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Briefings on How To Use the Federal Register
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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

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

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
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4. An introduction to the finding aids of the FR/CFR system.

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WASHINGTON, DC

WHEN: March 16 at 9:00 am

WHERE: Office of the Federal Register, 7th Floor Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

OAKLAND, CA

WHEN: March 30 at 9:00 am

WHERE: Oakland Federal Building, 1301 Clay Street, Conference Rooms A, B, and C, 2nd Floor, Oakland, CA

RESERVATIONS: Federal Information Center 1–800–726–4995

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Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers and **Federal Register** finding aids is available on 202–275–1538 or 275–0920.

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DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 810

RIN 0580–AA14

United States Standards for Soybeans

AGENCY: Federal Grain Inspection Service, Agriculture.

ACTION: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) is revising the U.S. Standards for Soybeans to: report the percentage of splits in tenths percent; reduce the U.S. Sample grade criteria for stones from eight or more to four or more and reduce the U.S. Sample grade aggregate weight criteria for stones from more than 0.2 percent by weight to more than 0.1 percent by weight; reduce the U.S. Sample grade criteria for pieces of glass from 2 to 0; eliminate the grade limitation on purple mottled or stained soybeans and establish a special grade, Purple Mottled or Stained, in the standards; eliminate the grade limitation on soybeans that are materially weathered; clarify the reference to Mixed soybeans in the standards; and establish a cumulative total for factors which may cause a sample to grade U.S. Sample grade.

EFFECTIVE DATE: September 1, 1994.

FOR FURTHER INFORMATION CONTACT: George Wollam, Federal Grain Inspection Service, USDA, room 0624–S, Box 96454, Washington, DC 20090–6454. Telephone (202) 720–0292.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Department is issuing this rule in conformance with Executive Order 12866. This rule has been determined to be not-significant for purposes of Executive Order 12866 and therefore has not been reviewed by OMB.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. The United States Grain Standards Act provides in section 87g that no State or subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the Act. Otherwise, this final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act Certification

David R. Galliart, Acting Administrator, FGIS, has determined that this final rule will not have a significant economic impact on a substantial number of small entities because those persons who apply the standards and most users of the inspection service do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Further, the standards are applied equally to all entities.

Information Collection and Recordkeeping Requirements

In compliance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection and recordkeeping requirements contained in this rule have been approved by OMB and assigned OMB No. 0580–0013.

Background

On July 2, 1991, FGIS proposed in the **Federal Register** (56 FR 30342) to revise the U.S. Standards for Soybeans by (1) changing minimum test weight per bushel from a grade determining factor to a nongrade determining factor; (2) reducing the foreign material limits for grades U.S. Nos. 1 and 2 to 0.5 and 1.0 percent, respectively; (3) reducing the grade limits for splits to 5.0, 10.0, 15.0, and 20.0 percent for U.S. Nos. 1, 2, 3, and 4 soybeans, respectively; (4) reporting the percentage of splits in tenths percent; (5) reducing the tolerance for stones from eight to four and eliminating the aggregate weight option; (6) reducing the tolerance for pieces of glass from two to zero; (7) eliminating the grade limitation on purple mottled or stained soybeans and establishing a special grade, Purple Mottled or Stained, in the standards; (8) eliminating the grade limitation on soybeans that are materially weathered; (9) creating a new grade and associated grade limits for U.S. Choice soybeans; (10) clarifying the reference to Mixed soybeans in the standards; (11) establishing a cumulative total for factors which may cause a sample to grade U.S. Sample grade; and (12) reporting the oil and protein content on all official lot inspection certificates for export soybean shipments. FGIS further proposed to revise inspection plan tolerances for soybeans based on the proposed changes.

Comment Review

FGIS received 1,770 comments during the 60-day comment period: 1,418 from soybean producers, 236 from grain handlers, 35 from foreign firms and associations, 5 from university researchers, 1 from Congress, and 75 from miscellaneous sources.

FGIS also received 99 comments after the close of the comment period: 69 from soybean producers, 20 from grain handlers, 1 from a foreign association, 4 from Congress, and 5 from miscellaneous sources.

On the basis of comments received during the comment period and other available information, FGIS is implementing seven of the proposed changes in the soybean standards. The following paragraphs address comments received regarding the proposed changes.

Minimum Test Weight Per Bushel (TW)

FGIS received 84 comments (64 supporting and 20 opposing) on the proposal to change TW from a grade determining factor to a nongrade determining factor.

Those supporting the proposal commented that TW is not a good indicator of the oil and meal yield of processed soybeans. They contended that other factors adequately reflect the quality of soybeans for grade purposes. Those opposing the proposal, however, indicated that they rely upon TW in making volume determinations and as a rough indicator of overall soybean quality. One commentor representing an association of grain handlers opposing the proposal stated that:

Grade determining factors should not be limited only to end-use values. Grain handlers depend on soybean grades to reflect other issues including storability. We believe that test weight is an important overall quality factor to both handlers and processors. Deleting test weight as a grade factor would be inappropriate and misleading.

Furthermore, those opposed contended that a change in the status of TW will create confusion among soybean importers given present trading and marketing practices.

While, as stated in the proposal, some question the value of TW as a grade determining factor (Refs. 1 and 2), it is evident from the comments that many in the industry do rely upon its grade determining status, especially in view of present trading and marketing practices. Considering its important use within the soybean industry, FGIS has determined that TW should be retained as a grade determining factor to facilitate trade. Since the status of TW will remain unchanged, it will be unnecessary to move TW from table 17 to table 18 of § 800.86 of the regulations as proposed. If, at a later date, more information is presented and/or the importance of TW as a grade determining factor diminishes, FGIS will reconsider the status of TW.

Foreign Material (FM)

The majority of commentors chose only to comment on the proposal to reduce the FM limits for grades U.S. Nos. 1 and 2 to 0.5 and 1.0 percent, respectively. Of the total 1,770 comments received, 1,763 or 99.6 percent commented on the FM proposal. Of these comments, 1,654 or 93.8 percent opposed the proposal with 1,312 or nearly 80 percent of the opposition coming from the State of Illinois. The vast majority of comments in opposition came in a form letter which claimed that:

(1) Under the proposed standards 88 percent of the 1988 soybean crop and 80 percent of the 1989 soybean crop would have been graded lower than U.S. No. 1;

(2) The proposed FM change will reduce the amount of money soybean growers will receive for their soybeans;

(3) Foreign buyers should use contract specifications to communicate their need for FM levels other than those specified in the standards;

(4) Domestic processors have not complained about FM levels; and

(5) It would be "wise" to await the results of the grain cleaning study before the FM levels are changed.

Individual producer comments from other States did not reflect similar opposition. In fact, producer comments from other States totaled 103 with 66 supporting and 37 opposing the proposal. Furthermore, individual views of some Illinois farmers appeared to contradict the claims of the form letter. Several farmers commented that increased FM levels occur during handling after the farmer delivers the soybeans to market.

The American Farm Bureau Federation, the nation's largest general farm organization, and the American Soybean Association, representing approximately 31,000 soybean farmers in 29 States, supported the reduced foreign material limits proposed for grades 1 and 2. In general, they contend lower FM limits will (1) make U.S. soybeans more competitive in the export market and (2) promote incentives to improve quality.

Two hundred thirty-three of the two hundred thirty-six comments received from grain handlers, individuals, and large trade associations opposed the proposal regarding FM. Three grain handlers did not address the FM proposal. Grain handlers contended that the United States' declining share of the world soybean market is directly related to U.S. farm and trade policies which have discouraged domestic soybean production and encouraged foreign buyers to diversify their soybean sources. They further contend that if the price is competitive and the intrinsic quality meets the customer's specifications, then the soybean FM level can be negotiated as part of the contract terms. These commenters contend that revising the FM limits in the soybean standards will not necessarily result in cleaner exported soybeans. Rather, they believe economic market forces will determine whether lower FM limits are shipped. Thus, grain handlers conclude that lowering FM limits will increase handling costs resulting in lower bids to farmers while doing nothing to increase the U.S. share of the soybean export market.

In contrast to grain handlers, all 35 comments received from foreign buyers of U.S. soybeans supported the proposed FM grade limits. These foreign buyers represent more than 60 percent of the U.S. export soybean market. The Japan Oilseed Processors Association (JOPA) and the EC Seed Crushers' and Oil Processors' Federation (FEDIOL), which represent the major foreign users of U.S. soybeans, stated that a FM reduction in U.S. soybeans is necessary to prevent further weakening of the U.S. export soybean market share. As stated in the proposal, when asked what guarantees would be given to increase exports if the FM limits were lowered, a FEDIOL representative responded: "The only guarantee is that the EEC will buy fewer soybeans from the U.S. if FM content remains at current levels." This opinion was reaffirmed in the written FEDIOL comment on the proposal and during the testimony of a FEDIOL representative at an October 29, 1991, Senate hearing on "Reducing Foreign Material Limits in Official Soybean Standards: Economic and Competitive Impacts." The concerns of the foreign buyers have also been expressed through foreign complaints filed with FGIS. Over the past decade, foreign material has been a steady source of complaints by foreign buyers of U.S. soybeans.

In summary, producers have expressed differing opinions regarding the FM proposal; elevator operators and others merchandizing and handling soybeans have voiced strong opposition to the proposal; and foreign buyers of U.S. soybeans have just as strongly supported the proposal. A similar mixed opinion was expressed by the FGIS Advisory Committee which voted eight to six to support the proposed FM change during a September 1991 meeting.

Due to the mixed opinions expressed both in the comments received and by the FGIS Advisory Committee, FGIS has decided not to finalize the FM limits.

Further, in June 1990, FGIS funded a 3-year study through the USDA Economic Research Service to determine the costs and benefits of marketing cleaner wheat, corn, barley, sorghum, and soybeans. In addition to identifying and quantifying the benefits and costs of cleaning grain, the study will assess the need to establish new or revise current factors, including FM, as related to grain cleanliness. After the study is completed, FGIS will review this matter to determine whether further changes to the standards should be proposed.

Splits

FGIS received 97 comments (16 supporting and 81 opposing) on the proposal to reduce the grade limits for splits. Those supporting the proposal indicated that the current limits for splits are rarely met, and, therefore, the grade limits are of little value. Those opposed stated that:

(1) Research/data is lacking to justify a reduction of the magnitude proposed;

(2) Splits are not a discount factor in the domestic soybean market;

(3) The level of split soybeans has never been a major cause for complaints about U.S. soybean exports; and

(4) The inverse relationship of moisture and splits could give incentive to increase moisture in order to reduce breakage.

As originally stated in the proposed rule, FGIS believes that storability and oil quality may be enhanced by a reduction in the amount of splits in a lot of soybeans. FGIS, however, does not want to encourage an increase in moisture of soybeans to inhibit splitting. Accordingly, FGIS will not change the grade limits for splits.

Finally, the percentage of splits in soybeans has traditionally been reported in whole percents with fractions of a percent being disregarded. Consequently, a soybean sample with 10.9 percent splits would be reported as 10.0 percent. FGIS proposed that the percentage of splits in soybeans be reported to the nearest tenth percent in accordance with procedures set forth in section 810.104 of the standards to better reflect normal rounding procedures. Those opposed (12 comments) offered no reason for their opposition. Those in favor (35 comments) of the proposal generally agreed with FGIS' reasoning. Therefore, in accordance with the rationale set forth in the proposal, FGIS will revise the soybean standards to report the percentage of splits in soybeans to the nearest tenth percent.

Stones

FGIS received 45 comments (29 supporting and 16 opposing) on the proposal to reduce the U.S. Sample grade criteria for stones from eight or more to four or more and to eliminate the U.S. Sample grade aggregate weight criteria. Those opposing the proposal offered no justification for their opposition. Of the 29 commenters who supported the proposal, 16 supported the proposal as stated and 13 supported the proposal in part. Those who partially supported the proposal suggested that the number of stones be reduced and that the aggregate weight criteria be maintained and reduced. They indicated that aggregate weight must be maintained so that size is qualified. One commenter summarized this position by stating:

> * * * We request that an aggregate weight limit for stones (0.1 percent) be retained to prevent minuscule, inconsequential stone particles from adversely affecting grade determinations.

The following definition for stones is given in § 810.102(c) of the Official United States Standards for Grain.

> Concreted earthy or mineral matter and other substances of similar hardness that do not disintegrate in water.

The definition of stones prevents the potential for sand or other similar particles from being classified as stones. Based on the comments received, however, FGIS believes that sufficient concern exists that a soybean lot could be downgraded due to the presence of a few minuscule stones. At processing facilities, minuscule stones are typically removed prior to crushing. FGIS believes, therefore, that the presence of a few minuscule stones should not function as a downgrading factor. A reduced weight limitation in combination with a count limitation will serve to prevent a few small stones from affecting the grade. FGIS, therefore, is revising the soybean standards to reduce the U.S. Sample grade criteria for stones from eight or more to four or more and reduce the aggregate weight option from more than 0.2 percent by weight to more than 0.1 percent by weight.

Glass

FGIS received 69 comments (53 supporting and 16 opposing) on the proposal to reduce the U.S. Sample grade criteria for pieces of glass from 2 to 0. One commentor effectively summarized the views of those who opposed the proposal to reduce the tolerance for pieces of glass from 2 to 0. He stated that he had:

> * * * A philosophical problem specifying a zero tolerance for factors not considered dangerous to human health and safety.

Glass has a harmful effect on a soybean quality and processing. One commentor supporting the proposal contended that:

> There is no reason for glass to be in soybeans, and if it is there, it should be identified at any level.

FGIS agrees that glass may adversely affect soybean quality and processing. Furthermore, pieces of glass are rarely found in soybeans and rarely cause a sample to grade U.S. Sample grade. FGIS believes that this change will create an incentive to maintain the current quality of soybeans in the future while having minimal economic impact on the current market. Accordingly, FGIS is revising the soybeans standards to reduce the U.S. Sample grade criteria for pieces of glass from 2 to 0.

Purple Mottled or Stained Soybeans

FGIS received 75 comments (52 supporting and 23 opposing) on the proposal to eliminate the grade limitation on purple mottled or stained soybeans and establish a special grade, Purple Mottled or Stained. Most of the opposing commentors offered no rationale for their opposition. One commentor suggested that purple mottled or stained soybeans affect both the free fatty acid content of the oil and the dehulling process. FGIS has found no data or any other source supporting this statement. Rather, those who supported FGIS' proposal generally agreed with the justification as presented in the proposed rule. FGIS stated therein that the fungus that causes purple mottling or staining colonizes only the seed coat of the soybean. Neither the fungus nor the resultant discoloration reduces kernel, oil, or feed quality. As a result of this information and the comments received, FGIS will revise the soybean standards to eliminate the grade limitation for purple mottled or stained soybeans.

Those who supported the FGIS proposal to eliminate the grade limitation also supported the proposal to establish a special grade, Purple Mottled or Stained, in the soybean standards. FGIS and these commenters are in agreement that aesthetic factors, such as purple mottled or stained, are important to some customers and, therefore, have an associated economic value. Therefore, to satisfy the needs of these specific customers, FGIS will revised the soybean standards to include a special grade, Purple Mottled or Stained.

Materially Weathered Soybeans

FGIS received 70 comments (53 supporting and 17 opposing) on the proposal to eliminate the grade limitation on soybeans that are materially weathered. Most of those opposed to the proposal offered no rationale for their opposition. One commentor, however, stated the following:

> We feel you are sending out the wrong message here. What you appear to be saying is that FGIS is not concerned about the appearance of our beans. Granted it doesn't come into play very often but when it does it is a very descriptive and meaningful term.

FGIS disagrees with the above statement for two reasons: (1) FGIS is concerned about both the quality and appearance of U.S. soybeans, and (2) since the last soybean standards review in 1985, FGIS has rarely found the need to limit the grade due to the amount of materially weathered soybeans. The limitation on damaged kernels appears to be an adequate control on overall damage so as to nullify the use for the materially weathered grade limitation. Therefore, FGIS does not view "materially weathered" as a meaningful and descriptive term. As stated in the proposed rule and by many of the supporting commentors, the factor limits for the other damages adequately convey quality. FGIS is therefore revising the standards to eliminate the grade limitation on soybeans that are materially weathered.

Edible Grade Soybeans

FGIS received 69 comments (33 supporting and 36 opposing) on the proposal to create a new grade and associated grade limits for U.S. Choice soybeans. Those supporting the proposal either generally supported all changes or stated that they were not opposed to the proposed change. One commenter stated that a new grade for edible soybeans may satisfy a specific niche within the market. Those opposed generally stated that the edible soybean market is small and that each purchaser has very specific needs. One commenter who opposed the proposal specifically stated the following:

> * * * I do not believe that consensus exists on what factors or factor limits best describe "edible-grade" soybeans. Variability of current contract specifications for food-grade soybeans suggests that reaching consensus on a single grade is unlikely or even impossible. Because food-grade soybean buyers and processors are currently able to purchase soybeans meeting their specific needs through their contract specifications, we suggest that a separate grade is unnecessary and perhaps even misleading and confusing.

FGIS agrees that the edible soybean market is very specialized. Since specific needs vary, not only from country to country, but from buyer to buyer within a country, FGIS agrees that the market can be best served through contractual specifications. FGIS, therefore, will not revise the standards to offer a new grade for edible soybeans.

Mixed Soybeans

FGIS received 64 comments (49 supporting and 15 opposing) on the proposal to clarify the reference to Mixed soybeans in the standards. Those opposing the proposal were generally opposed to many or all of the proposed changes without offering specific reasons. Those who were in favor of the proposed change agreed with FGIS that the reference to Mixed soybeans is simply to clarify the soybean standards. As a result, FGIS will amend § 810.1604, Grades and grade requirements for soybeans, to include a reference to Mixed soybeans. "Soybeans of other colors" have been and will continue to be disregarded as a factor in Mixed soybeans.

Cumulative Sample Grade Factors

FGIS received 71 comments (56 supporting and 15 opposing) on the proposal to establish a cumulative total for factors which may cause a sample to grade U.S. Sample grade. Those opposing the proposal did not offer any specific rationale for their position. Many of the supporters simply stated that they did not oppose the proposal. As stated in the proposal, FGIS believes that a cumulative total limit will better identify quality by designating a combination of deleterious material, animal filth, and toxic substances as U.S. Sample grade. Accordingly, FGIS is revising the soybean standards to establish the cumulative total Sample grade criteria as proposed.

FGIS will also revise the third footnote of the grade chart in § 810.1604, Grades and grade requirements for soybeans, as proposed for clarity. The revision states that only the number of stones, and not the weight of stones, will be considered in calculating the cumulative total for factors which may cause a sample to grade U.S. Sample grade. The third footnote is revised to read as follows:

> Includes any combination of animal filth, castor beans, crotalaria seeds, glass, stones, and unknown foreign substances. The weight of stones is not applicable for total other material.

Oil and Protein

FGIS received 86 comments (58 supporting and 28 opposing) on the proposal to report the oil and protein content on all official lot inspection certificates for export soybean shipments. Those opposing the proposal generally commented that any cost associated with mandatory oil and protein testing should be borne by those who request the service. The commenters further stated that mandatory testing would result in an unwarranted cost for all in the marketing system. One commenter opposing the proposal stated that:

> Buyers and sellers should have the marketing flexibility to determine through contract, if, which and how soybean oil and protein determinations should be made.

Another commenter stated that in the first quarter of the 1990/91 marketing year, 37 percent of foreign buyers had not requested oil and protein testing by FGIS. "Thus, the market is responding to the availability of the service, which FGIS appropriately provides." Yet another commenter suggested that mandating tests for oil and protein at export would create dual standards for domestic and export sales of soybeans.

Those who supported the proposal, however, contended that the current method of reporting oil and protein only upon request puts the burden upon the buyer. One commenter supporting the proposal stated that:

> I believe we can increase our competitive advantage in world markets by providing this information automatically.

Another commenter stated that not only could the U.S. improve its competitive position, but mandatory reporting will generate market signals that will help improve the composition of U.S. soybeans and thus make them more competitive.

While, as stated in the proposal, FGIS recognizes that oil and protein tests provide important information regarding soybean quality, it is evident that many in the industry are satisfied with the upon-request status of the tests. For the first half of the 1992/93 marketing year, FGIS inspected 66 percent of export soybeans for oil and protein content. The number of requests indicates that foreign purchasers and/or exporters are effectively requesting oil and protein tests, as needed, within the framework of the current inspection system. Therefore, at this time, FGIS believes that mandatory testing would place an unnecessary burden on the inspection system and would provide some foreign purchasers with unnecessary information. If, at a later date, more information is presented which indicates that mandatory oil and protein testing at export would facilitate marketing, FGIS will reconsider the status of oil and protein testing.

The proposed revisions of § 810.102, Definition of other terms to add sections (c) oil and (d) protein and redesignate sections (c), (d), and (e) as (e), (f), and (g) will be unnecessary because FGIS will not report oil and protein content on all official lot inspection certificates for export soybean shipments.

Miscellaneous Changes

FGIS proposed to revise the format of the grade chart in § 810.1604, Grades and grade requirements for soybeans, to improve the readability of the grade chart. FGIS also proposed to revise the authority citation for part 810. No comments were received on these proposals and, as a result FGIS will revise the soybean standards in this regard as proposed.

Inspection Plan Tolerances

Shiplots, unit trains, and lash barge lots are inspected by a statistically-based inspection plan (55 FR 24030; June 13, 1990). Inspection tolerances, commonly referred to as breakpoints, are used to determine acceptable quality. No changes in the breakpoints as proposed will be necessary because FGIS will not revise the FM grade limits for U.S. Nos. 1 and 2 soybeans, establish a new grade for U.S. Choice soybeans, nor revise the grade limits for splits.

Final Action

On the basis of these comments and other available information, FGIS has decided to revise the soybean standards as proposed with the exception of the reduction in the FM grade limits for U.S. Nos. 1 and 2, the change in TW from a grade determining factor to a nongrade determining factor, the reduction in the grade limits for splits, the elimination of the aggregate weight option for stones, the creation of a new grade for U.S. Choice soybeans, and the reporting of oil and protein content on all official lot inspection certificates for export soybean shipments.

Pursuant to section 4(b)(1) of the United States Grain Standards Act (7 U.S.C. 76(b)(1)), no standards established or amendments or revocations of standards are to become effective less than one calendar year after promulgation, unless in the judgment of the Administrator, the public health, interest, or safety requires that they become effective sooner. Pursuant to that section of the Act, it has been determined that in the public interest the revision becomes effective September 1, 1994. This effective date will coincide with the beginning of the 1994 crop year and facilitate domestic and export marketing of soybeans.

References

(1) Hill, L.D., "Changes in the Grain Standards Act," Grain Grades and Standards, 113–184.

(2) West, V.I., "How Good Are Soybean Grades?," Illinois Farm Economics, No. 192, Extension Service in Agriculture and Home Economics, College of Agriculture, University of Illinois, May 1951, p. 1166.

List of Subjects in 7 CFR Part 810

Exports, Grain.

For reasons set out in the preamble, 7 CFR part 810 is amended as follows:

PART 810—OFFICIAL UNITED STATES STANDARDS FOR GRAIN

1. The authority citation for part 810 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867 as amended (7 U.S.C. 71 *et. seq.*)

Subpart I—United States Standards for Soybeans

2. In § 810.104 the first sentence of paragraph (b) is revised to read as follows:

§ 810.104 Percentages.

* * * * *

(b) *Recording.* The percentage of dockage in barley, flaxseed, rye, and sorghum are reported in whole percents with fractions of a percent being disregarded. * * *

* * * * *

3. Section 810.1604 is revised to read as follows:

§ 810.1604 Grades and grade requirements for soybeans.

Grading factors	Grades U.S. Nos.			
	1	2	3	4
	Minimum pound limits of:			
Minimum test weight per bushel	56.0	54.0	52.0	49.0
	Maximum percent limits of:			
Damaged kernels:				
Heat (part of total)	0.2	0.5	1.0	3.0
Total	2.0	3.0	5.0	8.0
Foreign material	1.0	2.0	3.0	5.0
Splits	10.0	20.0	30.0	40.0
Soybeans of other colors [1]	1.0	2.0	5.0	10.0
	Maximum count limits of:			
Other material:				
Animal filth	9	9	9	9
Castor beans	1	1	1	1
Crotalaria seeds	2	2	2	2
Glass	0	0	0	0
Stones [2]	3	3	3	3
Unknown foreign substance	3	3	3	3
Total [3]	10	10	10	10

U.S. Sample grade Soybeans that:
(a) Do not meet the requirements for U.S. Nos. 1, 2, 3, or 4; or
(b) Have a musty, sour, or commercially objectionable foreign odor (except garlic odor); or
(c) Are heating or of distinctly low quality.

[1] Disregard for Mixed soybeans.

[2] In addition to the maximum count limit, stones must exceed 0.1 percent of the sample weight.

[3] Includes any combination of animal filth, castor beans, crotalaria seeds, glass, stones, and unknown foreign substances. The weight of stones is not applicable for total other material.

4. Section 810.1605 is amended by designating the text as paragraph (a) and by adding paragraph (b).

§ 810.1605 Special grades and special grade requirements.

(a) *Garlicky soybeans.* * * *

(b) *Purple mottled or stained soybeans.* Soybeans with pink or purple seed coats as determined on a portion of approximately 400 grams with the use of an FGIS Interpretive Line Photograph.

Dated: February 28, 1994.

David R. Galliart,

Acting Administrator.

[FR Doc. 94–5067 Filed 3–4–94; 8:45 am]

BILLING CODE 3410–EN–M

Commodity Credit Corporation

7 CFR Part 1413

RIN 0560–AD55

Malting Barley Assessment

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends the regulations with respect to the malting barley assessment which is conducted by the Commodity Credit Corporation (CCC) in accordance with section 105B of the Agricultural Act of 1949, as amended (the 1949 Act). The amendment made by this interim rule will set the malting barley assessment rate at 2.5 percent for the 1993 through 1995 crops of barley. This action is taken to immediately improve the competitive position of U.S. barley producers and eliminate the distortions the assessment has on barley marketings and production.

DATES: Interim rule effective March 7, 1994. Comments must be received on or before April 6, 1994, in order to be assured of consideration.

ADDRESSES: Submit comments to the Director, Grains Analysis Division, Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), P.O. Box 2415, Washington, DC 20013–2415; telephone 202–720–4418. Comments received may be inspected between 9 a.m. and 4:30 p.m., Monday through Friday, except holidays, in room 3740, South Agriculture Building, USDA, 14th Street and Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Philip Sronce, Director, Grains Analysis Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013–2415; telephone 202–720–4418.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This interim rule is issued in conformance with Executive Order 12866 and has been determined not to be a "significant regulatory action." Based on information compiled by the Department, it has been determined that this interim rule:

(1) Would have an annual effect on the economy of less than $100 million;

(2) Would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(3) Would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(4) Would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and

(5) Would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies is Feed Grain Production Stabilization—10.055.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because the CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Executive Order 12778

This interim rule has been reviewed in accordance with Executive Order 12778. The provisions of this interim rule do not preempt State laws, are not retroactive, and do not require the exhaustion of any administrative appeal remedies.

Environmental Assessment or Impact Statement

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Executive Order 12372

This program/activity 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).

Paperwork Reduction Act

The amendments set forth in this interim rule do not contain information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. 35.

Comments

For the 1991 and 1992 crops of barley the assessment has been established at 5 percent. For the 1993 through 1995 crops of the barley the assessment will be established at 2.5 percent. This action is taken to immediately improve the competitive position of U.S. barley producers and eliminate the distortions the assessment has on barley marketings and production. Accordingly, the provisions of this interim rule are effective upon publication in the **Federal Register**. Comments are requested within 30 days of publication and will be scheduled for review so that a final document discussing comments received can be published in the **Federal Register**.

Statutory Background

In accordance with section 105B(p) of the 1949 Act, the Secretary is required to levy an assessment on producers of malting barley that are participating in the barley production adjustment program for each of the 1991 through 1995 crop years. The Secretary is required to establish such assessment at no more than 5 percent of value of malting barley produced on program payment acres on the farm and the production per acre on which the assessment is based shall not be greater than the farm program payment yield.

List of Subjects in 7 CFR Part 1413

Acreage allotments, Cotton, Disaster assistance, Feed grains, Price support programs, Reporting and recordkeeping requirements, Rice, Soil conservation, Wheat.

Accordingly, 7 CFR part 1413 is amended as follows:

PART 1413—FEED GRAIN, RICE, UPLAND AND EXTRA LONG STABLE COTTON, WHEAT AND RELATED PROGRAMS

1. The authority citation for 7 CFR part 1413 continues to read as follows.

Authority: 7 U.S.C. 1308, 1308a, 1309, 1441–2, 1444–2, 1444f, 1445b–3a, 1461–1469; 15 U.S.C. 714b and 714c.

2. In § 1413.110, paragraph (b) is revised to read as follows:

§ 1413.110 Malting barley.

* * * * *

(b)(1) The assessment rate per bushel for the 1991 and 1992 crops of barley will be the smaller of:

(i) 5 percent of the:

(A) State weighted average market price of malting barley produced on the farm in those States where average market prices are available from the National Agricultural Statistics Service, or

(B) The national average market price in all other States, or

(ii) The final deficiency payment rate.

(2) The assessment rate per bushel for the 1993, 1994, and 1995 crops of barley will be 2.5 percent.

* * * * *

Signed at Washington, DC on February 28, 1994.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 94–4996 Filed 3–4–94; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–28–AD; Amendment 39–8830; AD 94–04–10]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes, that requires replacement of the bottom joint fittings and modification of these new bottom joint fittings, the main landing gear (MLG) rear spar fittings, and the rear spar webs by cold-expanding the bolt holes. This amendment is prompted by full-scale fatigue testing of a Fokker Model F28 Mark 0100 series airplane, which revealed cracks in the MLG rear spar fitting. The actions specified by this AD are intended to prevent loss of the structural integrity of the MLG attachments.

DATES: Effective April 6, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 6, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes was published in the **Federal Register** on August 3, 1993 (58 FR 41210). (A correction of the rule was published in the **Federal Register** August 9, 1993 (58 FR 42361).) That action proposed to require replacement of the bottom joint fittings and modification of these new bottom joint fittings, the MLG rear spar fittings, and the rear spar webs by cold-expanding the bolt holes.

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

One commenter supports the rules as proposed.

The Air Transport Association (ATA), on behalf of one of its members, requests that paragraph (a) of the proposed AD be revised to include Fokker Service Bulletin Change Notification (SBCN) SBF100–57–020/01, dated February 4, 1993, as an additional source of service information. This commenter states that, since one operator has already begun the proposed modification, that operator would have to request an alternative method of compliance if the SBCN is not incorporated into the final rule. The FAA concurs. This SBCN makes certain minor corrections and clarifications to Fokker Service Bulletin SBF100–57–020, dated April 27, 1992. Therefore, paragraph (a) of the final rule has been revised to include this SBCN as an additional source of appropriate service information.

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

The FAA estimates that 52 airplanes of U.S. registry will be affected by this AD, that it will take approximately 27 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $2,100 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $186,420, or $3,585 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

94–04–10 Fokker: Amendment 39–8830. Docket 93–NM–28–AD.

Applicability: Model F28 Mark 0100 series airplanes; serial numbers 11244 through 11390 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of the structural integrity of the main landing gear (MLG) attachments, accomplish the following:

(a) Prior to the accumulation of 13,500 total landings, or within one year after the effective date of this AD, whichever occurs later, replace the bottom joint fittings and modify these new bottom joint fittings, the MLG rear spar fittings, and the rear spar webs by cold-expanding the bolt holes in accordance with Fokker Service Bulletin SBF100–57–020, dated April 27, 1992, as revised by Fokker Service Bulletin Change Notification (SBCN) SBF100–57–020/01, dated February 4, 1993, and SBCN SBF100–57–020/02, dated April 20, 1993.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

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

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

(d) The replacement and modification shall be done in accordance with Fokker Service Bulletin SBF100–57–020, dated April 27, 1992, as revised by Fokker Service Bulletin Change Notification SBF100–57–020/01, dated February 4, 1993, and Fokker Service Bulletin Change Notification SBF100–57–020/02, dated April 20, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc. 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on April 6, 1994.

Issued in Renton, Washington, on February 14, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–3753 Filed 3–4–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 4

[Docket No. RM94–11–000]

Deletion of Definition

Issued March 1, 1994.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: In 1991, the Commission adopted regulations which included a subsection setting forth a definition of "fishway." Section 1701 (b) of the Energy Policy Act of 1992 vacated that definition. The Commission, by this final rule, is implementing the mandate of Congress by deleting the subsection from its regulations.

EFFECTIVE DATE: The final rule is effective March 1, 1994.

FOR FURTHER INFORMATION CONTACT: Barry Smoler, Office of the General Counsel, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, (202) 208–1269.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this documents during normal business hours in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits, and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in Wordperfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, located in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F. Santa, Jr.

I. Introduction and Discussion

In 1991, the Commission adopted § 4.30(b)(9)(iii) of its regulations,[1] setting forth a definition of "fishway." Section 1701(b) of the Energy Policy Act of 1992 vacated that definition.[2] Accordingly, the Commission, by this final rule, is implementing the mandate of Congress by deleting § 4.30(b)(9)(iii) from its regulations.

II. Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980 (RFA)[3] generally requires a description and analysis of final rules that will have a significant economic impact on a substantial number of small entities.[4] Pursuant to section 605(b) of the RFA, the Commission hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities.

III. Environmental Statement

Issuance of this rule does not represent a major federal action having a significant adverse effect on the human environment under the Commission regulations implementing the National Environmental Policy Act.[5] This rule is clarifying and corrective and thus falls within the categorical exemptions provided in the Commission's regulations. Neither an environmental impact statement nor an environmental assessment is required.[6]

IV. Information Collection Statement

Office of Management and Budget (OMB) regulations require that OMB

[1] See Order No. 533, III FERC Stats. & Regs. ¶ 30,921 (1991), 56 FR 23108 (May 20, 1991); Order No. 533–A, III FERC Stats. & Regs. ¶ 30,932 (1991), 56 FR 61137 (Dec. 2, 1991). Commissioner (now Chair) Elizabeth Anne Moler dissented with respect to the definition of "fishway." See III FERC ¶ 30,921 at pp. 30,171–73 and ¶ 30,932 at pp. 30,372–73.

[2] Public Law 102–486, 106 Stat. 2776–3133 (October 24, 1992). Section 1701(b), provides in pertinent part as follows:

(b) Clarification of Authority Regarding Fishway.—The definition of the term "fishway" contained in 18 CFR 4.30(b)(9)(iii), as in effect on the date of enactment of this Act, is vacated without prejudice to any definition or interpretation by rule of the term "fishway" by the Federal Energy Regulatory Commission for purposes of implementing section 18 of the Federal Power Act * * *.

[3] 5 U.S.C. 601–602.

[4] Section 601(c) of the RFA defines a "small entity" as a small business, a small not-for-profit enterprise, or a small governmental jurisdiction. A "small business" is defined by reference to section 3 of the Small Business Act as an enterprise which is "independently owned and operated and which is not dominant in its field of operation." 15 U.S.C. 632(a).

[5] See Order No. 486, 52 FR 47897 (Dec. 17, 1987). FERC Stats. & Regs. (Regulations Preambles 1986–1990) ¶ 30,783 (Dec. 10, 1987) (codified at 18 CFR part 380).

[6] See 18 CFR 380.4(a)(2)(ii).

approve certain information collection requirements imposed by agency rule.[7] This rule contains no information collection requirements and is not subject to OMB approval.

V. Administrative Findings and Effective Date

This final rule is purely ministerial in nature. It implements the mandate of section 1701(b) of the Energy Policy Act of 1992 by physically deleting from the Commission's regulations a paragraph thereof, § 4.30(b)(9)(iii), that Congress explicitly vacated. Prior notice and comment under section 4 of the Administrative Procedure Act[8] are therefore unnecessary. The Commission is taking this action at this time, and finds good cause to make this rule effective immediately upon issuance, because title 18 of the Code of Federal Regulations will next be reprinted based on the regulations in effect on April 1, 1994. This rule therefore is effective March 1, 1994.

List of Subjects in 18 CFR Part 4

Electric power, Reporting and recordkeeping requirements.

By the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

In consideration of the foregoing, the Commission amends part 4 of chapter I, title 18, Code of Federal Regulations, as set forth below.

PART 4—LICENSES, PERMITS, EXEMPTIONS, AND DETERMINATION OF PROJECT COSTS

1. The authority citation for part 4 is revised to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 42 U.S.C. 7101–7352.

§ 4.30 [Amended]

2. In § 4.30, paragraph (b)(9)(iii) is removed.

[FR Doc. 94–5055 Filed 3–4–94; 8:45 am]
BILLING CODE 6717–01–P

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18 CFR Part 271

[Docket No. RM91–8–004]

Order Qualifying Certain Tight Formation Gas for Tax Credits

Issued March 1, 1994.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; order denying extension request.

SUMMARY: The Federal Energy Regulatory Commission is issuing an order denying the request to extend the April 30, 1994 deadline for jurisdictional agencies to submit their Natural Gas Policy Act well determinations to the Commission.

EFFECTIVE DATE: This final rule is effective March 1, 1994.

FOR FURTHER INFORMATION CONTACT: Jacob Silverman, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–2078.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the text of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1379. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits, and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in Wordperfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, located in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

Order Denying Extension Request

Issued March 1, 1994.

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F. Santa, Jr.

In Order No. 539[1] the Commission initially established a June 30, 1993 deadline for jurisdictional agencies to submit well category determinations to the Commission in light of the repeal of title I of the Natural Gas Policy Act of 1978 (NGPA) effective January 1, 1993. The Commission believed that this would provide sufficient time for an orderly end to the determination program. However, in response to requests by jurisdictional agencies for extensions of the deadline, the Commission extended that deadline on three different occasions in order to allow jurisdictional agencies additional time to process and submit their determinations to the Commission. First the Commission extended the deadline until September 30, 1993, for all jurisdictional agencies;[2] then until April 30, 1994, for certain specified jurisdictional agencies;[3] and later until April 30, 1994, for all jurisdictional agencies.[4]

On January 25, 1994, a number of offices of the Bureau of Land Management, United States Department of the Interior (BLM) in two states[5] requested the Commission to further extend the April 30, 1994 deadline[6] until August 31, 1994. In support of the request, BLM stated that their pending workload was extremely heavy and the extension was necessary to ensure that all applications were properly reviewed. BLM claimed that this situation had developed because of a number of factors, such as the extreme weather and road conditions which caused delays in well completions and pipeline gathering systems; the increased number of applications after the issuance of Order No. 539–C; and the difficulties that producers have had in completing their wells to provide the necessary paperwork to BLM. BLM also asserts that there is the likelihood that there will be numerous preliminary negative determinations and appeals by applicants protesting those determinations which BLM will have to review before BLM can issue the final determinations.

In Order No. 539–B, issued on April 15, 1993, the Commission stated that it was desirable to conclude the determination process as soon as possible and, accordingly, the Commission stated that it "will not grant any extension beyond April 30, 1994."[7] The April 30, 1994 deadline allowed jurisdictional agencies 16 months after the repeal of title I of the NGPA to process applications and submit the determinations to the Commission. Moreover, since April 15, 1993, agencies have been on notice that

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[7] 5 CFR part 1320.

[8] 5 U.S.C. 553(b).

[1] Qualifying Certain Tight Formation Gas for Tax Credits, FERC Statutes & Regulations, ¶ 30,940 (1992); 57 FR 13009 (April 15, 1992).

[2] Order No. 539–A, FERC Statutes & Regulations ¶ 30,947 (1992); 57 FR 31123 (July 14, 1992).

[3] Order No. 539–B, FERC Statutes & Regulations ¶ 30,968 (April 15, 1993); 58 FR 19607 (April 15, 1993).

[4] Order No. 539–C, FERC Statutes & Regulations ¶ 30,973 (1993); 58 FR 38528 (July 19, 1993).

[5] The New Mexico State offices in Santa Fe and Albuquerque, and the Wyoming State offices in Cheyenne, Rawlins, and Rock Springs.

[6] Since the April 30, 1994 deadline falls on a Saturday, the deadline is May 2, 1994.

[7] FERC Statutes & Regulations ¶ 30.968 at 30,834.

there would be no further extensions of the April 30, 1994 deadline. The Commission believes that it has allowed jurisdictional agencies sufficient time to complete the processing of applications while at the same time ending the determination program within a reasonable time after the repeal date of January 1, 1993. Accordingly, the Commission denies BLM's request.

The Commission Orders

The request of BLM for extension of the April 30, 1994 deadline for jurisdictional agencies to submit well category determinations to the Commission is denied.

By the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5095 Filed 3–4–94; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 90C–0453]

Listing of Color Additives Exempt From Certification; Synthetic Iron Oxide

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the color additive regulations to provide for the safe use of synthetic iron oxide in human food. This action is in response to a petition filed by Teepak, Inc.

DATES: Effective April 7, 1994, except as to any provisions that may be stayed by the filing of proper objections; written objections by April 6, 1994.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Rosalie M. Angeles, Center for Food Safety and Applied Nutrition (HFS–207), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9528.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of January 11, 1991 (56 FR 1197), FDA announced that a color additive petition (CAP 0C0228) had been filed by Teepak, Inc., P.O. Box 11925, Columbia, SC 29211. The petition proposed that the color additive regulations in § 73.1200 *Synthetic iron oxide* (21 CFR 73.1200) be amended to provide for the safe use of synthetic iron oxide as a color additive in human food, specifically in sausage casings. The petition was filed under section 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379e). The agency erred in citing the specific section number to be amended as § 73.1200 because that section is in Subpart B—Drugs of part 73 (21 CFR part 73); the amendment is more accurately placed in § 73.200 (21 CFR 73.200) in Subpart A—Foods. The agency finds, however, that because the regulatory action was described properly in the notice, the error in citation will not mislead anyone and an amended notice is not necessary.

Based on data contained in the petition and other relevant information, FDA concludes that the petitioned use of synthetic iron oxide as a color additive in human food is suitable and safe. The agency, therefore, is amending § 73.200 to provide for the use of synthetic iron oxide as a color additive in human food.

The existing regulation for food use of synthetic iron oxide in § 73.200 contains a set of specifications for heavy metals which FDA established when it listed the color additive for use in dog and cat food (33 FR 9953, July 11, 1968). However, it is the agency's policy to limit human exposure to heavy metal contaminants in food to the lowest levels possible. Therefore, for human food use, the agency is restricting the levels for lead, arsenic, and mercury in synthetic iron oxide to no more than 10 parts per million (ppm), 3 ppm, and 1 ppm, respectively.

In accordance with § 71.15 (21 CFR 71.15), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in § 71.15, the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before April 6, 1994, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. FDA will publish notice of the objections that the agency has received or lack thereof in the **Federal Register**.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 73 is amended as follows:

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

1. The authority citation for 21 CFR part 73 is revised to read as follows:

Authority: Secs. 201, 401, 402, 403, 409, 501, 502, 505, 601, 602, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e).

2. Section 73.200 is amended by revising paragraphs (a)(2), (b), and (c) to read as follows:

§ 73.200 Synthetic iron oxide.

(a) * * *

(2) Color additive mixtures for food use made with synthetic iron oxide may contain only those diluents that are suitable and that are listed in this subpart as safe for use in color additive mixtures for coloring foods.

(b) *Specifications.* (1) Synthetic iron oxide for human food use shall conform to the following specifications:

Arsenic (as As), not more than 3 parts per million.
Lead (as Pb), not more than 10 parts per million.
Mercury (as Hg) , not more than 1 part per million.

(2) Synthetic iron oxide for dog and cat food use shall conform to the following specifications:

Arsenic (as As), not more than 5 parts per million.
Lead (as Pb), not more than 20 parts per million.
Mercury (as Hg), not more than 3 parts per million.

(c) *Uses and restrictions.* (1) Synthetic iron oxide may be safely used for the coloring of sausage casings intended for human consumption in an amount not exceeding 0.10 percent by weight of the finished food.

(2) Synthetic iron oxide may be safely used for the coloring of dog and cat foods in an amount not exceeding 0.25 percent by weight of the finished food.

* * * * *

Dated: February 25, 1994.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 94–5128 Filed 3–4–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF DEFENSE

48 CFR Parts 225 and 252

Defense Federal Acquisition Regulation Supplement; Carbonyl Iron Powders

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Department of Defense has amended the Defense Federal Acquisition Regulation Supplement to delete the restriction on the acquisition of carbonyl iron powders, which required that all carbonyl iron powders be manufactured in a facility located in the United States or Canada.

EFFECTIVE DATE: February 14, 1994.

FOR FURTHER INFORMATION CONTACT: Mrs. Alyce Sullivan, (703) 697–7266.

SUPPLEMENTARY INFORMATION:

A. Background

Section 9151 of the Fiscal Year 1993 Defense Appropriations Act (Pub. L. 102–396) required that all carbonyl iron powders be manufactured in a facility located in the United States or Canada. Section 9151 applied only to Fiscal Year 1993. A similar restriction was not included in the Fiscal Year 1994 Defense Appropriations Act.

The Director, Defense Procurement, issued Departmental Letter 94–001, February 14, 1994, to delete the restriction on the acquisition of carbonyl iron powders from the Defense Federal Acquisition Regulation Supplement (DFARS Case 94–D301).

B. Regulatory Flexibility Act

The Regulatory Flexibility Act applies but is not expected to have a significant impact on a substantial number of small entities because it removes a statutory restriction on the acquisition of carbonyl iron powders, and the restriction is no longer in effect.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the revisions do not contain and/or affect information collection requirements which require the approval of OMB under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Claudia L. Naugle,

Deputy Director, Defense Acquisition Regulations Council.

Therefore, 48 CFR parts 225 and 252 are amended as follows:

1. The authority citation for 48 CFR parts 225 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and FAR subpart 1.3.

PART 225—FOREIGN ACQUISITION

225.7014 [Removed and Reserved]

2. Section 225.7014 is removed and reserved, and sections, 225.7014–1, 225.7014–2, and 225.7014–3 are removed.

PART 252—SOLICITAITON PROVISIONS AND CONTRACT CLAUSES

252.225–7023 [Removed and Reserved]

3. Section 252.225–7023 is removed and reserved.

[FR Doc. 94–4880 Filed 3–4–94; 8:45 am]

BILLING CODE 3810–01–M

48 CFR Parts 247 and 252

Defense Federal Acquisition Regulation Supplement; Reflagging and Repair Work

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for public comments.

SUMMARY: The Director of Defense Procurement is issuing an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to restrict performance of reflagging or repair work on any vessel utilized under a time charter contract to performance in the United States or its territories.

DATES: *Effective Date:* February 25; 1994; *Comment Date:* Comments on the interim rule should be submitted to the address shown below on or before May 6, 1994 to be considered in formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to The Defense Acquisition Regulations Council, ATTN: Mrs. Linda Holcombe, OUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 697–9845. Please cite DFARS Case 93–D313 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Mrs. Linda Holcombe, (703) 697–7266.

SUPPLEMENTARY INFORMATION:

A. Background

Section 315 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160) places restrictions on reflagging or repair work on any vessel utilized under a time charter contract.

The Director, Defense Procurement, issued Departmental Letter 94–002, February 25, 1994, to provide that all time charter solicitations and contracts for the use of a vessel for the transportation of supplies must include a clause which restricts performance of reflagging or repair work to performance in the United States, or its territories, unless a waiver has been granted by the Secretary of Defense.

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* because it restricts performance of reflagging or repair work to performance within the United States or its territories. This restriction is limited to

all time charter solicitations and contracts for the use of a vessel for the transportation of supplies. An initial Regulatory Flexibility Analysis has therefore not been performed. The interim rule applies to both large and small businesses. Comments are invited from small businesses and other interested parties. Comments from small entities will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite DFARS Case 93–D313 in all correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the interim rule does not impose reporting or recordkeeping requirements which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 247 and 252

Government procurement.

Claudia L. Naugle,

Deputy Director, Defense Acquisition Regulations Council.

Therefore, 48 CFR parts 247 and 252 are amended as follows:

1. The authority citation for 48 CFR parts 247 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and (FAR) 48 CFR part 1, subpart 1.3.

PART 247—TRANSPORTATION

2. Section 247.571 is amended by redesignating paragraph (c) as paragraph (e) and by adding paragraphs (c) and (d) to read as follows:

247.571 Policy.

* * * * *

(c) Except as provided in paragraphs (d) and (e) of this section, any vessel used under a time charter contract for the transportation of supplies shall have all reflagging or repair work, as defined in the clause at 252.247–7025, performed in the United States or its territories.

(d) The Secretary of Defense may waive the requirement described in paragraph (c) if the Secretary determines that such waiver is critical to the national security of the United States.

* * * * *

3. Section 247.573 is amended to add paragraph (d) as follows:

247.573 Solicitation provision and contract clauses.

* * * * *

(d) Use the clause at 252.247–7025, Reflagging or Repair Work, in all time charter solicitations/contracts for the use of a vessel for the transportation of supplies, unless a waiver has been granted in accordance with 247.571(d).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 252.247–7025 is added to read as follows:

252.247–7025 Reflagging or Repair Work.

As prescribed in 247.573(d), use the following clause:

Reflagging or Repair Work (Feb 1994)

Any work performed on a vessel used in the performance of this contract that enables the vessel to meet applicable standards to become a vessel of the United States or to convert the vessel to a more useful military configuration shall be performed in the United States or its territories.

(End of clause)

[FR Doc. 94–4881 Filed 3–4–94; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB66

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Hungerford's Crawling Water Beetle

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines the Hungerford's crawling water beetle (*Brychius hungerfordi* Spangler) to be an endangered species pursuant to the Endangered Species Act (Act) of 1973 as amended. The species is a small, rare beetle that lives in the cool riffles of clean, slightly alkaline streams. The species is known to occur in only three isolated locations: The East Branch of the Maple River, Emmet County, Michigan; the East Branch of the Black River, Montmorency County, Michigan; and the North Saugeen River at Scone, Bruce County, Ontario. The two Michigan sites are in the Cheboygan River watershed. This species is threatened by the rarity of the type locality in association with alteration of its stream habitat as a result of beaver dam management. Other potential contributing factors include fisheries management, logging, impoundment, bank stabilization, stream pollution and general stream degradation.

EFFECTIVE DATE: April 6, 1994.

ADDRESSES: The complete file for this rule is available for inspection during normal business hours at the Division of Endangered Species, U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, One Federal Drive, Fort Snelling, Minnesota 55111–4056.

FOR FURTHER INFORMATION CONTACT: Robert Adair, Chief, Division of Endangered Species (see **ADDRESSES** above) at 612/725–3276.

SUPPLEMENTARY INFORMATION:

Background

Hungerford's crawling water beetle, *Brychius hungerfordi*, was first identified by Spangler in 1954 (Spangler 1954). The bettle is a member of an uncommon genus in the Family Haliplidae and Order Coleoptera. It can be distinguished from all other beetles as follows (from Wilsmann and Strand 1990):

Brychius hungerfordi is a small (4.20 mm), distinctive, yellowish brown beetle with irregular dark markings and longitudinal stripes on the elytra, each of which is comprised of a series of fine, closely spaced and darkly pigmented punctures. Males tend to be smaller than females. In Spangler's (1954) original series, specimens ranged from 3.70 mm in length and 1.90 mm in width (a male) to 4.35 mm in length and 2.25 mm in width (a female). Males are characterized by thickened tarsal segments of the front legs with small tufts of hair on the first three segments. *B. hungerfordi* can be differentiated from all other Haliplidae in Michigan by the shape of its pronotum, the sides of which are nearly parallel for the basal ⅔ (Hilsenhoff and Brigham, 1978) and are widened mid-laterally.

This small, rare beetle lives in the cool riffles of clean, slightly alkaline streams. The species is known to occur in only three isolated locations: The East Branch of the Maple River, Emmet County, Michigan; the East Branch of the Black River, Montmorency County, Michigan; and the North Saugeen River at Scone, Bruce County, Ontario. The two Michigan sites are in the Cheboygan River watershed. The disjunct distribution of this species suggests that it is a relict from glacial periods when cool, fast moving streams were more prevalent and the beetle was more widespread. It is speculated that human activities such as fish management, logging, beaver control management, dredging, stream pollution, and general stream degradation have contributed to the reduction of its habitat (Wilsmann and Strand 1990).

On May 22, 1984, the Service published in the **Federal Register** (49 FR 21664) its first listing of invertebrate animal species being considered for

listing under the Act (Animal Notice of Review) which included the Hungerford's crawling water beetle. Hungerford's crawling water beetle appeared again in the January 6, 1989, Animal Notice of Review (54 FR 544) as a Category 2 species. Category 2 comprises taxa for which there is some evidence of vulnerability, but for which the information necessary to list is lacking. It was again listed as Category 2 in the November 21, 1991, Animal Notice of Review (56 FR 58804). However, given the research by Wilsmann and Strand (1990), it should have been listed as a Category 1 at that time. The listing priority is 2. The research results of Wilsmann and Strand indicate that the species occurs in only three vulnerable, isolated locations and should receive protection of the Act. The Service analyzed the status survey, as well as other information, and determined that the beetle is facing serious threats and should be protected as an endangered species.

All of the sites where the beetles have been found are characterized by moderate to fast stream flow, good stream aeration, inorganic substrate, and alkaline water conditions. Streams like those in which *B. hungerfordi* occur are common in the Great Lakes States. Although these areas have been extensively surveyed for invertebrates in the last 30 years, no additional populations have been discovered (Wilsmann and Strand 1990). Roughley (1989a) surveyed 30 to 40 potential locations in Ontario and 5 sites in Michigan. The survey resulted in the discovery of the only known *B. hungerfordi* population in Canada. White (1989b) surveyed portions of lower and upper Michigan, Hilsenhoff and Brigham (1978) surveyed Wisconsin, and Wallace (Brigham 1982) surveyed Minnesota and southern Canada without finding any new populations of *B. hungerfordi*. Strand (1989) surveyed streams in Emmet, Cheboygan, Presque Isle, Montmorency, and Otsego counties and found *B. hungerfordi* in 15 of 128 sampling stations. Of these, 14 occurred near the type location in the East Branch of the Maple River and so were effectively from the same population. The remaining site, in the East Branch of the Black River, was the only new population that has been found in the United States since the species was discovered.

The largest population presently occurs in the East Branch of the Maple River in a pristine portion of stream on the boundary of the University of Michigan Biological Station. This population is estimated to include 200 to 500 individuals while the other two populations are thought to be much smaller (White 1986b, Wilsmann and Strand 1990). The East Branch of the Maple River is a small stream surrounded by forest with a partially open canopy so sunlight reaches the water. The stream is cool (15–20° C) with a relatively fast flowing current (>50 cm per second) and a substrate of limestone gravel and rock (White 1986b). The forest is intact, the beaver population is healthy, and their dams function to stabilize water levels so the riffles below the dams remain predictable from year to year (Wilsmann and Strand 1990). At the Black River site, the beetles occur in a moderately fast current in fairly shallow water. The site in Ontario has been degraded by road construction and the beetles occur in the riffles below an old millrace. The swift currents in these locations maintain a mineral substrate.

White (1986) concluded that the East Branch of the Maple River at the type locality provides fast-flowing, deep riffles, and *Cladophora* attached to larger rocks coupled with a lack of fast-water water-column predators (i.e., trout). Although some trout exist in the East Branch of the Maple River, it is speculated that warm summer water temperatures (>25° C) force the population to remain in Lake Kathleen except during cooler months of the year. Because adult beetles must swim to the surface for air, they are vulnerable to predation by fish, tadpoles and other aquatic insects (Hickman 1931; Wilsmann and Strand 1990).

The life history of *B. hungerfordi* is not known. The beetles are thought to live longer than one year and to overwinter as larvae in the dense aquatic vegetation at the stream's edge (Wilsmann and Strand 1990). As with other Haliplidae, larvae probably go through three instar phases and pupate in the moist soil above the water line (Hickman 1929; White, Brigham, and Doyen 1984). Adults and larvae are seldom captured together and they appear to inhabit different microhabitats in the stream. Adults are more apt to be found in stronger currents, foraging for algae on gravel and stones. Both adults and larvae are herbivorous but very little is known about their specific dietary requirements or feeding adaptations (White 1986a, 1986b). Wilsmann and Strand (1990) reported, "The small size of *B. hungerfordi* adults prevented direct observation of food ingestion. However, it is likely that they scrape food material from rocks by grasping with their tarsal claws and scraping with their distally flattened and single notched mandibles which are slightly medially cupped. This speculation is based on observations of the beetles crawling from rock to rock, stopping occasionally to grip a rock for varying lengths of time."

Compared to other Haliplidae, the adults are strong swimmers and they obtain oxygen by swimming to the surface or crawling to the water line at the edge of the stream. Larvae obtain oxygen directly from the water and are found in association with dense mats of vegetation (*Chara, Nitella,* or *Cladophora*) which offer protection and foraging. The growth form of this vegetative cover may be more important than the plant composition (Brigham 1990, pers comm. in Wilsmann and Strand 1990).

There is no evidence that *B. hungerfordi* has a dispersal flight. No adults have been found at blacklight stations, and the adults seem unusually reluctant to fly. This was observed during Wilsmann and Strand's (1990) survey when *B. hungerfordi* were removed from the water for 30 minutes and did not attempt to fly. An unexpected result given that most other aquatic insects would have attempted to fly after this period of desiccation. It is possible, therefore, that if this species disperses by flying, it is during a very brief period of time in the spring. The primary mode of dispersal appears to be movement within the stream system.

Summary of Comments and Recommendations

In the March 2, 1993, proposed rule (58 FR 12013), all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting public comment were published in 6 Michigan newspapers.

Four written comments and three responses via telephone were received from the following: Michigan Department of Natural Resources, Algonquin Group (Michigan's Mackinac Chapter of the Sierra Club), Dr. Wayne Owen of Idaho, Mr. Robert Almquist of Ohio, Michigan Department of Natural Resources, U.S. Department of Agriculture's Animal and Plant Health Inspection Service, and Isle Royale National Park, Michigan. Comments supporting the proposal were received from the Michigan Department of Natural Resources, Algonquin Group Michigan's Mackinac Chapter of the Sierra Club, Dr. Wayne, Owen of Idaho, and Mr. Robert Almquist of Ohio. Three

comments provided thoughts about the species but did not take a position on the listing.

The primary issue raised was the need to obtain additional information regarding the species' distribution, life history, and threats to afford adequate protection and management. The information is necessary to clarify and/or substantiate the threats stated in the proposed rule as sources responsible for the species' decline. Specifically stating the role of fish management, beaver dam removal and dredging as primary threats for the decline of the species was speculative, based on incomplete data and not substantiated by the references cited. If managed appropriately, some of the threats may be beneficial to the continued existence and management of *B. hungerfordi* and its habitat.

The Service recognizes the need for further surveys and studies on the life history, distribution and ecology of the species. The Service considered all comments received and has incorporated them into this final rule as appropriate.

Summary of Factors Affecting the Species

After a thorough review and consideration of all available information, the Service has determined that the Hungerford's crawling water beetle *Brychius hungerfordi* should be classified as an endangered species. Section 4(a)(1) of the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to Hungerford's crawling water beetle (*B. hungerfordi* Spangler) are as follows:

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

Although natural succession in the type locality is not completely understood, it appears, that human activities in or near the habitat can speed up succession and subsequent loss of the Hungerford's crawling water beetle. For example, removal of existing beaver dams upstream from *B. hungerfordi* populations poses as significant threat to the beetle. The downstream side of beaver dams serve as a riffle and aeration site because they retain sediments and organic material, raise water temperatures, and modify nutrient cycling, decomposition dynamics, and riparian zone structure and composition. The highest density locations of *B. hungerfordi* are below beaver dams or immediately below structures that provide similar conditions to those found downstream from beaver impoundments (Wilsmann and Strand 1990).

Potential threats that may result in modification of the species habitat include certain fish management activities such as removal or introduction of fish, stream side logging and heavy siltation resulting from logging, impoundment, bank stabilization with structures creating an artificial shoreline, stream pollution, and general stream degradation. In Michigan, one site already has been impounded downstream by a dam, and the Ontario site has been impounded upstream (Roughley 1989b). The Service recognizes that further research and surveys are required since much is not known about the distribution, ecology and the effects of the potential threats on the species.

Given the rapid rate of recreational development and the demands for fish, wildlife, and forest management in northern Michigan, unknown populations of *B. hungerfordi* could easily be extirpated before they are discovered, increasing the need to protect existing populations. Because only three small populations of this species are known to exist, loss of even a few individuals could extirpate the species from some locations (Wilsmann and Strand 1990) and thus severely affect the continued existence of the species.

The Michigan Department of Natural Resources issued a permit allowing the construction of an experimental stream facility on the East Branch of the Maple River. The applicant amended the initial proposal such that the location was moved to an area where the beetles are not known to occur on the Maple River.

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

Recent research efforts have involved mostly capture and release rather than collecting, and the few collections that have been made are housed in appropriate museum collections. The species will continue to draw scientific interest and collection should be regulated. However, because of the species' rarity, there is the possibility that amateur scientific collections could occur.

C. Disease or Predation

Little is known about these factors, but there are no indications at this time that they may be contributing to the decline of *B. hungerfordi*.

D. The Inadequacy of Existing Regulatory Mechanisms

B. hungerfordi is currently listed as endangered under Michigan's Endangered Species Act (P.A. 203 of 1974, as amended). Any taking of this species, including harassment, is unlawful without a permit. The Michigan Department of Natural Resources also implements section 404 of the Clean Water Act. This section allows Michigan to regulate placement of fill material in waters of the United States. The Montmorency County site, including a mile of upstream and downstream buffer, is in a State forest but is not protected from fish management activities. The aforementioned legislation allows significant regulatory oversight on a wide variety of activities that should prevent taking of this species and habitat loss and alteration. The Emmet County site is in mixed ownership and is not protected. The Canadian population is not protected and the land surrounding it is in mixed ownership. The Federal Endangered Species Act would offer additional protection to this species by increasing the protection for the two Michigan sites, encouraging habitat protection for the species on private lands, and influencing impoundment development which very likely would involve Federal funds.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The existence of only three populations of *B. hungerfordi* increases the potential for extinction from stochasitc events. The limited gene pool may depress reproductive vigor, or a single human-caused or natural environmental disturbance, disease, or predation could destroy an entire population and a significant percentage of the known individuals of the species.

Both Michigan sites are in the Cheboygan watershed and could potentially be affected by any changes upstream in the watershed such as in Van Creek, the upper portion of the East Branch of the Maple River, Town Line Creek, Foch Lakes Flooding Creek, Rattlesnake Creek, and the upper portion of the East Branch of the Black River. Changes could include agricultural pesticide pollution, siltation, or stream bed modification. Because two of the three known populations occur immediately

downstream from a roadway, accidental events, such as chemical spills, pose a threat (Wilsmann and Strand 1990). The cumulative effects of road salt runoff also poses a threat to this species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *B. hungerfordi* as endangered. Only three relatively small populations of this species are known to exist and these populations occur on sites threatened with habitat loss or destruction. In addition, all of these populations are in need of long-term management.

Critical habitat is not being proposed at this time for the reasons discussed below.

Critical Habitat

Critical habitat, as defined by section 3 of the Act, means:

(i) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (ii) The specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat for Hungerford's crawling water beetle is not presently determinable. The Service's regulations (50 CFR 424.12(a)(2)) state that critical habitat is not determinable when one or both of the following situations exist: (i) Information sufficient to perform required analyses of the impacts of the designation is lacking; or (ii) The biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat. As discussed under Factor A in the Summary of Factors Affecting the Species, the information on the biology of the Hungerford's crawling water beetle is lacking to permit specific identification of its critical habitat.

The Service will initiate a concerted effort to obtain the information needed to determine critical habitat for Hungerford's crawling water beetle. Designation of critical habitat must be completed within two years of the date of this rule, unless the designation is not prudent. A proposed rule for critical habitat designation must be published in the **Federal Register**, and the notification process and public comment provisions parallel those for a species listing. In addition, the Service will evaluate the economic and other relevant impacts of the critical habitat designation, as required under section 4(b)(2) of the Act.

It should be emphasized that critical habitat designation does not necessarily affect all Federal activities. Where appropriate, the impacts will be addressed during consultation with the Service as required by section 7(a)(2) of the Act, as amended.

Available Conservation Measures

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

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

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

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued for a specified time to relieve undue economic hardship that would be suffered if such relief were not available.

National Environmental Policy Act

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

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Wilsmann, L.A. and R.M. Strand. 1990. A status survey of *Brychius hungerfordi* (Coleoptera: Haliplidae).

Author

The primary author of this final rule is Carlita Shumate (see **ADDRESSES** section), 612/725–3276.

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

Accordingly, the Service amends part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, set forth below.

PART 17—[AMENDED]

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

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

2. Section 17.11(h) is amended by adding the following, in alphabetical order under *Insects*, to the list of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
•	•	•	•	•	•	•	•
Insects							
•	•	•	•	•	•	•	•
Beetle, Hungerford's crawling water.	*Brychuis hungerfordi*	U.S.A. (MI), Canada	NA	E	533	NA	NA
•	•	•	•	•	•	•	•

Dated: February 9, 1994.

Mollie H. Beattie,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 94–5119 Filed 3–4–94; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 217

[Docket No. 930809–3209; I.D. 021594F]

Sea Turtle Conservation; Restrictions Applicable to Fishery Activities

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

ACTION: Interim rule with request for comments.

SUMMARY: NMFS issues this interim rule to reduce for 60 days the size of the offshore area where the summer flounder fishery must use an approved turtle excluder device (TED) in any net that is rigged for fishing, by moving the northern boundary from 37°05′ N. latitude (Cape Charles, VA) to 35°46.1′ N. latitude (Oregon Inlet, NC). The southern boundary of the offshore area (the North Carolina-South Carolina border) remains the same. The purpose of this action is to relieve an unnecessary restriction on fishermen in the summer flounder fishery while continuing to provide protection to endangered and threatened sea turtles.

DATES: This rule is effective March 1, 1994. Comments on this rule must be submitted by March 31, 1994.

ADDRESSES: Direct comments on this rule and requests for copies of the Environmental Assessment prepared for this rule to: Dr. William Fox, Jr., Director, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Phil Williams, Acting Chief, Endangered Species Division (301/713–2319), Charles A. Oravetz, Chief, Protected Species Program, NMFS Southeast Region (813/893–3366), or Doug Beach, Chief, Protected Species Program, NMFS Northeast Region (508/281–9291).

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.* (ESA). According to the 1990 report on the decline of sea turtles, published by the National Academy of Sciences, incidental capture in shrimp trawls is by far the leading cause of human-induced mortality to sea turtles in the water, but collectively, activities in non-shrimp fisheries, which include the summer flounder bottom trawl fishery, constitute the second largest source.

NMFS has taken action to require the use of TEDs in the bottom trawl fishery for summer flounder from 37°05′ N. latitude (Cape Charles, VA) southward to 33°35′ N. latitude (North Carolina-South Carolina border), referred to as the "summer flounder fishery-sea turtle protection area" and to require vessels to carry an observer, if requested to do so. These requirements were initially

effective November 15, 1992, through December 15, 1992 (57 FR 53603, November 12, 1992), were extended from December 16, 1992, through January 14, 1993 (57 FR 60135, December 18, 1992), were modified and extended from January 7, 1993, through February 8, 1993 (58 FR 4088, January 13, 1993), and were extended from February 10, 1993, through April 10, 1993 (58 FR 5884, February 16, 1993). On September 20, 1993, an interim final rule was published requiring year-round TED-use by participants in the bottom trawl fishery for summer flounder in the summer flounder fishery-sea turtle protection area defined above (58 FR 48797, September 20, 1993). The specific requirements, their background and rationale, comments and responses to comments, and summaries of pertinent biological opinions were included in the cited **Federal Register** publications and are not repeated here.

Recent Events

NMFS' continuing review of the available information regarding the temporary TED requirement under the ESA in the summer flounder bottom trawl fishery indicates that conditions continue to necessitate the use of TEDs in some of the waters off North Carolina. Sea turtles and bottom trawling continue to co-occur in these waters based on observations of turtles, both at sea and from strandings on ocean beaches.

NMFS and the U.S. Coast Guard are continuing to conduct cooperative enforcement activities in the waters off of North southern Virginia and North Carolina. NMFS has determined that compliance with the TED-use requirement has been good.

NMFS has determined, based on past interactions between sea turtles and the summer flounder fishery, that bottom trawl nets without TEDs can capture and kill sea turtles at a rate comparable with that of the shrimp trawl fishery along the southern U.S. Atlantic coast, where TED use is now required at all times. Based on this information, the use of TEDs should be a required conservation measure throughout most of the summer flounder fishing season.

In December 1991 and January 1993, based on available information, including the relatively cooler waters observed north of Cape Hatteras, NMFS moved the northern boundary of the turtle conservation zone where restricted tow times were required. The northern boundary was moved from Cape Charles, VA, to Oregon, Inlet, NC, effective December 27, 1991 (57 FR 213, January 3, 1992) and January 7, 1993 (58 FR 4088, January 13, 1993).

Recent data acquired by satellite sensors indicate that sea surface temperatures off the coast of North Carolina north of Oregon Inlet are less than 10 °C. NMFS has found, based on reports from observers aboard trawlers and from the scientific literature, that the probability of sea turtle captures declines to near zero when surface water temperatures fall below 10 °C. This decline is apparently related to decreased turtle abundance and/or activity in cold waters.

Therefore, based on recent data regarding ocean water temperature north of Oregon Inlet, turtle stranding information, and sea turtle conservation measures that are currently in effect, the potential threat to turtles within the northern boundary of the TED-use area from Cape Charles, VA, to Oregon Inlet, NC, has diminished since the onset of the summer flounder season. While there is a small risk to sea turtles associated with moving the northern boundary of the TED-use area southward, NMFS has determined that this risk is minimal and will not jeopardize the continued existence of endangered and threatened sea turtles.

The September 20, 1993, interim rule requiring year-round TED-use in the summer flounder fishery-sea turtle protection area will continue to protect sea turtles from summer flounder fishery interactions until NMFS issues a permanent rule.

The present action modifying the size of the summer flounder fishery-sea turtle protection area will be applicable for 60 days, unless NMFS determines that it should be modified or that other action is required, based on comments received on this rule or on events in the fishery.

Comments on NMFS' 1993 Actions Reducing the Size of the Summer Flounder-Sea Turtle Protection Area by Lowering the Northern Boundary to Oregon Inlet

One comment was received from the Center for Marine Conservation (CMC), which supported a permanent TED-use requirement in the fishery from Cape Charles, VA, to the southern border of North Carolina, and opposed the reduction of the area to Oregon Inlet, NC. Further, CMC supported an observer requirement on summer flounder vessels north to Cape Cod, Massachusetts, and observers in all fisheries in order to determine the full extent of sea turtle and fishery interactions.

Response: NMFS' actions to move the northern boundary south to Oregon Inlet and to maintain it there were based on available data regarding turtle distribution and fishing activity. Past data essentially mirror present data which indicate that the potential threat to sea turtles north of Oregon Inlet diminishes substantially by the beginning of January, but trawling without TEDs south of Oregon Inlet continues to pose a threat. NMFS will not require the use of restricted tow times in the offshore waters north of Oregon Inlet because the likelihood of turtle capture is remote due to the decreased presence and activity of turtles in the cold waters.

However, NMFS will continue to monitor conditions north of Oregon Inlet to assess the risk of capture from trawlers not using TEDs. Cooperative efforts between NMFS and the North Carolina Division of Marine Fisheries will increase stranding monitoring efforts through periodic aerial coverage of the beaches.

If NMFS determines that incidental capture of turtles is occurring, or is likely to occur, conservation measures will again be imposed. Such measures will include the use of TEDs.

Under this interim rule, NMFS may place observers on summer flounder vessels operating inside and outside of the summer flounder fishery-sea turtle protection area. It is NMFS' intention to require the use of TEDs in all areas where the distribution of turtles and trawling overlap, and where there is an incidental take of turtles, as a permanent conservation measure in this fishery. NMFS recognizes that the use of TEDs is the most effective and easily enforceable turtle conservation measure. However, the required use of TEDs during the last two summer flounder fishing seasons has brought to light certain problems. These problems relate to the strength of TEDs and their ability to withstand the sometimes excessive clogging with bycatch (most often schools of dogfish) or bottom debris encountered under certain conditions, especially north of Oregon Inlet during cold water periods. Flounder trawls are made of heavier mesh, and are pulled at much faster speeds than shrimp trawls, which greatly increases the stresses on the TED caused by large accumulations of bycatch. NMFS is continuing to seek improved TEDs for this fishery. On October 20, 1993, NMFS approved an improved Flounder TED for bottom trawl nets, developed in cooperation with the North Carolina Division of Marine Fisheries, Sea Grant, and summer flounder fishermen.

Sea Turtle Conservation Measures

This interim rule does not supersede the September 20, 1993, interim rule requirement (58 FR 48797) that owners

and operators of summer flounder bottom trawlers in the summer flounder-sea turtle protection area use an approved TED in each net that is rigged for fishing. The present action does, however, similar to a prior action last season (58 FR 8554, February 16, 1993), modify for a 60-day period the northern boundary of the summer flounder-sea turtle protection area by relocating it southward to Oregon Inlet, NC. The modified summer flounder-sea turtle protection area includes all offshore waters seaward of the COLREGS (International Regulations for Preventing Collisions at Sea, 1972) demarcation line, bounded on the north by a line along 35°46.1′ N. latitude (Oregon Inlet) and bounded on the south by a line along 33°35′ N. latitude (North Carolina-South Carolina border).

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this temporary action will continue to conserve sea turtles and at the same time reduce unnecessary regulatory burdens on summer flounder fishermen. The AA has further determined that incidental takings of sea turtles during summer flounder bottom trawling are unauthorized unless those takings are consistent with the applicable biological opinions and associated incidental take statements. A biological opinion on the impacts of the summer flounder bottom trawl fishery managed under the Fishery Management Plan for Summer Flounder Fishery (FMP) and Amendment 2 to the FMP was issued on August 10, 1992. That incidental take statement allows for the documented lethal take of 18 sea turtles: Three in any combination of Kemp's ridley, hawksbill, green, or leatherback sea turtles, and 15 loggerhead turtles. A supplemental biological opinion was prepared for the September 20, 1993, action (which established the TED-use requirement in the summer flounder fishery from Cape Charles, VA to the North Carolina-South Carolina border). NMFS has also prepared a supplemental biological opinion for this temporary action and has authorized a take, by death or injury, of two endangered Kemp's ridley, hawksbill, green, or leatherback turtle, or six loggerhead turtles during the applicable 60-day period of this action.

This rule will require summer flounder trawlers, whether operating inside or outside of the summer flounder fishery-sea turtle protection area, to carry an observer if selected by the Director, NMFS Southeast Region, or the Director, NMFS Northeast Region. NMFS will cooperate with the North Carolina Division of Marine Fisheries in the placement of observers. If observer reports or other information indicate that the authorized incidental take level is met or exceeded, NMFS will take other necessary measures to protect turtles.

Classification

The AA has determined that this interim rule is consistent with the ESA and other applicable law.

This rule is not subject to review under E.O. 12866.

The AA prepared an environmental assessment (EA) for the final rule to protect sea turtles (57 FR 57348, December 4, 1992). A supplemental EA prepared for previous identical actions concludes that there will be no significant impact on the human environment. A copy of the EA prepared for this interim rule is available (see ADDRESSES).

The AA finds there is good cause to waive opportunity for prior notice and opportunity for comment under section 553(b)(B). The AA finds that prior notice and opportunity for comment is unnecessary, impracticable, and contrary to the public interest because fishermen will be unnecessarily disadvantaged by the delay without any benefit in the protection of sea turtles. Because this interim rule relieves a restriction, a 30-day delayed effective date is not necessary.

Because prior notice and opportunity for comment is not required for this action, under section 603(b) of the Regulatory Flexibility Act, an initial regulatory flexibility analysis is not required.

List of Subjects in 50 CFR Part 217

Endangered and threatened species, Exports, Fish, Imports, Marine Mammals, Transportation.

Dated: March 1, 1994.

Samuel W. McKeen,

Program Management Officer, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 217 is amended as follows:

PART 217—GENERAL PROVISIONS

1. The authority citation for part 217 continues to read as follows:

Authority: 16 U.S.C. 1531–1544; and 16 U.S.C. 742a *et seq.*, unless otherwise noted.

2. In § 217.12, the definition for "*Summer flounder fishery-sea turtle protection area*" is revised to read as follows:

§ 217.12 Definitions.

* * * * *

Summer flounder fishery-sea turtle protection area means:

(1) All offshore waters, bounded on the north by a line along 37°05′ N. latitude (Cape Charles, VA) and bounded on the south by a line along 33°35′ N. latitude (North Carolina-South Carolina border), except as provided in paragraph (2) of this definition.

(2) Applicable from March 1, 1994 through May 2, 1994, all offshore waters bounded on the north by a line along 35°46.1′ N. latitude (Oregon Inlet, NC) and bounded on the south by a line along 33°35′ N. latitude (North Carolina-South Carolina border).

* * * * *

[FR Doc. 94–5051 Filed 3–1–94; 4:33 pm]

BILLING CODE 3510–22–P

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50 CFR Part 625

[Docket No. [940262–4062; I.D. 012194A]]

Summer Flounder Fishery

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

ACTION: Final specifications for the 1994 summer flounder fishery.

SUMMARY: NMFS issues this notification of final specifications to implement the commercial catch quota and other restrictions for the 1994 summer flounder fishery. The intent of this notification is to comply with implementing regulations for this fishery that require the Secretary of Commerce (Secretary) to publish measures for the upcoming fishing year that will prevent overfishing of the summer flounder resource.

EFFECTIVE DATE: March 2, 1994.

ADDRESSES: Copies of the Environmental Assessment prepared for this action are available from Richard B. Roe, Regional Director, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–3799. Copies of supporting documents used by the Monitoring Committee are available from David R. Keifer, Chairman, Summer Flounder Monitoring Committee, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 S. New Street, Dover, DE 19901–6790.

FOR FURTHER INFORMATION CONTACT: Hannah Goodale, 508–281–9101.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Summer Flounder Fishery (FMP) was developed jointly by the Atlantic States Marine Fisheries Commission (ASMFC) and the Mid-Atlantic Fishery Management Council (Council) in consultation with the New England and

South Atlantic Fishery Management Councils. The management unit for the FMP is summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina northward to the Canadian border. Implementing regulations for the fishery are found at 50 CFR part 625.

Section 625.20 outlines the process for determining the annual commercial catch quota and other restrictions for the summer flounder fishing year. Pursuant to § 625.20, certain management measures have been adopted for calendar year 1994 to ensure achievement of the appropriate fishing mortality rate. These measures include: (1) A coastwide harvest limit of 26,675,934 million pounds (12.1 million kg); (2) a coastwide commercial quota of 16,005,560 million pounds (7.3 million kg); (3) a coastwide recreational harvest limit of 10,670,374 million pounds (4.8 million kg); (4) a minimum commercial fish size of 13 inches (33 cm)(no change from present minimum); (5) a minimum mesh size of 5–1/2-inch (14.0-cm) diamond or 6-inch (15.2 cm) square (no change from present minimum); and (6) a minimum recreational fish size of 14 inches (35.6 cm)(no change in present minimum). These measures are unchanged from the proposed specifications, which were published in the **Federal Register** on December 7, 1993 (58 FR 64393). Recreational catch data for 1993 are not yet available, and the Committee will consider modifications to the recreational possession limit and recreational season after a review of that information.

Table 1 presents the 1994 commercial quota (16,005,560 million pounds (7.3 million kg)) apportioned among each state according to the percentage shares specified by Amendment 4 to the FMP (58 FR 49937; September 24, 1993). These state allocations do not reflect the adjustments required under § 625.20 if 1993 landings exceed the quota for any state. A notification of allocation adjustment will be published in the **Federal Register** if such an adjustment is necessary, after final 1993 commercial landing values are available.

TABLE 1.—1994 STATE COMMERCIAL QUOTAS

State	Share (percent)	1994 Quota (pounds)
ME	0.04756	7,612
NH	0.00046	74
MA	6.82046	1,091,653
RI	15.68298	2,510,149
CT	2.25708	361,258
NY	7.64699	1,223,943
NJ	16.72499	2,676,928
DE	0.01779	2,847
MD	2.03910	326,369
VA	21.31676	3,411,867
NC	27.44584	4,392,860

Comments and Responses

Comments were received on the proposed management measures from Seafarers International Union of North America (SIU) and the Atlantic Coast Conservation Association of Virginia (ACCA). Comments concerning the recommended 1994 management measures are addressed below.

Comment: The SIU believes that the recommended commercial quota is overly conservative and was adopted without question by the Council.

Response: The summer flounder stock assessment was intensively reviewed in October 1992 and May 1993 by the Southern Demersal Working Group, which is composed of biologists from both Federal and state agencies. The Council staff's initial recommendation of management measures was based on the assessment, which concluded that the resource is at a low biomass level and is overexploited. This initial recommendation was reviewed and debated by the Summer Flounder Monitoring Committee (Committee), the Council's Demersal Species Committee, and the ASMFC's Policy Board before adoption of the management measures by the Council and ASMFC.

Comment: The SIU believes that the proposed quota ignores the fact that fishing mortality in 1993 was below the 0.53 target.

Response: The basis for the SIU comment is unclear. In the absence of actual data for 1993, the assessment used as the basis of the 1994 quota recommendation makes several assumptions that the SIU may have misinterpreted to be statements of fact. These assumptions are: That the target fishing mortality is not exceeded, the overall 1993 quota is not exceeded, discards do not increase, and all landings are reported. All of these assumptions are incorporated into the specified quota level.

Comment: The SIU believes that the estimates of discard mortality in the analysis are too high. It cites a study conducted by the Commonwealth of Massachusetts that showed a 94-percent survival rate for summer flounder.

Response: The Massachusetts study provides data of interest to the Committee and to NMFS, and there is interest in further study. However, the study was limited in both scope and sample size, and the results cannot be extrapolated to the summer flounder commercial fishery as a whole.

Comment: The SIU believes that the Council should consider a higher commercial quota, in part because the SIU believes that data indicate that the stock was recovering before implementation of the current management measures.

Response: The assessment results indicate that recruitment has improved since 1988, but that it remains at or below an average level. The fishery is dependent upon incoming recruitment because of the limited number of ages of fish in the population. Given the uncertainty of stock size estimates for 1993, the assessment recommends a cautious strategy in setting the 1994 quota.

Comment: The SIU believes that the target fishing mortality rate for 1996 of F_{max} will not be 0.23. The SIU believes that the management measures enacted under the FMP during the period 1993 through 1995 will result in a recalculated F_{max}, which will be higher. Therefore, SIU believes that the Council should not be influenced by concern about the 1996 reduction in target fishing mortality rate.

Response: F_{max} is a biological reference point, which could require recalculation if the production parameters of the stock change significantly. The production parameters to consider are growth rate, natural mortality rate, and partial recruitment. There is no evidence of change in any of these parameters, but partial recruitment will be monitored in case change occurs in response to the implementation of the management measures in the FMP. If change is detected and determined to be both significant and sustained, recalculation of F_{max} could be required. Unless such change occurs, the target fishing mortality specified in the FMP for 1996 is 0.23. It is appropriate for the Council to consider this when establishing annual management measures.

Comment: The ACCA opposes any increase in the commercial quota for 1994 because it believes Amendment 2 requires the Council and NMFS to err in favor of resource conservation if there is uncertainty about the status of the resource.

Response: Amendment 2 requires the Council, ASMFC, and NMFS, to adopt management measures that balance the probability of reaching the target fishing mortality rate against reasonable impacts on the industry. The commercial quota was set after an

examination of stock projections for 1994 that were conducted using low, mean, and high estimates of recruitment and the number of age-1 fish. The adopted management measures are based upon the low estimate of recruitment in order to proceed conservatively due to several sources of uncertainty in the assessment.

Comment: The ACCA questions the way in which state survey data were used to estimate age-0 fish. They believe the assessment should have relied on the Virginia Institute of Marine Science (VIMS) index, which indicates poor recruitment.

Response: The stock assessment incorporates the results of five state surveys to estimate age-0 fish. Each of the state surveys is limited in area and indicates recruitment trends locally. The overall analysis combines all of the surveys and produces a moderate estimate that is lower than the mean over the past 5 years. The uncertainty concerning this estimate is one of the reasons cited by the Council and ASMFC for the conservative quota adopted.

Comment: The ACCA questions the assumption that the 1993 commercial quota will not be exceeded and states that the 1994 quota should not be set until final 1993 landings figures are available. ACCA supports the FMP provision that requires state landings in excess of the 1993 quota to be deducted from state quota allocations for 1994.

Response: The FMP requires the Summer Flounder Monitoring Committee to make a recommendation concerning management measures for the upcoming year by August 15. Clearly, the Council was aware that it would be impossible to incorporate landings data from one year into the recommendations for the following year. The assumption that the 1993 quota is not exceeded is not unreasonable since the FMP requires weekly dealer reports and gives NMFS the authority to close states to the landing of summer flounder when a state quota is attained. If final 1993 landings exceed a state quota, the 1994 state quota will be decreased by the overage amount.

Comment: The ACCA believes the 1994 quota recommendation does not take into account the additional reduction in target fishing mortality that the FMP requires in 1996.

Response: As stated in the proposed specifications, a conservative quota level was selected for 1994 in part in anticipation of the FMP requirement for reduction of the target fishing mortality rate to 0.23 in 1996. If a conservative quota level is implemented in 1994, and if recruitment in 1993/94 exceeds the assumed level, then spawning stock biomass is expected to increase at a rate faster than estimated. Larger stock sizes in 1996 would allow for a quota level that would minimize the impacts of the additional reduction on fishermen.

Classification

This action is authorized by 50 CFR part 625.

List of Subjects in 50 CFR Part 625

Fisheries, reporting and recordkeeping requirements.

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

Dated: March 1, 1994.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 94–5125 Filed 3–2–94; 3:28 pm]

BILLING CODE 3510–22–P

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50 CFR Part 651

[Docket No. 931076–4052; I.D. 030194A]

RIN 0648–AD33

Northeast Multispecies Fishery; Correction

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

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule published on Tuesday, March 1, 1994 (59 FR 9872), which implements Amendment 5 to the Fishery Management Plan for the Northeast Multispecies Fishery (FMP).

EFFECTIVE DATE: March 1, 1994.

FOR FURTHER INFORMATION CONTACT: Susan Murphy, Northeast Regional Office, 508–281–9252.

SUPPLEMENTARY INFORMATION:

Need for Correction

This document corrects the minimum-mesh net size requirement to be 5½ inches (13.97 cm), rather than 6 inches (15.24 cm), for the Gulf of Maine/Georges Bank regulated mesh area and the Stellwagen Bank/Jeffreys Ledge juvenile protection area from March 1, 1994, through March 31, 1994. The minimum mesh size requirement for these two areas will become 6 inches (15.24 cm) beginning April 1, 1994. The Regional Director determined on February 25, 1994, that fishermen need additional time to come into compliance with a larger minimum mesh requirement of 6 inches (15.24 cm).

Correction of Publication

Accordingly, the publication on March 1, 1994, of the final rule, which was the subject of FR Doc. 94–4610, is corrected as follows:

1. On page 9874, under the **"SUPPLEMENTARY INFORMATION"** caption, in the second column, before the heading, "Comments and Responses", add the following heading and paragraph: Delay of 6-inch (15.24-cm) Minimum Mesh Requirement.

The 6-inch minimum mesh requirements in the Gulf of Maine/Georges Bank regulated mesh area (see § 651.20(a)(2)) and the Stellwagen Bank/Jeffreys Ledge juvenile protection area (see § 651.20(a)(5)) are effective beginning April 1, 1994, with a minimum mesh requirement of 5½ inches (13.97 cm) from March 1 through March 31, 1994. The Regional Director determined on February 25, 1994, that fishermen need additional time to come into compliance with a larger minimum mesh requirement of 6 inches (15.24 cm).

§ 651.20 [Corrected]

2. On page 9893, third column, in § 651.20(a)(2), line 2, after the phrase "area, shall be", insert the following: "5½ inches (13.97 cm) from March 1, 1994, through March 31, 1994, and beginning April 1, 1994,".

3. On page 9894, third column, in § 651.20(a)(5), introductory text, last line, after the words "net gear", and before the period, add the words: "except that from March 1, 1994, through March 31, 1994, the minimum mesh requirement shall be 5½ inches (13.97 cm) square mesh (hung on the square) in the last 140 bars of the codend and extension piece of all mobile net gear."

Dated: March 1, 1994.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 94–5078 Filed 3–2–94; 11:22 am]

BILLING CODE 3510–22–P

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50 CFR Part 672

[Docket No. 920461–4061; I.D. 021594E]

Groundfish of the Gulf of Alaska

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

ACTION: Final rule; technical amendment.

SUMMARY: NMFS issues a technical amendment that updates directed

fishing standards to reflect changes in Gulf of Alaska (GOA) target species categories. These changes resulted from the annual specification process for GOA groundfish and must be incorporated into the directed fishing standards to maintain the intent of these regulations to limit bycatch amounts of certain groundfish species closed to directed fishing.

EFFECTIVE DATE: March 7, 1994.

FOR FURTHER INFORMATION CONTACT: Kaja Brix, Fisheries Management Division, Alaska Region, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: Regulations at § 672.20(a)(2) authorize the Secretary of Commerce to split or combine target species categories during the annual specification process for purposes of establishing Total Allowable Catch (TAC) amounts under § 672.20(c)(1). Under this authority, the final 1991 specifications for GOA groundfish (56 FR 8723, March 1, 1991) established shortraker/rougheye rockfish and Pacific ocean perch (POP) as two separate TAC categories when it removed these species from the species group "other rockfish." Separate TAC categories were also established for northern rockfish in the final 1993 specifications (58 FR 16787, March 31, 1993) by removing this species from the "other rockfish" category and for rex sole in the final 1994 specifications (59 FR 7647, February 16, 1994) when this species was removed from "deep water flatfish." The new TAC categories resulted in inadvertent changes to the directed fishing standards, at § 672.20(g), that were not consistent with the intent of these regulations.

This technical amendment updates and clarifies the regulations pertaining to the directed fishing standards to reflect these new target species categories. Paragraphs § 672.20(g)(1)(i)(A); (g)(1)(ii); (g)(2); and (g)(4)((ii) are updated to add "rex sole" to the same grouping as deep water flatfish; and at § 672.20(g)(1)(ii) and (g)(4)(ii), "other rockfish" and thornyhead rockfish are updated to read "other rockfish of the genera *Sebastes* and *Sebastolobus*." Reasons for these changes follow.

Under the existing regulations at § 672.20(g)(1)(ii) and (g)(4)(ii), the operator of a vessel is engaged in directed fishing for demersal shelf rockfish if the operator retains at any particular time during a trip demersal shelf rockfish in an amount equal to or greater than 1 percent of the aggregate amount of deep water flatfish, flathead sole, sablefish, "other rockfish," and thornyhead rockfish, plus 10 percent of the amount of all other fish species retained at the same time on the vessel during the same trip.

The intent of the existing regulations was to set a directed fishing standard for demersal shelf rockfish at 1 percent of the aggregate amount of deep water species, including deep water flatfish and "other rockfish," because demersal shelf rockfish are less likely to be caught as bycatch in deep water fisheries. However, when northern rockfish, shortraker/rougheye, and POP rockfish species were removed from the complex of "other rockfish" and rex sole was removed from the deep water flatfish complex they then, under the directed fishing standards (§ 672.20(g)), became part of the "all other fish species" designation against which demersal shelf rockfish can be retained at a rate of up to 10 percent. This percentage is inconsistent with the intent of the directed fishing standard to limit demersal shelf rockfish bycatch to minimal amounts in the deep water fisheries. Therefore, consistent with the intent of the original regulation, the technical amendment would ensure that northern rockfish, shortraker/rougheye rockfish, POP, and rex sole would remain in the category against which demersal shelf rockfish can be retained up to 1 percent.

The existing regulations at § 672.20(g)(1)(i)(A) and (g)(2) present a similar situation for rex sole. The directed fishing standard for sablefish, at paragraph (g)(1)(i), is 15 percent of the aggregate amount of deep water flatfish, flathead sole, and rockfish of the genera *Sebastes* and *Sebastolobus* retained at the same time on the vessel during the same trip, plus 5 percent of the total amount of all other fish species retained at the same time on the vessel during the same trip. When rex sole was removed from the category of deep water flatfish, which formed part of the grouping against which sablefish can be retained at an amount up to 15 percent, it then became part of the default group against which sablefish can be retained at an amount up to 5 percent. The intent was not for rex sole to be grouped with the "all other fish species" category, against which sablefish can be retained at reduced amounts.

The same situation involving rex sole occurs in paragraph (g)(2). The existing regulations state that an aggregate amount of rockfish of the genera *Sebastes* and *Sebastolobus*, except demersal shelf rockfish, can be retained at the same time on the vessel during the same trip at up to 15 percent of the aggregate amount of deep water flatfish, flathead sole, sablefish, and other rockfish species for which directed fisheries are open and 5 percent of the total amount of other fish species retained at the same time on the vessel during the same trip. The intent of the regulation was not for rex sole to be grouped with the "all other fish species" category. Therefore, consistent with the intent of the original regulations, the new category of "rex sole" will be specified in the same grouping as deep water flatfish and other deep water species.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined, under section 553(d)(3) of the Administrative Procedure Act, that good cause exists for waiving the 30-day delayed effectiveness period for this action. Because this technical amendment makes only minor, non-substantive changes to existing regulations, notice and public comment, thereon, and a delay in the effective date would serve no purpose. This rule updates the directed fishing standards and does not cause a change in any fishing practices.

This rule is not subject to review under E.O. 12866.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Dated: March 1, 1994.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 672 is amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for part 672 continues to read as follows:

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

2. In § 672.20, paragraphs (g)(1)(i)(A), (g)(1)(ii), (g)(2), and (g)(4)(ii) are revised to read as follows:

§ 672.20 General limitations

* * * * *

(g) * * *

(1) * * *

(i) * * *

(A) 15 percent of the aggregate amount of deep water flatfish, rex sole, flathead sole, and rockfish of the genera *Sebastes* and *Sebastolobus* retained at the same time on the vessel during the same trip; plus

* * * * *

(ii) Demersal shelf rockfish. The operator of a vessel is engaged in directed fishing for demersal shelf rockfish if he retains at any particular time during a trip demersal shelf

rockfish caught using trawl gear in an amount equal to or greater than 1 percent of the aggregate amount of deep water flatfish, rex sole, flathead sole, sablefish, and other rockfish of the genera *Sebastes* and *Sebastolobus*, plus 10 percent of the amount of all other fish species retained at the same time on the vessel during the same trip.

(2) Rockfish of the genera *Sebastes* and *Sebastolobus*, except demersal shelf rockfish. The operator of a vessel is engaged in directed fishing for rockfish if he retains at any particular time during a trip an aggregate amount of rockfish species for which a directed fishery closure applies except for demersal shelf rockfish, that is equal to or greater than the sum of 15 percent of the aggregate amount of deep water flatfish, rex sole, flathead sole, sablefish, and other rockfish species for which directed fisheries are open, retained at the same time on the vessel during the same trip, and 5 percent of the total amount of other fish species retained at the same time on the vessel during the same trip.

* * * * *

(4) * * *

(ii) Demersal shelf rockfish. The operator of a vessel is engaged in directed fishing for demersal shelf rockfish if he retains at any particular time during a trip demersal shelf rockfish caught using hook-and-line gear in an amount equal to or greater than 1 percent of the aggregate amount of deep water flatfish, rex sole, flathead sole, sablefish, and other rockfish of the genera *Sebastes* and *Sebastolobus*, plus 10 percent of the amount of all other fish species retained at the same time on the vessel during the same trip.

* * * * *

[FR Doc. 94–5088 Filed 3–4–94; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 59, No. 44
Monday, March 7, 1994

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.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–4845–7]

RIN 2060–AC28

National Emission Standards for Hazardous Air Pollutants for Ethylene Oxide Commercial Sterilization and Fumigation Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: The proposed standards would limit emissions of ethylene oxide (EO) from existing and new commercial sterilization and fumigation operations. The proposed national emission standards for hazardous air pollutants (NESHAP) implement section 112(d) of the Clean Air Act (Act). The intent of the proposed standards is to protect public health by requiring existing and new major sources and existing area sources to control emissions to the level achievable by the maximum achievable control technology (MACT), and by requiring new area sources to control emissions using generally available control technology (GACT).

DATES: *Comments.* Comments must be received on or before May 6, 1994.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by April 4, 1994, a public hearing will be held on April 12, 1994, beginning at 10 a.m.

Request to Speak at Hearing. Requests to present oral testimony must be received by April 4, 1994.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (LE–131), Attention, Docket No. A–88–03, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The Agency requests that a separate copy also be sent to the contact person listed below.

Public Hearing. If anyone contacts the EPA requesting a public hearing, it will be held at the EPA Office of Administration Auditorium in Research Triangle Park, North Carolina. Persons interested in requesting a hearing, verifying that a hearing will be held, or wishing to present oral testimony should contact Ms. Lina Hanzely, Chemicals and Petroleum Branch (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5673 by the dates specified above.

Background Information Document. The background information document (BID) for the proposed standards may be obtained from the U.S. Department of Commerce, National Technical Information Service (NTIS), Springfield, Virginia 22161, telephone number (703) 487–4650. Please refer to "Ethylene Oxide Emissions from Commercial Sterilization/Fumigation Operations—Background Information for Proposed Standards, NTIS number PB 93–226744, EPA–453/D–93–016." Electronic versions of the BID as well as this proposed rule are available for download from the EPA's Technology Transfer Network (TTN), a network of electronic bulletin boards developed and operated by the Office of Air Quality Planning and Standards. The TTN provides information and technology exchange in various areas of air pollution control. The service is free, except for the cost of a phone call. Dial (919) 541–5742 for up to a 14,400 bits per second (bps) modem. If more information on TTN is needed contact the systems operator at (919) 541–5384.

Docket. Docket No. A–88–03, containing supporting information used in developing the proposed standards, is available for public inspection and copying from 8 a.m. to 4 p.m., Monday through Friday, at the EPA's Air and Radiation Docket and Information Center, Waterside Mall, room M–1500, Ground Floor, 401 M Street SW., Washington, DC 20460. The proposed regulatory text and other materials related to this rulemaking are available for review in the docket. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information concerning the standards or technical aspects, contact Mr. David Markwordt at (919) 541–0837, Chemicals and Petroleum Branch, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. For information concerning the health effects of EO, contact Dr. Nancy Pate at (919) 541–5347, Pollutant Assessment Branch, Emission Standards Division (MD–13) at the above address.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

The proposed regulatory text is not included in this **Federal Register** notice,

but is available in Docket No. A–88–03 or by request from the EPA contact persons designated earlier in this notice free of charge. The proposed regulatory language is also available on the EPA's Technology Transfer Network (TTN). See the DOCKET section of this preamble for more information on accessing TTN.

I. List of Categories and Subcategories

Section 112 of the Act requires that the EPA evaluate and control emissions of hazardous air pollutants (HAP). The control of HAP is achieved through promulgation of emission standards under sections 112(d) and 112(f) for categories of sources that emit HAP. The initial list of major and area source categories to be regulated was published in the **Federal Register** on July 16, 1992 (57 FR 31576).

The source categories for which standards are proposed today are commercial EO sterilization and fumigation operations. Standards for both major and area sources of EO from commercial sterilization and fumigation operations are presented in today's proposed regulation. The commercial EO sterilization and fumigation source category consists of commercial operations that use EO in the sterilization of medical equipment supplies and in miscellaneous operations as a sterilant for heat- or moisture-sensitive materials or as a fumigant to control microorganisms or insects. A variety of materials are sterilized or fumigated with EO including medical equipment, pharmaceuticals, cosmetics, spices, books, artifacts, and beehives.

Approximately 188 commercial EO sterilization and fumigation facilities are in operation in the U. S., emitting an estimated 1,070 megagrams per year (Mg/yr) [1,180 tons per year (ton/yr)] of EO. Because all of the EO used for sterilization and fumigation is emitted following the sterilization process, the uncontrolled EO emissions from a facility are equal to the amount of EO used by that facility. Approximately 25 commercial sterilization and fumigation facilities each use 9,070 kilograms per year (kg/yr) [10 ton/yr] or more of EO and would, considering actual emissions, be considered major sources under section 112. Approximately 21 facilities use 9,070 kg/yr (10 ton/yr) or more of EO, but control the majority of EO emissions, emissions from the sterilization chamber vent, and would not be required to install additional controls on this emissions point. Of the remaining 142 known facilities, approximately 68 would be regulated as area sources under this proposed regulation. Approximately 74 of the smallest area sources would not be regulated.

II. Background

In 1985, the EPA published a **Federal Register** notice titled "Assessment of Ethylene Oxide as a Potentially Hazardous Air Pollutant" (50 FR 40286). In this notice, the EPA stated that it intended to list EO as a HAP under section 112 of the Act. The EPA then initiated an extensive information-gathering effort resulting in the development of the 1986 commercial sterilization data base as well as cost, industry profile, and other background information. In May 1988, the EPA presented a status report of the project to the National Air Pollution Control Techniques Advisory Committee (NAPCTAC). Both NAPCTAC members and members of the public provided comments on the draft BID that was presented at that time.

In December 1988, work on the draft rule was temporarily suspended (although technical work continued) until the Agency responded to an appellate court ruling (*Natural Resources Defense Council, Inc.* v. *EPA*, 824 F 2d at 1148 (DC Cir. 1987)) that the EPA must revise its NESHAP risk management policy so as to base decisions totally on health risk and to consider cost and technological feasibility only after the safe level of exposure has been set. As an interim activity, in March 1989, the EPA issued an Alternative Control Technology document (EPA–450–3/89–007) that presents technical information to be used by State and local agencies in developing strategies for reducing emissions of volatile organic compounds (VOC) (e.g., EO) from sterilization and fumigation operations.

With the passage of the 1990 Amendments to the Act, regulatory development activities resumed. The 1990 Amendments significantly changed the NESHAP decision-making process under section 112. Section 112 of the Act requires the EPA to develop technology-based standards for source categories that emit HAP. This process is explained in section III of this preamble. The EPA is proposing to regulate EO emissions from commercial sterilization and fumigation operations under authority of section 112 of the amended Act.

III. NESHAP Decision Process

A. Source of Authority for NESHAP Development

Title III of the 1990 Amendments was enacted to reduce the amount of nationwide air toxics emissions. Under title III, section 112 was amended to give the EPA the authority to establish national standards to reduce air toxics from certain industries that generate these emissions. Section 112(b) contains a list of HAP, which are the specific air toxics used to identify the source categories to be regulated by NESHAP. Section 112(c) directs the EPA to use this pollutant list to develop and publish a list of source categories for which NESHAP will be developed. A list of source categories was published in the **Federal Register** on July 16, 1992 (57 FR 31576). This list included both major and area commercial EO sterilization and fumigation sources.

B. Criteria for Development of NESHAP

The NESHAP are to be developed to control HAP emissions from both new and existing sources according to the statutory directives set out in section 112 of the Act. The statute requires the standards to reflect the maximum degree of reduction in emissions of HAP that is achievable for new or existing sources. The NESHAP must reflect consideration of the cost of achieving the emission reduction, any nonair quality health and environmental impacts, and energy requirements for control levels more stringent than the MACT floors. (As described in section III.C. of this preamble, the MACT floor is the minimum stringency level for MACT standards, and is determined according to section 112(d) of the Act.) The emission reduction may be accomplished through application of measures, processes, methods, systems or techniques including, but not limited to, measures that: 1. Reduce the volume of, or eliminate emissions of, such pollutants through process changes, substitution of materials or other modifications;

2. Enclose systems or processes to eliminate emissions;

3. Collect, capture or treat such pollutants when released from a process, stack, storage, or fugitive emissions point;

4. Are design, equipment, work practice, or operational standards (including requirements for operator training or certification) as provided in section 112(h); or

5. Are a combination of the above (section 112(d)(2)).

To develop NESHAP, the EPA collects information concerning the industry, including information on emission source characteristics, control technologies, data from HAP emission tests at well-controlled facilities, and information on the costs and other energy and environmental impacts of

emission control techniques. The EPA uses this information to analyze possible regulatory approaches.

Although NESHAP are normally structured in terms of numerical emission limits, alternative approaches are sometimes necessary. In some cases, physically measuring emissions from a source may be impossible or at least impracticable due to technological and cost limitations. Section 112(h) authorizes the Administrator to promulgate a design, equipment, work practice, or operational standard, or combination thereof, in those cases where it is not feasible to prescribe or enforce an emissions standard.

C. Maximum Achievable Control Technology Floor Determination and Process of Developing Regulations for Major and Area Sources

The EPA must set MACT standards for each of the source categories listed under section 112(c) of the Act that contain major sources. Such standards must be set at a level at least as stringent as the "floor." Congress provides certain very specific directives to guide the EPA in the process of determining this regulatory floor. As described below, area sources may be regulated with either a MACT standard or a GACT standard. A GACT standard is not required to be as stringent as the MACT floor.

For MACT, Congress specified that the EPA shall establish standards that require "the maximum degree of reduction in emissions of the HAP * * * that the Administrator, taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impacts and energy requirements, determines is achievable for new or existing sources in the category or subcategory to which such emission standard applies * * *" (the Act, section 112(d)(2)). In addition, Congress limited the Agency's discretion by establishing a minimum baseline or "floor" for standards. For new sources, the standards for a source category or subcategory "shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source, as determined by the Administrator" (the Act, section 112(d)(3)). Congress provided that existing source standards could be less stringent than new source standards but could be no less stringent than the average emission limitation achieved by the best performing 12 percent of the existing sources (excluding certain sources) for categories and subcategories with 30 or more sources or the best performing 5 sources for categories or subcategories with fewer than 30 sources (the Act, section 112(d)(3)).

Once the floor has been determined for new or existing sources for a category or subcategory, the Administrator must set a MACT standard that is no less stringent than the floor. Such standards must then be met by all sources within the category or subcategory. However, in establishing standards, the Administrator may distinguish among classes, types, and sizes of sources within a category or subcategory (the Act, section 112(d)(1)).

In addition, the Act provides the Administrator further flexibility to regulate area sources. Section 112(d)(5) provides that in lieu of establishing MACT standards under section 112(d), the Administrator may promulgate standards that provide for the use of "generally available control technologies or management practices." Area source standards promulgated under this authority (GACT standards) would not be subject to the MACT "floors" described above. Moreover, for area source categories subject to standards promulgated under section 112(d)(5), the EPA is not required to conduct a residual risk analysis under section 112(f).

At the end of the data gathering and analysis, the EPA must decide whether it is more appropriate to follow the MACT or the GACT approach for regulating an area source category. An area source is "any stationary source of HAP that is not a major source." As stated previously, MACT is required for major sources. If all or some portion of the sources emit less than 9.1 Mg/yr (10 tons/yr) of any one HAP (or less than 22.7 Mg/yr [25 tons/yr] of total HAP), then it may be appropriate to define subcategories within the source category and apply a combination MACT/GACT approach, MACT for major sources and GACT for area sources. In other cases, it may be appropriate to regulate both major and area sources under MACT.

The next step in establishing a MACT or GACT standard is the investigation of regulatory alternatives. With MACT standards, only alternatives at least as stringent as the floor may be considered. Information about the industry is analyzed to develop model plant populations for projecting national impacts, including HAP emission reduction levels, costs, energy, and secondary impacts. Several regulatory alternative levels (which may be different levels of emissions control or different levels of applicability or both) are then evaluated to determine the appropriate MACT or GACT level.

The regulatory alternatives for new versus existing sources may be different, and separate regulatory decisions must be made for new and existing sources. For both source types, the selected alternative may be more stringent than the MACT floor. However, the control level selected must be technically achievable. In selecting a regulatory alternative to represent MACT or GACT, the Agency considers the achievable reduction in emissions of HAP (and possibly other pollutants that are co-controlled), the cost impacts, energy impacts, and other environmental impacts of the alternatives above the floor. The objective is to achieve the maximum degree of emission reduction without unreasonable impacts.

The selected regulatory alternative is then translated into a proposed regulation. The regulation implementing the MACT or GACT decision typically includes sections of applicability, standards, test methods, and compliance demonstration, monitoring, reporting, and recordkeeping. The preamble to the proposed regulation provides an explanation of the rationale for the decision. The public is invited to comment on the proposed regulation during the public comment period. Based on an evaluation of these comments, the EPA reaches a final decision and promulgates the standard.

IV. Summary of Proposed Standards

A. Source Categories To Be Regulated

These proposed standards would regulate emissions of EO from existing and new commercial sterilization and fumigation operations using 907 kg/yr (1 ton/yr) of EO or more. The commercial sterilization and fumigation source categories cover the use of EO as a sterilant and fumigant in the production of medical equipment and supplies and in miscellaneous sterilization and fumigation operations at both major and area sources. The facilities affected by these proposed standards include, but are not limited to, medical equipment suppliers (SIC 3841 and 3842); pharmaceutical suppliers (SIC 2831, 2833, 2834, and 5122); other health-related industries (SIC 2211, 2821, 2879, 3069, 3079, 3569, 3677, 3693, 3999, and 5086); spice manufacturers (SIC 2034, 2035, 2046, 2099, and 5149); contract sterilizers (SIC 7218, 7399, and 8091); and laboratories (0279, 7391, 7397, 8071, and 8922). These commercial sterilization facilities use EO as a sterilant for heat- or moisture-sensitive materials and as a fumigant to control microorganisms or insects. Materials may be sterilized at the facility that produces or uses the product or by contract sterilizers (i.e., firms under

contract to sterilize products manufactured by other companies).

B. Pollutant To Be Regulated

Section 112(b) of the amended Act lists EO as a HAP. Ethylene oxide is emitted from commercial EO sterilization and fumigation operations in significant quantities. The nationwide emissions from all commercial EO sterilization and fumigation facilities are approximately 1,070 Mg/yr (1,180 ton/yr).

C. Affected Emission Points

One of the affected emission points is the sterilization chamber vent(s) at existing and new commercial EO sterilization and fumigation operations. This vent is the emission point for EO evacuated from the sterilization chamber following sterilization. The EO is removed from the sterilization chamber via a series of air washes. As explained in section VI.B. of this preamble, a component of this emission point is the emissions from any vacuum pump drain used to evacuate the chamber during these air washes.

The second emission point affected by this proposed regulation is the chamber exhaust vent(s). Prior to unloading the sterilization chamber, the chamber door is automatically cracked, and the chamber exhaust is activated. The chamber exhaust evacuates EO-laden air from the sterilization chamber prior to unloading and while the chamber is being unloaded (and reloaded). The chamber exhaust enables facilities to meet U.S. Occupational Safety and Health Administration (OSHA) workplace exposure standards; not all facilities have or need chamber exhaust vents.

The third emission point affected by this proposed regulation is the aeration room vent(s) at existing and new major source commercial EO sterilization and fumigation operations. Aeration rooms or chambers are used to allow further diffusion of residual EO from the sterilized products prior to shipping in order to comply with U.S. Food and Drug Administration (FDA) residual EO guidelines. Exhaust from these aeration rooms or chambers is emitted through the aeration room vent.

D. Format of the Standards

A percent reduction format in the form of a mass reduction determination was selected for the proposed standard for the sterilization chamber vents. This format provides flexibility to the owner or operator in the use of any technology or operational practice that achieves the same level of reduction.

A concentration-based format was selected for the proposed standard for the chamber exhaust and aeration room vents: parts per million of EO emitted per unit volume of air. This format is desirable because it requires measurement at only one point in the process and continuous monitoring of compliance is possible. Additionally, because the inlet concentrations from the aeration room vents are relatively low, and the outlet concentrations of some of the controlled aeration room vents approach the levels of detection for EO, some facilities may not be able to demonstrate compliance with an "equivalent" percent reduction requirement.

E. Proposed Standards

A summary of today's proposed standards is listed in Table 1.

TABLE 1.—PROPOSED STANDARDS, NATIONAL COSTS, AND EMISSION REDUCTIONS FOR MAJOR AND AREA SOURCES

Vent type	EO use cut-off, kg/yr (ton/yr)	Standard	Emission reduction, Mg/yr (ton/yr)	Annual cost, $MM
Sterilizer vent	907 (1)	99 percent reduction	950 (1,050)	3.8
Chamber exhaust	907 (1)	5,300 ppmv maximum concentration	0	0
Aeration room	9,070 (10)	1 ppmv maximum concentration	48 (53)	2.6

Included in this table are applicability cutoffs based on annual EO use, descriptions of the standards, and the estimated impacts associated with these proposed standards for each type of vent.

Owners or operators of existing commercial EO sterilization and fumigation operations would be required to install the control technology needed to comply with the proposed standards within 2 years after the effective date of the standard. Owners or operators of new commercial EO sterilization and fumigation operations that have commenced construction or reconstruction after the standards are proposed, and before the final standards are promulgated, would be required to have installed the control technology needed to comply with the proposed standards upon startup. Owners or operators of new commercial EO sterilization and fumigation operations that have commenced construction or reconstruction after the standards are promulgated would be required to comply with all requirements upon startup.

F. Impacts of the Standards

The nationwide impacts presented below are the impacts the standards would have on existing operations. The growth rate in the source categories covered by these standards is projected to be approximately zero. A more detailed discussion on how these impacts were calculated can be found in Chapters 6 through 8 of the Background Information Document (see **ADDRESSES** section).

The nationwide emission reduction beyond the baseline resulting from these standards would be 1,000 Mg/yr (1,100 tons/yr). The nationwide annual costs beyond baseline would be $6.4 million. Except for contract sterilizers, most facilities are not expected to face significant increases in the total costs of producing sterilized goods. Although contract sterilizers will face greater production cost increases, their business volume is expected to increase as other types of facilities opt to switch from in-house sterilization to contract sterilization to avoid the costs of regulation. No closures are anticipated as a result of compliance with these standards. The energy, solid waste, and water impacts attributable to the use of these control technologies are expected to be minimal (see sections V.C. and D. of this preamble for a more detailed discussion of these impacts).

G. Certification of Compliance

The tests required under the proposed standards include initial performance testing of control equipment installed on the sterilization chamber vents, and aeration room vents at affected EO commercial sterilization and fumigation operations. The schedule for performance testing is provided in § 63.7 of the proposed General Provisions. The initial performance test is required 120 days after the effective date of the standards or after startup for a new facility, or 120 days after the

compliance date specified for an existing facility.

H. Monitoring Requirements

The owner or operator of a commercial EO sterilization and fumigation operation controlling emissions from the sterilization chamber vent through the use of an acid-water scrubber would be required to monitor the ethylene glycol concentration in the scrubber liquor. Owners or operators controlling emissions from the sterilization chamber vent through the use of catalytic oxidation would be required to monitor the change in temperature across the catalyst bed.

The owner or operator of a commercial EO sterilization and fumigation operation would be required to measure the concentration of EO in the sterilization chamber immediately before the chamber exhaust is activated. Owners or operators of commercial EO sterilization and fumigation operations would be required to continuously monitor the concentration of EO being emitted from the aeration room vent at the outlet to the environment.

I. Reporting and Recordkeeping Requirements

Owners or operators of commercial EO sterilization and fumigation operations using 907 kg (1 ton) or more of EO in any consecutive 12-months would be required by the proposed General Provisions of part 63 of 40 CFR to submit an initial notification report. For new sources, the EO use information must be an estimate of expected use during the first consecutive 12 months of operation. Owners or operators of new sources would be required to submit the initial notification report within the timeframes specified in § 63.9 of 40 CFR part 63, subpart A, according to the type of new source classification. For existing sources, the notification report must specify the amount of EO used in the previous consecutive 12 months as well as the information required under § 63.9 of 40 CFR part 63, subpart A. Owners or operators of existing sources would be required to submit the initial notification report within 45 calendar days after the effective date of the standards or within 45 days of the month in which a facility exceeds the annual applicability cutoff.

Owners or operators of any affected commercial EO sterilization and fumigation operation would be required to submit a report indicating their intention to conduct a performance test at least 75 days before the scheduled date of the test. This report must be accompanied by a site test plan. Once the performance test is approved and conducted properly, a report containing the test results must be submitted within 30 days after completion of the test.

Owners or operators of affected commercial EO sterilization and fumigation operations consistently using less than 9,070 kg (10 tons) of EO during 12 consecutive months would be required to maintain records of a 12-month rolling average of EO use. Owners or operators of commercial EO sterilization and fumigation operations who previously used less than 9,070 kg (10 tons) of EO but whose EO use within a consecutive 12 months equaled or exceeded 9,070 kg (10 tons) would be required to submit an initial notification and all related "new source" reports for the aeration room standard unless the facility was existing prior to the affected date of the standards.

Owners or operators of commercial EO sterilization and fumigation operations subject to these standards would be required to report when their operations exceeded levels specified in the standards, and therefore violated the respective standard. The reports would be due by the 30th day following the end of each quarter in which excess emissions occurred. These reports would contain the date and time of the violation, the conditions and duration of the violation, and the steps taken to correct the violation and return the device to proper operation.

Owners or operators of commercial EO sterilization and fumigation operations would be required to retain all information related to their initial performance test, compliance with the standards, and the test methods for a minimum of 5 years.

V. Summary of Environmental, Energy, and Economic Impacts

A. Facilities Affected by These NESHAP

There are approximately 188 existing commercial EO sterilization and fumigation facilities throughout the country. Approximately 18 percent of this total have already installed emission control equipment on sterilization chamber vents to comply with OSHA, State, or local requirements, and would not have to install additional control equipment to meet the proposed standards. Approximately 51 percent of the 47 commercial EO sterilization and fumigation major sources have installed emission control devices. About 83 existing commercial EO sterilization and fumigation facilities have uncontrolled sterilization chamber vents (or have sterilization chamber vents that are controlled at an efficiency insufficient to meet this proposed standard) and would be required to install control equipment on sterilization chamber vents under today's proposed standards. No commercial EO sterilization and fumigation operations contained in the EPA's commercial sterilization data base control emissions from the chamber exhaust vent. Approximately 114 facilities will be required to meet the 5,300 parts per million by volume (ppmv) concentration standard for emissions from the chamber exhaust vent. The 47 major sources would be required to control emissions from the aeration room vent. Sixteen of these facilities are known to have already installed control equipment to meet State or local permitting requirements and would not be required to install additional controls. About 31 existing commercial EO sterilization and fumigation facilities have uncontrolled aeration room vents (or have aeration room vents that are controlled at a concentration insufficient to meet this proposed standard) and would be required to install control equipment on aeration room vents. (Additional information on the status of control in this industry is found in the docket for this rulemaking effort.)

Based on the projected zero growth rate of the commercial sector, it is estimated that the only newly constructed commercial EO sterilization and fumigation facilities covered by the proposed standards during the 5-year period from 1992 to 1997 would be facilities replacing those facilities that have retired.

B. Air Impacts

The proposed standards would reduce nationwide emissions of EO from existing commercial EO sterilization and fumigation facilities by about 93 percent in 1997 compared to the emissions that would result in the absence of the proposed standards. In the absence of a regulation, existing commercial EO sterilization and fumigation operations are projected to emit 1,070 Mg (1,180 tons) of EO in 1997. Under the proposed standards, these facilities are projected to emit 72 Mg (79 tons) of EO, a reduction of approximately 1,000 Mg (1,100 tons). The standard for sterilization chamber vent emissions accounts for a nationwide reduction of 950 Mg (1,050 tons) of EO, and the standard for aeration room vent emissions accounts for a nationwide reduction of 48 Mg (53 tons). There is no expected change in emissions from chamber exhaust vents

because the intent of the standard for these vents is to prevent any emissions increases.

C. Water, Solid Waste, and Noise Impacts

The water quality impact associated with these proposed standards is small. The impact of the proposed standards on water quality would result from ethylene glycol in the wastes generated by the acid-water scrubbers. Ethylene glycol is generated when the EO exhaust stream contacts and then reacts with the acid-water solution in this type of scrubber. When this solution is spent, the scrubber tank is emptied, and a fresh acid-water solution added. Each tank typically holds about 833 liters (L) (220 gallons (gal)) of a 10 percent (by volume) aqueous sulfuric acid (H_2SO_4) solution, which is neutralized with 50 percent (by weight) caustic (NaOH) before the tank is drained. The amount of ethylene glycol solution generated by existing sources as a result of this proposed regulation is expected to be 2,120 cubic meters per year (m^3/yr) (561,000 gallons per year (gal/yr)). However, there are several operations offering no-credit, no-cost (except for shipping) ethylene glycol recovery; it is anticipated that the nationwide wastewater impacts will be lower than 2,120 m^3/yr (561,000 gal/yr).

The solid waste impact due to the proposed standards is small. Catalytic oxidation is used at some facilities as a control technology for both sterilization chamber vents and aeration room vents. The catalyst beds are typically returned to the control device manufacturer for regeneration where the spent catalyst is landfilled. The spent catalyst is not classified as a hazardous waste. However, control technologies utilizing acid-water scrubbers, which have no solid waste impacts, are used at the majority of facilities. Therefore, it is expected that the solid waste impacts will be minimal.

There are no noise impacts associated with these proposed standards.

D. Energy Impacts

The national energy impacts associated with these proposed standards are small. The total increase in annual electricity use resulting from the proposed standards in 1997 would be about 0.1 gigawatt hours per year (GWh/yr). This increased electricity use attributed to existing sources results from the operation of control devices used in complying with the emissions standards for the sterilization vent and aeration room vent. The average electricity requirements for a typical operation affected by these standards are projected to increase 110 kilowatt hours/yr (KWh/yr) as a result of the proposed standards. Because a zero net growth rate is projected for these industries, no increase in energy use is expected to result from these proposed standards for new sources.

E. Cost Impacts

Under the proposed NESHAP, the nationwide annualized costs for existing commercial EO sterilization facilities would increase by about $6.4 million beyond baseline based on an analysis of the application of controls to all existing facilities not currently controlled to the level of the standards. The levels of controls specified in the standards comprise the regulatory baseline. Because any new sources would be replacing existing sources, costs attributable solely to new sources are not anticipated.

To comply with the proposed emission standards, the initial capital cost incurred by a typical uncontrolled existing source such as a large commercial EO sterilization and fumigation operation using 68,000 kg/yr (75 ton/yr) of EO would be about $310,000 for controlling the sterilization chamber vent emissions and about $270,000 for controlling the aeration room vent emissions. The annualized cost incurred by this typical source to operate the control devices would be about $100,000 to control the sterilization chamber vent emissions and about $74,000 to control the aeration room vent emissions.

F. Economic Impacts

The analysis of economic impacts indicated that the commercial EO sterilization and fumigation facilities subject to these proposed standards would not experience significant economic impacts. Due to OSHA requirements limiting worker exposure and existing State regulations, the industry trend is toward increased control of EO emissions; thus, the level of control required by these standards is, in many cases, already in place.

The proposed standards will have the potential to affect many contract sterilizers in two ways. First, because sterilization is nearly the entire "product" for contract sterilizers, the proposed standards will probably cause a more pronounced increase in contract sterilizers' production costs as compared to the cost increase for other facilities affected by the standards. However, the proposed standards will likely also result in an increased demand for contract sterilization services. Because contract sterilizers on average have larger chambers than the other industry groups and use more EO, the per-unit cost of the proposed standards is lower for contract sterilizers than for the other groups. The contract sterilizers' lower per-unit control costs are therefore, expected to result in additional business if firms in the other affected industries switch from in-house sterilization to contract sterilization.

The controls required under the proposed standards will increase sterilization costs in the other affected industry groups. However, sterilization costs are generally very small relative to the total cost of producing sterilized products in these industries. Consequently, the proposed standards will not significantly increase production costs for most medical device suppliers, other health-related manufacturers, spice manufacturers, or pharmaceutical manufacturers. Some facilities may choose to switch from in-house to contract sterilization to avoid any direct regulatory impacts.

VI. Rationale

This section describes the decisions made by the Administrator to select the proposed standards.

A. Selection of Pollutants and Source Category for Control

Section 112(c)(1) as amended authorizes the Administrator to publish a list of all categories and subcategories of major sources and area sources of the HAP listed in section 112(b), ethylene oxide is one of these listed HAP. For the categories and subcategories the Administrator lists, emission standards are to be established pursuant to section 112(d).

A list of source categories to be regulated was published on June 16, 1992 (57 FR 31576). Both major and area commercial EO sterilization and fumigation sources were listed.

B. Selection of Emission Points To Be Covered by the Standards

For EO commercial sterilization and fumigation operations, the source consists of three emission points. The standards address all three of these emissions points, which are: (1) The sterilization chamber vent (i.e., the vent of the vacuum pump gas/liquid separator), (2) the chamber exhaust vent, and (3) the aeration room vent.

A component of the sterilization chamber vent at some EO commercial sterilization and fumigation operations is a once-through, water-ring vacuum pump that results in EO emissions from wastewater. The use of a closed-loop, recirculating vacuum pump drain, a technology used at many EO

commercial sterilization and fumigation operations, would eliminate these EO drain emissions (i.e., the EO that would be emitted via the drain would instead be emitted via the sterilization chamber vent). Thus, to prevent these wastewater emissions, the Agency is including any emissions from a vacuum pump drain as emissions from the sterilization chamber vent.

C. Selection of the Basis and Level of Proposed Standards for Major Sources

1. New Source MACT Floor Determination

The following discussion presents the Agency's determination of the MACT floor for each of the three source types at new major source commercial EO sterilization and fumigation operations. Additional information on this analysis is found in the docket for this rulemaking.

a. *Sterilization chamber vent.* The greatest sterilization chamber vent emission reduction by similar existing sources is the reduction of 99 percent of emissions. Therefore, this emissions reduction comprises the MACT floor for new commercial EO sterilization and fumigation operations.

b. *Chamber exhaust vent.* It is possible that chamber exhaust vent emissions could be controlled with existing technology. However, despite the presence of regulations in some States (e.g., California) that require emission reductions from this emission source, the EPA's database does not contain any existing chamber exhaust vents that are routed to a control device. Therefore, the MACT floor for new source chamber exhaust vents requires no reduction in emissions from these vents. However, to ensure that the current amount of EO being evacuated via the sterilization pump continues to be routed to a control device rather than exhausted via an uncontrolled vent, the Agency is incorporating a concentration-based limit on emissions from chamber exhaust vents. The new source MACT floor for chamber exhaust vents is a concentration limit of 5,300 ppmv. Because this floor maintains the "status quo" for emissions from the chamber exhaust vent, and does not require the use of any control technologies, the Administrator determined that the use of this limit does not constitute measures beyond the MACT floor for these sources. The EPA is soliciting comments and data regarding demonstrated control technologies for this source.

c. *Aeration room vent.* The best controlled aeration room vent at a similar source utilizes control technologies that reduce emissions to 1 ppmv at most. This level of control therefore comprises the MACT floor for aeration room vents at new commercial EO sterilization and fumigation operations.

2. Existing Source MACT Floor Determination

The following discussion presents the Agency's analysis that led to the determination of MACT floors for each of the three source types at existing commercial EO sterilization and fumigation operations. Additional information on this analysis is found in the docket for this rulemaking.

a. *Sterilization chamber vent.* In the EPA's commercial sterilization data base, 24 of 47 major source facilities (51 percent) have control devices (catalytic oxidizers and acid-water scrubbers) for their sterilization chamber vent emissions that achieve an emissions reduction of 99 percent. These control devices are used across a range of industry categories and for a wide range of facility sizes (from 3.7 m^3 to 280 m^3 (130 ft^3 to 10,000 ft^3) cumulative chamber size). No control devices capable of achieving greater emission reductions were found. Therefore, a 99-percent reduction was selected as the MACT floor for these existing emissions sources.

b. *Chamber exhaust vent.* As is the case for the new source MACT floor, there are no existing chamber exhaust vents routed to a control device. Therefore the MACT floor for existing source chamber exhaust vents requires no reduction in emissions from these vents. However, to ensure that the current amount of EO being evacuated via the sterilization pump continues to be routed to a control device rather than exhausted via an uncontrolled vent, the Agency is incorporating a concentration-based limit on emissions from chamber exhaust vents. The existing source MACT floor for chamber exhaust vents is therefore a concentration limit of 5,300 ppmv. Because this floor maintains the "status quo" for emissions from the chamber exhaust vent, and does not require the use of any control technologies, the Administrator determined that the use of this limit does not constitute measures beyond the MACT floor for these sources.

c. *Aeration room vent.* There are approximately 16 major sources (34 percent) known to have controlled aeration room vent emissions. The MACT floor for aeration room vents at existing commercial EO sterilization and fumigation operations using 9,070 kg (10 ton) or more of EO in a consecutive 12-months is therefore a reduction of emissions to a maximum concentration of 1 ppmv.

3. Development of Regulatory Alternatives

a. *New sources.* The regulatory alternatives developed for new major sources incorporate the regulatory approaches described in section V.C. of this preamble as well as the MACT floors discussed above. In addition, these alternatives incorporate technologies that achieve an emission reduction beyond that of the MACT floors. These regulatory alternatives are listed in Table 2.

TABLE 2.—MAJOR SOURCE REGULATORY ALTERNATIVES FOR NEW AND EXISTING SOURCES

Reg. alt.	Control levels			Emission reduction, Mg/yr (ton/yr)	Annual cost, $MM	Cost effectiveness, $/Mg ($/ton)
	Sterilizer vent	Aeration room vent	Chamber exhaust vent			
A	≥99 percent mass reduction.	<1 ppmv outlet concentration.	≥99 percent mass reduction.	830 (910)	5.5	6,600 (6,000)
B[a]	≥99 percent mass reduction.	<1 ppmv outlet concentration.	<5,300 ppmv outlet concentration.	800 (880)	4.3	5,400 (4,900)

[a] Regulatory Alternative B represents the MACT floor for existing sources as well as the best controlled similar source (i.e., MACT) for new sources.

The nationwide emission reduction and cost data in Table 2 are based on existing sources.

(1) *Regulatory alternative A.* Regulatory alternative A represents the most stringent reduction in emissions of EO from new commercial EO sterilization and fumigation of major sources. This alternative would require

the installation of control devices on all three emission sources—the sterilization chamber vent, chamber exhaust vent, and aeration room vent. The control devices would be required to achieve an emission reduction of 99 percent (1 ppmv maximum emissions limit for aeration room vents). As discussed in the MACT floor analysis, the Agency is unaware of any demonstrated controls in use on a chamber exhaust vent. However, for purpose of this analysis, a model control device was evaluated.

(2) *Regulatory alternative B.* This regulatory alternative reflects the application of MACT floor controls on the three emissions sources. Regulatory alternative B represents a reduction in emissions of EO from new commercial EO sterilization and fumigation sources that is less stringent than regulatory alternative A. The difference is that instead of reducing emissions from the chamber exhaust vent, the owner or operator would be required to not exceed "status quo" emissions.

(3) *Selected regulatory alternative.* In determining MACT, the EPA evaluated the emission reductions, costs, economic impacts, and other environmental and energy impacts of the MACT floor control level and the levels of control more stringent than the floor. Based on the provisions of section 112(d)(2) of the amended Act, the Administrator selected regulatory alternative B as the basis for today's proposed standards for new sources. In the case of the sterilization chamber and aeration room vents, the Agency is unaware of a technology that achieves a demonstrated emissions reduction beyond the MACT floor controls. For chamber exhaust vents, the high costs coupled with the relatively low emissions reduction associated with controlling the existing sources (more than $40,000 per Mg) indicates that requiring this level of control would also impose overly-burdensome costs on new sources and would be inconsistent with § 112(d) of the Act where the Administrator is required to consider the costs of any controls beyond the MACT floor.

b. *Existing sources.* Regulatory alternatives were also developed for existing commercial EO sterilization and fumigation operations. These regulatory alternatives are listed in Table 2 and are identical to the regulatory alternatives developed for new sources. As with new sources, these regulatory alternatives reflect the application of the MACT floor controls to these major sources as well as the application of control technologies more stringent than the MACT floor.

(1) *Regulatory alternative A.* Regulatory alternative A represents the most stringent reduction in emissions of EO from commercial EO sterilization and fumigation major sources. This alternative would require the installation of control devices on all three emission points—the sterilization chamber vents, chamber exhaust vents, and aeration room vents—at all major source commercial EO sterilization and fumigation operations. The control devices would be required to achieve an emission reduction of 99 percent (1 ppmv emissions limit for aeration room vents).

(2) Regulatory alternative B. Regulatory alternative B represents a reduction in emissions of EO from commercial EO sterilization and fumigation sources that is less stringent than regulatory alternative A. This alternative represents the MACT floor for existing major sources.

(3) *Selected regulatory alternative.* As with the determination of MACT for new sources, the EPA evaluated the emission reductions, costs, economic impacts, and other environmental and energy impacts of the MACT floor control level and the levels of control more stringent than the floor. Based on the provisions of section 112(d)(2) of the amended Act, the Administrator selected regulatory alternative B as the basis for today's proposed standards for existing sources. The incremental cost effectiveness of moving from regulatory alternative B to regulatory alternative A is $40,000 per Mg. The Administrator determined that this additional burden was excessive given the relatively low additional emission reduction achieved by the more stringent alternative. Regulatory alternative B therefore provides MACT-level controls while not imposing overly burdensome costs on the regulated community.

D. Selection of the Basis and Level of Proposed Standards for Area Sources

In developing standards for area sources, the Administrator first determined that area sources using less than 907 kg/yr (1 ton) would not be required to control emissions from any of the emissions points. The Administrator based this decision on a number of factors discussed herein including the low emissions of sources below this cutoff (1.5 percent of nationwide emissions or approximately 14 Mg/yr (15 ton/yr) of EO) and the high cost effectiveness (more than $50,000 per Mg) that is anticipated if just the emissions from the sterilization chamber vent were controlled at a 99-percent reduction limit. The data represent an increasing cost effectiveness at facilities using smaller quantities of EO. Because of these analyses, the Administrator decided not to regulate facilities using less than 907 kg/yr (1 ton/yr) of EO.

For area sources using 907 kg/yr (1 ton/yr) of EO or more, the Agency evaluated MACT as the bases for regulations of new and existing sources. For new area sources, GACT was also evaluated as a basis for the standards. The potential approaches and corresponding levels of control for new and existing sources are shown in Table 3.

TABLE 3.—POTENTIAL REGULATORY APPROACHES AND CONTROL LIMITS EXAMINED BY THE AGENCY FOR NEW AND EXISTING AREA SOURCES

Emissions point	Control limits		
	New area sources		Existing area sources
	GACT	MACT floor	MACT floor
Sterilization chamber vent	99% emission reduction	99% emission reduction	99% emission reduction.
Chamber exhaust vent	5,300 ppmv emission limit	5,300 ppmv emission limit	5,300 ppmv emission limit.
Aeration room vent	No controls required	1 ppmv emission limit	No controls required.

1. New Area Sources

As shown in table 3, the best performing area source (i.e., new source MACT floor) reduces emissions from the sterilization chamber vent by 99 percent, does not control emissions from the chamber exhaust vent but would prevent increases in emissions from this vent by requiring an emissions

limit of 5,300 ppmv, and reduces emissions from the aeration room vent to a maximum of 1 ppmv. Because impact data for existing area sources indicate an incremental cost effectiveness of over $110,000/Mg ($100,000/ton) associated with requiring controls on aeration room vents for area sources, the Administrator rejected MACT as a basis for the new area source standards. The Administrator employed her authority under section 112(f) of the Act to base the standards for new area sources on GACT.

As shown in table 3, GACT for new area sources results in a 99 percent reduction in emissions from the sterilization chamber vent, an emissions limit of 5,300 ppmv for emissions from the chamber exhaust vent, and no control for emissions from the aeration room vent. These requirements would result in a nationwide cost effectiveness of $10,900 per Mg ($9,900 per ton) for existing area sources. Based on these data from existing sources, the Administrator determined that the projected costs of compliance of requiring these controls for new sources was justified given the anticipated reductions in emissions.

2. Existing Area Sources

The following discussion presents the Agency's analysis that led to the determination of MACT floors for each of the three source types at existing area source commercial EO sterilization and fumigation operations.

a. *Sterilization chamber vent.* In the EPA's commercial sterilization data base, 8 of 67 area source facilities (12 percent) using 907 kg/yr (1 ton/yr) or more of EO have control devices (catalytic oxidizers and acid-water scrubbers) for their sterilization chamber vent emissions that achieve an emissions reduction of 99 percent. No devices were found which exceed this level of control. Therefore, a 99-percent reduction was selected as the MACT floor for these vents at existing area source commercial EO sterilization and fumigation operations.

b. *Chamber exhaust vent.* As is the case for the major source MACT floor at existing sources, there are no existing chamber exhaust vents routed to a control device. Therefore the MACT floor for existing area source chamber exhaust vents requires no reduction in emissions from these vents. However, to ensure that the current amount of EO being evacuated via the sterilization pump continues to be routed to a control device rather than exhausted via an uncontrolled vent, the Agency is incorporating a concentration-based limit on emissions from chamber exhaust vents. The existing area source MACT floor for chamber exhaust vents is therefore a concentration limit of 5,300 ppmv. Because this floor maintains the "status quo" for emissions from the chamber exhaust vent, and does not require the use of any control technologies, the Administrator determined that the use of this limit does not constitute measures beyond the MACT floor for these sources.

c. *Aeration room vent.* There are 2 of 68 area sources (3 percent) using 907 kg/yr (1 ton/yr) or more of EO known to have controlled aeration room vent emissions. When the emissions reduction of the best performing 12 percent of these existing area sources is averaged, a 25 percent control efficiency would be required. Because this 25 percent emissions reduction does not correspond to any known control technology, the median (94th percentile) of the best performing 12 percent control technology was used to determine the MACT floor. This median source is uncontrolled. Therefore, the MACT floor for aeration room vents at existing area source commercial EO sterilization and fumigation operations is no control.

d. *Selected basis.* The Administrator determined that there was no justification to reject MACT as the basis for regulating existing area sources. In making this decision, the Administrator noted that if additional data were made available to the Agency showing a controlled MACT floor for aeration room vents, there could be sufficient justification to reject MACT. Such a decision would be based on the high cost effectiveness coupled with the relatively low emissions reduction associated with controlling aeration room vents.

In making the decision to base the standards for existing area sources on MACT, the Administrator also noted that the Agency would be required to perform a residual risk analysis under section 112(f) of the Act. The Administrator requests comment on the weight that this requirement (to perform a residual risk analysis) should carry in determining the basis for area source standards. For example, where MACT and GACT would require the same level of control (as in this case), is it permissible to call the standard GACT for area sources in order to exempt those sources from the requirements of 112(f)?

3. Development of Regulatory Alternatives for Existing Area Sources

The regulatory alternatives developed for existing area sources incorporate the regulatory approaches and MACT floors described in section V.D. of this preamble. In addition, these alternatives incorporate technologies that achieve an emission reduction beyond that of the MACT floors. These regulatory alternatives and their nationwide emission reduction and cost impacts are listed in table 4.

TABLE 4.—AREA SOURCE REGULATORY ALTERNATIVES FOR EXISTING SOURCES

Reg. Alt.	Control levels			Emission reduction, Mg/yr (ton/yr)	Annual cost, $MM	Cost effectiveness, $/Mg ($/ton)
	Sterilizer vent	Aeration room vent	Chamber exhaust vent			
A	≥99 percent mass reduction.	<1 ppmv outlet concentration.	≥99 percent mass reduction.	206 (227)	4.3	20,900 (19,000)
B	≥99 percent mass reduction.	<1 ppmv outlet concentration.	<5,300 ppmv outlet concentration.	(222)	3.0	15,000 (14,000)
C	≥99 percent mass reduction.	No control	<5,300 ppmv outlet concentration.	193 (213)	2.1	10,900 (9,900)

a. *Regulatory alternative A.* Regulatory alternative A represents the most stringent reduction in emissions of EO from existing commercial EO sterilization and fumigation area sources. This alternative would require the installation of control devices on all three emission sources—the sterilization chamber vent, chamber exhaust vent, and aeration room vent. The control devices would be required to achieve an emission reduction of 99 percent (1 ppmv maximum emissions limit for aeration room vents). As discussed in the MACT floor analysis for these area sources, the Agency is unaware of any demonstrated controls in use on a chamber exhaust vent. However, for

purpose of this analysis, a model control device was evaluated.

b. *Regulatory alternative B.* This regulatory alternative reflects the installation of control devices on two of the emission sources—the sterilization chamber vent and aeration room vent. The control devices would be required to achieve an emission reduction of 99 percent (1 ppmv maximum emissions limit for aeration room vents). No controls would be required for the chamber exhaust vents, however increases in these emissions would be disallowed by the use of an emissions cap of 5,300 ppmv.

c. *Regulatory alternative C.* This regulatory alternative reflects the application of MACT floor controls on the three emissions sources. Control devices would only be required for the sterilization chamber vent. No controls would be required for the chamber exhaust vent or aeration room vent, however increases in emissions from the chamber exhaust vent would be disallowed by the use of an emissions cap of 5,300 ppmv.

d. *Selected regulatory alternative.* In determining MACT for existing area sources, the EPA evaluated the emission reductions, costs, economic impacts, and other environmental and energy impacts of the MACT floor control level and the levels of control more stringent than the floor. Based on the provisions of section 112(d)(2) of the amended Act, the Administrator selected regulatory alternative C as the basis for today's proposed standards for existing sources. Although the cost effectiveness for MACT is relatively high, in this case the MACT approach was not rejected in favor of GACT because of the high toxicity of EO; one pound of EO is roughly equivalent in cancer potency to 15 pounds of benzene. In addition to being a probable carcinogen, EO is also associated with severe noncancer health effects.

In the case of the sterilization chamber vents, the Agency is unaware of a technology that achieves a demonstrated emissions reduction beyond the MACT floor controls. For aeration room and chamber exhaust vents, the high costs of requiring controls for these vents are overly burdensome (more than $110,000 per Mg ($100,000 per ton) incremental cost effectiveness associated with the control of aeration room vents under the next most stringent Regulatory Alternative). These high costs, coupled with the relatively low emissions reduction associated with controlling these vents, are inconsistent with section 112(d) of the Act where the Administrator is required to consider the costs of any controls beyond the MACT floor.

E. Selection of the Format of the Proposed Standards

1. Alternative Formats Considered

Consistent with section 112(d)(2) of the amended Act, the EPA considered performance-based formats for the standards. The Agency also considered alternative formats for the three emissions sources addressed in today's proposed regulation.

a. *Sterilization chamber vent emissions.* Two formats consisting of concentration limits and percent reduction (efficiency) were considered for regulating emissions from the sterilization chamber vent. These formats addressed the varying EO concentrations and air flow rate characteristics associated with these batch sterilization and fumigation operations.

(1) *Concentration limit format.* Standards based on a specified EO concentration at the control device outlet (e.g., outlet concentration requirement) are desirable because they require measurement at only one point in the process. However, outlet concentration was deemed to be an inferior format for the sterilization vent standard because outlet concentration alone is not a direct measure of the performance of the control devices used by this industry for control of this vent. Outlet concentration depends on the inlet concentration and flow rate of air through the control device. Because these are batch operations, the inlet concentrations and the flow rates may vary significantly during the sterilization cycle.

Another reason a concentration format was not chosen for sterilization vent emissions is that the EPA lacks sufficient test data to establish a credible concentration limit that could be met by the industry as a whole and that would represent equivalent levels of control by all sources. The EPA could calculate a nationwide (or even plant-specific) concentration limit based on standard sterilization parameters, but (as discussed below) such a limit would have to be based on an assumed control device efficiency. Because the purpose of the outlet concentration standard format is to be a reliable indicator of control device efficiency, this method is inferior to other methods.

(2) *Percent reduction format.* The EPA also considered a percent reduction format for the sterilization chamber vent standard. Although other methods of assessing percent reduction were considered (notably the comparison of inlet and outlet concentrations), the Agency determined that a mass-based reduction measurement of efficiency was the most effective for sterilization chamber vent emissions. This format was the only alternative that was feasible given the variable operating conditions of these batch operations. This mass-based measurement involves a compliance test where the outlet EO concentration and gas flowrate are measured in order to calculate the mass of EO at the outlet.

Additionally, the inlet mass is determined through the measurement of the flowrate and concentration or by knowing the amount of EO charged to the chamber and chamber operating conditions.

b. *Chamber exhaust vent emissions.* Two formats consisting of concentration limits and emission calculation were considered for regulating emissions from chamber exhaust vents.

(1) *Concentration limit format.* A format based on a specified EO concentration in the sterilization chamber immediately prior to activating the chamber exhaust would be desirable because it requires measurement at only one point in the process and continuous monitoring of compliance is possible. Owners or operators of commercial EO sterilization and fumigation facilities could easily monitor this concentration and reduce the EO concentration inside the sterilization chamber below this level by performing air wash cycles as needed (the exhaust from these air wash cycles would exit via the sterilization chamber vent and would be considered to be emissions from the sterilization chamber vent emission point).

(2) *Emissions calculation format.* During the development of these NESHAP, the Agency developed calculations that could be used to estimate chamber exhaust vent emissions. The Agency used actual test data as well as hypothetical situations to calculate the concentrations of EO remaining in the sterilization chamber after a certain number of air washes. These calculations assumed that EO behaved as an ideal gas and that a reasonable number of air wash chamber evacuations were performed (reasonable being dependent upon the type of sterilant gas and the product being sterilized). The concentrations of EO emitted from the chamber exhaust vent were consistently found to be less than 2 percent of the original concentration of EO charged to the chamber when this reasonable number of air evacuations was performed. The Agency used these data to develop a regulatory format whereby an owner or operator of a commercial EO sterilization and

fumigation operation could meet the chamber exhaust standard by performing the calculated number of chamber evacuations before engaging the chamber exhaust. Additional information on the development of this format is found in the docket for this rulemaking.

The Agency noted that this format would be sufficient for commercial EO sterilization and fumigation operations that sterilized similar materials on a routine basis. However, because the calculated number of air evacuations to be performed depends on the materials to be sterilized, the Agency believes that this format would not be realistic for operations that sterilize a variety of materials. The Agency therefore did not select this format. The Agency is, however, soliciting comment on the use of this format as an alternative to the selected concentration-based format for commercial EO sterilization and fumigation operations that sterilize similar materials on a routine basis.

c. *Aeration room vent emissions.* Two formats, percent reduction and concentration limit, were considered for regulating EO emissions from the aeration room vent. The Administrator is requesting specific comment on the format selected for the aeration room vent and any test data regarding emissions from this vent.

(1) *Percent reduction format.* As with the format for the sterilization chamber vent standard, the EPA considered a percent reduction format for the standard for aeration room vents. However, the Agency believes that this format is not appropriate because the EO concentrations at the outlet of the control device could theoretically be below the limits of detection for EO and might, therefore, inaccurately measure the efficiency of a control device. Aeration room EO concentrations are typically 20 to 30 ppmv. Because of these low inlet EO concentrations, the outlet EO concentrations from a control device required to perform at the same efficiency as a control device for the sterilization chamber vent emissions could not be measured given the level of detection for EO. The Agency therefore determined that this percent reduction format was inappropriate for the aeration room vent standard.

(2) *Concentration limit format.* A concentration format based on the EO concentration at the control device outlet is desirable because it requires measurement at only one point in the process and continuous monitoring of compliance is possible. Even though outlet concentration was deemed to be an inferior alternative for the sterilization vent standard, it is appropriate for the aeration room vent standard because of the less variable operating conditions. Because the outlet concentration depends on the inlet concentration when scrubbers are used, and the inlet concentrations do not vary significantly in the data available, the Administrator believes that an outlet concentration limit is an appropriate format for this emission source. This format also has the advantage that the concentration limit selected, 1 ppmv, approaches the limit of detection for EO, and would comprise the default outlet emission concentration if used to determine the percent emission reduction.

2. Formats Selected

The percent reduction format, in the form of a mass reduction, was selected as the format of the standard for the sterilization chamber vent emissions. The Administrator determined that this format was technically achievable and provided a sufficient indicator of performance while also not imposing prohibitive costs on the owners or operators subject to the standard.

A concentration limit format was selected as the format of the standards for the chamber exhaust vent and aeration room vent emissions. The Administrator determined that the use of the concentration limit format for these vents would provide the most accurate measurement of the performance of the control devices. The EO concentrations typically encountered in the aeration room vents (i.e., relatively low inlet EO concentrations and outlet EO concentrations approaching the limits of detection) precluded the use of the percent reduction format. In the case of the chamber exhaust vents, the Administrator determined that the variability of materials sterilized or fumigated would preclude the use of the emissions calculation format for many commercial EO sterilization and fumigation operations. However, as mentioned previously, the Agency is soliciting comment on the use of this format for chamber exhaust vents.

F. Selection of Compliance and Performance Testing Provisions and Monitoring Requirements

The proposed regulation contains compliance provisions that require owners or operators to conduct an initial performance test to demonstrate compliance with the proposed standards. As a means of demonstrating compliance with the sterilization chamber vent standards following this initial performance test, the owner or operator must also establish source-specific parameters based on the type of control device used at that operation to control emissions from the sterilization chamber vent. The Administrator determined that these provisions were necessary to meet the enhanced monitoring provisions established in section 114(a)(3) of the Act.

The provisions for enhanced monitoring contained in the Act as amended in 1990 give the Administrator the authority to promulgate regulations requiring compliance certification and enhanced monitoring by the owners or operators of all stationary sources. Consistent with the legislative history of the 1990 Amendments, the Agency has interpreted this new statutory authority as linking the data obtained from enhanced monitoring and compliance so that enhanced monitoring would be used to determine whether compliance was continuous. The Agency has therefore defined enhanced monitoring as monitoring conducted for the purpose of determining continuous compliance with emission limitations and standards. By requiring the use of enhanced monitoring, it will be possible to determine compliance on a continuous basis. Although the term "continuous" generally means at all times, the Agency has determined that less frequent measurements or determinations of compliance can ensure continuous compliance. The potential variability of the emissions or parameters is a primary factor in establishing the frequency of measurements. If the potential variability is high, measurements must be done frequently or even continuously. If the potential variability is low, measurements may be done less frequently at prescribed intervals. In any event, the monitoring must be capable of detecting deviations with sufficient reliability and timeliness to determine whether compliance with applicable standards is continuous.

1. Sterilization Chamber Vent

As part of the compliance provisions of the proposed regulation, all owners or operators of commercial EO sterilization and fumigation operations subject to the sterilization chamber vent standard would be required to demonstrate compliance with the 99-percent emission reduction standard through a direct calculation of the emissions reduction. During this demonstration of compliance with the sterilization chamber vent standard, owners or operators of commercial EO sterilization and fumigation operations would also be required to establish site-specific monitoring parameters. These site-specific parameters depend on the type

of emission control systems installed at the source. Owners or operators complying with the sterilization chamber standard through the use of acid-water scrubbers would be required to establish a maximum concentration of ethylene glycol in the scrubber liquor when emissions from the vent are in compliance with the 99-percent emissions reduction standard. Subsequent operation of the affected sterilization source with an ethylene glycol concentration in the scrubber liquor in excess of the baseline ethylene glycol concentration shall constitute a violation of the sterilization chamber vent standard.

Owners or operators complying with the sterilization chamber standard through the use of catalytic oxidation would be required to establish a temperature baseline of the change in temperature across the catalyst bed when emissions from the vent are in compliance with the 99-percent emissions reduction standard. Operation of the affected sterilization source during any period when the temperature change across the catalyst bed varies from the baseline temperature change in excess of ±5.6°C (±10°F) shall constitute a violation of the sterilization vent standard. Owners or operators complying with the sterilization chamber standard through the use of another control technology would be required to obtain approval from the Administrator for their monitoring protocols.

Once the parameters to be monitored were selected, the mechanism for determining the limits for these parameters was investigated. The Agency considered establishing a nationwide limit for these parameters but after consultation with control device vendors is proposing that each commercial EO sterilization and fumigation operation, during the initial compliance demonstration, establish site-specific limits for the appropriate control device. The Administrator determined that site-specific determination of these compliance limits would address the variabilities in operating conditions and designs of individual control devices.

2. Aeration Room Vent

Owners of operators of commercial EO sterilization and fumigation operations subject to the aeration room vent standard would be required to monitor the concentration of EO being emitted from the aeration room vent (after any control device). Operation of the sterilization source in excess of the 1 ppmv EO concentration limit shall constitute a violation of the aeration room standard. This requirement provides a direct measurement of compliance with the standard and is in keeping with the principles established for enhanced monitoring.

3. Chamber Exhaust Vent

Under today's proposed regulation, owners or operators of commercial EO sterilization and fumigation operations subject to the chamber exhaust standard would be required to monitor the concentration of EO in the sterilization chamber immediately prior to the operation of the chamber exhaust (i.e., at the completion of the sterilization cycle and immediately prior to the opening of the chamber door for unloading and subsequent loading of the chamber). Operation of the affected sterilization source in excess of the 5,300 ppmv EO concentration shall constitute a violation of the chamber exhaust vent standard. This requirement provides a direct measurement of compliance with the standard and is in keeping with the principles established for enhanced monitoring. Because the chamber exhaust is an integral part of a batch operation, true continuous monitoring of the vent is not necessary. In addition, because of the nature of this emissions point, the maximum concentration of EO that could be emitted from this emission point would be measured during under this monitoring approach.

G. Selection of Recordkeeping and Reporting Requirements

Section 114 of the amended Act authorizes the EPA to require sources to monitor, test, keep records, and make reports. The proposed standards would require an owner or operator to submit the following four types of reports: 1. Initial Notification; 2. Notification of Compliance Status; 3. Periodic Reports; and 4. Other reports.

The purpose and contents of each of these reports are described in this section. The proposed rule requires all reports to be submitted to the "Administrator." The term Administrator refers either to the Administrator of the Agency, an Agency regional office, a State agency, or other entity that has been delegated the authority to implement this rule. In most cases, reports will be sent to State agencies. Addresses are provided in the proposed General Provisions (subpart A) of 40 CFR part 63.

Records of reported information and other information necessary to document compliance with the regulation are generally required to be kept for 5 years. Records pertaining to the design and operation of the control and monitoring equipment must be kept for the life of the equipment.

1. Initial Notification

The proposed standards would require owners or operators who are subject to today's proposed standards to submit an Initial Notification. This report notifies the agency of applicability for existing facilities or of construction for new facilities as outlined in § 63.5 of the proposed General Provisions. This report will establish an early dialogue between the source and the regulatory agency, allowing both to plan for compliance activities. The notice is due within 45 days after the date of promulgation for existing sources. For new sources, it is due 180 days before commencement of construction or reconstruction, or 45 days after promulgation of today's proposed rules, whichever is later.

The Initial Notification must include a statement as to whether the source can achieve compliance by the specified compliance date. If an existing source anticipates a delay that is beyond its control, it is important for the owner or operator to discuss the problem with the regulatory authority as early as possible. Pursuant to section 112(i) of the Act, the General Provisions contain provisions for a 1-year compliance extension to be granted by the Administrator on a case-by-case basis. This report will also include a description of the parameter monitoring system intended to be used. Finally, the owner or operator of commercial EO sterilization and fumigation operations would be required to include in this report the amount of EO used within the previous consecutive 12 months. For new sources, this report would include the amount of EO expected to be used during the first consecutive 12 months of operation.

2. Notification of Compliance Status

The Notification of Compliance Status (NCS) would be submitted no later than 30 days after the facility's initial performance test. It contains the information necessary to demonstrate that compliance has been achieved, such as the results of the initial performance test and the establishment of the control device baseline monitoring parameters. The submission of the performance test report will allow the regulatory authority to verify that the source has followed the correct sampling and analytical procedures, and has performed all calculations correctly.

Included in the performance test report submitted with the NCS would be the calculation of the operating parameter values for the selected

operating parameters to be monitored. The notification must include the data and rationale to support these parameter values as ensuring continuous compliance with the emission limits.

3. Periodic Reports

Periodic reports are required to ensure that the standards continue to be met. An exceedance of any of the regulatory standards during any quarter following the applicable compliance date would require that a report of noncompliance be submitted by the 30th day following the end of each quarter in which excess emissions occurred. These reports would include information on the violations such as when any of the monitored operating parameters were outside the required values (e.g., an ethylene glycol concentration in excess of the baseline ethylene glycol concentration, or a catalyst bed temperature below the baseline oxidation temperature).

4. Other Reports

There are also a limited number of other reports required under the proposed standards. In a few cases it is necessary for the facility to provide information to the regulatory authority shortly before or after a specific event. For example, notification before a performance test is required to allow the regulatory authority the opportunity to have an observer present (as specified in the proposed General Provisions to part 63). This type of reporting must be done separately from the periodic reports because some situations require a shorter term response from the reviewing authority.

Reports of start of construction, anticipated and actual startup dates, and modifications, as required under §§ 63.5 and 63.9 of the General Provisions, are entered into the Agency's Aerometric Information Retrieval System (AIRS) and are used to determine whether emission limits are being met.

Records required under the proposed standards are generally required to be kept for 5 years. General recordkeeping requirements are contained in the proposed General Provisions under § 63.10(b). These requirements include records of malfunctions and maintenance performed on the air pollution control systems and the parameter monitoring systems. Monitoring data from parameter monitors will provide a record of compliance with the emissions standards. Owners or operators of affected facilities who use less than 9,070 kg/yr (10 tons/yr) would be required to maintain records of a 12-month rolling average of EO use. These records are required to document that the facility is below the EO use applicability threshold for the aeration room standard.

H. Operating Permit Program

Under title V of the amended Act, all sources subject to standards promulgated under section 112 will be required to obtain an operating permit unless otherwise exempted. As discussed in the rule establishing the operating permit program published on July 21, 1992 (57 FR 32251), this new permit program would include in a single document all of the emission limits, monitoring, recordkeeping, and reporting requirements that pertain to a single source. All applicable requirements of these standards will ultimately be included in the source's title V operating permit. The permit will contain Federally enforceable conditions with which the source must comply. Once a State's permit program has been approved, each commercial EO sterilization and fumigation facilities within that State must apply for and obtain an operating permit. If the State where the facility is located does not have an approved permitting program, the owner or operator of a facility must submit the application to the Regional Office. The addresses for the Regional Offices and States will be included in the proposed General Provisions for 40 CFR part 63 standards.

I. Selection of Emission Test Methods

The proposed test methods found in the regulation have been developed for use with the proposed standards. During the development of these test methods, input was received from the regulated community and trade associations (including the Health Industry Manufacturers Association (HIMA)). Other information for these test methods was developed from tests of existing commercial EO sterilization and fumigation operations. Additional input for these proposed test methods was obtained from test methods developed by States for their air pollution control programs. In developing these proposed methods, the Agency has attempted to provide owners or operators of commercial EO sterilization and fumigation facilities with as much flexibility as possible by offering several equivalent methodologies for determining the certification and compliance parameters.

The proposed method for sterilization chamber vents would establish a procedure for determining the efficiency of the control device used to achieve the 99-percent emission reduction required by the proposed standard for these vents. This method includes instructions for determining the amount of EO charged to the sterilization chamber, remaining in the chamber after the first evacuation cycle, at the inlet to the control device, and emitted from the control device. These data are used to determine the efficiency of the control device during a compliance test.

Specifications for replication of these methods are also provided.

Methods are also provided for determining the site-specific monitoring parameters to be used in determining compliance with the sterilization chamber vent standard. These methods depend on the type of control device used to control emissions of the sterilization chamber vent (i.e., acid-water scrubber or catalytic oxidation).

The proposed methods for chamber exhaust and aeration room vents are based on a measurement of EO concentrations. The methods for measuring these concentrations are contained in § 7.2 of Test Method 18, 40 CFR part 60, appendix A.

J. Solicitation of Comments

The Administrator welcomes comments from interested persons on any aspect of the proposed standards, and on any statement in the preamble or the referenced supporting documents. The proposed standards were developed on the basis of information available. The Administrator specifically requests factual information that may support either the approach taken in the proposed standards or an alternate approach. To receive proper consideration, documentation or data should be provided. In addition, the Administrator is specifically requesting factual information and comments in the following areas:

1. Selection of MACT as the Basis for the Area Source Standards

a. Selection of Regulatory Approach for Area Sources

The Agency is requesting comment on whether the application of section 112(f) should be a factor in deciding whether to apply MACT of GACT to an area source category. In addition, the Agency is requesting data on the existence of controls on aeration room vents at area sources.

b. MACT Floor Determination

The EPA does not believe that the interpretation of the MACT floor would change the proposed standards in this package. However, the EPA is considering more than one interpretation of the statutory language concerning the MACT floor for existing

sources and is soliciting comment on them in another rulemaking. This solicitation is being made in a reopening of the comment period for the national emission standards for hazardous air pollutants from the synthetic organic chemical manufacturing industry. Please refer to that rulemaking (Docket No. A–90–19) for further information or to comment on the issue.

2. Chamber Exhaust Vent MACT Floor

It is possible that chamber exhaust vent emissions can be controlled using existing technologies such as acid-water scrubbers or catalytic oxidizers, because EO concentrations in this vent stream are higher and exhaust rates are potentially lower than in aeration room vent streams, which are controlled at many facilities. However, despite the presence of State regulations (e.g., California's) that require emission reductions from chamber exhaust vents, the EPA's database does not contain any existing chamber exhaust vents that are routed to a control device and for which emission reductions are demonstrated. On this basis, the Administrator determined that the MACT floor for new and existing sources is a zero level of control because no single best controlled "similar" source could be found. The Administrator solicits comments and data regarding demonstrated control technologies for this source.

3. Format of Chamber Exhaust Vent Standard

The Agency considered an alternative format to the proposed concentration limit format for the chamber exhaust vent standard. The Agency used actual test data as well as hypothetical situations to calculate the concentration of EO remaining in the sterilization chamber after a certain number of air washes. These calculations assumed that EO behaved as an ideal gas and that a reasonable number of air wash chamber evacuations were performed given the type of sterilant gas and the product being sterilized. Under these scenarios, the concentration of EO in the chamber exhaust gas was consistently less than 2 percent of the original concentration of EO charged to the chamber. These data were then used to develop a regulatory format whereby an owner or operator could meet a standard of maintaining the concentration of EO in the chamber exhaust at less than 2 percent of the original EO charge by performing a calculated number of air washes before engaging the chamber exhaust.

The advantage of this format is that it would not require the owner or operator to monitor the actual concentration of EO in the chamber exhaust. However, because the calculated number of air evacuations to be performed depends on the materials to be sterilized, this format could be onerous for those facilities that sterilize numerous materials using differing sterilization protocols. The Agency is soliciting comment on the use of this format as an alternative to the proposed concentration-based format.

4. Monitoring Parameters

During the selection of the sterilization chamber vent monitoring parameters, the Agency investigated several possible parameters for the two types of control devices typically used to control EO emissions. In consultation with control device vendors, the regulated community, and State regulators, the Agency determined that the parameters selected (ethylene glycol concentration for acid-water scrubbers and temperature across the catalyst bed for catalytic oxidizers) would provide suitable indicators of performance. However, the Agency is soliciting comment and data on the correlation between these parameters and the performance of the control devices.

The Agency is also soliciting comment on the monitoring requirements for the chamber exhaust vent and aeration room vent standards that specify direct measurement of the EO concentration. Specifically, the Agency is requesting comment on the practicality of requiring these direct measurements, and solicits alternative monitoring requirements that would also provide the required indication of compliance for these standards.

5. Emissions Averaging

During the development of today's proposal, the EPA considered including an emissions averaging approach but did not identify any viable alternatives. The EPA would be interested in pursuing the development of an averaging alternative if such an alternative would be protective of the environment and, as expected, lower the cost of achieving any particular emission reduction. A possible benefit of an averaging approach is that it may provide sources greater flexibility in achieving emission reductions that may also translate into cost savings for the source. The Agency is interested and requests data and comments that could be used to develop an emission averaging alternative in the final rule.

VII. Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to discuss the proposed standards in accordance with section 307(d)(5) of the amended Act. Persons wishing to make oral presentation on the proposed standards for EO emissions from commercial EO sterilization and fumigation operations should contact the EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be addressed to the Air and Radiation Docket and Information Center address given in the **ADDRESSES** section of this preamble and should refer to Docket No. A–88–03.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at the EPA's Air and Radiation Docket and Information Center in Washington, DC (see **ADDRESSES** section of this preamble).

B. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by the EPA in developing this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties to identify and locate documents readily so that they can effectively participate in the rulemaking process and (2) to serve as the official record in case of judicial review (except for interagency review materials (the Act, section 307(d)(7)(A))).

C. Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of this Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect of the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of Executive Order 12866, the OMB has notified the EPA that this action is a "significant regulatory action" within the meaning of the Executive Order. For this reason, this action was submitted to the OMB for review. Changes made in response to the OMB suggestions or recommendations will be documented in the public record.

D. Paperwork Reduction Act

The information-collection requirements in this proposed rule have been submitted for approval to the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by the EPA (ICR No. 1666.01), and a copy may be obtained from Ms. Sandy Farmer, Information Policy Branch, U. S. Environmental Protection Agency, 401 M Street, SW. (2136), Washington, DC 20460, or by calling (202) 260–2740. The public reporting burden for this collection of information is estimated to average 338 hours per response, including 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 the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, (2136), U. S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked, "Attention: Desk Officer for the EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires the EPA to consider potential impacts of proposed regulations on small business "entities." If a preliminary analysis indicates that a proposed regulation would have a significant economic impact on 20 percent or more of small entities, then a regulatory flexibility analysis must be prepared.

Present Regulatory Flexibility Act guidelines indicate that an economic impact should be considered significant if it meets one of the following criteria: (1) Compliance increases annual production costs by more than 5 percent, assuming costs are passed on to consumers; (2) compliance costs as a percentage of sales for small entities are at least 10 percent more than compliance costs as a percentage of sales for large entities; (3) capital costs of compliance represent a "significant" portion of capital available to small entities, considering internal cash flow plus external financial capabilities; or (4) regulatory requirements are likely to result in closures of small entities.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small business entities because: (1) In all industry categories except the contract sterilization industry, there is not a substantial number of small entities, and (2) contract sterilizers should experience an increase in demand for their services as other facilities switch from in-house to contract sterilization. As a result, contract sterilizers will not be adversely impacted by the proposed rule.

F. Miscellaneous

In accordance with section 117 of the Act, publication of this proposal was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. The Administrator will welcome comments on all aspects of the proposed regulation, including health, economic and technological issues, and on the proposed test methods.

This regulation will be reviewed 8 years from the date of promulgation. This review will include an assessment of such factors as evaluation of the residual health risks, any overlap with other programs, the existence of alternative methods, enforceability, improvements in emission control technology and health data, and the recordkeeping and reporting requirements.

Statutory Authority: The statutory authority for this proposal is provided by sections 101, 112, 114, 116 and 301 of the Clean Air Act, as amended; 42 U.S.C. 7401, 7412, 7414, 7416, and 7601.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Ethylene oxide sterilization, Hazardous substances, Reporting and recordkeeping requirements.

Dated: February 28, 1994.

Carol M. Browner,

Administrator.

[FR Doc. 94–5149 Filed 3–4–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94–12, RM–8419]

Radio Broadcasting Services; Sebastian, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by T & M Communications, requesting the allotment of Channel 240C3 to Sebastian, Florida, as that community's first local aural transmission service. Channel 240C3 can be allotted to Sebastian in compliance with the Commission's minimum distance separation requirements without a site restriction. The coordinates for Channel 240C3 at Sebastian are North Latitude 27–49–00 and West Longitude 80–28–12.

DATES: Comments must be filed on or before April 25, 1994, and reply comments on or before May 10, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Cary S. Tepper, Meyer, Faller, Weisman & Rosenberg, 4400 Jenifer Street, NW., suite 380, Washington, DC 20015 (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Nacy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 94–12, adopted February 2, 1994, and released March 2, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., room 246, or

2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 94–5097 Filed 3–4–94; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 94–13, RM–8431]

Radio Broadcasting Services; Agana, GU

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Inter-Island Communications, Inc. requesting the allotment of Channel 275C to Agana, Guam, as that community's sixth local aural transmission service. Channel 275C can be allotted to Agana in compliance with the Commission's minimum distance separation requirements without a site restriction. The coordinates for Channel 275C at Agana are North Latitude 13–28–27 and West Longitude 144–44–52.

DATES: Comments must be filed on or before April 25, 1994, and reply comments on or before May 10, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Peter Gutmann, Pepper & Corazzini, 1776 K Street, NW., suite 200, Washington, DC 20006 (Attorney for Petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 94–13, adopted February 2, 1994, and released March 2, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., room 246, or 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 94–5098 Filed 3–4–94; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 94–14, RM–8426]

Radio Broadcasting Services; Van Wert, OH

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Van Wert Radio seeking the allotment of Channel 282A to Van Wert, Ohio, as the community's second local FM service. Channel 282A can be allotted to Van Wert in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.5 kilometers (7.7 miles) east, at coordinates North Latitude 40–53–09 and West Longitude 84–26–17, to avoid a short-spacing to Station WLBC–FM, Channel 281B, Muncie, Indiana. Canadian concurrence in the allotment at Van Wert is required since the community is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before April 25, 1994, and reply comments on or before May 10, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Jerrold Miller, Esq., Miller & Miller, P.O. Box 33003, Washington, DC 20033 (Counsel to petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 94–14, adopted February 2, 1994, and released March 2, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 94–5099 Filed 3–4–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 94–16, RM–8432]

Radio Broadcasting Services; Belle Fourche, SD

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Ultimate Caps, Inc., seeking the allotment of Channel 271C3 to Belle Fourche, SD, as the community's second local FM transmission service. Channel 271C3 can be allotted to Belle Fourche in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates North Latitude 44–40–18 and West Longitude 103–51–00.

DATES: Comments must be filed on or before April 25, 1994, and reply comments on or before May 10, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Karl Grimmelmann, Vice President, Ultimate Caps, Inc., P.O. Box 787, Belle Fourche, SD 57717 (Petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 94–16, adopted February 2, 1994, and released March 2, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 94–5100 Filed 3–4–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 94–15; RM–8411]

Radio Broadcasting Services; Ravenswood and Elizabeth, WV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by MediaCom, Inc., proposing the reallotment of Channel 291A from Ravenswood to Elizabeth, West Virginia, as that community's first local aural transmission service, and the modification of Station WRZZ(FM)'s license accordingly. Channel 291A can be allotted to Elizabeth in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 291A at Elizabeth are North Latitude 39–03–48 and West Longitude 81–23–43. Since Elizabeth is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been requested.

DATES: Comments must be filed on or before April 25, 1994 and reply comments on or May 10, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Robert L. Olender, Esq., Baraff, Koerner, Oldender & Hochberg, P.C., 5335 Wisconsin Avenue, NW., suite 300, Washington, DC 20015–2003 (Counsel for Petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's notice of proposed rule making, MM Docket No. 94–15, adopted February 2, 1994, and released, March 2, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 94–5101 Filed 3–4–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB97

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period and Public Hearing on Proposed Designation of Critical Habitat for the Louisiana Black Bear

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; public hearing and reopening of comment period.

SUMMARY: The Fish and Wildlife Service (Service) gives notice that a public hearing will be held on the proposed designation of critical habitat for the Louisiana black bear, *Ursus americanus luteolus*. The Louisiana black bear occupies the Tensas and Atchafalaya River basins with possible remnant numbers is the lower Mississippi River Delta and the bluffs south of Vicksburg, Mississippi. The proposed critical habitat areas are limited to forest within the Tensas and Atchafalaya River basin and south of U.S. Highway 90, west from the lower Atchafalaya River along

the coastline to the Vermillion Parish line, north to Highway 14, thence east to U.S. Highway 90. This hearing will allow additional comments on this proposal to be submitted from all interested parties.

DATES: The comment period on the proposal is reopened through April 4, 1994. The public hearing will be held from 6 to 10 p.m. on March 23, 1994.

ADDRESSES: The public hearing will be held in the auditorium of the New Iberia Senior High School, 1301 E. Admiral Doyle Drive, New Iberia, Louisiana. Written comments and materials should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Suite A, Jackson, Mississippi 39213. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Wendell A. Neal at the above address (601/965–4900).

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act requires the Service to designate critical habitat to the maximum extent prudent and determinable concurrently with listing a species. Although the Service found that designation of critical habitat was not prudent in the proposed rule of June 21, 1990 (55 FR 25341) for listing the Louisiana black bear as threatened, in the final rule listing the Louisiana black bear as threatened, published on January 7, 1992 (57 FR 588), the Service changed its earlier finding by determining that designation of critical habitat was prudent but not then determinable. A proposal to designate three areas as critical habitat was published in the **Federal Register** on December 2, 1993 (58 FR 63560). The actual critical habitat within these areas is limited to forestland.

Section 4(b)(5)(E) of the Endangered Species Act requires that a public hearing be held on proposed designation of critical habitat if requested within 45 days of the proposal's publication in the **Federal Register**. Public hearing requests were received during the allotted time period from Robert Lamar Boese, the Honorable Bill Tauzin, Pietro L. Pipari, and Henry Stickler.

Anyone expecting to make an oral presentation at the hearing is encouraged to provide a written copy of their statement to the hearing officer prior to the start of the hearing. In the event there is a large attendance, the time allotted for oral statements may have to be limited. Oral and written statements receive equal consideration. There are no limits to the length of written comments presented at this hearing or mailed to the Service.

The comment period originally closed on March 2, 1993. In order to accommodate the public hearing, the Service reopens the public comment period. Written comments may now be submitted through April 4, 1994, to the office in the **ADDRESSES** section.

Author

The primary author of this notice is Wendell A. Neal (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act (16 U.S.C. 1531–1544).

Dated: February 25, 1994.

James W. Pulliam, Jr.,

Regional Director.

[FR Doc. 94–5114 Filed 3–4–94; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

[I.D. 030194B]

Northeast Multispecies Fishery

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

ACTION: Public hearings and request for comments.

SUMMARY: The New England Fishery Management Council (NEFMC), in cooperation with the Mid-Atlantic Fishery Management Council (MAFMC), will hold preliminary hearings to inform interested parties and receive comments on proposals to amend the Northeast Multispecies Fishery Management Plan (FMP). In response to concerns expressed by the NEFMC's Industry Advisory Committee about the emergence of a juvenile silver hake (whiting) fishery, the NEFMC intends to hold public hearings this spring on a set of management objectives and alternatives to meet those objectives. The NEFMC seeks input on the development of the public hearing document from interested parties who have not had the opportunity to comment at FMP development meetings in the New England area.

DATES: Written comments should be sent by March 8, 1994 (see **ADDRESSES**). The hearings will be held at 7 p.m. on Monday, March 7, 1994; and at 7 p.m. on Tuesday, March 8, 1994.

ADDRESSES: Comments should be sent to Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route One), Saugus, MA 01906. Additional information can be obtained from the NEFMC at the above address, or from the Mid-Atlantic Fishery Management Council, Federal Bldg., room 2115, 300 South New Street, Dover, DE 19901–6790.

Public hearings will be held on March 7 at the South Wall Fire House, West Atlantic Avenue at Route 34, Wall, NJ, (908) 223–2150; and on March 8 at the Gurney's Inn, Old Montauck Highway, Montauck, NY, (516) 668–2345.

FOR FURTHER INFORMATION CONTACT: Douglas G. Marshall, Executive Director, (617) 231–0422.

SUPPLEMENTARY INFORMATION: The NEFMC staff will provide materials for the hearings to the MAFMC. The MAFMC will distribute the materials to interested parties and provide other support for the hearings. They will also forward all comments to the NEFMC. After the NEFMC's Groundfish Committee reviews the scoping hearing comments, a public hearing document will be prepared. Interested members of the public should contact either the MAFMC or the NEFMC office for further information (see ADDRESSES).

This hearing is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Douglas G. Marshall at (617) 231–0422 at least 5 days prior to the meeting date.

Dated: March 1, 1994.

David S. Crestin,

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

[FR Doc. 94–5092 Filed 3–2–94; 11:22 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 59, No. 44
Monday, March 7, 1994

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

Agricultural Research Service

Intent to Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Milk Specialties Company of Dundee, Illinois, an exclusive field of use license to S.N. 07/822,505; S.N. 07/921,173; S.N. 08/122,949; and S.N. 08/166,779 each entitled "Probiotic for Control of Salmonella." Notice of availability for S.N. 07/822,505 was published in the **Federal Register** on March 30, 1992. Notice of availability for S.N. 07/921,173 was published in the **Federal Register** on December 14, 1992. S.N. 08/122,949 is a division of and S.N. 08/166,779 is a continuation-in-part of S.N. 07/921,173.

DATES: Comments must be received on or before May 6, 1994.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, room 401, Building 005, BARC-West, Baltimore Boulevard, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to these inventions are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license these inventions as said company has submitted a complete and sufficient application for a license, promising therein to bring the benefits of these inventions to the U.S. public. The prospective exclusive field of use 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, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Dated: February 24, 1994.

W.H. Tallent,

Assistant Administrator.

[FR Doc. 94–5066 Filed 3–4–94; 8:45 am]

BILLING CODE 3410–03–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: Federal Fisheries Permits – Southwest Region.

Agency Form Number: No designated Form Number.

OMB Approval Number: 0648–0204.

Type of Request: Revision of a currently approved collection.

Burden: 163 hours.

Number of Respondents: 290.

Avg Hours Per Response: Approximately 30 minutes per application.

Needs and Uses: Permit data are collected to identify fishery participants and their vessels in the crustacean precious corals, bottomfish and seamount groundfish, and pelagics fisheries of the Western Pacific Region. Information obtained through permits are essential for fishery management. They are also an effective enforcement tool. The collection includes a request for a new longline "limited entry" permit and "appeal" process.

Affected Public: Businesses or other for–profit institutions, small businesses or organizations.

Frequency: On occasion, annually.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Dated: February 23, 1994

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94–5109 Filed 3–4–94; 8:45 am]

BILLING CODE 3510–CW–F

Agency Forms Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Federal Fisheries Permits — Northwest Region.

Agency Form Numbers: None Assigned.

OMB Approval Number: 0648–0203.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 406 hours.

Number of Respondents: 956.

Avg Hours Per Response: Approximately 20 minutes.

Needs and Uses: Fishermen wanting to conduct experimental fishing off Washington, Oregon, and California must apply for a permit and file reports. Those fishermen having limited entry permits must annually renew them to remain valid. Any permit leased or sold must be reported. Permits are also issued for processing vessels over 125 feet. This information is needed for the orderly management of the groundfish fishery.

Affected Public: Businesses or other for–profit institutions; small businesses or organizations.

Frequency: On occasion, annually.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Federal Fisheries Permits — Southeast Region.

Agency Form Number: None assigned.

OMB Approval Number: 0648–0205.

Type of Request: Extension of a currently approved collection.

Burden: 2,737 hours.

Number of Respondents: 8,867.

Avg Hours Per Response: Approximately 20 minutes.

Needs and Uses: Fishing permits are an integral part of the management of fisheries in the Southeast. Permits are used to identify fishermen, for control, and for information dissemination. The permit application forms associated with this family of forms are necessary for issuing fishery permits.

Affected Public: Businesses or other for–profit organizations; small businesses or organizations.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Logbooks — Southeast Region Family of Forms.

Agency Form Number: None assigned.

OMB Approval Number: 0648–0016.

Type of Request: Revision of a currently approved collection.

Burden: 23,867 hours.

Number of Respondents: 2,307 (approximately 40 responses per respondent).

Avg Hours Per Response: Ranges between 20 and 30 minutes.

Needs and Uses: This request is to amend the existing logbooks requirements to require certain economic data be provided. The data will be used for cost/benefit analysis, as well as for economic profitability profiles and trade and import tariff decisions.

Affected Public: Businesses or other for–profit institutions; small businesses or organizations.

Frequency: On occasion and after each set of trips.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Copies of the above information collection proposals can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Dated: February 25, 1994.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94–5110 Filed 3–4–94; 8:45 am]

BILLING CODE 3510–CW–F

Agency Information Collection Under Review by the Office of Management and Budget (OMB); Expedited Review

DOC has submitted to OMB for expedited clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). The collection is for the International Trade Administration of DOC.

Title: Paris Air Show Evaluation Interview.

Form Number: Agency—N/A; OMB—0625—.

Type of Request: New Collection—Expedited Review.

Burden: Estimated 150 respondents, 188 burden hours, average minutes per response—45 minutes.

Needs and Uses: This collection will be used in an evaluation of the DOC's role in supporting the U.S. aerospace industry at the biennial Paris Air Show. Its results will affect whether and how the Department allocates resources to this event to best support industry interest.

Affected Public: Businesses and other for profit, Other U.S. government agencies, small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Gary Waxman, (202) 395–7340.

A copy of the evaluation interview is published below. Any questions can be directed to Edward Michals, DOC Clearance Officer, 202–482–3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments for the proposed information collection should be sent to Gary Waxman, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: March 2, 1994.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

OMB No. 0625 _____

Expires:

Paris Air Show Evaluation Survey

This survey is authorized by law (15 U.S.C. 1512 171 et seq., 15 U.S.C. 171 et seq.) While you are not required to respond, your cooperation is needed to make the results of this evaluation comprehensive, accurate, and timely. In order to reduce any time burdens that a person-to-person survey would entail, this survey is being faxed to you for your responses. We request that you complete your response within two working days of its receipt, and request that you return your responses by Fax to the Survey Group, International Trade Administration, Department of Commerce at (202) 482–3113. Should you need clarification of any of the questions, please call the Survey Group at 202–482–2835 or Fax your question to the above Fax number, including the name of a contact person and their telephone number.

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including the time for reviewing instructions, 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 the burden, to Reports Clearance Officer, International Trade Administration, room 4001, U.S. Department of Commerce, Washington, DC 20230, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0625——), Washington, DC 20503.

The following will be faxed to the respondents as a cover to the survey.

Introduction

- In recent years the Department of Commerce (DOC) has organized and managed the USA National Pavilion at the Paris Air Show with its permanent staff and relied upon others commissioned by the DOC to perform certain other well-defined tasks.
- We are currently evaluating the full range of options for funding and operating the USA National Pavilion in the future. Specifically, we are interested in determining the best allocation of tasks, as laid out in question 2, involved in sponsoring the Pavilion between our staff and other sources.
- Our purpose is to determine your views on the appropriate role, if any, of the U.S. Government in the USA National Pavilion. We are interested in your opinions and ideas on how tasks should be divided between DOC staff and others commissioned by the DOC.

• Answers to the following questions will help produce a set of options and recommendations that will be presented to senior management of the International Trade Administration (ITA) of the DOC. The decisions of International Trade Administration management will affect the role of DOC in future Paris Air Shows.

• All answers to the evaluation will be kept strictly confidential.

Paris Air Show Evaluation

1. In what venue(s) did your company participate in past Paris Air Shows? (Circle)

Participation	Years				
USA National Pavilion	1993	1991	1989	1987	1985
Private Sector Group Organizer	1993	1991	1989	1987	1985
Individual Participation	1993	1991	1989	1987	1985
Did not Exhibit	1993	1991	1989	1987	1985
Do not Know	1993	1991	1989	1987	1985

2. Please rate the following facilities and services on their importance in meeting your company's goal at the Paris Air Show. Please use these categories: Not Important=1, Important=2, Essential=3, or No Opinion/Did not use=4. (Circle)

Facilities:				
Exhibiting in a pavilion of U.S. companies	1	2	3	4
Business Center (Phones, Fax, Printers, PC's)	1	2	3	4
Press Center (Briefing Rooms & Staff	1	2	3	4
American Embassy Business Information Center	1	2	3	4
Adjacent Outdoor Display Area	1	2	3	4
Exhibitors' Lounge	1	2	3	4
Full-Service Pavilion Restaurant	1	2	3	4
Private Meeting Rooms	1	2	3	4
Services:				
Exhibit Designer/ Building Contractor On-Site	1	2	3	4
Catering Services On-Site	1	2	3	4
Multilingual Translation Services On-Site	1	2	3	4
24 Hour Security	1	2	3	4
Trade-Only Access (No Public Visitors)	1	2	3	4
Exhibitors' Briefing Book (Market Research Info)	1	2	3	4
Follow-Up & After Show Support	1	2	3	4

Can you think of any programs or services other than the ones I have just listed which would be of interest to your company at the Paris Air Show?

3. Please rate the following programs, services, and events offered by DOC at the USA National Pavilion. How valuable are the following services to your company at the Paris Air Show?

Advocacy—Active written/oral support by the DOC on behalf of your company in a major international procurement or competition. Example: Letter from the Secretary or personal meeting/appearance by the Secretary on your behalf.

☐ Not Valuable ☐ Somewhat Valuable ☐ Very Valuable

Business Counseling—Market information provided to U.S. companies. Example: This includes private sector or government contacts, regulatory updates, non-tariff barriers to trade.

☐ Not Valuable ☐ Somewhat Valuable ☐ Very Valuable

U.S. Ambassador's Reception—Reception sponsored by the U.S. Government at the American Ambassador's residence, Paris, France. Example: 1993 reception hosted by the Deputy Chief of Mission Avis Bohlen.

☐ Not Valuable ☐ Somewhat Valuable ☐ Very Valuable

Senior Government Official at Opening of USA National Pavilion—President's Official Representative to the Paris Air Show. Example: Secretary of Commerce Ronald H. Brown at the 1993 Paris Air Show Opening.

☐ Not Valuable ☐ Somewhat Valuable ☐ Very Valuable

Promotional Support—DOC assistance in arranging visits by foreign government/buyer delegations to the Paris Air Show.

☐ Not Valuable ☐ Somewhat Valuable ☐ Very Valuable

4. What would be the position of your company with respect to having a private firm recruit firms for participation in the USA National Pavilion? Recruitment has been performed by DOC staff.

☐ Favor ☐ Indifferent ☐ Opposed

☐ Strongly Favor ☐ Strongly Opposed

Why? _____

5. What would be the position of your company with respect to having the management of the USA National Pavilion handled by a private firm under an agreement with the DOC? The USA National Pavilion is currently organized and managed by DOC staff.

☐ Favor ☐ Indifferent ☐ Opposed

☐ Strongly Favor ☐ Strongly Opposed

Why? _____

6. Are there any specific tasks that you believe must not be performed by private firms at the USA National Pavilion? What are they? Why?

_____

7. In the context of the USA National Pavilion, what tasks do you believe are performed best by private firms? Why?

_____

8. What would be the position of your company with respect to using a private firm to operate the press center and the publicity campaigns that are currently performed by DOC staff?

☐ Favor ☐ Indifferent ☐ Opposed

☐ Strongly Favor ☐ Strongly Opposed
Why? _____

9. What would be the position of your company with respect to using a private firm to provide the market support services that are currently performed by DOC staff?
☐ Favor ☐ Indifferent ☐ Opposed
☐ Strongly Favor ☐ Strongly Opposed
Why? _____

10. What would be the position of your company with respect to having a private firm handle the Foreign Buyer Delegation and VIP Services programs that are currently performed by DOC staff?
☐ Favor ☐ Indifferent ☐ Opposed
☐ Strongly Favor ☐ Strongly Opposed
Why? _____

11. Foreign Buyer Delegation and VIP Service programs are available to all U.S. aerospace companies participating in the Paris Air Show. Through these programs U.S. executives have the opportunity to meet with foreign delegations (government and private) at receptions held in the USA National Pavilion lounge.

- Were you aware of the Foreign Buyer Delegations and VIP Services offered by the USA National Pavilion before today? ☐ Yes ☐ No
- How effective do you believe that the Foreign Buyer Delegations and VIP Services are in providing opportunities for business contacts with foreign officials and companies during the Paris Air Show?

☐Highly effective ☐ Moderately effective ☐ Not effective

- In what ways could the Foreign Buyer Delegations and VIP Services be improved at future Paris Air Shows?

_____

12. How influential are the programs and services provided by DOC at the USA National Pavilion in your decision on where you will exhibit at the Paris Air Show?
☐ Highly influential ☐ Moderately influential ☐ Not influential

- Name the three programs or services that are the most influential (in a positive sense) in your decision where to exhibit.

Most influential _____

Least influential _____

- Name the programs or services offered by DOC that are not influential in your decision on where to exhibit.

_____

[FR Doc. 94–5160 Filed 3–4–94; 8:45 am]
BILLING CODE 3510–CW–M

National Oceanic and Atmospheric Administration

[I.D. 030194C]

Groundfish of the Gulf of Alaska

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

ACTION: Notice of availability of an amendment to a fishery management plan; reopening of comment period.

SUMMARY: NMFS is reopening public comment through March 11, 1994, on proposed Amendment 32 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) and is requesting comments from the public. Amendment 32 would establish a plan to rebuild stocks of the rockfish Pacific ocean perch (POP) in the Gulf of Alaska (GOA). This action is being taken to allow additional time for review and consideration of information contained in the 1993 Gulf Triennial Survey Results for POP (Triennial Survey). The Triennial Survey represents the best available information on the status of POP stocks in the GOA.

DATES: Comments should be submitted on or before March 11, 1994.

ADDRESSES: Comments on the FMP amendment should be submitted to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, Alaska, 99802 (Attn: Lori Gravel), or delivered to the Federal Building, 709 West 9th Street, Juneau, Alaska.

Copies of Amendment 32 and the environmental assessment (EA) and economic analysis prepared for the amendment are available from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, Alaska 99510 (telephone 907–271–2809).

Copies of the Triennial Survey are available from Dr. William Aron, Director, Alaska Fisheries Science Center, 7600 Sand Point Way, NE., BIN C15700, Bldg. 4, Seattle, WA 98115–0070. The document is also available in the Miscellaneous Section on the NMFS Alaska Region's electronic bulletin board at 907–586–7259.

FOR FURTHER INFORMATION CONTACT: Jessica A. Gharrett, NMFS, Alaska Region, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS issued a **Federal Register** notice (59 FR 295, January 4, 1994) announcing that the North Pacific Fishery Management Council (Council) had submitted Amendment 32 to the FMP for Secretarial review and requested public comments over a 60-day period, ending March 7, 1994. Due to a miscalculation in the comment period deadline of March 7, a correction was subsequently issued on February 2, 1994 (59 FR 4978). The document corrected the date for the comment period from March 7, 1994 to February 28, 1994 (59 FR 4978).

Amendment 32 would establish a plan to rebuild stocks of the rockfish Pacific ocean perch (POP) (*Sebastes alutus*) in the GOA. This amendment is necessary to improve conservation and management of POP and is intended to further the goals and objectives of the FMP. Additional information is contained in the **Federal Register** notice, which announced the availability of Amendment 32 for public comment.

NMFS has received a request for an extension of the comment period to allow time for consideration of the Triennial Survey. NMFS agrees that information contained in this document related to POP should be considered prior to the final decision by the Secretary of Commerce (Secretary). Therefore, NMFS is reopening the comment period through March 11, 1994. The Secretary will consider the public comments received during both comment periods in determining whether to approve Amendment 32.

Copies of the amendment may be obtained from the Council (see **ADDRESSES**). Copies of the Triennial Survey are available (see **ADDRESSES**).

Dated: March 2, 1994.

David S. Crestin,

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

[FR Doc. 94–5126 Filed 3–2–94; 3:28 pm]
BILLING CODE 3510–22–P

[I.D. 022494B]

Marine Mammals

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

ACTION: Issuance of emergency permit No. 890 (P46B).

SUMMARY: Notice is hereby given that The New England Aquarium, Central Wharf, Boston, MA 02110–3399 has been issued a permit to take up to 2 right whales (*Eubalaena glacialis*) for purposes of enhancing the survival or recovery of the species.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment, in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930 (508/281–9200); and

Director, Southeast Region, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702 (813/893–3141).

SUPPLEMENTARY INFORMATION: On February 25, 1994, the NMFS issued an emergency permit pursuant to sections 10(a)(1)(A) and 10(c) of the Endangered Species Act to authorize the permit holder to attach a radio tag by suction cup to one sick or injured right whale calf (*Eubalaena glacialis*) or its mother, in order to monitor their movements and progress. In accordance with 50 CFR 222.24(e), the Director, Office of Protected Resources, waived the standard 30-day comment period due to the emergency nature of the request. The Marine Mammal Commission reviewed the permit application and recommended that the emergency permit be issued.

On Tuesday, February 22, 1994, the New England Aquarium aerial survey team observed a right whale mother and calf 10 miles off the coast near Jacksonville, Florida. The aerial team reported that the calf's tail flukes were curled and limp, and completely white, probably from the loss of all skin and due to loss of circulation. There were no obvious causes, but the tail stock area was difficult to assess from the airplane. On Wednesday, February 23, 1994, the New England Aquarium requested a permit to attach a radio tag by suction cup to the calf or its mother, in order to monitor their movements and progress. Because the right whale population is currently at such critically low levels that the survival of every individual could be important to the survival of the population as a whole, and due to the time-critical nature of the request, the National Marine Fisheries Service issued an emergency permit pursuant to sections 10(a)(1)(A) and 10(c) of the Endangered Species Act to authorize the requested activities.

Issuance of this permit as required by the Endangered Species Act of 1973 was based on a finding that such permit: (1) Was applied for in good faith; (2) will 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.

Dated: February 25, 1994.

William W. Fox, Jr., Ph.D.,

Director, Office of Protected Resources, National Marine Fisheries Services.

[FR Doc. 94–5111 Filed 3–4–94; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Bangladesh

March 2, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing a limit.

EFFECTIVE DATE: March 9, 1994.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 635 is being reduced for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 59 FR 4039, published on January 28, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 2, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 24, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on February 1, 1994 and extends through January 31, 1995.

Effective on March 9, 1994, you are directed to amend the directive dated January 24, 1994 to reduce the limit for Category 635 to 227,554 dozen [1], as provided under the terms of the current bilateral agreement between the Governments of the United States and the People's Republic of Bangladesh.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–5158 Filed 3–4–94; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Indonesia

March 2, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: March 9, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6704. For information on embargoes and quota re-openings, call (202) 482–3715.

[1] The limit has not been adjusted to account for any imports exported after January 31, 1994.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 611 is being increased by application of swing, reducing the limit for Categories 359–S/659–S to account for the increase.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 58 FR 31190, published on June 1, 1993.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 2, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on May 25, 1993, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on July 1, 1993 and extends through June 30, 1994.

Effective on March 9, 1994, you are directed to amend further the directive dated May 25, 1993, to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Indonesia:

Category	Adjusted twelve-month limit [1]
Levels in Group I:	
359–S/659–S [2]	1,033,336 kilograms.
611	4,809,344 square meters.

[1] The limits have not been adjusted to account for any imports exported after June 30, 1993.

[2] Category 359–S: only HTS numbers 6112.39.0010, 6112.49.0010, 6211.11.2010, 6211.11.2020, 6211.12.3003 and 6211.12.3005; Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–5159 Filed 3–4–94; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2)of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 22–23 March 1994.

Time of Meeting: 0830–1600 (22 March), 0900–1600 (23 March).

Place: Bethesda MD, & Pentagon (22 March), Arlington, VA (23 March).

Agenda: The Army Science Board's Ad Hoc Study on "Innovations in Artillery Force Structure" will hold a meeting of the Panel Members. This meeting will be hosted by the Director, Concepts Analysis Agency and Office of the Deputy Chief of Staff for Intelligence on 22 March, and the National Guard Bureau on 23 March 1994. The intent of the meeting is to present general and specific information to the panel pertaining to artillery force structure development within the hosting agencies. It will consist of classified and proprietary briefings dealing with force structure initiatives, artillery related studies and analysis, and field artillery weapon systems. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S. C., specifically subparagraph (1) and (4) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The proprietary and classified matters to be discussed are so inextricably intertwined so as to preclude opening all portions of the meeting. The ASB Administrative Officer Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 94–5122 Filed 3–4–94; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 23 March 1994.

Time of Meeting: 0700–1700.

Place: Pentagon, Washington, DC.

Agenda: The 1994 Army Science Board Summer Study on "Technical Architecture for Army C4I" will discuss Assessment of Commercial Information Processing and Telecommunications Technology. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 94–5123 Filed 3–4–94; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 29 March 1994.

Time of Meeting: 0830–1100 (classified).

Place: McLean, VA.

Agenda: The Threat Team of the Army Science Board's 1994 Summer Study on "Capabilities Needed to Counter Current and Evolving Threat" will meet to receive an Intelligence Support Status Report. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The unclassified and classified matters to be discussed are so inextricably intertwined so as to preclude opening all portions of the meeting. The ASB Administrative Officer Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 94–5124 Filed 3–4–94; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Research, Development, and Demonstration of Metal Casting Research To Increase the Competitiveness of the U.S. Foundry Industry

AGENCY: Department of Energy, Idaho Operations Office.

ACTION: Solicitation for Financial Assistance: Metal Casting Competitiveness Research Program.

SUMMARY: Notice is hereby given that pursuant to Public Law 101–425, Department of Energy Metal Casting Competitiveness Research Act of 1990, the U.S. Department of Energy (DOE) Idaho Operations Office (ID), is seeking applications for cost-shared research and technology development in the U.S. metal casting industry. The objective is to promote the competitiveness and energy efficiency of the U.S. metal casting industry through major gains in manufacturing productivity; remediation technologies; process cost reduction; and product quality improvement. This is a complete solicitation document. No other solicitation will be issued for this Metal Casting Competitiveness Research Program.

DATES: The deadline for receipt of applications is April 29, 1994.

ADDRESSES: Applications shall be submitted to: [Number DE–PS07–94ID13293] J.O. Lee, Contracting Officer; Contracts Officer; Procurement Services Division; U.S. Department of Energy; Idaho Operations Office; 785 DOE Place, MS 1221, Idaho Falls, Idaho 83401–1562.

FOR FURTHER INFORMATION CONTACT: Trudy Thorne, Contract Specialist, (208) 526–9519.

SUPPLEMENTARY INFORMATION:

Background

The U.S. metal casting industry has been losing its competitive position in the domestic marketplace relative to imported castings for a number of years. The domestic metal casting industry, with costs which are typically 40 to 50 percent for charge materials, 20 to 30 percent for labor, and 15 to 20 percent for energy, is generally at a disadvantage when compared to most foreign competitors. In addition, many foreign competitors obtain R&D assistance funded by their governments. Moreover, they are not required to meet stringent environmental regulations, while the ability of the U.S. metal casting industry to compete is adversely affected because of the expense of complying with rules and regulations intended to protect the environment and the work place. These advantages often outweigh the additional transportation and distribution costs incurred by foreign competitors entering the U.S. market for metal castings. A technically advanced and viable metal casting industry is essential to the competitiveness of many American industries. Many metal casting companies lack the resources to conduct metal casting research alone due to the fragmented nature of the industry.

In order to improve the competitiveness and energy efficiency of the U.S. metal casting industry, the Office of Industrial Processes (OIP) of the DOE has sponsored a R&D program titled Metal Casting Competitiveness Research Program (MCCRP). As part of this program, this solicitation for federal financial assistance applications is being issued.

Project Description

DOE anticipates awarding approximately two to eight Cooperative Agreements as a result of this solicitation provided applications received meet or further the objectives of Public Law 101–425 and funds are available. Federal funds appropriated for this solicitation are approximately $1,900K. The Catalog of Federal Domestic Assistance Number for this program is 81.078. Each award will make available federal funds to a project on a cost-sharing basis, but the federal funding contribution will not exceed 50 percent of the total cost of a research project. Under Cooperative Agreements it is anticipated there will be substantial involvement by DOE.

DOE suggests, but does not require, a multi-phase approach and projects may be initiated at the bench (Phase I), laboratory (Phase II), or pilot-scale (Phase III), levels. The period of performance for Phase I is anticipated to be 12 months. At the end of Phase I, provided satisfactory progress has been made and funds are available, DOE may award a continuation of work to undertake further development if the participant demonstrates a continuing need for federal assistance, shows sufficient progress in the research effort in Phase I, has completed Phase I in compliance with a mutually agreed management plan, and identifies the new research planned.

The thrust of the Program is directed towards R&D which will improve the competitive position and energy efficiency of the U.S. metal casting industry, defined as the industries identified by codes numbered 3321, 3322, 3324, 3325, 3363, 3364, 3365, 3366, and 3369, in the Standard Industrial Classification manual published by the Office of Management and Budget in 1987. Utilizing the recommendations of the DOE Metal Casting Industrial Advisory Board, and in accordance with the objectives of Public Law 101–425, the below listed priority research subject areas have been identified. Applicants should focus their effort on the seven subject areas identified with an asterisk (*), which have the highest priority. One, or more, of the lower priority listed subjects may be included in the proposed research. Proposals for research in areas not included in the list below will not be considered. Applications should explain why industry is not already performing the proposed research and why DOE funding is appropriate.

Metal Casting Research Priorities

This solicitation is to be focused on the following metal casting research priorities identified by the industry and the Industrial Advisory Board.

1. Solidification and Casting Technologies:

* a. Dimensional control of castings.
* b. Clean cast metal technology.
c. Expendable pattern casting technology

2. Modeling and Design:

* a. Computer integrated processing methods for productivity and quality improvements such as Computer Aided Design (CAD), Computer Aided Engineering (CAE), Computer Aided Manufacturing, (CAM), and Computer Integrated Manufacturing (CIM).

3. Processing Technologies and Design for Energy Efficiency, Material Conservation, Environmental Protection, or Industrial Productivity:

a. Energy Efficiency:
* (1) Melting Furnace Optimization.
b. Material Conservation:
* (1) Casting process improvements for lightweight and thin-wall components of aluminum, and magnesium etc.
c. Environmental Protection:
* (1) Sand reclamation.
* (2) Characterization and remediation of waste streams.
d. Industrial Productivity:
(1) Gating system removal technologies.

4. Other Areas of Research:

a. On-line process control and sensors for molding, melting, and coremaking.
b. Improved melting process for casting purposes.

Proposal Requirements

Each proposal must contain the following:

1. Demonstrated support of the metal casting industry by describing:
a. How industry has participated in deciding what research activities will be undertaken;

b. How industry will participate in the evaluation of the applicant's progress in research and development activities; and

c. The extent to which industry funds are committed to the applicant's proposal.

2. Demonstrate a commitment for matching funds from non-federal sources, which shall consist of:

a. Cash, and/or

b. As determined by DOE, the fair market value of equipment, services, materials, appropriate technology transfer activities, and other assets directly related to the proposal's cost;

3. Provide a single or multiyear management plan that outlines how the research, development, and technology transfer activities will be carried out and administered; The management plan that shall:

a. Outline the research, development, and technology transfer activities expected to be performed;

b. Outline who will conduct those research activities;

c. Establish the duration of each task and over which the research activities will take place; and

d. Define the overall program management and direction by:

1. Identifying managerial, organizational and administrative procedures and responsibilities;

2. Outlining how the coordination of research and development between the individuals and organizations involved will be achieved;

3. Demonstrating how implementation and monitoring of the progress of research project after receipt of funding from the Secretary will be achieved;

4. Demonstrating how recommendations and implementations on modifications to the plan, if any, will be achieved; and

5. Providing sufficient rationale to support the project costs.

4. State the annual cost of the proposal and a breakdown of those costs per each task and each individual performing the work;

5. A critical review of existing and emerging technologies, relevant patents, on-going research, and practices, and a description of the hurdles that must be overcome to ensure commercial viability and commercialization of the proposed technologies;

6. Justify the project with an initial economic evaluation indicating the potential for a significant reduction in manufacturing cost and/or a significant improvement in product value resulting from the proposed research;

7. Identify the technical hurdles for commercialization and how they will be addressed; and

8. Evidence of having the facilities and equipment capable of conducting at least laboratory scale testing or demonstration of metal casting or related processes.

Note: Underlying assumptions along with detailed calculations to support the claimed economic and energy efficiency benefits must be included in the application.

Qualified Applicants

The following entities are qualified to respond to this solicitation:

a. An educational institution;

b. A consortium of educational institutions;

c. A consortium of educational institution(s) with one or more of the following: Government-owned laboratories, private research organizations, nonprofit institutions, or private firms;

That is located in a region where the metal casting industry is concentrated.

Proposal Evaluation

a. *Application Deadline:* The deadline for receipt of applications is April 29, 1994. Only applications which are timely in accordance with 10 CFR 600.13, will be evaluated. Late applications will be handled in accordance with 10 CFR 600.13.

b. *Selection of Proposals:* Only those proposals which meet all of the requirements of this solicitation will be considered for selection. Selections will be made in accordance with the following selection criteria and programmatic considerations:

Criterion 1—The research proposal demonstrates a thorough knowledge of the metal casting industry by highlighting its technology needs, barriers to their development and commercialization, and provides a credible management plan to achieve, and evidence to support, the benefits identified in the proposed research.

Criterion 2—The research proposal offers technology which is based upon sound scientific, environmental, and engineering principles, are technically feasible and cost effective, have practical industrial application, and will provide the greatest benefits per dollar invested in U.S. metal casting industry competitiveness and job creation and/or retention.

Criterion 3—The research proposal identifies a viable mechanism to facilitate the transfer of the technology to the metal casting industry at the earliest practicable time;

Criterion 4—The research proposal contains evidence of strong support by the metal casting industry by identifying significant industry involvement in preparation of the proposal and in performing the research activities; and

Criterion 5—The extent of the financial commitment of non-Federal sources to the research activities.

c. *Weighting of Criteria:* Selection criterion (given under F.b. above) Criterion 1 is weighted 60% of the total score. Criteria 2, 3, 4, and 5 are weighted equal, each one being 10% of the total score.

d. *Programmatic Selection Considerations:* In conjunction with the evaluation results and rankings of individual proposals, the Government will make selections for negotiations and planned awards from among the highest ranking proposals utilizing the following programmatic considerations:

(1) To the greatest extent possible and subject to available appropriations, selection decisions will ensure that at least one applicant is selected from each of the four census regions of the country where the metal casting area is concentrated.

(2) It is desirable to implement each research and development project as a continuing collaborative effort in which the participants represent both the scientific/engineering research disciplines as well as members of the metal casting industry engaged in its practical, daily operations and experienced in the application of advanced metal casting processes.

(3) To the maximum extent possible, the research and development activities should be conducted on the premises of the industrial participants in the proposed projects.

(4) It is desirable that a dominant portion of the proposed research focus on improving metal casting processes and the application of emerging advanced technologies in the typical U.S. metal casting company.

(5) Proposals that have the potential to save significant energy and provide significant cost benefits are preferred.

e. *Merit Reviews:* All Applications will be evaluated under the Office of Conservation and Renewable Energy Merit Review of Discretionary Financial Assistance Applications Review Procedures for Solicited Proposals. Selections for negotiations are expected to be made May 31, 1994, and financial assistance awards are expected to be made by August 31, 1994.

Conditions, Instructions, and Notices

General Conditions

The applications will be evaluated in accordance with the applicable DOE Financial Assistance Rules, Code of Federal Regulations Title 10, Chapter II, Subchapter H, part 600, and the criteria and programmatic considerations set forth in this solicitation. In conducting this evaluation, the Government may utilize assistance and advice from non-Government personnel. Applicants are therefore requested to state on the cover sheet of the applications if they do not consent to an evaluation by such non-government personnel. The applicants are further advised that DOE may be unable to give full consideration to an application submitted without such consent. DOE reserves the right to support or not to support any, all, or any part of any application. All applicants will be notified in writing of the action taken on their applications in approximately 90 days after the closing date for this solicitation, provided no follow-up clarifications are needed. Status of any application during the evaluation and selection process will not be discussed with the applicants. Unsuccessful applications will not be returned.

Instructions for Preparation of Applications

Each application in response to this solicitation should be prepared in one volume. One original and six copies of each application are required. The application facesheet is the Standard

Form 424. The application is to be prepared for the complete project period.

a. *Proprietary Proposal Information:* Applications submitted in response to this solicitation may contain trade secrets and/or privileged or confidential commercial or financial information which the applicant does not want used or disclosed for any purpose other than evaluation of the application. The use and disclosure of such data may be restricted provided the applicant marks the cover sheet of the application with the following legend, specifying the pages of the application which are to be restricted in accordance with the conditions of the legend:

The data contained in pages _____ of this application have been submitted in confidence and contain trade secrets or proprietary information, and such data shall be used or disclosed only for evaluation purposes, provided that if this applicant receives an award as a result of or in connection with the submission of this application, DOE shall have the right to use or disclose the data herein to the extent provided in the award. This restriction does not limit the government's right to use or disclose data obtained without restriction from any source, including the applicant.

Further, to protect such data, each page containing such data shall be specifically identified and marked, including each line or paragraph containing the data to be protected with a legend similar to the following:

Use or disclosure of the data set forth above is subject to the restriction on the cover page of this application.

It should be noted, however, that data bearing the aforementioned legend may be subject to release under the provisions of the Freedom of Information Act (FOIA), if DOE or a court determines that the material so marked is not exempt under the FOIA.

The Government assumes no liability for disclosure or use of unmarked data and may use or disclose such data for any purpose. Applicants are hereby notified that DOE intends to make all applications submitted available to non-Government personnel for the sole purpose of assisting the DOE in its evaluation of the applications. These individuals will be required to protect the confidentiality of any specifically identified information obtained as a result of their participation in the evaluation.

b. *Budget:* A budget period is an interval of time (usually 12 months) into which the project period is divided for funding and reporting purposes. Project period means the total approved period of time that DOE will provide support contingent upon satisfactory progress and availability of funds. The project period may be divided into several budget periods. Each application must contain Standard Forms 424A. The budget summary page only needs to be completed for the first budget period; all other periods of support requested should be shown on the total costs page. The proposal should contain full details of the costs regarding the labor, overhead, material, travel, subcontracts, consultants, and other support costs broken down per task and per year. Every cost item should be justifiable and further details of the costs may be required if the proposal is selected for the award. It is essential that requested details be submitted in a timely manner for the actual award. Items of needed equipment should be individually listed by description and estimated cost, inclusive of tax, and adequately justified. The destination and purpose of budgeted travel and its relation to the research, should be specified. Anticipated consultant services should be justified and information furnished on each individual's expertise, primary organizational affiliation, daily compensation rate and number of days of expected service. Consultant's travel costs should be listed separately under travel in the budget.

c. *Cost:* In the event there are multiple projects proposed in a submittal, a separate cost proposal should be included for each project proposed for funding. The cost proposal should have sufficient detail that an independent evaluation of the labor, materials, equipment and other costs as well as a verification of the proposed cost share can be performed.

Notices to Applicants

a. *False Statements:* Applications must set forth full, accurate, and complete information as required by this solicitation. The penalty for making false statements is prescribed in 18 U.S.C. 1001.

b. *Application Clarification:* DOE reserves the right to require applications to be clarified or supplemented to the extent considered necessary either through additional written submissions or oral presentations.

c. *Amendments:* All amendments to this solicitation will be mailed to recipients who submit a written request for the application forms.

d. *Applicant's Past Performance:* DOE reserves the right to solicit from available sources relevant information concerning an applicant's past performance and may consider such information in its evaluation.

e. *Commitment of Public Funds:* The Contracting Officer is the only individual who can legally commit the Government to the expenditure of public funds in connection with the proposed award. Any other commitment, either explicit or implied, is invalid.

f. *Effective Period of Application:* All applications should remain in effect for at least 180 days from the closing date.

g. *Availability of Funds:* The actual amount of funds to be obligated in each fiscal year will be subject to availability of funds appropriated by Congress to carry out the purposes of the Act (Pub. L. 101–425).

h. *Assurances and Certifications:* DOE requires the submission of preaward assurances of compliance and certifications which are mandated by law. The assurance and certification forms will be provided in the application package which will be provided to you upon written request.

i. *Preaward Costs:* The government is not liable for any costs incurred in preparation of an application. Awardees may incur preaward costs up to ninety (90) days prior to the effective date of award. Should the awardee take such action, it is done so at the awardee's risk and does not impose any obligation on the DOE to issue an award.

j. *Patent Rights:* Pursuant to the direction in Section 9 of Public Law 101–425, applicants are advised that patent rights will be treated in accordance with Chapter 18, Title 35 of the United States Code.

k. *Loans under DOE Minority Economic Impact (MEI) Loan Program:* Applicants are advised that loans under the DOE Minority Economic Impact (MEI) Loan Program are not available to finance the cost of preparing an application pursuant to this solicitation.

l. *Environmental impact:* The applicant shall include a listing, discussion and existing documentation if the project/activity has the possibility of involving, generating or resulting in changes to any of the following: (1) Air Pollutants—released or discharged into the atmosphere through point or fugitive sources; (2) Liquid Effluent—any waste stream discharged; (3) Solid Waste—nonradioactive, nonhazardous solid waste; (4) Radioactive Waste—waste containing <2 nCi/g; (5) Hazardous Waste—RCRA hazardous per 40 CFR 261.3 and polychlorinated biphenyls (PCBs); (6) Mixed Waste—combination of radioactive and hazardous waste; (7) Chemical Storage/Use—define species, uses and estimates volumes; (8) Petroleum Products Storage—define product, volume, use and type of storage; (9) Asbestos Waste—define friability, estimated volume, and if project is renovation or demolition; (10) Water Use/Diversion—withdrawal of groundwater or diversion or withdrawal of surface water; (11) Sewage System—all pipes, tanks, treatment structures; disposal areas, etc. for collection, treatment, and disposal of sewage; (12) Clearing/Excavation—removal of surface debris, vegetation, and other changes in soil surface features; (13) Construction/Renovation; (14) Excess Noise Levels—ambient noise level name, near proposed project/activity; (15) Pesticide Use—identify pesticide name, target organism, use area, application rate, method, and applicator; (16) Radiation Exposures—radiation levels at or near the proposed project/activity.

The discussion shall address the following questions. Will this action contribute to a cumulative impact with on-going activities? Is this action related to a proposed action with potentially significant impacts? Will the project create uncertain, unique, or unknown risks? Will the project require siting, construction, or expansion of a waste facility? Will the project impact a RCRA-regulated unit or facility? Will the project threaten or violate any statute, regulation, or DOE Order? Will the project require any federal, state, or local permits, approvals, etc.? Has this action/area been previously assessed under NEPA? Will the action take place in an area of previous or on-going disturbance? Will the action have any socioeconomic concerns? Will the project adversely affect any of the following environmentally sensitive resources? (1) Threatened/Endangered Species; (2) Wildlife/Vegetation; (3) Soils/Erosion; (4) Cultural/Historical; (5) Wilderness/Scenic Areas; (6) Prime/Unique Farmland; (7) Wild/Scenic Rivers; (8) Lakes/Floodplains/Wetlands; (9) Domestic/Groundwater; (10) Air Resources/Quality. Discussions shall include how all environmental impacts will

be mitigated. If an environmental impact cannot be mitigated, what are the direct and indirect, short term and long term adverse effects that can not be avoided?

In order to receive a copy of the application package, please submit a written request or fax to the following address.

U. S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, ID 83401–1562, Attn: Trudy Thorne MS–1221, Fax No. (208) 526–5548

The Procurement Request No. is 07–94ID13293.000. To facilitate handling, please place the Procurement Request No. on the fax or outside of the package containing your request for the application forms:

Solicitation: DE–PS07–94ID13293.

Dated: February 25, 1994.

J.O. Lee,

Acting Director, Procurement Services Division.

[FR Doc. 94–5139 Filed 3–4–94; 8:45 am]

BILLING CODE 6450–01–P

Nevada Operations Office; Implementation of Noncompetitive Financial Assistance

AGENCY: Nevada Operations Office, Department of Energy.

ACTION: Notice of noncompetitive financial assistance.

SUMMARY: DOE Nevada Operations Office (DOE/NV) announces that pursuant to the Department of Energy's Financial Assistance Rules 10 CFR 600.7(b)(2), it is awarding a noncompetitive financial assistance grant to support a forum for the discussion of radiation hazards and regulations, and to promote uniform standards for the protection of the public, patients, workers, and the environment.

FOR FURTHER INFORMATION CONTACT: Peter Mueller, Emergency Management Division, DOE Nevada Operations Office, P.O. Box 98518, Las Vegas, NV 89193–8518, (702) 295–1777.

SUPPLEMENTARY INFORMATION: This award will provide financial support to the Conference of Radiation Control Program Directors (CRCPD).

The CRCPD was formed as the professional association of state and federal radiation control agencies. CRCPD has approximately 50 committees that address specific aspects of radiation control, as well as task forces that are formed to address particular, current problems. The DOE/NV's interests are shared by the committee on radioactive material transportation, natural radioactivity contamination, radioactive waste management, emergency response planning, state laboratory accreditation, federal facilities, resource recovery and radioactivity, decontamination and decommissioning, ionizing measurements, information dissemination, and suggested state regulations.

Eligibility for the award of this grant is being limited to CRCPD because of their unique qualifications in this field.

The project period of this grant is for 5 years and will commence on March 15, 1994, through March 14, 1999. The total estimated cost of this award is $50,000.

Issued in Las Vegas, Nevada, on February 18, 1994.

Nick C. Aquilina,

Manager, DOE Nevada Operations Office.

[FR Doc. 94–5133 Filed 3–4–94; 8:45 am]

BILLING CODE 6450–01–M

Hydrogen Technical Advisory Panel Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law. 92–463, 86 Stat. 770, as amended), notice is hereby given of the following advisory committee meeting:

Name: Hydrogen Technical Advisory Panel.

Date and Time: Tuesday, March 22, 1994, 1 p.m.–5:30 p.m., Wednesday, March 23, 1994, 8:45 a.m.–3:45 p.m.

Place: Hotel Washington, Pennsylvania Avenue at 15th Street, Washington, DC 20004, Telephone (202) 638–5900, Fax (202) 638–1594.

FOR FURTHER INFORMATION CONTACT: Russell Eaton, Designated Federal Official, 1000 Independence Avenue SW., Washington, DC 20585, Telephone: (202) 586–1506.

SUPPLEMENTARY INFORMATION:

Purpose

The Hydrogen Technical Advisory Panel (HTAP) will advise the Secretary of Energy who has the overall management responsibility for carrying out the programs under the Matsunaga Hydrogen Research, Development, and Demonstration Program Act of 1990, Public Law 101–566. The Panel will review and make any necessary recommendations to the Secretary on the following items: (1) The implementation and conduct of programs required by the Act, (2) the economic, technological, and environmental consequences of the deployment of hydrogen production and use systems, and (3) the contents of the comprehensive 5-year program required by the Act.

Tentative Agenda

Tuesday, March 22, 1994

1 p.m.—Introductions and Opening Comments. J. Birk
1:15 p.m. DOE Status Report (including program integration suggestions). R. Eaton
1:45 p.m. Discussion of DOE Report. All
2:15 p.m. Aircraft Program Recommendation. A. Bain
2:45 p.m. Aircraft Program Discussion/Action. All
3:15 p.m. Break.
3:45 p.m. A Smooth Hydrogen Transition (LNLL). B. Schock
4:15 p.m. Discussion of Transition. All
4:45 p.m. Public Comments (5-minute rule). Public
5:30 p.m. Adjournment.

Wednesday, March 23, 1994

8:45 a.m. DOE Demonstration Program Outline. N. Rossmeissl
9:15 a.m. Discussion Demonstration Program. All
10 a.m. Sustainable Energy Centers: A Near-Term Path to Renewable Hydrogen. Senator Tom Harkin
10:30 a.m. Break.
11 a.m. Discussion DOE Demonstration Program (continued).
12 p.m. Lunch.
1 p.m. Election of Chairman. All
- Expressions of Interest
- Nominations
- Ballot Election

1:15 p.m. Safety Issues/Suggestion. Zalosh
1:45 p.m. Discussion of Safety. All
2:15 p.m. International Report (Recent IEA activities). Hoagland/Eaton
2:45 p.m. Discussion International Report. All
3:15 p.m. Round Table.
3:45 p.m. Adjournment.

Public Participation

The meeting is open to the public. The Chairman of the HTAP is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business. Any member of the public who wishes to make an oral statement pertaining to agenda items should contact the Designated Federal Official at the address or telephone number listed above. Requests must be received before 5 p.m. (e.s.t.) Tuesday, March 15, 1994, and reasonable provision will be made to include the presentation during the public comment period. It is requested that oral presenters provide 15 copies of their statements at the time of their presentations.

Written testimony pertaining to agenda items may be submitted prior to the meeting. Written testimony must be received by the Designated Federal Official at the address shown above before 5 p.m. (e.s.t.) Tuesday, March 15, 1994, to assure that it is considered by Panel members during the meeting.

Minutes

A transcript of the open, public meeting will be available for public review and copying approximately 30 days following the meeting at the Public Reading room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC between 9 a.m. and 4 p.m., Monday through Friday except Federal holidays.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 94–5134 Filed 3–4–94; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. RP94–31–002]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

March 1, 1994.

Take notice that on February 24, 1994, CNG Transmission Corporation (CNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets:

Substitute First Revised Sheet No. 358
Substitute Original Sheet No. 358A

CNG states that the purpose of the filing is to comply with the Commission's February 9, 1994, letter order in this proceeding. CNG states that it is removing tariff language that would have allowed it to offset certain supplier refunds received after March 31, 1995.

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 Rules of Practice and Procedure 18 CFR 385.211. All protests should be filed on or before March 8, 1994. 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 Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5056 Filed 3–4–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–21–000]

Northern Natural Gas Co.; Suspension of Comments

March 1, 1994.

Take notice that the initial and reply comments dates established at the technical conference held in this proceeding on January 26, 1994, are suspended until further notice to allow the parties the opportunity to further discuss the possibility of settlement.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5057 Filed 3–4–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP94–6–000 and RP94–64–000]

Northern Natural Gas Co; Technical Conference

March 1, 1994.

Take notice that at 9:30 a.m. on Tuesday, March 22, 1994, the Commission staff will convene a technical conference in the above-captioned proceedings. Any discussion and/or review of confidential data will be restricted to those parties who have signed a confidentiality agreement.[1]

The technical conference will be held at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC.

Linwood A Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5058 Filed 3–4–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–147–000]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

March 1, 1994.

Take notice that on February 25, 1994, Northern Natural Gas Company (Northern) tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, proposed to be effective April 1, 1994:

Third Revised Sheet No. 59
Third Revised Sheet No. 60
First Revised Sheet No. 61
Frist Revised Sheet No. 62
First Revised Sheet No. 65

Northern states that such tariff sheets are being submitted to propose a reduction in the number of mileage indicator districts (MIDS) Northern uses to assess transportation and fuel charges.

[1] The Commission staff is not required to sign a confidentiality agreement.

Northern further states that copies of the filing have been mailed to each of its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests must be filed on or before March 8, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5059 Filed 3–4–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–149–000]

Pacific Gas Transmission Co.; Proposed Change in FERC Gas Tariff

March 1, 1994.

Take notice that on February 28, 1994, Pacific Gas Transmission Company (PGT) submitted for filing pursuant to section 4 of the Natural Gas Act, new and revised tariff sheets in Second Revised Volume No. 1 and First Revised Volume No. 1–A of its FERC Gas Tariff. PGT states that the primary and alternate tariff sheets revised rates for its transportation services and reflect other changes to the FERC Gas Tariff, Second revised Volume No. 1 and First Revised Volume No. 1–A. PGT states that the revised rates reflect an increase of approximately $22.6 million over present rates. An effective date of April 1, 1994 is proposed for the revised tariff sheets.

PGT states that it is submitting this general rate case in compliance with the Settlement Agreement approved by the Commission in Docket No. RS92–46–000, which requires PGT to file a rate case pursuant to section 4 of the National Gas Act within fourteen months of the commencement of restructured services on PGT's system in order to provide a forum for the resolution of whether rates applicable to PGT's shippers should be determined on an equalized basis.

In this regard, PGT states that the primary tariff sheets submitted reflect

rates per mile of haul that have been equalized through rolled-in cost allocation so that the only difference in charges from firm service will reflect the distance the gas is transported. PGT requests that the Commission order an expedited procedural schedule that will allow this issue to be resolved (and rates implemented) by the end of the suspension period. PGT states that the current regime of vintaged rates is irreparably harming PGT's shippers because the substantial rate disparities that exist under vintaged pricing severely impair the ability of shippers subject to surcharges to release capacity as contemplated by Order No. 636, *et seq.* In the event the Commission is unable to resolve this issue by the end of the suspension period, PGT requests authority to implement its proposed equalized rates at the end of the suspension period (subject to refund) pursuant to an escrow arrangement, which is more fully discussed in PGT's filing. PGT states that, in the event the Commission does not grant either request, it is submitting alternate tariff sheets reflecting the continuation of vintaged pricing to become effective pending the Commission's final determination on its primary tariff sheets.

PGT states that the annual cost of service underlying the proposed rates is $216,925,450, which is based on the twelve months of actual experience ending October 31, 1993, adjusted for known and measurable changes occurring during the nine-month period ending July 31, 1994. As more fully set forth in PGT's filing, this annual cost of service reflects updated operation and maintenance expenses; an overall rate of return of 9.24%, based on a capital structure consisting of 65.5% debt and 34.5% equity, a cost of debt of 7.26%, and a cost of equity of 13.00%; updated plant costs; updated depreciation expenses that reflect an increase in the depreciable basis and a change in the depreciation rate for transmission plant due to an extension of the useful life for older transmission plant to 2023, and revised negative salvage value rates; and adjustments to tax expenses.

PGT states that it has not changed the method of Straight-Fixed Variable cost classification and rate design the Commission approved, most recently in PGT's restructuring proceeding in Docket No. RS92–46–000. PGT further states that it has also continued to design and bill the firm reservation charges on the basis of contract demand, and allocated costs and designed rates on a strict mileage basis using contract demand and commodity units. In addition, PGT states that it is fully allocating its total cost of service between interruptible and firm transportation service and designing its rates to recover the allocated costs.

PGT states that it is submitting certain tariff modifications to afford shippers additional flexibility, including overrun service for all firm and interruptible shippers under Rate Schedules FTS–1 and ITS–1; to permit shippers to determine the length of the bidding period for all subject capacity releases; to streamline the number of release types; to shorten the time period to effectuate a Rapid Release; and to add a reservation charge credit provision and clarifying and updating other provisions of PGT's open-access tariff.

PGT states that copies of its filing were served on all jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 8, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5096 Filed 3–4–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–145–000]

Pacific Gas Transmission Co.; Proposed Change in FERC Gas Tariff

March 1, 1994.

Take notice that on February 25, 1994, Pacific Gas Transmission Company (PGT) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, proposed tariff sheets listed on the Appendix to the filing, with a proposed effective date of March 27, 1994.

PGT states that the purpose of this filing is the establishment of HUB Services to be provided at receipt/delivery points on its system, particularly at its major market centers and pipeline interconnects at Kingsgate, British Columbia, Stanfield, Oregon and Malin, Oregon. PGT will offer new Parking and Authorized Imbalance Service under new Rate Schedules PS–1 and AIS–1 respectively. PGT proposes an effective date of March 27, 1994 for the new services.

PGT further states that copies of its filing were served on all jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 8, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5060 Filed 3–4–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–148–000]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

March 1, 1994.

Take notice that on February 25, 1994, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1 the following tariff sheets to be effective April 1, 1994:

First Revised Sheet No. 125
First Revised Sheet No. 236
First Revised Sheet No. 237
First Revised Sheet No. 241
First Revised Sheet No. 247
First Revised Sheet No. 251
First Revised Sheet No. 252
First Revised Sheet No. 253
First Revised Sheet No. 295
First Revised Sheet No. 303
First Revised Sheet No. 304
First Revised Sheet No. 313
First Revised Sheet No. 321
First Revised Sheet No. 322
First Revised Sheet No. 331
First Revised Sheet No. 337
First Revised Sheet No. 338
First Revised Sheet No. 339
First Revised Sheet No. 346
First Revised Sheet No. 347
First Revised Sheet No. 353
First Revised Sheet No. 354

Southern states that the purpose of this filing is to revise its transportation tariff in two respects that will further streamline the nomination, confirmation and scheduling procedures. The first is to revise its nomination form to obtain from each shipper a ranking of its receipts and deliveries to be used in the event its corresponding delivery or receipt nominations cannot be confirmed or scheduled. This will reduce the manual processing Southern currently performs and will help advance the goal to notifying all parties of their scheduled nominations within normal business hours. The second change is to remove the requirement that shippers appoint parties who are aggregating gas supplies (supply poolers) as their agents for submitting receipt point detail on their behalf. As a result of formalizing pooling arrangements on Southern's system, this step is no longer necessary and will eliminate paperwork that has been slowing down the nomination process.

Southern states that copies of the filing will be served upon its shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before March 8, 1994. Protests will not be considered by the Commission in determining the 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5061 Filed 3–4–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–203–042]

Tennessee Gas Pipeline Co.; Compliance Filing

March 1, 1994.

Take notice that on February 24, 1994, Tennessee Gas Pipeline Company (Tennessee) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheets, effective November 1, 1993:

Second Substitute Alternate First Revised Sheet No. 177
Second Substitute First Revised Sheet No. 178

Tennessee states that this filing is in compliance with the Commission's February 9, 1994, order in the above-referenced proceeding. Second Substitute Alternate First Revised Sheet No. 177 has been revised to include the flexibility provision in the Receipt and Delivery Points section for NET customers. Second Substitute First Revised Sheet No. 178 reflects the correction of a typographical error.

Any person desiring to protest this 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. All such protests should be filed on or before March 8, 1994. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5063 Filed 3–4–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–166–002]

Tennessee Gas Pipeline Co.; Compliance Filing

March 1, 1994.

Take notice that on February 24, 1994, Tennessee Gas Pipeline Company (Tennessee) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheets in compliance with the Commission's February 9, 1994, order in this proceeding:

Second Revised Sheet No. 319
First Revised Sheet No. 319A
First Revised Sheet No. 319B
First Revised Sheet No. 319C

Tennessee states that the February 9, 1994, order accepted Tennessee's proposed tariff Sheets to establish a mechanism for resolving transportation imbalances that remain outstanding after implementation of restructuring on the Tennessee system. The tariff sheets have been modified to: (1) Remove Tennessee's proposed cash-out imbalance resolution mechanism; (2) include modifications that Tennessee proposed during a technical conference in this proceeding; and (3) remove accounting provisions relating to imbalance resolution.

Any person desiring to protest such 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. All such protests should be filed on or before March 8, 1994. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5062 Filed 3–4–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–146–9000]

Transcontinental Gas Pipe Line Corp.; Tariff Filing

March 1, 1994.

Take notice that on February 24, 1994, Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, revised tariff sheets to which tariff sheets are enumerated in appendix A to the filing. The tariff sheets are proposed to be effective as set forth in appendix A to the filing.

TGPL states that on August 4 and October 18, 1993, and January 7, 1994, TGPL submitted compliance filings (collectively hereinafter "Compliance Filings") in its Docket No. RS92–86 Order No. 636 restructuring proceeding which included, among other things, revisions to Rate Schedules GSS, LSS and LG–A. Such revisions were accepted (or are currently pending acceptance) to be effective November 1, 1993. During the restructuring process, on August 13, 1993, TGPL filed revisions to Rate Schedules GSS and LSS (August 13 Filing) to implement the terms of a Stipulation and Agreement between TGPL and its Rate Schedules GSS and LSS customers reflecting changes to TGPL's Rate Schedules GSS and LSS service necessitated by changes to the service rendered by CNG to TGPL under CNG's Rate Schedule GSS. TGPL's August 13 Filing was accepted to be effective October 1, 1993, pursuant to an OPPR letter order issued October 5, 1993 in Docket Nos. RS92–86–007 et al. (October 5 Order).

TGPL states that the instant filing is required in order to integrate the tariff revisions which were accepted by the October 5 Order to be effective October 1, 1993 and the tariff revisions under Rate Schedules GSS and LSS approved effective November 1, 1993 (or currently

pending approval) in TGPL's Order No. 636 restructuring proceeding. In addition, the instant filing is necessary to order to conform the tariff sheets which set forth the rates for service under such rate schedules (i.e. sheet nos. 27 and 28A) to ensure consistency with the revised provisions of such rate schedules occasioned by Commission acceptance of the aforementioned Compliance Filings and the August 13 Filing.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 8, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5065 Filed 3–4–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–144–000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in Proposed FERC Gas Tariff

March 1, 1994.

Take notice that on February 22, 1994, Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Seventh Revised Second Revised Sheet No. 23, which tariff sheet is proposed to be effective April 1, 1994.

On June 19, 1991, the Commission issued its "Order Approving Settlements As Modified And Issuing Certificates" in Docket Nos. CP88–391–004 et al. (June 19 Order), which approved with certain modifications TGPL's June 22, 1990 Settlement filed in Docket Nos. RP87–7–000 et al. (Rate Settlement) and TGPL's September 17, 1990 Settlement filed in Docket Nos. CP88–391 et al. (GIC Settlement). Pursuant to Article III of the GIC Settlement, there shall be individual periodic renegotiations of the Firm Service Fee not more frequently than annually. Specifically, either party (Buyer or Seller) may request that the Firm Service Fee be renegotiated effective April 1, 1994, and annually thereafter as set forth in exhibit A, section 3(d) of the Form of Service Agreement.

TGPL states that the purpose of the instant filing is to eliminate the current Firm Service Fee of $5.80 under Rate Schedule FS and, in lieu thereof, provide a reference to exhibit A, section 3(d) of the FS Service Agreement in recognition that effective April 1, 1994 such fee is individually negotiated.

TGPL states that on this date TGPL mailed copies of the instant filing to its customers, State Commissions, and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 8, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5064 Filed 3–4–94; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Cases Filed With the Office of Hearings and Appeals; Week of February 4 Through February 11, 1994

During the Week of February 4 through February 11, 1994, the appeals and applications for exception or other relief listed in the appendix to this notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: February 25, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Feb. 4 through Feb. 11, 1994]

Date	Name and location of applicant	Case No.	Type of submission
Dec. 29, 1993	Texaco/Owens Cartage Company, Anniston, AL.	RR321–149	Request for modification/rescission in the Texaco refund proceeding. *If Granted:* The December 8, 1993 Dismissal Letter (Case No. RF321–15587) issued to Owens Cartage Company would be modified regarding the firm's Application for Refund submitted in the Texaco refund proceeding.
Feb. 3, 1994	Standard Oil (Amoco)/Indiana, Indianapolis, IN.	RM21–265	Request for modification/rescission in the Standard Oil (Amoco) second stage refund proceeding. *If Granted:* The March 7, 1986 and January 5, 1985 Decisions and Orders (Case Nos. RQ21–272 and RQ21–221) issued to Indiana would be modified regarding the state's Application for Refund submitted in the Standard Oil (Amoco) second stage refund proceeding.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of Feb. 4 through Feb. 11, 1994]

Date	Name and location of applicant	Case No.	Type of submission
Feb. 7, 1994	Eugene Maples, Hopkins, SC	LFA–0354	Appeal of an information request denial. *If Granted:* The January 24, 1994 Freedom of Information Request Denial issued by the Chicago Operations Office would be rescinded and Eugene Maples would receive access to certain documents.
Do	Ewing Oil Company, Hagerstown, MD	LEE–0084	Exception to the reporting requirements. *If Granted:* Ewing Oil Company would not be required to file Form EIA–782B, "Resellers'/Retailers Monthly Petroleum Product Sales Report."
Do	General Cooperative Association, Colorado City, AZ.	LEE–0085	Exception to the reporting requirements. *If Granted:* General Cooperative Association would not be required to file Form EIA–782B, "Resellers'/Retailers Monthly Petroleum Product Sales Report."
Do	Midstream Fuel Services, Inc., Mobile, AL.	LEE–0083	Exception to the reporting requirements. *If Granted:* Midstream Fuel Services, Inc. would not be required to file Form EIA–782B, "Resellers'/Retailers Monthly Petroleum Product Sales Report."
Do	R.V. Ratts, Inc., Hurst, TX	LEE–0082	Exception to the reporting requirements. *If Granted:* R.V. Ratts, Inc. would not be required to file Form EIA–23, "Annual Survey of Domestic Oil and Gas Reserves."
Do	Texaco/North Jensen Texaco, Port St. Lucie, FL.	RR321–148	Request for modification/rescission in the Texaco refund proceeding. *If Granted:* The January 11, 1994 Dismissal Letter (Case No. RF321–14800) issued to North Jensen Texaco would be modified regarding the firm's Application for Refund submitted in the Texaco refund proceeding.
Feb. 8, 1994	Contishipping, Division of Continental Grain, Los Angeles, CA.	RR272–126	Request for Modification/Rescission in the Crude Oil Refund Proceeding. *If Granted:* The May 17, 1993 Dismissal Letter (Case No. RF272–25150) issued to Contishipping, Division of Continental Grain would be modified regarding the firm's Application for Refund submitted in the Crude Oil refund proceeding.
Do	Gifford-Hill & Company, Inc., Los Angeles, CA.	RR272–125	Request for modification/rescission in the crude oil refund proceeding. *If Granted:* The May 20, 1993 Dismissal Letter (Case No. RF272–38282) issued to Gifford-Hill & Company, Inc. would be modified regarding the firm's Application for Refund submitted in the Crude Oil proceeding.
Do	Texaco/M&M Transportation Company, Earlington, KY.	RR321–150	Request for modification/rescission in the Texaco refund proceeding. *If Granted:* The October 28, 1993 Decision and Order (Case No. RF321–17431) issued to M&M Transportation Company would be modified regarding the firm's Application for Refund submitted in the Texaco refund proceeding.

REFUND APPLICATIONS RECEIVED

[Week of February 4 to February 11, 1994]

2/4/94 thru 2/11/94	Texaco oil refund applications received	RF321–20147 thru RF321–20222.
2/4/94 thru 2/11/94	Crude oil refund applications received	RF321–95115 thru RF321–95123.

[FR Doc. 94–5138 Filed 3–4–94; 8:45 am]

BILLING CODE 6450–01–P

Issuance of Decisions and Orders by the Office of Hearings and Appeals; Week of November 22 Through November 26, 1993

During the week of November 22 through November 26, 1993, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Complaint of Discrimination

Complainant, 11/23/93, LDA–0001, LDA–0002

The OHA investigated a Complaint of Discrimination filed against the DOE by an employee who was not selected for the position of Director of DOE's Office of Human Resources. The Complainant alleged discrimination on the basis of race, sex and age, and retaliation for filing a previous Complaint of Discrimination. In its determination, the OHA pointed out that the agency has the discretion to choose among qualified candidates so long as the decision is not premised on an unlawful factor. As a result of the investigation, the OHA found that the ultimate selectee for the position was chosen because the selecting official was familiar with her work and believed that she was the outstanding candidate. The OHA concluded that the selection was not based upon any improper factor.

Accordingly, the OHA denied the claim for relief.

Refund Applications

State of Maine, 11/23/93, RF272–74169

The DOE issued a Decision and Order granting an Application for Refund filed by the State of Maine (Maine) in the Subpart V crude oil refund proceeding. The state applied on behalf of all specified state agencies. The DOE rejected Objections filed by Phillip P. Kalodner, council for utilities, transporters, and manufacturers, in regard to this Application. In this Decision, Maine was granted a refund of $77,374.

Texaco Inc./Doc's Texaco Service, Texaco Inc./Baden Texaco, 11/22/93 RF321–10696, RF321–10891

The Office of Hearings and Appeals (OHA) of the Department of Energy issued a Decision and Order concerning Applications for Refund that were filed in the Texaco refund proceeding by Doc's Texaco (Doc's) and Baden Texaco (Baden). In that Decision, we stated that Doc's and Baden purchased their Texaco refined petroleum products on an indirect basis from suppliers who themselves had filed Applications for Refund in the Texaco proceeding and who had proved that they absorbed most of Texaco's overcharges. Therefore, Baden and Doc's were granted refunds to the extent that their respective suppliers passed through Texaco's overcharges. Baden was granted a refund of $3,010 and Doc's was granted a refund of $196.

Texaco Inc./Keith's Texaco, Keith's Texaco, 11/24/93, RF321–18823, RF321–18824

The DOE issued a Decision and Order denying one Application for Refund and granting another Application for Refund filed by Keith Hughes in the Texaco Inc. Subpart V special refund proceeding on behalf of two Texaco outlets Mr. Hughes operated. Mr. Hughes' Application on behalf of Keith's Texaco on Marion Street (Case No. RF321–18824) lacked acceptable purchase volume information; rather, the purchase volume advanced in the Application was based solely on the applicant's memory with no supporting documentation. The DOE has previously decided that an applicant's memory is not an acceptable means of establishing a purchase volume. Thus, Mr. Hughes' Application for Refund for Keith's Texaco on Marion did not meet the criteria set forth in the Decision and Order implementing the Texaco Subpart V special refund proceeding and was denied accordingly. On the other hand, Mr. Hughes' Application for Refund for Keith's Texaco on Boston Street met (Case No. RF321–18823) the criteria set forth in the *Texaco* Decision and Mr. Hughes was granted a refund of $1,068 (representing $778 principal and $290 interest).

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/E–Z Serve, Inc	RF304–4878	11/24/93
E–Z serve of Calif., Inc	RF304–4880	
Atlantic Richfield Company/Pete's Arco et al	RF304–14007	11/23/93
Atlantic Richfield Company/Wonder Chemical Corporation et al	RF304–14405	11/24/93
Blasig's Produce et al	RF272–91139	11/22/93
City of Texarkana, Arkansas	RF272–69192	11/23/93
Gulf Oil Corporation/87 Gulf	RF300–20071	11/22/93
Saunders Oil Company	RF300–20072	
Shell Oil Company/Bernie's Shell	RF315–10185	11/23/93
Superior Printing, Inc. et al	RF272–81806	11/23/93
Texaco Inc./Joe C. Lovett et al	RF321–14227	11/24/93
Texaco Inc./Johnson's Texaco et al	RF321–1641	11/23/93
Texaco Inc./Lone Tree Texaco et al	RF321–19000	11/24/93
Texaco Inc./Meltonis Texaco et al	RF321–14441	11/22/93
Texaco Inc./V & H Service et al	RF321–14091	11/23/93
Toombs County, Georgia et al	RF272–85088	11/24/93
United Parcel Service of America, Inc	RF272–93086	11/23/93
Womeldorf Trucking, Inc	RF272–93134	

Dismissals

The following submissions were dismissed:

Name	Case No.
Big Springs Service Center	RF321–8514
Bradford Community Unit School District 1	RF272–81476
Chilton ISD	RF272–81416
Culberson County ISD	RF272–81233
Duncan Unified School District 2	RF272–81397
Earl's Texaco Service	RF321–8512
Eastport Union Free School	RF272–81585
Forgione's Service Station	RF321–8498
Gas for Less Texaco	RF321–8507
Glen Hill Service Station	RF321–8510
Gooden & Son Texaco	RF321–8517
Grayslake CC. School District	RF272–81614
Ladysmith-Hawkins School District	RF272–82347
Layton Davis Texaco Station	RF321–8471
M.S.A.D. 8	RF272–81367
Majewski Texaco Service	RF321–8497
Merit Oil Co.	RF321–8464
Mount Pleasant Community School	RF272–81404
New Hartford Community School	RF272–81368

Name	Case No.
Northeast Bradford School District	RF272–81323
Paul's Service Station	RF321–8449
Pearson Auto Service	RF321–8506
Pequot Filling Station	RF321–8480
R&S Self-Service	RF321–8448
Rodgers Arco	RF304–14452
Roybal's Texaco Service	RF321–8455
Rusty's Texaco	RF321–8483
Sabol's Service Station	RF321–8468
Tenafly School District	RF272–81620
Vallejo City Unified	RF272–81517
Vogt's Texaco	RF321–8489
Walnut Creek Elementary	RF272–81607
Wheeler County School District	RF272–81429
Whitley's Texaco	RF321–8534

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of
a.m. and 5 p.m., except federal holidays. They are also available in *Energy Management:* Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: February 25, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 94–5137 Filed 3–4–94; 8:45 am]

BILLING CODE 6450–01–P

Issuance of Decisions and Orders; Week of October 18 Through October 22, 1993

During the week of October 18 through October 22, 1993, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

R.L. Morse, 10/18/93, LFA–0322

Mr. Richard L. Morse filed an Appeal from a denial by the Office of Intergovernmental and External Affairs (OIEA), Albuquerque Operations Office (AL), Department of Energy (DOE) of a Request for Information which he had submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that the Los Alamos Area Office and the Albuquerque Field Office had conducted reasonable searches in response to Mr. Morse's request, and that all responsive documents had been released to him. The Appeal was, therefore, denied. Important issues that were considered in the Decision and Order were (i) how to determine the existence of a document about which Mr. Morse provided some evidence in the Appeal, and (ii) the documentation of verbal information provided to the Los Alamos Area Office in the course of a security clearance investigation.

Request for Exception

Texport Oil Company, 10/19/93, LEE–0047

Texport Oil Company (Texport) filed an Application for Exception from the provisions of the Energy Information Administration (EIA) reporting requirements in which the firm sought relief from filing Form EIA–782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." In considering the request, the DOE found that Texport was not adversely affected by the reporting burden in a way that is significantly different from the burden borne by similar reporting firms, and because the firm is a "certainty unit," it could not be granted relief from filing. Accordingly, exception relief was denied.

Refund Applications

Gulf Oil Corporation/S&L Auto Wash, 10/18/93, RF300–16848

The DOE has issued a Decision and Order granting in part and denying in part an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding on behalf of S&L Auto Wash (S&L). Throughout most of the consent order period the now defunct S&L was under joint ownership. However, this application was submitted on behalf of one partner, Mr. Steve Sopko. In this Application, Mr. Sopko has requested a refund for 100 percent of the Gulf products purchased by S&L during the consent order period. In considering his Application, the DOE found that his partner's ownership interest had ended with the appointment of a court ordered receiver on April 17, 1974. Accordingly, Mr. Sopko was granted a refund for 50 percent of the Gulf purchases made before that date and 100 percent of S&L's Gulf purchases made on or after that date.

Texaco Inc./Energy Refunds, Inc., 10/20/93, RF321–19876

The Office of Hearings and Appeals (OHA) of the Department of Energy issued a Decision and Order concerning an Application that was filed in the Texaco refund proceeding by Energy Refunds, Inc. (ERI), a privately owned filing service. In that Decision, the DOE determined that ERI should be granted a payment of $1,879. This determination was based on the fact that, although a previous refund granted to an ERI client had been rescinded by the OHA and the refund ordered repaid, this repayment obligation was satisfied entirely by ERI, with no reimbursement from the client. A subsequent Application for Refund was filed by ERI on behalf of the client, and this application was also granted by the OHA. ERI requested that the payment on this refund claim be made to ERI, and not to the client. In view of the fact that the client had retained the original refund and the repayment obligation was satisfied solely by ERI, the DOE determined that ERI's request should be granted.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Mitschele Contracting Co. Inc. et al	RF304–14091	10/20/93
Atlantic Richfield Company/Schwerman Trucking Company	RF304–14058	10/18/93
Baltic School Dist. No. 49–1 et al	RF272–80633	10/20/93
Beacon Oil Company/Gas-O-Teria	RF238–70	10/19/93
Bolivar Central Schools	RR272–116	10/18/93
Butz Oil Company, Inc	RF272–90784	10/22/93
City of Adrian, Michigan et al	RF272–88403	10/20/93
City of Ypsilanti et al	RF272–91202	10/18/93
Crescent Refining & Oil Co./Cargill, Inc	RF347–8	10/20/93
Cargill, Inc	RF347–9	
Dixie Beer Distributors, Inc	RF272–81377	10/20/93
Elliot Company	RF272–73784	10/20/93
Elliot Company	RD272–73784	
Franklin County, PA et al	RF272–89049	10/20/93
Gulf Oil Corporation/Massey's Gulf et al	RF300–21066	10/21/93
Gulf Oil Corporation/Neshaminy School District et al	RF300–20507	10/20/93
Gulf Oil Corporation/Oil Products, Inc	RF300–21296	10/22/93
Gulf Oil Corporation/Speed Car Wash, Inc	RF300–21064	10/18/93
H–K Contractors, Inc	RF272–14150	10/21/93
H–K Contractors, Inc	RD272–14150	
Hamilton-Wenham Reg. Sch. Dist et al	RF272–85276	10/19/93
Hobart Sales & Service et al	RF272–09501	10/21/93
Metropolitan Petroleum & Fuel/Denbe Corp	RF349–5	10/20/93
Bird Gas	RF349–6	
Shell Oil Company/Hill City Oil Co., Inc	RF315–8202	10/20/93
Shell Oil Company/Jim's Shell Service	RF315–8450	10/18/93
Shell Oil Company/Smith's Shell Service	RF315–8712	10/18/93
Shell Oil Company/Whitaker Oil Co	RF315–8927	10/20/93
Southwest Health Center, Inc	RF272–87691	10/22/93
Texaco Inc./Briggs Transportation Co. et al	RF321–13240	10/20/93
Texaco Inc./Hayes Texaco	RF321–19936	10/20/93
Texaco Inc./Mitchell's Texaco et al	RF321–19021	10/22/93
Texaco Inc./Paul Jay Haight & Co., Inc. et al	RF321–10528	10/21/93
Texaco Inc./Stevenson Texaco et al	RF321–17069	10/18/93

Dismissals

The following submissions were dismissed:

Name	Case No.
American Standard, Inc	RF272–92695
Bourbon County	RF272–85264
Central Arkansas Transit Authority	RF272–90193
Chelsea School District	RF272–81754
City of Buchanan	RF272–85280
Columbus County Hospital	RF272–90121
Dalzell School District 98	RF272–80650
Days Inn of America	RF300–14697
Downtown Shell & Tire Service	RF315–10157
Dulce School District	RF272–80649
Fairfield Home Oil Company	RF300–21265
Francis & Market Texaco	RF321–14494
Gas Stop Pop Shoppe	RF321–14493
Giroux Brothers Transport, Inc	RF272–89451
Hancock County	RF272–85257
Home Oil Company, Inc	LEE–0046
Honey Dew Truck Stop	RR300–105
Inmont Corporation	RF300–21602
Jackson County, Kansas	RF272–86727
L.E. Shifflet	RR300–234
Mobil-Teria Catering Company	RF272–90116
Putnam County RI	RF272–80642
R.F. White Company, Inc	RR300–239
River Dell Regional H.S. Dist.	RF272–89298
Rolla School District	RF272–89280
Sketchley Services, Inc	RF300–20653
State Oil Service, Inc	RF309–1145
The Blue Ox Coop	RF272–88785
Village of Northfield	RF272–89292
Warrenton-Hammond School District 30	RF272–82001

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: February 25, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 94–5135 Filed 3–4–94; 8:45 am]

BILLING CODE 6450–01–P

Issuance of Proposed Decisions and Orders; Week of January 3 Through January 7, 1994

During the week of January 3 through January 7, 1994, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR part 205, subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a notice of objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issuance of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays.

Dated: February 25, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

Request for Exception

Marbob Energy Corporation, Artesia, New Mexico, LEE–0066 Reporting Requirements

Marbob Energy Corporation filed an Application for Exception from the requirement that it file Form EIA–23, the "Annual Survey of Domestic Oil and Gas Reserves." In considering the request, the DOE found that the firm was not adversely affected by the reporting requirement in a way that was significantly different from the burden born by similar reporting firms. Accordingly, on January 7, 1994, the DOE issued a Proposed Decision and Order tentatively determining that the exception request should be denied.

Miller's Bottled Gas, Inc., Bowling Green, Kentucky, LEE–0059 Reporting Requirements

Miller's Bottled Gas, Inc. (Miller's) filed an Application for Exception from the provision of filing Form EIA–782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." The exception request, if granted, would permit Miller's to be temporarily exempted from filing Form EIA–782B. On January 5, 1994, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

Paulson Oil Company, Chesterton, Indiana, LEE–0060 Reporting Requirements

Paulson Oil Company filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA–782B, the "Reseller/Retailer's Monthly Petroleum Product Sales Report." In considering this request, the DOE found that the firm was not suffering gross inequity or serious hardship. Accordingly, on January 7, 1994, the DOE issued a Proposed Decision and Order determining that the exception request should be denied.

[FR Doc. 94–5136 Filed 3–4–94; 8:45 am]

BILLING CODE 6450–01–P

Issuance of Proposed Decision and Order by the Office of Hearings and Appeals; Week of February 7 Through February 11, 1994

During the week of February 7 through February 11, 1994, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR part 205, subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a notice of objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays.

Dated: February 25, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

Rockford Grain Growers, Rockford, Washington, Reporting Requirements

Rockford Grain Growers (Rockford) filed an Application for Exception from the provision of filing Form EIA–782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." The Exception request, if granted, would permit Rockford to be exempted from filing Form EIA–782B. On February 10, 1994, the Department of Energy issued a Proposed Decision and Order which determined that the Exception request be denied.

[FR Doc. 94–5140 Filed 3–4–94; 8:45 am]

BILLING CODE 6450–01–P

Issuance of Decisions and Orders by the Office of Hearings and Appeals; Week of February 7 Through February 11, 1994

During the week of February 7 through February 11, 1994, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Rockwell International Corporation, 2/9/94, LFA–0348

Rockwell International Corporation (Rockwell) filed an Appeal from a determination issued to it by the Office of Budget and Administration of the Office of Environment, Safety and Health (EH) of the Department of Energy (DOE) in response to a Request for Information submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE found that the individual searches performed by the various branches of EH were adequate as to the documents actually searched for. The DOE did determine, however, that other portions of the agency could have responsive documents and that some portions of EH may not have searched for all possible responsive documents. The DOE also found that because of the multitude of individual determination letters, the DOE had not issued a sufficient determination on all portions of Rockwell's request and that there had not been a final agency response. Accordingly, the Appeal was denied in part, granted in part, and remanded to the Freedom of Information and Privacy Branch of the Reference and Information Management Division of the DOE Office of Administrative Services (FOI Branch) to determine which other branches of the DOE, if any, may have responsive documents, and to have those branches initiate a search for any such documents. In addition, the FOI Branch was instructed, on remand, to issue a new determination specifying which portions of the request had been responded to, were being responded to for the first time, and which could not be responded to because the documents were unavailable. Finally, for particular DOE documents which Rockwell specifically alleges are in the custody of the Government Accounting Office (GAO) but are not found in any new searches, on remand the FOI Branch should obtain copies from the GAO and review the documents for release under the FOIA.

Requests for Exception

Radio oil Company, 2/8/94, LEE–0062

Radio Oil Company (Radio) filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA–782B, the "Reseller/Retailer's Monthly Petroleum Product Sales Report." In considering Radio's request, the DOE found that the firm was not suffering gross inequity or serious hardship. The DOE issued a Proposed Decision and Order determining that the exception request should be denied. No Notice of Objection to the Proposed Decision and Order was filed with the Office of Hearings and Appeals of the DOE within the prescribed time period. Therefore, the DOE issued the Proposed Decision and Order in final form, denying Radio's Application for Exception.

Rand Oil Co., 2/10/94, LEE–0053

Rand Oil Co. (Rand) filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA–782B, the "Reseller/Retailer's Monthly Petroleum Product Sales Report." In considering the request, the DOE found that the firm was suffering a gross inequity because of the medical condition of the owner. Accordingly, on November 18, 1993, the DOE issued a Proposed Decision and Order determining that the exception request should be granted in part and that Rand should be exempt from filing Form EIA–782B for two years. Since a Notice of Objection was not filed, this Decision and Order was issued in final form.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Chambers County et al	RF272–85134	02/10/94
Enron Corp./Mangum Oil & Gas Corp	RF340–91	02/08/94
Kern Oil & Refining Co.	RF340–101	
Fayette County School District et al	RF272–80685	02/08/94
Fife School Dist., Washington et al	RF272–88183	02/10/94
Gulf Oil Corporation/Robert L. Yancey	RF300–21772	02/08/94
Jackson Public Sch. Dist. et al	RF272–81877	02/10/94
Pennwalt Corp. D/B/A/ Elf Atochem, North America, Inc	RF272–13486	02/07/94
Pennwalt Corp. D/B/A/ Elfatochem, North America	RF272–13486	
Redman Homes et al	RF272–90529	02/08/94
Texaco Inc./Nassaney Service Stations et al	RF321–4345	02/07/94
Texaco Inc./Northwest Oil Company, Inc.	RF321–19482	02/07/94
Texaco Inc./Truck Trailer Equip. Co. et al	RF321–19504	02/07/94

Dismissals

The following submissions were dismissed:

Name	Case No.
Burgess Texaco Station	RF321–19455
Cabrillo Shell Service	RF315–6798
City of Portland	RF272–88133
City of Thomson	RF272–88398
Elk Point Public Schools	RF272–88620
Harrison Oil Co.	RF300–19533
Jim's Main Street Shell	RF315–8893
John's Texaco Service Center	RF321–8482
Loving School District	RF272–80017
Montana Agricultural Experiment Station	RF272–88739
Oxy USA, Inc.	LRZ-0024
Ozark Truck Plaza	RF321–2403
R & J Arco	RF304–15226
Russell Farms	RF300–19762
Sandpoint Motor Co.	RF321–19614
Utilities, Manufacturers & transporters	LRR–0014

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: February 25, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

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Western Area Power Administration

Boulder Canyon Project Notice of Rate Order No. WAPA–58–1

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of rate order—Boulder Canyon Project annual power rate adjustment.

SUMMARY: Notice is given of the approval by the Administrator of Western Area Power Administration (Western) of Rate Order No. WAPA–58–1 and Rate Schedule BCP–F4/2 placing the proposed decreased power rates for the Boulder Canyon Project (BCP) into effect.* The methodology utilized in Rate Order WAPA–58 requires that Western modify the BCP rates, either an increase or decrease, on an annual basis. These BCP rates will remain in effect until they are superseded.

The proposed rates for BCP power are based on a composite rate of 12.62 mills per kilowatthour (mills/kWh). The composite rate consists of an energy charge of 6.31 mills/kWh and a capacity charge of $1.07 per kilowatt per month ($/kW/month).

The Assistant Secretary, Conservation and Renewable Energy, United States Department of Energy, approved the existing BCP rate methodology on an interim basis, effective on January 1, 1993 [57 FR 61074; December 23, 1992]. The Federal Energy Regulatory Commission (FERC) approved the methodology for the BCP rate on a final basis by Order dated November 3, 1993.

A comparison of the existing and annual BCP rates follows:

	Existing rates (FY 1993)	Annual rates (FY 1994)*
Rate Schedule ..	BCP–F4/1	BCP–F4/2
Composite Rate (mills/kWh)	14.56	12.62
Energy Rate (mills/kWh)	7.28	6.31
Capacity Rate ($/kW/month)	$1.28	$1.07

*The ratesetting methodology is in effect from January 1, 1993, through September 30, 1997. The BCP rates will be reviewed annually.

DATES: Rate Schedule BCP–F4/2 will be placed into effect beginning on February 1, 1994.

FOR FURTHER INFORMATION CONTACT:

Mr. J. Tyler Carlson, Acting Area Manager, Phoenix Area Office, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457 (602) 352–2521.

Ms. Deborah Linke, Chief, Rates and Statistics Branch, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401–0098, (303) 275–1618.

Mr. Joel Bladow, Assistant Administrator for Washington Liaison, Western Area Power Administration, Power Marketing Liaison Office, Room 8G–027, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0001, (202) 586–5581.

SUPPLEMENTARY INFORMATION: By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of Energy delegated: (1) The authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of Western; (2) the authority to confirm, approve, and place power rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove power rates to FERC.

These power rates are established pursuant to the DOE Organization Act (42 U.S.C. 7101 *et seq.*), the Reclamation Act of 1902 (43 U.S.C. 372 *et seq.*), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), the Colorado River Basin Project Act of 1968 (43 U.S.C. 1501 *et seq.*), the Colorado River Storage Project Act of 1956 (43 U.S.C. 620 *et seq.*), the Boulder Canyon Project Act of 1928 (43 U.S.C. 617 *et seq.*), the Boulder Canyon Project Adjustment Act of 1940 (43 U.S.C. 618 *et seq.*), the Hoover Power Plant Act of 1984 (43 U.S.C. 619 *et seq.*), the General Regulations for Power Generation, Operation, Maintenance, and Replacement at the Boulder Canyon Project, Arizona/Nevada (43 CFR Part 431) published in the **Federal Register** at 51 FR 23960 on July 1, 1986, and the General Regulations for the Charges for the Sale of Power from the Boulder Canyon Project, Final Rule (10 CFR Part 904) published in the **Federal Register** at 51 FR 43124 on November 28, 1986, the procedures for public participation in rate adjustments for power and transmission service marketed by Western (10 CFR Part 903) published in the **Federal Register** at 50 FR 37835 on September 18, 1985, and the DOE financial reporting policies, procedures,

*WAPA's Administrator has been empowered as part of DOE's 1992 rate filing with FERC to approve the annual rates. See, 57 FR 61076; December 23, 1992 and 57 FR 62318 December 30, 1992.

and methodology (DOE Order No. RA 6120.2 dated September 20, 1979).

During the 90-day comment period, Western received nine written comments. In addition, six speakers commented during the August 31, 1993, public comment forum. All comments and responses are addressed in the rate order.

Rate Order No. WAPA–58–1 (Rate Schedule BCP–F4/2) approving and placing the BCP proposed rates into effect is issued and approved on a final basis.

Issued in Golden, CO, February 4, 1994.

William H. Clagett,

Administrator.

Order Approving and Placing the Boulder Canyon Project Power Rates Into Effect

In the matter of Western Area Power Administration Annual Rate Adjustment for Phoenix Area Office Boulder Canyon Project.

[Rate Order No. WAPA–58–1]

February 4, 1994.

Pursuant to section 302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. 7152(a), the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902, 43 U.S.C. 372 *et seq.*, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c), and other acts specifically applicable to the projects involved, were transferred to and vested in the Secretary of Energy (Secretary) acting by and through the Administrator of the Western Area Power Administration (Western).

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of Energy delegated: (1) The authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of Western; (2) the authority to confirm, approve, and place power rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove power rates to the Federal Energy Regulatory Commission. Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) became effective on September 18, 1985 (50 FR 37835).

The ratesetting methodology used in this rate order was approved and confirmed on a final basis by the Federal Energy Regulatory Commission on November 3, 1993, in WAPA–58. Western is required to modify the Boulder Canyon Project power rate, either an increase or a decrease, on an annual basis. This ratesetting methodology uses an approved rate formula, along with an annual public participation process, for the Boulder Canyon Project through September 30, 1997. As long as Western adheres to this rate formula and public process, as outlined in WAPA–58, there is no requirement to seek additional approval from the Federal Energy Regulatory Commission.

Acronyms and Definitions

As used in this rate order, the following acronyms and definitions apply:

1941 General Regulations: General Regulations for Generation and Sale of Power in Accordance with the Boulder Canyon Project Adjustment Act, May 20, 1941.

1984 Act: Hoover Power Plant Act of 1984, August 17, 1984 (43 U.S.C. 619 *et seq.*).

$/kW/month: Monthly charge for capacity (usage—$ per kilowatt per month).

Additions: A unit of property constructed or acquired which enhances or improves a project or system and which is properly allocated to power or the joint features allocated to power.

Adjustment Act: Boulder Canyon Project Adjustment Act, July 19, 1940 (43 U.S.C. 618 et seq.).

Annual Rate: A rate revision recommended to the Administrator of Western for approval on an annual basis. The Annual Rate adjustments are approved by the Administrator of Western.

BCP: Boulder Canyon Project.

BCP Handout: A document prepared for the public information forum.

Capacity Rate: Shown in the PRSS as a $/kW/year charge. Billed on a $/kW/month basis. Applied each billing period to each kW of rated output to which each contractor is entitled by contract.

Colorado River Basin Project Act: The Colorado River Basin Project Act, September 30, 1968 (43 U.S.C. 1501 *et seq.*).

Colorado River Dam Fund (CRDF): A fund established by section 2 of the Boulder Canyon Project Act of 1928 which is to be used only for the purposes specified in the Boulder Canyon Project Adjustment Act of 1940, the Colorado River Basin Project Act of 1968, and the Hoover Power Plant Act of 1984.

Composite Rate: Combination of an energy rate and a capacity rate, which is expressed in mills/kWh.

Conformed Criteria: Conformed General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects (49 FR 50582, December 28, 1984) beginning on June 1, 1987.

Cost Evaluation Period (CEP): The first 5 future years in the PRSS, starting with the first future year of costs and revenue estimates.

Contractors: The Boulder Canyon Project Power customers.

Crosswalk: A reconciliation between a project PRSS and the Western and Reclamation financial statements.

CSRS: Civil Service Retirement System.

Current PRSS: The PRSS included in this rate order based on the existing BCP rates.

DOE: Department of Energy.

DOE Order No. RA 6120.2: An order dealing with power marketing administration financial reporting.

E&OC: Engineering and Oversight Committee consisting of members from BCP Contractors, Western, and Reclamation. Their function is to establish a regular review process of Western's and Reclamation's planned O&M, additions, and replacements.

EIS: Environmental Impact Statement.

Energy Rate: Expressed in mills per kWh. Applied to each kWh made available to each Contractor.

FY 1992 Ratebase PRSS: FY 1992 Revised PRSS.

FERC: Federal Energy Regulatory Commission.

FY: Fiscal year.

Guide Service: This is service provided to the visitors for tours at the Hoover Dam site.

GWh: Gigawatthour.

Hoover Dam: The dam on the Colorado River which forms Lake Mead.

Hoover Rates Committee: The Hoover Power Rates Methodology Review Standing Committee made up of BCP Contractors, Western, and Reclamation who developed the new proposed ratesetting methodology (Settlement Agreement).

Interior: U.S. Department of the Interior.

kW: Kilowatt.

kW/month: The greater of (1) the highest 30-minute demand measured during the month, not to exceed the contract obligation, or (2) the contract rate of delivery.

kWh: Kilowatthour.

LCRBDF: Lower Colorado River Basin Development Fund—a fund established by the Colorado River Basin Project Act of 1968.

Master Schedule: This is an 18-month schedule of projected BCP hydrology.

mills/kWh: Mills per kilowatthour.
Multiproject Costs: These are costs for facilities being charged to one project that benefit other projects.
MW: Megawatt.
MWh: Megawatthour.
NEPA: National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).
OMB: Office of Management and Budget.
O&M: Operations and maintenance.
P–DP: Parker-Davis Project.
Project Act: The Boulder Canyon Project Act authorizing the construction of Boulder Canyon Project dated December 21, 1928 (43 U.S.C. 617 *et seq.*).
PRSS: Power Repayment Spreadsheet Study.
Reclamation: Bureau of Reclamation, U.S. Department of the Interior.
Reclamation's 1986 General Regulations: General Regulations for Power Generation, Operation, Maintenance, and Replacement at BCP, Arizona/Nevada 43 CFR Part 431 (51 FR 23960, July 1, 1986).
Replacements: A unit of property constructed or acquired as a substitute for an existing unit of property for the purpose of maintaining the power features of a project or the joint features properly allocated to power.
Replacement Study: The cyclical analysis of replacement service lives. A high level of replacement activity for a few consecutive years will reoccur in future years at a similar high level with years in between tending to be at lesser level of replacement.
Secretary: Secretary of Energy.
Schedule A: Boulder Canyon Project Contractors that receive capacity and energy. Contractors are Arizona Power Authority (APA), Boulder City, Burbank, Colorado River Commission of Nevada (CRC), Glendale, Los Angeles Department of Water and Power, Metropolitan Water District of Southern California, Pasadena, and Southern California Edison.
Schedule B: Boulder Canyon Project Contractors that receive Hoover capacity and energy and who also advanced the funds for the Uprating Program. These Contractors include Anaheim, APA, Azusa, Banning, Burbank, CRC, Colton, Glendale, Pasadena, Riverside, and Vernon.
Schedule C: Both the Schedule A and Schedule B Contractors (All Contractors).
Settlement Agreement: See Hoover Rates Committee.
Treasury: Secretary of the Department ot the Treasury.
Uprating Contractors: Contractors who contributed to advance of funds for financing the upgrading of the BCP system (see Schedule B definition).
Uprating Credits: The payments/credits that are returned to the Uprating Contractors in repayment for the advancement of funds.
Uprating Program: Non-federally financed work to increase the capacity of the existing generating and associated electrical equipment at the BCP.
Western: Western Area Power Administration, DOE.
Western's 1986 General Regulations: General Regulations for the Charges for the Sale of Power from the Boulder Canyon Project, 10 CFR Part 904 (51 FR 43124, November 28, 1986).
Working Capital Fund: Reserve of funds contributed by the Contractors to be used when the Colorado River Dam Fund has no money available.

Effective Date

The existing approved ratesetting methodology is effective January 1, 1993, through September 30, 1997.

The rates in Rate Schedule BCP–F4/2 will be in effect on a final basis beginning February 1, 1994. The methodology utilized in WAPA–58 requires that Western modify the BCP rate, either an increase or decrease, on an annual basis. For all other FYs of the ratesetting methodology approval period (through 1997) the rates will be set in accordance with the approved ratesetting methodology and placed into effect by the Administrator of Western.

Public Notice and Comment

The Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions, 10 CFR part 903, have been followed by Western in the development of the power rates. It is a major rate adjustment as defined at 10 CFR 903.2(e) and 903.2(f)(1). The distinction between a minor and a major rate adjustment is used only to determine the public procedures for the rate adjustment.

The following summarizes the steps Western took to ensure involvement of interested parties in the rate process:

1. A **Federal Register** notice was published on August 17, 1993 (58 FR 43631), officially announcing the proposed annual BCP power rate adjustment, initiating the public consultation and comment period, announcing the public information and public comment forums, and presenting procedures for public participation.

2. A letter was mailed to all BCP customers and other interested parties on August 10, 1993, providing a copy of the BCP PRSS and Supporting Schedules and announcing a public information forum and a public comment forum.

3. At the public information forum held on August 31, 1993, Western and Reclamation representatives explained the need for the BCP rate adjustment in greater detail and answered questions.

4. The public comment forum was also held on August 31, 1993, to give the public an opportunity to comment for the record. Six people representing customers and customer groups made oral comments.

5. On September 29, 1993, a **Federal Register** notice was published (58 FR 50916) formally announcing that the consultation and comment period would be extended through October 18, 1993, for the proposed Annual Rate review process for the BCP.

6. Due to the need for additional time to respond to some of the questions asked by the BCP customers in the August 31, 1993, public information forum, Western again extended the consultation and comment period. On October 26, 1993, a **Federal Register** notice was published (58 FR 57598) formally announcing that the consultation and comment period would be extended through November 15, 1993.

7. A letter was mailed to all BCP customers and other interested parties on October 18, 1993, providing a copy of the BCP revised PRSS and Supporting Schedules and announcing an informal customer meeting. The informal meeting was held on November 4, 1993, in Phoenix, Arizona. At this informal meeting, Western and Reclamation representatives discussed the revised PRSS, Supporting Schedules, and summary of the changes.

8. Nine written comment letters were received during the 90-day consultation and comment period. The consultation and comment period ended November 15, 1993.

Project History

The BCP was authorized for construction by the Project Act. The Project Act provided for a dam to be built in the Black Canyon located on the Colorado River adjacent to the Arizona/Nevada border. The dam was built for the express purposes of: (1) Controlling the flooding in the lower regions of the Colorado River drainage system; (2) improving navigation of the Colorado River and its tributaries; (3) regulating the Colorado River, while providing storage and delivery of the stored water

for the reclamation of public lands; and (4) generating electrical energy as a means of making the BCP a self-supporting and financially solvent undertaking. Congress authorized Treasury to advance up to $165 million to the Secretary of the Interior to provide for the construction of the dam, powerplant, and related features; $25 million of the $165 million were allocated to flood control.

Construction of the Hoover Dam, formerly known as Boulder Dam, began in 1930, and the first generating unit of the power plant went into service in 1937. Upon completion of the project facilities, power sales commenced, in accordance with the provisions of the Project Act, to Contractors in the States of Arizona, California, and Nevada.

The Project Act was modified in 1940 by the Adjustment Act. The Adjustment Act, among other things, authorized the Secretary of the Interior to promulgate and to put into effect power rates based upon a repayment period from June 1, 1937, to May 31, 1987; to reduce the interest rate from 4 percent to 3 percent per annum on unpaid Treasury advances; to require annual payments to the States of Arizona and Nevada in lieu of taxes levied; and to defer without interest until June 1, 1987, the repayment of the $25 million allocated to flood control.

Subsequently and pursuant to the Adjustment Act, the Secretary of the Interior published and implemented the 1941 General Regulations for the period ending May 31, 1987.

As the end of the 50-year term of the original contracts approached, controversy developed among the BCP Contractors over renewal rights to BCP power, and litigation resulted. Compromises were reached and embodied in the 1984 Act.

The 1984 Act authorized an increase in the capacity of the existing generating and associated electrical equipment at the BCP. The work to accomplish this increase, referred to as the Uprating Program, was to be funded initially by advances from certain BCP Contractors to Reclamation. Funds advanced would be returned to these Contractors through credits on their monthly power bills. The 1984 Act provided for advances from the Treasury for the improvement of visitor facilities at the BCP. The 1984 Act also required that an additional charge of 4.5 mills/kWh be assessed on energy sales to Arizona and an additional charge of 2.5 mills/kWh be assessed on energy sales to California and Nevada; all revenue resulting from the additional charge is to be transferred to the LCRBDF.

Under the 1984 Act, BCP's power was sold to 15 Contractors located in the States of Arizona, California, and Nevada, in accordance with the Conformed Criteria.

Due to the numerous requirements set out in the 1984 Act and the earlier division of the Federal responsibilities relating to Hoover Dam between Reclamation and Western, both agencies published new regulations governing their respective responsibilities at the BCP after June 1, 1987. These regulations are cited herein as Reclamation's 1986 General Regulations and Western's 1986 General Regulations, and they supersede the 1941 General Regulations, which terminated on May 31, 1987.

Power Repayment Spreadsheet Studies

PRSS are prepared each FY to determine if power revenues will be sufficient to pay, within the prescribed time periods, all costs assigned to the power function. Repayment criteria are based on law, policies, and authorizing legislation. DOE Order No. RA 6120.2, section 12.b, states:

> In addition to the recovery of the above costs (operations and maintenance and interest expenses) on a year-by-year basis, the expected revenues are at least sufficient to recover: (1) Each dollar of power investment at Federal hydroelectric generating plants within 50 years after they become revenue producing, except as otherwise provided by law; plus, (2) each annual increment of Federal transmission investment within the average service life of such transmission facilities or within a maximum of 50 years, whichever is less; plus, (3) the cost of each replacement of a unit of property of a Federal power system within its expected service life up to a maximum of 50 years; plus, (4) each dollar of assisted irrigation investment within the period established for the irrigation water users to repay their share of construction costs; plus, (5) other costs such as payments to basin funds, participating projects or States.

Existing and Annual Rates

A comparison of the existing and annual BCP rates follows:

	Existing rates (FY 1993)	Annual rates (FY 1994)
Power Rate Schedule	BCP–F4/1	BCP–F4/2*
Composite Rate (mills/kWh)	14.56	12.62
Energy Rate (mills/kWh)	7.28	6.31
Capacity Rate ($/kW/month)	$1.28	$1.07

*The ratesetting methodology is in effect from January 1, 1993, through September 30, 1997. The BCP rates will be reviewed annually.

Certification of Rates

Western's Administrator has certified that the BCP rates placed into effect herein are the lowest possible consistent with sound business principles, pursuant to the ratesetting methodology agreed to by the BCP Contractors, Western, and Reclamation. The BCP rates have been developed in accordance with administrative policies and applicable laws.

Discussion

The proposed BCP rates have been updated from the BCP rates originally proposed in the customer package sent out on August 10, 1993, and **Federal Register** notice dated August 17, 1993. The changes to the FY 1993 Ratebase PRSS are as follows:

—The actual figures for FY 1992 were used rather than the projected figures. The adjustments for FY 1992 that had been reflected in FY 1994 were removed.
—FY 1994 Working Capital Fund was adjusted to zero. It was reduced because of the current year CRDF carry-over balance.
—The most recent uprater credit schedules received from the Contractors were used for FY 1994 and out years.
—FY 1993 figures have been adjusted to actual.
—The Visitor Facilities completion date was moved to FY 1996.
—Circular reference in the supporting schedule LOANS10F.WK1 eliminated. No change to output.
—The projected Total Energy Sales (MWh) for FY 1999 through the end of the study were changed to a constant of 4,527,001 MWh.
—Title on PRSS changed from "Boulder Canyon Project FY 1993 Power Repayment Study Spreadsheet" to "* * * Spreadsheet Study."
—Corrected Column 14 formula for FY 1994 and out-years. It did not change any figures.
—Deleted working column to far right of spreadsheet. It did not change any figures.
—Corrected the energy and capacity and the FY 1992 adjustment in "Other Revenue" to reconcile with the crosswalk numbers for FY 1992.
—On Supporting Schedule ACTFINAL.WK1 (E–1, E–2), added summary pages of principal payments. This will serve as an easy-to-read tool of what is being paid off in any particular year.
—On Supporting Schedule LOANS10F.WK1, added an adjustment (page F–1). Also, the amortization period was changed back to 10 years instead of 9 years.

—On Supporting Schedule REQFINAL.WK1 (G–1), the principal payment in FY 1993 was corrected and now ties with the PRSS.
—In column 27 in FY 2017, the $5,045,030 adjustment (PRSS to CRDF) was credited. (This is reflected in FY 2018 in column 14.) This was done to repay the customers at the end of their contract.
—In columns 21 and 25, the formula used to determine the Annual Rate for this rate adjusts the rate for FY 1994 over the remainder of FY 1994. This is assuming the effective date of the rate is February 1, 1994.
—Changed the file reference title at the bottom of the PRSS to [RATEBASE.WK1].
—Revised the CSRS costs as submitted in memorandum dated September 7, 1993.

The existing and FY 1994 annual revenue requirements for the BCP are as follows:

	Revenue requirements	
	Existing BCP rates (FY 1993)	Annual BCP rates (FY 1994)*
Revenue Requirements	$49,992,504	$47,894,340

*The proposed BCP rates are to be in effect beginning February 1, 1994.

The methodology utilized in WAPA–58 requires that Western modify the BCP rate, either an increase or decrease, on an annual basis.

Statement of Revenue and Related Expenses

The following table provides a summary of revenue and expense data through the 5-year proposed rate approval period.

BOULDER CANYON PROJECT COMPARISON OF 5-YEAR RATE PERIOD (FY 1994–98) REVENUES AND EXPENSES

[$1,000]

	FY 1992 PRSS 1994–98	FY 1993 PRSS 1994–98	Difference
Revenues:			
Energy Sales	$138,790	$133,803	($4,987)
Capacity Sales	138,790	133,803	(4,987)
Water Sales	2,250	2,250	0
Other Revenue	6,360	13,280	6,920
CRDF Carry-Over Balance	0	2,803	2,803
Total Revenues	286,190	285,939	(251)
Revenue Distribution:			
Operation & Maintenance	108,525	113,072	4,547
Payment to States	3,000	3,000	0
Other Expenses	9,634	16,488	6,854
Annual Uprating Payments	89,741	80,491	(9,250)
Annual Replacement	17,655	22,740	5,085
Interest	43,139	39,168	(3,971)
Principal Payments	11,661	11,468	(193)
Working Capital Fund	2,835	(488)	(3,323)
Total	286,190	285,939	(251)

Basis for Rate Development—BCP

The FY 1994 annual BCP rates are designed to maintain a 50/50 split between revenue earned from energy and capacity rates. The cost to individual customers will vary, because of differences in their supplies and loads.

The BCP Annual Rate consists of a 6.31 mills/kWh energy rate and $1.07/kW/month capacity rate effective February 1, 1994. The ratesetting methodology approval period is through September 30, 1997.

Comments

During the 90-day comment period, Western received nine written comments. In addition, six speakers commented at the August 31, 1993, public comment forum. All comments were reviewed and considered in the preparation of this rate order.

Written comments were received from the following sources:

Arizona Municipal Power Users' Association (Arizona)
Arizona Power Authority (Arizona)
Vernon, City of (California)
Colorado River Commission of Nevada (Nevada)
Irrigation & Electrical Districts' Assoc. of Arizona (Arizona)
Los Angeles, City of, Department of Water and Power (California)
Metropolitan Water District of Southern California (California)
Overton Power District No. 5 (Nevada)/Valley Electric Association (Nevada)
Utility Resource Services (Arizona)

Representatives of the following organizations made oral comments:

Arizona Power Authority (Arizona)
Colorado River Commission of Nevada (Nevada)
Los Angeles, City of, Department of Water and Power (California)
Irrigation & Electrical Districts Association of Arizona (Arizona)
Overton Power District No. 5/Valley Electric Assoc. (Nevada)
Pioneer Chlor Alkali Company (Nevada)

Most of the comments received at the public meetings and in correspondence dealt with the PRSS, capitalized investments, annual expenses, working capital, other revenue, ratesetting, capitalized deficits, and audits. All comments were considered in developing the proposed BCP rates.

The comments and responses, paraphrased for brevity, are discussed below. Direct quotes from comment letters are used for clarification where necessary.

Boulder Canyon Comments

Power Repayment Spreadsheet Study

Comment: Substitute the real figures for FY 1992 in place of the projected figures. You would then have a true

carry-forward figure in FY 1992 and an estimated carry-forward figure at the end of FY 1993. It might have a substantial effect upon the numbers for FY 1994.

Response: The actual figures for both FY 1992 and FY 1993 have been utilized rather than the projected figures. The adjustments for FY 1992 that were reflected in FY 1994 were removed.

Comment: The customer believes as a result of the discrepancies we saw in the numbers a new PRSS should be run with the best available data.

Response: A revised PRSS was prepared and mailed to the BCP Contractors on October 18, 1993. Both a printed copy and diskette copy of the PRSS, along with a summary of changes to the original PRSS, were provided. On November 4, 1993, Western held an informal workshop with the BCP Contractors to discuss this revised PRSS.

Comment: Concern has been expressed that the PRSS does not reflect the most recent budget estimates for BCP operation, maintenance, and replacement expenses.

Response: The PRSS, upon which this rate adjustment is based, reflects the most current budget estimates for all costs associated with operation, maintenance, and replacement expenses in the BCP.

Comment: Establish a BCP recordkeeping system to provide a correlation between BCP actual and budgeted expenditures to the data shown in the PRSS.

Response: Western is in the process of implementing a recordkeeping system to correlate actual expenditures to budgeted expenditures. This system will be in place prior to Western revising rates for FY 1995.

Comment: In FY 1994, column 7, debt service interest expense, and column 8, capitalized deficit interest expense, did not sum to column 9, total interest expense.

Response: Due to a spreadsheet linking problem, the correct values did not properly transfer to the PRSS only in FY 1994. Western made corrections to the link between the supporting schedules and the PRSS to correct this problem.

Comment: Some Contractors expressed concern that Western deviated from the 5-year moving window methodology for the BCP. Some stated they believed the new methodology should operate very much like the rate mechanism that was in place prior to June 1, 1987.

Response: Western believes that it is adhering to the 5-year moving window methodology that was set forth in the September 15, 1992, Settlement Agreement. At the end of each year, differences between projected values and actual values are calculated and reflected in the PRSS. Any net differences, either positive or negative, are carried forward to the next year, as shown in column 14 of the PRSS.

The PRSS, upon which this rate adjustment is based, embodies all of the principles set forth in the September 15, 1992, Settlement Agreement. The new ratesetting methodology, as set out in this Settlement Agreement, was never intended to operate in the same fashion as the ratesetting process utilized prior to June 1, 1987.

Comment: There appears to be approximately an $11-million surplus that is pure and simple getting averaged out in the 5-year rate window process. It bears reminding that WAPA–58 represented an attempt to come up with a rate mechanism which was similar to the rate mechanics in the pre-1987 era. It is clear that the rate mechanism in that pre-1987 era trued up the cost immediately. This mechanism bears no resemblance to the pre-1987 process on the true-up mechanics.

Response: There is no $11-million surplus in the 5-year ratesetting period (cost evaluation period) for this rate process. If there was an under- or over-collection of revenues in any year, this would be carried forward to the next year. Thus, this under/over-collection would be numerically reflected in both the next year's rate calculation, as well as in the 5-year moving window rate calculation. While the WAPA–58 rate mechanism is somewhat similar to the pre-1987 rate mechanism, it is significantly different, because the WAPA–58 rate methodology reflects the 5-year moving window concept, as agreed to by the BCP Contractors, Reclamation, and Western in the September 15, 1992, Settlement Agreement.

Comment: A customer believes that annual uprater payments of column 3 should reflect the new debt service schedules that follow the uprating bonds used by the Arizona Power Authority and Colorado River Commission. The customer is also not so sure that the correct figures are being used for the Colorado River Commission and for the Southern California Public Power Authority.

Response: The revised annual uprater schedules are currently reflected in FY 1993 and in the out-years in the latest PRSS.

Comment: Some Contractors have requested that a new PRSS be run which would reflect the correction of historical data and the correction of mathematical errors.

Response: The PRSS, upon which this rate adjustment is based, has been corrected to fix these identified problems. These issues were all addressed in the Public Information Forum data requests which were mailed to the BCP Contractors on October 18, 1993. These issues were also addressed at length during the informal workshop held on November 4, 1993.

Comment: A customer is concerned that the FY 1992 true-up, as implemented here, does not reflect the intent of the FY 1992 rate formula, much less meet the lowest possible rate standard, which all such rates are supposed to meet.

Response: The FY 1992 projected values have been revised to actual values. (The adjustment had previously been shown in FY 1994.)

Comment: A customer is concerned about the huge variations between projected and actual expenditures, as well as significant differences between the PRSS and various other sources of data, as officially reported by both Reclamation and Western. Also such concerns are heightened by the continued failure of Western to comply with the independent project audit requirements.

Response: Over the past several years, various Contractors have raised the issue that several actual expenditures (most notably O&M expenses) have continually been less than projected. This is predominately due to the reduced actual hydrology of the BCP. The BCP is an "available receipts project" in that it cannot commit or spend money that is not in the Colorado River Dam Fund. Because power revenues are the only source of revenue to the CRDF, if the actual hydrology is less than anticipated, reductions in expenditures are necessary to keep from overspending the CRDF. To a large extent, the only way to reduce expenditures, without deferring the payment of Uprating Credits, is in the reduction of either O&M expenses or in annual replacements.

In regard to the concern over the significant differences between the PRSS and various sources of data, as reported by both Reclamation and Western, these differences have been explained in the data response mailed to the BCP Contractors on October 18, 1993. Although it appeared that significant differences did exist in the data, reconciliation data sheets that were supplied by Reclamation indicated that all data originated from a common data source and that differences were due to the particular forum the numbers

were prepared for, rather than any inherent difference in the data.

In regard to the concern over the lack of an independent audit, Western is conducting an annual audit on BCP, as part of the Western-wide audit process. FERC specifically addressed the audit issue in its Order approving WAPA–58 and found Western's procedures to be in compliance with requirements.

Rate Process

Comment: The authority for final confirmation and approval is exclusively reserved for FERC for any proposed change in BCP rates.

Response: On November 3, 1993, FERC issued an Order Confirming and Approving Rates on a Final Basis for the BCP which stated "As to the annual rate adjustments, Western's customers should be able to monitor the operation of the formula rate when they take part in Western's annual public participation proceedings held when it proposes Annual Rate adjustments according to the formula. This annual proceeding should provide the customers an opportunity to monitor both compliance with the formula rate as well as to voice any concerns about the magnitude of the rate adjustment." Western has indicated to the BCP Contractors that it intends to follow the same rate process as in the past, except that the approval process will conclude with the signature of Western's Administrator. Informational copies of the BCP rate order package will be submitted to DOE and to FERC. The current rate formula is approved through September 30, 1997. For BCP rates to become effective on or after October 1, 1997, Western will have to seek further approval of DOE and FERC.

Comment: A customer requests acknowledgement that the Annual Rate adjustments process is one of a number of issues which is subject to resolution by the BCP Implementation Agreement being negotiated.

Response: The Annual Rate adjustment process is one of the issues which is subject to resolution by the BCP Implementation Agreement being negotiated. The rate adjustment process filed in WAPA–58 and accepted by FERC resulted from the Settlement Agreement of September 15, 1992, among the BCP Contractors, Reclamation and Western. This same group of Contractors is again back at the negotiating table, attempting to resolve certain related issues which, if resolved, will possibly require modification of the rate methodology implemented in WAPA–58.

Comment: A customer supports a postponement in the rate process.

Comment: Desire to delay implementation of a 5-percent rate reduction for the BCP.

Response: As a result of comments made during the August 31, 1993, public information forum and public comment forum, Western extended the comment and consultation period and has postponed implementation of the Annual Rates until February 1, 1994.

Comment: A customer recommends that Western strictly adhere to the requirements of 10 CFR Part 903 by noticing the place, time, and date of the required public comment forum in the **Federal Register** at least 30 days in advance of the meeting.

Comment: The customer suggests for future Annual Rate adjustments and thereafter, Western should provide a public comment period that is longer than 30 days, as presented in the August 17, 1993, **Federal Register** notice. The customer suggests a 90-day public comment period for all future Annual Rate adjustments.

Response: Western acknowledges that the BCP Contractors were provided only 21 days advance written notice of the public comment forum that concerned the BCP rate process. However, the BCP Contractors were orally informed on July 30, 1993, of the proposed August 31, 1993, BCP public comment forum. This announcement was made and the proposed meeting date was discussed with the BCP Contractors at a BCP Settlement Negotiations meeting in Las Vegas at McCarran Airport. Representatives of all the BCP Contractors were in attendance.

Western is in the process of preparing a schedule of all the various activities that comprise a rate process, along with the timing of said events. This schedule is targeted for completion in early 1994 and will be provided to all Western's customers when completed. Because the BCP rates will be modified on an annual basis, at least until September 30, 1997, the BCP Contractors will know well in advance when various activities concerning the BCP rate process will occur.

Comment: A customer suggests that public information forums and public comment forums for future Annual Rate adjustments not be scheduled on the same day.

Response: In the future, Western will not conduct public information forums and public comment forums on the same day.

Comment: A customer requests that Western prepare a decision document summarizing all comments received during the public comment period and Western's and Reclamation's responses to those comments. This decision document should be distributed to all BCP Contractors and interested parties before implementing the proposed Annual Rate adjustment.

Response: As part of Western's rate process, a rate order package is prepared which, among other items, contains a summary of all of the comments received during both the public comment forum and the consultation and comment period. Western's responses to these comments are also part of this rate order package. This package is presented to Western's Administrator, and to DOE and FERC for informational purposes. This information is also published in the **Federal Register** and a copy of the material is sent by Western to its customers. This entire process takes place prior to implementation of the revised rates. In the future, distribution to the BCP Contractors will take place once Western's Administrator approves the annually revised rates, which will normally be prior to the implementation of said rates.

Ratesetting

Comment: A uniform, predictable program for the development of databases and rate studies in support of Annual Rate adjustments should be prepared, complete with the dates by which specific information will be provided to the Contractors, with reference to the specific sources of information to be used for all data presented in the power repayment study.

Response: As previously indicated, Western is in the process of preparing a schedule of all the various activities that comprise a rate process, along with the timing of said events. This schedule is targeted for completion in early 1994 and will be provided to all Western's customers when completed. Because the BCP rates will be modified on an annual basis, at least until September 30, 1997, the BCP Contractors will know well in advance when various activities concerning the BCP rate process will occur.

As also previously indicated, Western is in the process of developing a record-keeping system to correlate actual expenditures to budget projections. The combination of the detailed schedule and the proposed record-keeping system should provide both: (i) Advance notice to the BCP Contractors of all BCP rate activity and (ii) continuity and consistency of data.

Comment: Some Contractors have requested that the rate study be revised to recognize that the rate over the first 4 months of FY 1994 was equal to the Rate Order No. WAPA–58 rate, resulting

in an increase in forecast revenues in FY 1994.

Response: Western has revised the rate as appropriate to reflect: (i) A February 1, 1994, implementation date and (ii) the rate methodology specified in WAPA–58. The effect was to further reduce the Annual Rate in recognition of higher revenues for the first 4 months of FY 1994.

Comment: The third to the last paragraph of the **Federal Register** notice implies that the Delegation Order No. 0204–108 addresses not only rates but also ratesetting methodology. Western's paraphrase of the delegation order in the **Federal Register** notice is not correct since the delegation order only uses the word "rates" and not the words "ratesetting methodology." Customer raises this point now because of the importance it places on the need to ensure that the process authorized under Delegation Order No. 0204–108 is not construed to constitute a change in regulations governing a setting of rate without being accompanied by appropriate steps which must precede any change of regulations governing the establishments of rates by a power marketing administration.

Response: The customer is correct in that the words "ratesetting methodology" are not specifically referenced in Delegation Order No. 0204–108. However, 10 CFR 903.2(l) states that "rate means the monetary charge or formula for computing such a charge for any electric service provided by the PMA, including but not limited to charges for capacity (or demand), energy, or transmission service; * * *." Additionally, in the context of the BCP Settlement Agreement among the BCP Contractors, Reclamation, and Western, the rates being proposed for the BCP are dependent upon the methodology. There has been no change in regulations, or implied change in regulations, concerning the establishment of rates by Western.

Comment: Some Contractors indicate that because they do not participate in the budget formulation process, they believe that the formalization of the E&OC is necessary to assure them an opportunity to provide input prior to the development of the Western and Reclamation budgets.

Response: Both Western and Reclamation are committed to work with the Contractors through the E&OC to ensure that all entities are informed and have the opportunity to review budgetary expenditures, along with providing input on the project activities and costs that will impact the BCP rates. Additionally, Western is currently working with the customers in the development of its Ten-Year Engineering Plan. At the December 15, 1993, Ten-Year Engineering Plan meeting, Reclamation's representative indicated she would recommend that a similar process be initiated by Reclamation's management.

Comment: One customer is concerned that BCP rates are not the lowest possible rate to consumers consistent with sound business practice as required under the prescribed standards. And the use of such a formulary rate adjustment mechanism will not provide, and has not provided, the proper incentives to assure efficient and economic operation of the project. This formulary rate adjustment mechanism is similar to the prior pinch-point methodology, which also did not provide incentive for efficient and economic operations at the BCP.

Response: As indicated in a response to a similar comment in the WAPA–58 Rate Order, Western is of the opinion that the approved rate methodology sets rates at the lowest possible cost consistent with both sound business principles and with the principles outlined by the BCP Settlement Agreement of September 15, 1992. The Annual Rate covered in this rate order reflects a significant decrease in costs and suggests that the Annual Rate process and the EO&C are in fact promoting strong incentives for efficient and economic operations.

Comment: The subject ratemaking methodology constitutes an automatic adjustment clause within the meaning of and as governed by PURPA and that such automatic adjustment clause has not been implemented in accordance with the very precise and prescribed procedures established by PURPA.

Response: The Public Utility Regulatory Policies Act of 1978 (PURPA) states at 16 U.S.C. 2612(a) that:

> This chapter applies to each electric utility in any calendar year, and to each proceeding relating to each electric utility in such year if the total sales of electric energy by such utility for purposes other than resale exceeded 500 million kilowatthours during any calendar year beginning after December 31, 1975, and before the immediately preceding calendar year.

Electric utility is defined to include Federal agencies which sell electric energy. Of the 15 BCP Contractors, the Metropolitan Water District, purchases more than 500 million kWh during any calendar year which is for purposes other than resale. As a result, the BCP is subject to PURPA.

With regard to automatic adjustment clauses, the PURPA states at 16 U.S.C. 2623(b)(2), that "[n]o electric utility may increase any rate pursuant to an automatic adjustment clause unless such clause meets the requirements of section 2625(e) of this title."

Section 2625(e) states that:

> (1) An automatic adjustment clause of an electric utility meets the requirements of this subsection if—
>
> (A) Such clause is determined, not less often than every 4 years, by the State regulatory authority (with respect to an electric utility for which it has ratemaking authority) or by the electric utility (in the case of a nonregulated electric utility), after an evidentiary hearing, to provide incentives for efficient use of resources (including incentives for economical purchase and use of fuel and electric energy) by such electric utility, and
>
> (B) Such clause is reviewed not less often than every 2 years, in the manner described in paragraph (2), by the State regulatory authority having ratemaking authority with respect to such utility (or by the electric utility in the case of a nonregulated electric utility), to insure the maximum economies in those operations and purchases which affect the rates to which such clause applies.
>
> (2) In making a review under subparagraph (B) of paragraph (1) with respect to an electric utility, the reviewing authority shall examine and, if appropriate, cause to be audited the practices of such electric utility relating to costs subject to an automatic adjustment clause, and shall require such reports as may be necessary to carry out such review (including a disclosure of any ownership or corporate relationship between such electric utility and the seller to such utility of fuel, electric energy or other items).
>
> (3) As used in this subsection and section 2623(b) of this title, the term "automatic adjustment clause" means a provision of a rate schedule which provides for increases or decreases (or both), without prior hearing, in rates reflecting increases or decreases (or both) in costs incurred by an electric utility. Such term does not include an interim rate which takes effect subject to a later determination of the appropriate amount of the rate.

The current formula for sales from the BCP was agreed to by all of the Contractors, Western, and Reclamation in a Settlement Agreement dated September 15, 1992. The methodology set out in this Agreement was approved by FERC on November 3, 1993.

The stated PURPA purpose of automatic adjustment clauses in sections 2625(e)(1) (A) and (B) is to provide incentives for efficient use of resources (including incentives for economical purchase and use of fuel and electric energy) by such electric utility, and to insure the maximum economies in those operations and purchases which affect the rates to which such clause applies. In this particular case, the initial reason that annual review and adjustment was determined to be the preferred methodology was that the Contractors

wanted Western to be able to react on an annual basis to any over- or under-collections of revenues. The methodology set out in the September 15, 1992, Settlement Agreement establishes that Western look at the higher of the 5-year average or the first year of revenue requirements on an annual basis and make appropriate adjustments. As a result, sections 2625(e)(1) (A) and (B) do not apply in our case.

Section 2625(e)(3) applies in cases where an increase or decrease comes about without prior hearing. In our case, there have been numerous information and comment forums allowing for the presentation of both written and oral comments. BCP Contractors were provided an opportunity to be heard and many of their comments caused Western to make changes to some of the calculations that were used in determining the rate. Paragraph (3) does not require an evidentiary hearing as does paragraph (e)(1)(A). As a result, section 2625(e)(3) is inapplicable, because the BCP Annual Rate adjustment is not an automatic adjustment pursuant to an "automatic adjustment clause".

FERC stated in its Order Confirming and Approving Rates on a Final Basis that "[r]ather than rely on a stated rate to recover the costs projected in a power repayment study, Western now proposes a formula rate which will compute project costs annually and revise the BCP capacity and energy charges accordingly. In implementing the formula rate, Western will present annually to Reclamation and the BCP power purchasers (Contractors) * * * its analysis of the revenue that the then-effective BCP capacity and energy charges would produce for the next FY as compared to the forecasted annual revenue requirement for the next FY. If such revenues are greater or less than the forecasted annual revenue requirement, Western will adjust the capacity and energy charges * * *. Western will hold public participation proceedings prior to implementing any rate adjustment required by these annual reviews."

In summary, the annual adjustment clause of the new methodology was negotiated among Western, Reclamation, the Contractors, and other interested parties; the Settlement Agreement and the new methodology were approved by FERC with comment by the Contractors and other interested parties; and Western has had and will continue to have annual public processes which allow for review and input by the Contractors and other interested parties prior to implementation of any Annual Rate adjustments. PURPA is not applicable to the BCP annual adjustment because the purpose of the adjustment is not the purpose established by PURPA, and the Contractors and the public at large have been provided with the opportunity to be heard.

WAPA–58 Concerns/Issues

Comment: One customer requests that its intervention protest in WAPA–58 be a continuation of preservation of those issues in this proceeding.

Response: These comments have been responded to in the record for WAPA–58.

Comment: A customer would like its oral comments made on September 10, 1992, its written comments submitted on September 25, 1992, and its motion to intervene and protest filed under Docket EF 93–5091–000 considered a part of these comments today as if set out here in full.

Response: These comments have been responded to in the record for WAPA–58.

Comment: A concern was expressed that the August PRSS contained some data which had changed since the PRSS was prepared in support of Rate Order WAPA–58. Specifically, the August PRSS shows a significant reduction in the projected generation output for the BCP.

Response: Reclamation prepares a generation forecast each year to be used in support of the BCP PRSS. The generation forecast prepared for the 5-year ratesetting period is based upon the most current hydrological information available at the time the forecast is made. The data presented in the August PRSS reflects the impact upon project generation resulting from the water release limitation imposed as a result of the flooding in Arizona and the most recent water scheduling changes for the Central Arizona Project. The average annual generation for the 5-year ratesetting period reported in the PRSS prepared in support of Rate Order WAPA–58 was 4,083 GWh. The average annual generation for the 5-year ratesetting period reported in the August PRSS was 4,033 GWh. This represents an annual reduction of approximately 50 GWh per year, or about 1 percent.

Capitalized Deficit

Comment: Some Contractors have requested Western to amortize the capitalized deficit expense over the remainder of the current contract period, which ends in FY 2017, rather than over the 10-year period utilized in the PRSS.

Response: Western addressed this issue in Rate Order WAPA–58. In that rate order response, Western noted that standard practice is to repay capitalized deficits over a 5-year period. Due to the size of the deficit, Western believed it was appropriate to extend the payment over a 10-year period.

In FERC's Order confirming and approving WAPA–58 it stated:

> The agreement speaks broadly about "item(s) of debt" and does not speak directly to capitalized deficits. Thus, the claim that Western has violated the terms of the agreement does not appear to be justified. * * * The choice of the Administrator to amortize capitalized deficits over ten years is a reasonable approach to accommodate a phase-in of the formula rate that Western has proposed here.

Hydrology—S

Comment: Western has continued to fail to account for unloaded synchronized generation. Customer believes that is a component that needs to be addressed at some point and would like to see that included in the PRSS.

Response: Western addressed this issue in the WAPA–58 Rate Order. Both Western and Reclamation believe that unloaded synchronized generation has been properly addressed in the PRSS. Both Western and Reclamation are agreeable to meeting with the Contractors to resolve this issue.

Capitalized Investments

Comment: A Contractor inquired about the repayment period associated with the flood control debt, in light of the fact that a Bureau of Reclamation Inspector General audit report recommended use of a repayment period of 30 years.

Response: For the purposes of this PRSS, and pending the final resolution of Reclamation audit recommendations, Western believes the repayment period for flood control should remain at 50 years.

Comment: Some Contractors have indicated that they believe Western has erred in the application of revenue toward the repayment of investment, specifically with regard to the repayment of the highest interest bearing investments.

Response: The application of revenue toward repayment of the highest interest bearing debt, as portrayed in the PRSS, is in complete agreement with the ratesetting methodology established by the September 15, 1992, Settlement Agreement.

During the development of the ratesetting methodology, the Contractors were adamant about the amount of

investment to be repaid and the order in which these investments were to be repaid. As a result, amortization schedules were developed for each investment which depicted the portion of the investment to be repaid by the end of the current contract period FY 2017. To satisfy the concern expressed by the Contractors that they would not pay more than their share of each specific investment, it was agreed that repayment would be limited to the amount shown on the amortization schedule. Therefore, repayment was to be accomplished by applying revenues toward the retirement of the highest interest bearing investment, up to the limit established by the amortization schedule for the investment.

In FERC's Order confirming and approving WAPA–58 it stated:

> Western adopted the formula rate at the behest of its customers, whose rights to Boulder Canyon Project power expire in 2017. The formula rate is designed to ensure that these customers pay only their fair share of the cost of the facilities whose service lives extend past that year. Rather than prioritize repayment by interest rate, the formula rate amortizes repayment of each financial obligation over the service life of its associated facility. Western and the Contractors state, and we agree, that this method assures intergenerational equity, whereas repayment by interest rate alone could result in the entirety of some Federal investments being paid by pre-2017 customers.

Both Western and Reclamation believe that the application of principal is consistent with the language contained in the Settlement Agreement. Following development of the PRSS, which was based upon the language contained in the Settlement Agreement, Western made a presentation to the BCP Contractors which included a point-by-point analysis of each item in the Settlement Agreement and how the item had been implemented in the PRSS. The application of principal was thoroughly discussed and agreed to. The only disagreement to the application methodology was expressed by a consultant to the Arizona Power Authority (APA)—who was not present during the settlement negotiations (other representatives of the APA who were present during these discussions were in agreement with the methodology proposed by Western).

Comment: Some Contractors have expressed concern that the increase in the weighted average interest for the Visitor Facilities is in error.

Response: Reclamation has verified that the weighted average interest rate used for the Visitor Facilities is correct.

Comment: A customer requests leveling expenditures as much as possible.

Response: Both Western and Reclamation believe that expenditures should be levelized to the extent possible. Reclamation has taken an extensive look at its O&M and replacements program and in the future will be proposing a more levelized expenditure for these two items. Also, as indicated previously, Reclamation is investigating utilization of a process similar to Western's Ten-Year Engineering Plan process to allow more participative input from the BCP Contractors.

Programmable Master Supervisory Control System

Comment: Some Contractors have expressed a concern over the methodology used to allocate the costs associated with the programmable master supervisory control installed at Hoover.

Response: Optimization modeling studies conducted by Reclamation indicated that the majority of the improvement in operating efficiency will benefit the Contractors at Hoover. Generators at Parker-Davis (P–DP) are rarely, if ever, used for load following; therefore, there will be only a moderate improvement in the efficiency of the P–DP system. The major share of plant improvement will benefit Hoover. The allocation of costs among Hoover, Parker, and Davis is reflective of the benefits received at each installation.

Annual Expense—O&M

Comment: Some Contractors have requested an explanation of Reclamation's cost item captioned A&GE (nonutility water).

Response: The Administrative and General Expense budget line includes such items as general expenses (i.e., salaries, surcharges, travel, materials, and supplies); some Regional and Denver administrative charges; services; a portion of security charges; union activities; and equal employment opportunity activities. These items are all associated with BCP administrative activities.

Comment: Some Contractors expressed concern over the apparent discrepancy in the data presented in the August PRSS, the April 15, 1993, letter by Reclamation, and in material presented to the E&OC.

Response: These issues have been discussed in-depth by Western in its public information data responses. The nature of the documents are such that they cannot be directly comparable. For example, the O&M figures used in the April 15th letter do not include the Civil Service Retirement costs. However, the April 15th letter does include the undelivered orders associated with O&M. The information presented at the E&OC does not include these costs as they are necessary for repayment purposes only, but are not the type of data normally presented for E&OC purposes.

Comment: Some Contractors have expressed concern that the O&M budget estimates are consistently higher than the actual cost incurred.

Response: Reclamation has reduced the budget line for Operation by approximately $1 million beginning in FY 1994. This reduction was made because of a reanalysis of historical costs and future requirements. All line items included in the estimated O&M budget will be closely monitored and adjusted, if necessary.

Comment: An interested party requested an explanation of the reallocation of O&M costs by Reclamation as they relate to the security costs at Hoover.

Response: This issue was dealt with in detail in the data response prepared following the public information forum. Briefly, that response indicated that all security costs had historically been charged to operations. As a result of the reallocation, beginning in FY 1992, security costs were distributed to Uprating, Visitor Facilities, and Guide Service. The reallocation of the expense associated with the security cost occurred in FY 1992 and therefore, had no impact on any other historical year. The effect of the reallocation has been included in the budget documents which support the FY 1993 PRSS.

Annual Expense—Replacements

Comment: Some Contractors have expressed concern over the variation in the projected replacement costs presented in the PRSS.

Response: This issue has been discussed with the Contractors in detail at both the public information forum and at the most recent E&OC meeting. This issue was also addressed in Rate Order WAPA–58. In addition, both Reclamation and Western are making every effort to stabilize fluctuations in projected replacement costs for the 5-year moving window (cost evaluation period). The constant replacement cost shown after the 5-year window reflects an average of all replacement costs forecasted by Western's replacement study through the end of FY 2045.

Western and Reclamation have agreed to use the replacements study average for the out years in the PRSS. The replacement study represents higher

replacement costs at the beginning and end of the repayment period with the in-between years having lower replacement costs.

Comment: A question was asked as to why undelivered orders for replacements were included in the PRSS and excluded for operations.

Response: Actual FY 1992 expenditures for the Replacement Program were $5,884,561. For purposes of the PRSS, it was necessary to add the change in Undelivered Orders of $1,651,592 for a total of $7,536,153. The recording of Undelivered Orders (costs incurred with the completion of a material, supplies or services contract, which have not totally been billed to or paid by Reclamation) is consistent with standard governmental accounting practices. When the Undelivered Orders are satisfied, any over/under expenditure of funds will be reflected as a change in future years' Undelivered Orders amount. This process assures that the costs subject to repayment remain accurate without the potential for duplication or omission.

Comment: The question was asked why contributions for replacements of $659,000 were removed from PRSS revenues and effectively capitalized when actual expenditures for replacements are expensed and not capitalized.

Response: Because the historical years' data displayed in the PRSS reflects actual generation, revenues, and costs, Reclamation and Western are continuing to correlate the data reflected in the historical years with the actual financial data. As this process has continued, certain adjustments have been and are being made either to the financial records, the PRSS, or to both, to accomplish this correlation. This process is commonly referred to as the "Crosswalk." The adjustment to the PRSS reflects Reclamation's and Western's continuing effort to correlate the data reflected in the historical years to the actual historical financial records.

Comment: One Contractor indicated that for the purposes of projecting the annual cost associated with future replacements, Western should assume that Reclamation is successful in receiving appropriations, and that the annual cost for replacements should be equal to the amortized cost of replacements beginning with FY 1995.

Response: With the exception of the investment made for "air slots," Reclamation has historically been unable to obtain appropriations for replacements. To assume that such appropriations could be obtained in the future, when they could not be obtained in the past, would not reflect prudent fiscal responsibility on the part of either Western or Reclamation. Western is required to establish rates which will assure the repayment to Treasury of all costs which are incurred by the project. Therefore, until instructed otherwise by Reclamation, Western will continue to portray the costs associated with replacements as an annual expense.

Comment: One Contractor submitted a report to Reclamation specifically addressing the levelization of replacement spending at the BCP by Reclamation.

Response: Reclamation discussed the issue of stabilizing replacement costs at the most recent E&OC meeting held during November 1993. Reclamation and Western are making every effort to stabilize the fluctuations in the projected replacement costs.

Expenses—Other Expenses

Comment: Some Contractors requested further explanation of the increases from the prior PRSS in both Other Revenues, column 16, and Other Expenses, column 3.

Response: Other Revenues, column 16, reflects revenues collected through the guide service (tours), and must be sufficient to recover the costs of providing that service. On January 1, 1993, Reclamation increased the fee for guide service from $1 to $2. Further increases in guide service fees are anticipated in conjunction with the new Visitor Facilities.

Other Expenses, column 3, also reflect the costs of unfunded Civil Service Retirement, multiproject costs, as well as increased costs in providing the guide service. Considerable detail has been provided to the BCP Contractors on all of these issues. In addition, the issue of multiproject costs is one of the items being discussed in the current draft Settlement Agreement negotiations. As part of the Settlement Agreement, which is yet unsigned, Western has agreed to prepare detailed procedures for the calculation of multiproject costs and to prepare and present to the BCP E&OC all revisions to multiproject costs, prior to their insertion into future PRSS. In addition, Western's Phoenix Area Office (PAO), as part of a quality improvement initiative, formed a Process Improvement Team which has recently prepared a report on the multiproject cost process. Once the report has been reviewed by the PAO Quality Council, any accepted recommendations will be reflected in future calculations of multiproject costs.

Comment: A Contractor contends that multiproject costs for FY 1993 and FY 1994 should be removed from the revenue requirements for the BCP because agreed-upon procedures, analyses, and justification have yet to be developed. Also, new rates for the other projects have not been implemented to reflect additional revenues from BCP and the financial records for the BCP do not indicate that monies collected were actually transferred to P–DP or Pacific-Northwest Pacific-Southwest Intertie Project in FY 1993.

Comment: Regarding column 3, Other Revenues, a Contractor believes Western's estimate of multiproject costs of $442,016 for FY 1993 should be deleted since the P–DP and the Pacific-Northwest Pacific-Southwest Intertie Project will not begin to reflect multiproject benefits in their rates until FY 1994.

Response: Column 3 is entitled Other Expenses, not Other Revenues. Western believes that the FY 1993 expenditure of $442,016 is proper, because the current P–DP and Pacific-Northwest Pacific-Southwest Intertie Project's rate studies reflect revenue transfers of this amount from BCP in FY 1993. The appropriate revenue transfers have been made in all three projects, beginning in FY 1993.

Working Capital

Comment: In Rate Order No. WAPA–58, Western and Reclamation agreed to make the sum of column 6, Working Capital, and the carry-over balance of FY 1992, equal to $7.5 million. The sum of Working Capital and the carry-over balance in the August PRSS equals $7,846,238. The customer believes that a $346,238 reduction is in order.

Comment: Several questions have been raised with regard to the issue of working capital already recovered by Western and Reclamation.

Comment: Several Contractors asked if the working capital fund would be returned to the Contractors at the end of the contract period. They also requested that the $5 million PRSS to CRDF adjustment be treated as part of the working capital balance.

Response: Western will make adjustments to the PRSS to ensure that the sum of the "carry-over balance" and "working capital" equals $7.5 million. Western has always intended that all working capital would be returned to the BCP Contractors and the PRSS has been revised accordingly.

While Western and Reclamation are not in agreement with the BCP Contractors that the $5 million PRSS to CRDF adjustment is part of the working capital balance, they are both in agreement that any monies left over in the Colorado River Dam Fund at the end of the current contract period will be refunded to the current BCP Contractors. The issue related to this

adjustment should tend to resolve itself as the lag between the delivery of power and subsequent billing and collection for the power sale is reduced. The adjustment is necessary to prevent the PRSS from applying revenues toward repayment which are not available to the CRDF as a result of the lag in collection. This adjustment is unrelated to the working capital fund.

Comment: A working capital allowance is not needed to operate the project.

Response: The February 13, 1992, letter sent to Western and Reclamation by the Colorado River Commission of Nevada, on behalf of all the BCP Contractors indicated that a working capital fund of $7.5 million should be created. Western and Reclamation created a mechanism whereby this fund would be created through rates in 1993 and 1994. This mechanism was modified by the BCP Contractors, Western, and Reclamation and incorporated into Rate Order WAPA–58, which recently received approval from FERC.

Engineering and Oversight Committee

Comment: Several Contractors maintain that it is critical that the E&OC continue to function and thrive and that Western, Reclamation, and the BCP Contractors continue to strengthen the communication processes of the E&OC in order to provide the BCP Contractors the opportunity and means to provide input to Western and Reclamation on issues relating to BCP.

Response: Western and Reclamation agree that the E&OC should continue to function and provide a meaningful communication process among the BCP Contractors, Reclamation and Western. The continuation of the E&OC, along with an expansion of functions to be undertaken by the E&OC, is one of the issues being negotiated in the Settlement Agreement negotiations among the BCP Contractors, Western and Reclamation.

Comment: A Contractor has indicated that the E&OC could be a forum to discuss ways to handle Hoover's resources in a changing operating environment and that a real effort could be made towards developing principles of a rate process that are mutually agreeable to all parties.

Response: Several BCP Contractors have made statements, both at rate forums and E&OC meetings, that the E&OC is not meant to be a substitute for the review of data in a rate process. While Western and Reclamation support the efforts of the E&OC and are willing to work with the BCP Contractors to improve the operation and to lower the costs of the BCP, they are both in agreement that the efforts of the E&OC should be complementary and supportive to the rate process, and not a part of the rate process.

Uprating Credits

Comment: The proposed PRSS does not address the credit carry forward incurred after May 19, 1992. The mechanism for repaying such credit carry forward should be established and expressed in the PRSS. (In reference to amount financed by the APA bond issue * * *) Western will be paying interest on the APA bond issue which covered credit carry forward. It would be inequitable to pay such interest to APA and not to the other Schedule B Contractors.

Response: The proposed PRSS does address the credit carry forward incurred after May 19, 1992. The "Group 3" debt that was created in order to pay "Group 1" and "Group 2" debt is reflected in the Uprating Credits for FY 1995, 1996, and 1997. One third of this "Group 3" debt will be recovered in each of the years 1995, 1996, and 1997. The "Group 4" debt, which is the amount of Uprating Credits that certain of the Schedule B Contractors cannot take because their billed amount for electric service is less than their Uprating Credits, is reflected in the annual Uprating Credit amounts. (The amount of Uprating Credits shown in column 4 of the PRSS is exactly equal to the total of all the Uprating Credit schedules submitted by the Schedule B Contractors—which is exactly equal to the Uprating Credits applied to power bills plus monies retained by Reclamation to satisfy "Group 4" debt.)

In regard to the amount financed by the APA bond issue, or any other bond issue, Western is bound by contract to issue credits in the amounts submitted by the Contractors for Uprating Credits. While it is true that Western is in effect paying interest on credit-carry-forward debt for APA and not for other Schedule B Contractors, the other Schedule B Contractors who issued bonds could go through the same refinancing process that APA did and obtain interest on their carry-forward debt. The Schedule B Contractors who did not issue bonds could not utilize this mechanism to obtain interest on their portion of carry-forward debt.

In order to obtain and proceed with a unified position, in regard to the payment of interest on credit-carry-forward debt, Western issued a position paper on December 17, 1993, which proposed a methodology for payment of interest on credit-carry-forward debt. Once all BCP Contractors have responded, Western will issue either a final unified position statement (if all BCP Contractors are in agreement) or a summary of position statements (if one or more of the BCP Contractors are not in agreement).

Comment: Review and make adjustments as appropriate to the future uprate credit payments.

Response: According to section 6.5.5 of the BCP contracts, by October 1 of each year, the Schedule B Contractors are to provide Western and Reclamation with a credit schedule with respect to each billing period for the remaining term of the contract. The Uprating Credit payments utilized in the PRSS are a summation of the individual schedules sent to Western by the Schedule B Contractors and are the same schedules utilized by Western in determining the credits to apply to the individual monthly power bills.

Comment: Western should follow through with the establishment of procedures which assure that the determination and application of Uprating Credits is consistent with the electric service contract.

Response: Western believes that it is currently adhering to the provisions of the electric service contracts in regard to the determination of Uprating Credits, the application of said credits, and the overall administration of the Uprating Credit program.

Total Energy Sales

Comment: What is the rationale for the increase from an annual constant of 4,062,000 MWh to 4,552,000 MWh for the period 1999–2045?

Response: The generation shown during the cost evaluation period is based upon the most current hydrology studies conducted in support of the PRSS. The generation shown beyond the cost evaluation period reflects the contract amount of 4,527,001 MWh. The generation level of 4,552,000 MWh was given to Western in error.

Visitor Facilities

Comment: A recommendation was made that Reclamation develop and implement plans to obtain additional funds from sources other than the BCP Contractors.

Response: Reclamation is continuing to explore and evaluate a variety of options which may provide additional revenue that could be used to aid in the repayment of the Visitor Facilities costs.

Comment: A recommendation was made that the amount included in the estimated completion cost of the Visitor Facilities for anticipated claims by the construction Contractor be removed

from the repayment obligation of the BCP Contractor.

Response: Reclamation instructions require that the total estimated cost of the project be shown. This includes such items as anticipated claims and modifications. Reclamation's Commissioner has requested a full audit of the Visitor Facilities costs. Once that audit is completed, Western will evaluate appropriate changes, if any, to those costs.

Environmental Evaluation

In compliance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*; Council on Environmental Quality Regulations (40 CFR Part 1500–1508); and DOE NEPA Regulations (10 CFR part 1021), Western has determined that this action is categorically excluded from the preparation of an environmental assessment or EIS.

Executive Order 12866

DOE has determined that this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866, 58 FR 51735. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by OMB is required.

Availability of Information

Information regarding this rate adjustment, including PRSS, comments, letters, memorandums, and other supporting material made or kept by Western for the purpose of developing the power rates, is available for public review in the Phoenix Area Office, Western Area Power Administration, Office of the Assistant Area Manager for Power Marketing, 615 South 43rd Avenue, Phoenix, Arizona 89009; Western Area Power Administration, Division of Marketing and Rates, 1627 Cole Boulevard, Golden, Colorado 80401; and Western Area Power Administration, Office of the Assistant Administrator for Washington Liaison, Power Marketing Liaison Office, Room 8G–027, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

Submission to Federal Energy Regulatory Commission

The BCP rates herein are approved and placed into effect by the Administrator of Western. An informational copy will be submitted to FERC.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary, I confirm and approve, effective February 1, 1994, Rate Schedule BCP–F4/2.

Issued in Golden, CO, February 4, 1994.

William H. Clagett,

Administrator.

Approved for Legal Sufficiency.

Michael S. Hacskaylo,

General Counsel.

Boulder Canyon Project; Schedule of Rates for Power Service

Effective (In accordance with approved ratesetting methodology): February 1, 1994, that being the first day of the February 1994 billing period.

Available: In the marketing area served by the Boulder Canyon Project (BCP).

Applicable: To power customers served by the BCP supplied through one meter at one point of delivery, unless otherwise provided by contract.

Character and Conditions of Service: Alternating current at 60 hertz, three-phase, delivered and metered at the voltages and points established by contract.

Monthly Rate: The base charge capacity rate is $1.07/kW/month for each kW of rated capacity to which each contractor is entitled by contract during the billing period.

The base charge energy rate is 6.31 mills/kWh for each kWh measured or scheduled at the point of delivery during the billing period, except for purchased power.

Lower Basin Development Fund Contribution Charge: The Lower Basin Development Fund Contribution Charge is 4.5 mills/kWh for each kWh measured or scheduled to an Arizona purchaser and 2.5 mills/kWh for each kWh measured or scheduled to a California or Nevada purchaser, except for purchased power.

Billing for Unauthorized Overruns: For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual power obligations, such overruns shall be billed at 10 times the above base charge energy and capacity rates. The Lower Basin Development Fund Contribution Charge shall be applied also to each kWh of overrun.

Adjustments: None.

[FR Doc. 94–5142 Filed 3–4–94; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4844–9]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before April 6, 1994.

FOR FURTHER INFORMATION CONTACT: For further information or to obtain a copy of this ICR, contact Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: New Source Performance Standard (NSPS) for the Surface Coating of Plastic Parts for Business Machines (subpart TTT)–(EPA ICR No. 1093.04; OMB No. 2060–0162). This is a request for renewal of a currently approved information collection.

Abstract: Owners or operators of facilities that surface coat plastic parts for business machines must provide EPA or the delegated State regulatory authority with the following one-time-only reports: notification of the date of construction or reconstruction, notification of the anticipated and actual dates of startup, notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate, and notification of the date of the initial performance test and the results of this test. Owners or operators are also required to submit compliance reports semiannually; when the source is out of compliance with the applicable emission limitations they must report quarterly.

Owners or operators are required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility. They must also maintain records of the results of each monthly performance test.

The notifications and reports enable EPA or the delegated State to determine that best demonstrated technology is

installed and properly operated and maintained and to schedule inspections.

Burden Statement: The burden for this collection of information is estimated to average 2.3 hours per response for reporting and 84 hours per recordkeeper annually. This estimate includes the time needed to review instructions, develop a recall plan, create and gather data, and review and store the information.

Respondents: Owners or operators of facilities that coat plastic parts for business machines.

Estimated No. of Respondents: 323.

Estimated No. of Responses per Respondent: 3.

Estimated Total Annual Burden on Respondents: 29,444.

Frequency of Collection: One-time, quarterly and semiannually.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW., Washington, DC 20460.

and

Mr. Chris Wolz, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: February 28, 1994.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 94–5152 Filed 3–4–94; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4845–1]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before April 6, 1994.

FOR FURTHER INFORMATION CONTACT: For further information or to obtain a copy of this ICR, contact Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: New Source Performance Standard (NSPS) for Flexible Vinyl and Urethane Coating and Printing—Information Requirements (subpart FFF)—(EPA ICR No. 1157.04; OMB No. 2060–0073). This is a request for renewal of a currently approved information collection.

Abstract: Owners or operators of facilities that use flexible vinyl and urethane for coating and printing must provide EPA or the delegated State regulatory authority with the following one-time-only reports: notification of the date of construction or reconstruction, notification of the anticipated and actual dates of startup, notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate, and notification of the date of the initial performance test, and the results of this test. Semiannual reports of excess emissions are also required.

Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility. In addition they must keep records of the continuous measurements of control device operating parameters. Where a capture system and an incinerator are used, the calculated daily volume of VOC solvent recovered must be recorded. In addition, where thermal incineration is used, owners or operators must install, calibrate, and maintain temperature measurement devices downstream of the exhaust gases; where catalytic incineration is used, they must install, calibrate and maintain these devices both upstream and downstream.

The notifications and reports enable EPA or the delegated State to determine that best demonstrated technology is installed and properly operated and maintained and to schedule inspections.

Burden Statement: The burden for this collection of information is estimated to average 7 hours per response for reporting and 63 hours per recordkeeper annually. This estimate includes the time needed to review instructions, develop a recall plan, create and gather data, and review and store the information.

Respondents: Owners or operators of facilities that use flexible vinyl and urethane for coating and printing.

Estimated No. of Respondents: 8.

Estimated No. of Responses per Respondent: 3.

Estimated Total Annual Burden on Respondents: 632.

Frequency of Collection: One time and semiannually.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW., Washington, DC 20460.

and

Mr. Chris Wolz, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: February 28, 1994.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 94–5153 Filed 3–4–94; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4844–7]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before April 6, 1994.

FOR FURTHER INFORMATION CONTACT: For further information or to obtain a copy of this ICR, contact Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: New Source Performance Standard (NSPS) for Recordkeeping and Reporting for Lead Acid Battery Manufacturing (subpart FF)–(EPA ICR No. 1072.04; OMB No. 2060–0081). This is a request for renewal of a currently approved information collection.

Abstract: Owners or operators of lead acid battery manufacturing facilities must provide EPA or the delegated State regulatory authority with the following one-time-only reports: notification of the date of construction or reconstruction, notification of the anticipated and actual dates of startup, notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate, and notification of the date of the initial performance

test and the results of this test. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative.

Owners or operators of affected facilities using scrubbers are required to install, calibrate, maintain, and operate a monitoring device that measures and records pressure drop across the scrubbing system. Owners or operators must maintain a file of these measurements, and retain the file for at least two years.

The notifications and reports enable EPA or the delegated State to determine that best demonstrated technology is installed and properly operated and maintained and to schedule inspections.

Burden Statement: The burden for this collection of information is estimated to average 42.6 hours per response for reporting and 87.5 hours per recordkeeper annually. This estimate includes the time needed to review instructions, develop a recall plan, create and gather data, and review and store the information.

Respondents: The owners or operators of Lead Acid Battery Manufacturing facilities.

Estimated No. of Respondents: 3.

Estimated No. of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 3,540.

Frequency of Collection: One-time.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW., Washington, DC 20460.

and

Mr. Chris Wolz, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: February 28, 1994.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 94–5154 Filed 3–4–94; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4841–6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this notice announces the Office of Management and Budget's (OMB) responses to Agency PRA clearance requests.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer (202) 260–2740.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency PRA Clearance Requests

OMB Approvals

EPA ICR No. 0226.10; Interim Sewage Sludge Permit Application Form; was approved 01/27/94; OMB No. 2040–0086; expires 08/31/95.

EPA ICR No. 1001.05; Polychlorinated Biphenyls (PCB's): Exclusions, Exemptions, and use Authorizations; was approved 01/28/94; OMB No. 2070–0008, expires 01/31/97.

EPA ICR No. 1128.04; Information Requirements for Secondary Lead Smelters—NSPS Subpart L; was approved 01/31/94; OMB No. 2060–0080; expires 01/31/97.

EPA ICR No. 1655.01; Gasoline Detergent Additives Rule; was approved 02/03/94; OMB No. 2060–0275; expires 02/28/97.

EPA ICR No. 1571.04; General Hazardous Waste Facility Standards; was approved 10/20/93; OMB No. 2050–0120; expires 10/31/96.

EPA ICR No. 1572.03; Hazardous Waste Specific Unit Requirements and Special Waste Processes and Types; was approved 10/20/93; OMB No. 2050–0050; expires 10/31/96.

EPA ICR No. 1573.04; Part B Permit Application, Permit Modifications and Special Permits; was approved 10/20/93; OMB No. 2050–0009; expires 10/31/96.

EPA ICR No. 0261.11; Notification of Hazardous Waste Activity; was approved 09/24/93; OMB No. 2050–0028; expires 09/30/96.

OMB Disapproval

EPA ICR No. 1611.01; National Emissions Standard for Hazardous Air Pollutants for Chromium Electroplating and Anodizing Operations, Reporting and Recordkeeping Requirements; was not approved 01/28/94.

OMB Extension of Expiration Dates

EPA ICR No. 0857.05; Polychlorinated Biphenyls (PCBS): Manufacturing, Processing, and Distribution in Commerce Exemptions; expiration date was extended to 07/31/94.

EPA ICR No. 0866.03; Quality Assurance Specifications and Requirements; expiration date was extended to 08/31/94.

Dated: February 25, 1994.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 94–5155 Filed 3–4–94; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4844–8]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before April 6, 1994.

FOR FURTHER INFORMATION CONTACT: For further information or to obtain a copy of this ICR, contact Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: New Source Performance Standard (NSPS) for Wool Fiberglass Insulation Manufacturing (subpart PPP) Information Requirements–(EPA ICR No. 1160.04; OMB No. 2060–0114). This is a request for renewal of a currently approved information collection.

Abstract: Owners or operators of facilities that manufacture wool fiberglass insulation must provide EPA or the delegated State regulatory authority with the following one-time-only reports: notification of the date of construction or reconstruction, notification of the anticipated and actual dates of startup, notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate, and notification of the date of the initial performance test and the results of this test. Semiannual reports of excess emissions are also required.

Owners or operators are required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility. They must also maintain daily records of the continuous measurements of control device operating parameters. Where a wet scrubbing control device is used, the owner or operator must measure the gas pressure drop across each scrubber

and the scrubbing liquid flow rate to each scrubber at least once every four hours. Where a wet electrostatic precipitator control device is used, the owner or operator must measure the primary and secondary current and voltage in each electrical field and the inlet water flow rate at least once every four hours. Records of these measurements must be kept at the source for a period of 2 years.

The notifications and reports enable EPA or the delegated State to determine that best demonstrated technology is installed and properly operated and maintained and to schedule inspections.

Burden Statement: The burden for this collection of information is estimated to average 9.2 hours per response for reporting and 62.5 hours per recordkeeper annually. This estimate includes the time needed to review instructions, develop a recall plan, create and gather data, and review and store the information.

Respondents: Owners or operators of facilities that manufacturer wool fiberglass insulation.

Estimated No. of Respondents: 46.

Estimated No. of Responses per Respondent: 2.

Estimated Total Annual Burden on Respondents: 3,680.

Frequency of Collection: One-time and semiannually.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW., Washington, DC 20460.

and

Mr. Chris Wolz, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: February 25, 1994.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 94–5151 Filed 3–4–94; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4843–2]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 6, 1994.

FOR FURTHER INFORMATION CONTACT: For further information, or to obtain a copy of this ICR, contact Sandy Farmer at 202–260–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Region VII Section 114 Request for Date of Purchase Information for New Source Performance Standards Subpart OOO- Affected Facilities (EPA ICR No. 1677.01). This is a request for review of a new information collection.

Abstract: Under the authority of section 114 of the Clean Air Act, EPA Region VII will seek information from approximately 125 Missouri sources in the crushed stone, refractory clay, portland cement, and agricultural lime industries. The facilities emit particulates during the crushing, sizing, conveying, and storing of rock (nonmetallic minerals). EPA needs information on the type of facilities owned, date of acquisition, and date of any performance tests conducted for facilities potentially subject to NSPS Subpart OOO. EPA will use the information to determine the compliance status of these sources.

Burden Statement: The public reporting burden for this one-time collection of information is estimated to range from 1 to 2.5 hours per response for reporting. This estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information.

Respondents: Nonmetallic mineral processing plants in Missouri.

Estimated No. of Respondents: 125.

Estimated No. of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 312.5 hours.

Frequency of Collection: Once.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to:

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW., Washington, DC 20460.

and

Mr. Chris Wolz, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: February 28, 1994.

Paul Lapsley,

Director, Regulatory Management Division,

[FR Doc. 94–5156 Filed 3–4–94; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4846–3]

Hawaii: Adequacy Determination of State Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of tentative determination on application of Hawaii for full program adequacy determination, public hearing and public comment period.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, 42 U.S.C. 6945 (c)(1)(B), requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator hazardous waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). Section 4005(c)(1)(C) of RCRA, 42 U.S.C. 6945(c)(1)(C), requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs.

Approved State permit programs provide interaction between the State and MSWLFs owners and operators regarding site-specific permit conditions. Only those owners or operators located in States with approved permit programs can use the site-specific flexibility provided by 40 CFR part 258 to the extent the State permit program allows such flexibility. EPA notes that regardless of the approval status of a State and the permit status of any facility, the Federal landfill criteria will apply to all permitted and unpermitted MSWLF facilities.

Hawaii applied for a determination of adequacy under section 4005 of RCRA. EPA reviewed Hawaii's application and made a tentative determination that all portions of Hawaii's MSWLF permit program are adequate to assure compliance with the revised MSWLF Criteria. EPA has determined that Hawaii's revised requirements are adequate to ensure compliance with the Federal Criteria.

Although RCRA does not require EPA to hold a public hearing on any determination to approve a State's MSWLF program, EPA Region IX has tentatively scheduled a public hearing on this determination. If a sufficient number of people express interest in participating in a hearing by writing EPA Region IX or calling the contact given below within 30 days of the date of publication of this notice, EPA Region IX will hold a hearing on the date given below in the "DATES" section. EPA Region IX will notify all persons who express such interest or who submit comments on this notice if it decides to hold the hearing. In addition, anyone who wishes to learn whether the hearing will be held may call the person listed in the "CONTACTS" section. Representatives from the Hawaii Department of Health will participate in the public hearing on this subject, if one is held.

DATES: All comments on Hawaii's application for a determination of adequacy must be received by USEPA by the close of business on April 29, 1994.

ADDRESSES: Copies of Hawaii's application for adequacy determination are available during the hours of 9 a.m. to 4:30 p.m. at the following addresses for inspection and copying: Hawaii Department of Health, Solid Waste Program, 5 Waterfront Plaza, suite 250, 500 Ala Moana Blvd., Honolulu, Hawaii 96813; or USEPA Region IX Library, 75 Hawthorne Street, 13th floor, San Francisco, California 94105, telephone (415) 744–1510. Written comments should be sent to Greg Wilmore, mail code H–3–1, EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105.

FOR FURTHER INFORMATION CONTACT: EPA Region 9, 75 Hawthorne Street, San Francisco, California, 94105. Attn: Greg Wilmore, mail code H–3–1, phone (415) 744–2093.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, 42 U.S.C. 6941–6949(a), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria under part 258. Section 4005 of RCRA, 42 U.S.C. 6945, also requires that EPA determine the adequacy of State MSWLF permit programs to ensure that facilities comply with the revised Federal Criteria. To facilitate this requirement, the Agency has drafted and is in the process of proposing a State and Tribe Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State and Tribe landfill permit programs.

EPA intends to approve State MSWLF permit programs prior to the promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. EPA interprets the statutory requirements for States to develop "adequate" permit programs to impose several minimum standards. First, each State must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State must also provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA, 42 U.S.C. 6974(b). Finally, the State must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State has submitted an "adequate" program based on the interpretation outlined above. EPA expects States to meet all of the criteria for all elements of a MSWLF program before it gives full approval to a MSWLF program. In addition, States may use the draft STIR as an aid in interpreting these requirements.

B. State of Hawaii

On October 8, 1993, Hawaii submitted an application for program adequacy determination. EPA Region IX reviewed Hawaii's application and tentatively determined that all portions ensure compliance with the revised Federal Criteria. EPA proposes to fully approve Hawaii's MSWLF program. The State of Hawaii has the authority to enforce the requirements of the Revised Federal MSWLF Criteria at all MSWLFs in the State, and, according to its application, will have sufficient staff to carry out compliance and monitoring activities.

The public may submit written comments on EPA's tentative determination until April 29, 1994. Copies of Hawaii's application are available for inspection and copying at the location indicated in the "ADDRESS" section of this notice. If there is sufficient public interest, the Agency will hold a public hearing on April 18, 1994 at 9 a.m. in the Prince Kuhio Federal Building, fifth floor conference room t5124, 300 Ala Moana Blvd., Honolulu, HI. For information on how to express interest in a public hearing, see the last paragraph of the "SUMMARY" section.

EPA will consider all public comments on its tentative determination received during the public comment period and during any public hearing held. Issues raised by those comments may be the basis for a determination of inadequacy for Hawaii's program. EPA will make a final decision on whether or not to approve Hawaii's program and will give notice of it in the **Federal Register**. The notice will include a summary of the reasons for the final determination and a response to all major comments.

Section 4005(a) of RCRA, 42 U.S.C. 6945(a), provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this notice from the requirements of section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6945.

Dated: February 24, 1994.

Nora McGee,

Acting Regional Administrator.

[FR Doc. 94–5157 Filed 3–4–94; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4846–5]

Nevada; Final Determination of Adequacy of State/Tribal Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination of full program adequacy for Nevada's application.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, 42 U.S.C. 6945(c)(1)(B) requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C), 42 U.S.C. 6945 (c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs.

EPA-approved State/Tribal permit programs provide interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in States/Tribes with approved permit programs can use the site-specific flexibility provided by 40 CFR part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the Federal landfill criteria will apply to all permitted and unpermitted MSWLF facilities.

Nevada applied for a determination of adequacy under section 4005 of RCRA. EPA reviewed Nevada's application and issued for public comment a tentative determination that Nevada's permit program is adequate to assure compliance with the revised MSWLF Criteria. Based on a thorough review of Nevada's municipal solid waste landfill program and the fact that no comments were received from the public, EPA is today issuing a final determination that Nevada's program is adequate.

EFFECTIVE DATE: The determination of adequacy for Nevada shall be effective on March 7, 1994.

FOR FURTHER INFORMATION CONTACT: USEPA Region 9, 75 Hawthorne Street, San Francisco, California, 94105. Attn: Ms. Rebecca Jamison, Mailcode H–3–1, telephone (415) 744–2099.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, 42 U.S.C. 6941–6949(a), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria under part 258. Section 4005 of RCRA, 42 U.S.C. 6945, also requires that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To facilitate this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs.

EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. EPA interprets the statutory requirements for States or Tribes to develop "adequate" permit programs to impose several minimum standards. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe must also provide for public participation in permit issuance and enforcement as required in section 7004(b)(1) of RCRA. Finally, the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an "adequate" program based on the interpretation outlined above. EPA expects States/Tribes to meet all of the criteria for all elements of a MSWLF program before it gives full approval to a MSWLF program. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements.

On June 24, 1993, Nevada submitted an application for adequacy determination for Nevada's MSWLF permit program. On December 30, 1993, EPA published a tentative determination of adequacy for all portions of Nevada's program. Further background on the tentative determination of adequacy appears at 58 FR 69362 (December 30, 1993).

Along with the tentative determination, EPA announced the availability of the application for public comment. EPA received no comments nor a request for a public meeting on this determination.

The State of Nevada has the authority to enforce the requirements of their municipal solid waste landfill program at all MSWLFs in the State, with the exception of those located on Tribal Lands.

B. Decision

In the tentative determination, EPA proposed to approve specified parts of Nevada's program for which existing State law was adequate to ensure compliance with the Federal criteria. At that time, EPA also proposed to approve all of Nevada's program if draft revised requirements submitted by Nevada were adopted before EPA's final determination and effective on or before the relevant effective dates of the Federal Criteria. On January 27, 1994 EPA received the final adopted revisions to Nevada's MSWLF permit program. After reviewing these revisions, I conclude that they are identical to the draft revision and that Nevada's application for adequacy determination meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Nevada is granted a determination of adequacy for all portions of its municipal solid waste permit program.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Today's action takes effect on March 1, 1994. EPA believes it has good cause under section 553(d) of the Administrative Procedure Act, 5 U.S.C 553(d), to put this action into effect less than 30 days after publication in the **Federal Register**. All of the requirements and obligations in the State's/Tribe's program are already in effect as a matter of State/Tribal law. EPA's action today does not impose any new requirements that the regulated community must begin to comply with. Nor do these requirements become enforceable by EPA as Federal law. Consequently, EPA finds that it does not need to give notice prior to making its approval effective.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this notice from the requirements of section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6945.

Dated: February 17, 1994.

John Wise,

Acting Regional Administrator.

[FR Doc. 94–5150 Filed 3–4–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL MARITIME COMMISSION

[Docket No. 94–04]

Cancellation of Tariffs for Failure To Comply With Automated Tariff Filing and Information System ("ATFI") Filing Requirements; Order To Show Cause

Section 8 of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. 1707, requires the filing of tariffs with the Federal Maritime Commission ("Commission") by common carriers by water and conferences in the foreign commerce of the United States showing all rates, charges, classifications, rules and practices. Section 8 of the 1984 Act further provides that the Commission may by regulation prescribe the form and manner in which tariffs shall be filed. Section 17 of the 1984 Act, *id.* app. 1716, authorizes the Commission to prescribe rules and regulations necessary to carry out the 1984 Act.

The Commission instituted Docket No. 90–23, Automated Tariff Filing and Information System ("ATFI"), to establish regulations governing the conversion of tariff filing to an electronic system. Proposed Rules were issued on September 9, 1991 (56 FR 46,044) and Interim Rules were issued on August 12, 1992 (57 FR 36,248) and January 4, 1993 (58 FR 25). The rules issued in Docket No. 90–23 are codified in 46 CFR Part 514. This new part modifies and combines all non-obsolete tariff regulations of 46 CFR Parts 515, 550, 580 and 581, and establishes regulations to facilitate and implement the conversion of tariffs to ATFI.[1]

On December 17, 1992, the Commission issued Supplemental Report No. 3 and Notice ("Supplemental Report No. 3") (57 FR 59,999) in Docket No. 90–23. Supplemental Report No. 3 prescribed the schedule by which entities serving specific trades must convert tariff data into ATFI, and defined the geographic areas subject to each ATFI filing time frame ("window"). It also provided that tariffs which are not filed in ATFI by the close of the applicable filing window are subject to cancellation by order of the Commission in a show-cause proceeding, unless temporarily exempted.

In January, 1993, the Commission's Bureau of Tariffs, Certification and Licensing ("BTCL") mailed Information Bulletin No. IB 4–93 to over 4,000 firms. This Bulletin included the schedule of filing windows and a statement regarding cancellation of unconverted tariffs by show-cause order. Supplemental Report No. 4 in Docket No. 90–23, issued in May 1993, again advised the public of the filing schedule and that failure to file in ATFI would subject entities to a proceeding for the cancellation of tariffs.

The first filing window closed on June 4, 1993. On September 28, 1993, carriers failing to register for and file their Worldwide, Asian and South Pacific scope tariffs in ATFI or file a petition for temporary extension of the filing deadline were subject to an Order to Show Cause in Docket No. 93–19, Cancellation of Tariffs for Failure to Comply with Automated Tariff Filing and Information System (ATFI) Filing Requirements (58 FR 50550). By Order issued January 12, 1994 (59 FR 1737), the applicable paper tariffs or portions of tariffs of 67 of these carriers were cancelled.

The 228 carriers listed on Attachement A to this Order had registered in ATFI and/or had obtained a temporary extension of the ATFI window until September 7, 1993. However, the carriers have not, to date, filed an ATFI tariff.

Now Therefore, It Is Ordered that pursuant to section 11 of the 1984 Act, 46 U.S.C. 1710, the entities listed in the Attachment to this Order are directed to show cause, within 45 days after the publication of this Order in the **Federal Register**, why the Commission should not cancel their tariffs or portions of tariffs currently on file with the Commission with Worldwide, Asian and South Pacific scope for failure to conform to the requirements of section 8 of the 1984 Act, 46 CFR part 514, and Supplemental Reports Nos. 2, 3, and 4 issued in Docket No. 90–23;

It Is Further Ordered, That a copy of this Order be sent by certified mail to the last known address of the entities listed in the Attachment;

It Is Further Ordered, That this Order be published in the **Federal Register**.

By the Commission.

Joseph C. Polking,

Secretary.

Attachment A

A. Burghart Shipping Co., Inc.
A.W. Fenton Company, Inc., The
AA Forwarding, Inc.
Africa Mid-East Line
African Atlantic Steamship Limited
AFS Freight Management (HK) Ltd.
Air 7 Seas Transport Logistics, Inc.
Air Sea Worldwide Logistics Ltd.
Alaska Cargo Transport, Inc.
Alliance Shippers, Inc.
Allied Pickfords U.S.A., Inc.
Almar International Forwarders, Inc.
Amana Express International, Inc.
American Cargo International, Inc.
American Exhibition Services International, Inc.
American Freight Lines International, Inc.
American International Forwarding, Inc.
American Ocean Freight Services, Inc.
American Orient Forwarding Company
American Overseas Air Freight, Inc.
Aries International, Inc.
Armen Cargo Services, Inc.
Arrowpac, Inc.
ASG Forwarding, Inc.
Assurance International Forwarder, Inc.
Atlas Freight Consolidators, Inc.
Auto Shipping International, Inc.
Bangladesh Shipping Corporation
Benelux Maritime Agencies N.V.
Berry International, Inc.
Blue Eagle Consolidation Services GMBH
Blue Star Pace Ltd.
Boss International, Inc.
Brisley Transport, Ltd.
Bronson and Sandy, Inc.
C.V.S. Enterprises, Inc.
Canal Barge Company, Inc.
Cargo Shippers International, Inc.
Cargo Transport, Inc.
CDM International
Certain Shipping Limited
Chavez Bogdanski Cincinello International, Inc.
Chesapeake Bay Shipping and Warehousing, Inc.
China National Chartering Corporation
China Resources Transportation & Godown Co. Ltd.
Choice Transportation Services, Inc.
Chu Kong Shipping Co., Ltd.
Cizzon International, Inc.
CL Consolidators Services Ltd.
Combi Maritime Corporation
Con-Carriers Ltd.
Con-Trand Services, Inc.

[1] Section (b)(1) of Public Law 102–582 requires all tariffs and essential terms of service contracts to be filed electronically with the Commission. 106 Stat. 4900, 4910–11.

Container Services International, Inc.
Conti Line, Inc.
Corporate World Relocation International, Inc.
Cross Ocean International, Inc.
CWI Container Line, Inc.
D.C. Worldwide Transport Co., Inc.
D.I.F. Inc.
Daiichi Chuco Kisen Kaisha
Dal Farra Company, Inc.
Dallas Shipping Corporation
Damco Maritime Corp.
Danmar Lines, Ltd.
Darrell J. Sekin & Co.
Dragon Shipping Limited
Dyna Transport, Inc.
Dynamic Freight Services Ltd.
Ellerman Lines Plc
Equipment Interchange Discussion Agreement
Ever Strong Services Ltd.
Everbest Container Line, Inc.
Exacta International
Exbo Shipping Company
Exx-Ortz International, Inc.
F.A.R. Freight Services, Inc.
Famous Freight Forwarding (S) Pte Ltd.
Far East Enterprising Co. (H.K.) Ltd.
Fast Cargo U.S. (LA), Inc.
FFS Freight International, Inc.
Fisher Transport, Inc.
Flamingo International, Inc.
Formosa Container Line, Inc.
Fortune Network Ltd.
Freight-Trans International Co., Ltd.
Galaxy Freight Service Ltd.
Gamma Freight Forwarding, Inc.
Geographical Freight Services, Inc.
Global Logistics, Inc.
Golden Fortune Shipping Company Limited
Grace Navigation, Inc.
Grand Express International, Inc.
H. Abbe International, Inc.
H.T. Cargo Incorporated
Hohenstein & Company, Inc.
Hwa-Hsin USA Inc.
I.F.S. Lines, Inc.
Independent Cargo Express, Inc.
Industrial Maritime Carriers, Inc.
Innovative Freighting, Inc.
Inter-Shipping Chartering Co.
Interconex, Inc.
Intermodal Systems Limited
International Link Service Inc.
Intersped Systems Inc.
Islands International Consolidators, Inc.
ISS Express Lines Inc.
ITL Shipping Co., Inc.
JG International
J–Mar Overseas Transport, Inc.
Jagremar Marine, Inc.
Jagro Customs Brokers & International Freight Forwarders, Inc.
Jardine Transport Services (China) Ltd.
John Cassidy & Sons, Inc.
Jose G. Flores, Inc.
Kamden International Shipping, Inc.
Keymost International, Inc.
Kohsho USA, Inc.
Kyowa Shipping Co., Ltd.
Leader Freight System Inc.
Liberty Pacific Searoad Pty Ltd.
Liberty Shipping International Inc.
Logistics International Management Services, Ltd.
Lynden Air Freight, Inc.
Magellan's Navigator, Inc.
Mainfreight International Limited
Makoto Overseas Services Co., Ltd.
Market Pioneer International, Corp.
Matlack International, Inc.
Matrix Consolidators Inc.
Max Gruenhut Gmbh
Mayflower Transit, Inc.
MCC (Mercantile Europe) S.A.
MCC–Mercantile Europe Ltd.
Meisner Enterprises, Inc.
Mercantile Singapore Pte. Ltd.
Mercator Shipping Ltd.
Meridian Worldwide Forwarding
Metzger Und Richner Transport Ag.
Miami Worldwide Forwarders, Inc.
Montgomery Tank Lines, Inc.
Multi-Modal International, Inc.
Naigai Nitto America Inc.
Navix Azuma Container Service Co., Ltd.
Newport Ocean Consolidator Inc.
Nexus International Express, Inc.
NJR Consolidators, Inc.
Norton Line Inc., The
Norvanco International, Inc.
Novo Express International, Inc.
Novocargo USA, Inc.
Ocean Links Intl. USA Inc.
Oceans Development Corporation
OCI Ocean Services, Inc.
Overbruck International Inc.
Pacific Champion Service Corp.
Pacific Forum Line (NZ) Limited
Pacific Ocean Express, Inc.
Pan Ocean Shipping Company, Ltd.
Pangaea Enterprises
Phoenix Shipping 1986, Inc.
Phoenix U.S.A., Inc.
Poler International Travel and Cargo Agency, Inc.
Pro-Speed Shipping, Inc.
Prof. Technology International, Inc.
Profit Cargo Service Co., Ltd.
Pyramid Shipping Inc.
Rail Van, Inc.
Refrigerated Container Carriers Pty, Ltd.
Rose International Inc.
Ross Freight Company, Inc.
Rusflot Shipping Line N.V.
Saga Transport (USA) Inc.
Sagawa World Express, Inc.
Sam Young Sunpak Inc.
Samson Transport Company A/S
Samson Transport Company, Inc.
Sanwa Line Inc.
Sargent, Kenneth E.
SBA Consolidators, Inc.
Sea Cargo International Inc.
Sea Traders Line, Inc.
Sea World Services Inc.
Sea-Link Corporation
Seaborne Lines, Inc.
Seajet Express (USA), Inc.
Selship International LTD.
Sentry Household Shipping, Inc.
Seven C's Transport Inc.
Shipping Services Company, Inc.
Sky Marine International, Inc.
Splosna Plovba P.O.
Steve Zamarripa, Inc.
Strand Freight System Inc.
Supertrans International, Inc.
T M C Line
TDY International Freight Services, Inc.
Thai Maritime Navigation Co. Ltd.
Tyhssen Haniel Logistic Gmbh
TKM Overseas Transport Inc.
Top Harbour Limited
Top Harbour Shipping Ltd.
Trade Air, Inc.
Tradewind Connections, Inc.
Trans-Freight Inc.
Translink Pacific Shipping Limited
Transpacific Tech Ltd.
Trinity Liner Agencies Ltd.
Trust Forwarder & Consolidator, Inc.
U.C.S. Group Inc.
U.C.T International, Inc.
U.S. Consolidators International Corp.
UAL Universal Africa (USA) Lines N.V. (N.A.)
Union Star Line
Unitainer System Forwarder Inc.
United Asiatic Co., Ltd.
United Shipping Agency, Inc.
United Transport Tankcontainer, Inc.
United Van Lines, Inc.
Unitrans, Inc.
Velvet Marine Contractors, Inc.
VEN-American Carriers, Ltd.
VTG Vereinigte Tanklager Und Transportmittel Gmbh GB Tankcontainer
Wing Lee Shipping Co.
World Class Freight, Inc.
World Express Shipping, Transportation and Forwarding Services, Inc.
Zonn Agency

[FR Doc. 94–5093 Filed 3–4–94; 8:45 am]
BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Smoke-Free Workplace

AGENCY: Office of the Assistant Secretary for Health HHSD.

ACTION: Notice.

Tobacco smoking has long been recognized as a major cause of death and disease. The Surgeon General has concluded that tobacco use causes cancer and is an important risk factor for heart disease. Tobacco smoking is estimated to be responsible for in excess of 400,000 deaths per year in the United States

Exposure to Environmental Tobacco Smoke—commonly known as second-hand smoke—also poses a serious health risk. The Government has concluded that exposure to environmental tobacco smoke is responsibile for approximately 3,000 lung cancer deaths each year in nonsmoking adults and impairs the respiratory health of hundreds of thousands of children and adults.

A report issued by the Surgeon General in 1988 states that nicotine, the active drug in tobacco, is a toxic and addictive substance. Environmental tobacco smoke is potentially toxic to those persons who are exposed to it. In view of these facts, the Department of Health and Human Services has

implemented a smoke-free workplace policy for all of its employees.

It is the mission of the Public Health Service to protect and advance the physical and mental health of the American people. PHS fulfills this mission in part by acting to prevent and control the abuse of dangerous and addictive substances (alcohol and drugs) and by coordinating with States, local governments and other Federal agencies to protect the public from exposure to toxic substances. PHS also provides national leadership for the prevention and control of environmentally related health problems. Therefore, while PHS recognizes that many organizations are already providing a smoke-free environment, PHS believes that it is crucially important to the health of the nation to widen the smoke-free workplace practice.

It is the policy of PHS to strongly encourage all recipients of PHS grants to provide a smoke-free workplace and promote the non-use of tobacco products. It is also the policy of PHS to encourage those recipients which already have a smoke-free workplace and promote the non-use of tobacco products to continue such practices.

Consistent with the usage in HHS General Administration Manual Chapter 1–60, dated August 25, 1987, and a memorandum from the Assistant Secretary for Health, dated February 17, 1988, PHS defines the term "smoke-free workplace" to mean office space (including private offices and other work space), laboratory space, patient clinical areas, conference or meeting rooms, corridors, stairways, lobbies, rest rooms, cafeterias, and other public space.

In order to assess the extent to which organizations are already providing a smoke-free environment, the Public Health Service is interested in ascertaining the extent to which PHS grantee organizations currently provide a smoke-free workplace. New and competing continuation grant applications will be modified to request information on whether or not applicant organizations currently provide a smoke-free workplace and/or promote the non-use of tobacco products.

Dated: February 8, 1994.

Philip R. Lee, M.D.,

Assistant Secretary for Health.

[FR Doc. 94–5107 Filed 3–4–94; 8:45 am]

BILLING CODE 4160–17–M

Agency for Toxic Substances and Disease Registry

Board of Scientific Counselors, Agency for Toxic Substances and Disease Registry; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) announces the following committee meeting.

Name: Board of Scientific Counselors, ATSDR.

Times and Dates: 8:30 a.m.–5:30 p.m., April 14, 1994. 8:30 a.m.–3:30 p.m., April 15, 1994.

Place: The Westin Peachtree Plaza Hotel, Confederate Room, Peachtree at International Boulevard, Atlanta, Georgia 30343.

Status: The entire meeting will be open to the public.

Purpose: The Board of Scientific Counselors, ATSDR, advises the Administrator, ATSDR, on ATSDR programs to ensure scientific quality, timeliness, utility, and dissemination of results. Specifically, the Board advises on the adequacy of the science in ATSDR-supported research, emerging problems that require scientific investigation, accuracy and currency of the science in ATSDR reports, and program areas to emphasize and/or to de-emphasize.

Agenda: The agenda will include an update on Superfund reauthorization and will also focus on other issues of concern to ATSDR, including an overview of risk assessment in public health practice; the science base for ATSDR Minimal Risk Levels, Environmental Media Evaluation Guides, and Significant Human Exposure Levels; an overview of ATSDR Health Assessments and discussion on whether they should be more risk based; criteria for evacuation of communities; and the role and expectations of the ATSDR Board of Scientific Counselors.

Written comments are welcome and should be received by the contact person listed below prior to the opening of the meeting.

Contact Person for More Information: Charles Xintaras, Sc.D., Executive Secretary, Board of Scientific Counselors, ATSDR, Mailstop E–28, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone 404/639–0708.

Dated: February 28, 1994.

Elvin Hilyer,

Associate Director for Policy Coordination.

[FR Doc. 94–5112 Filed 3–4–94; 8:45 am]

BILLING CODE 4163–70–M

Centers for Disease Control and Prevention

Method Development for Airborne Mycobacterium Tuberculosis; Meeting

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Method Development for Airborne Mycobacterium Tuberculosis.

Time and Date: 1 p.m.–5 p.m., March 29, 1994.

Place: Alice Hamilton Laboratory, Conference Room C, NIOSH, CDC, 5555 Ridge Avenue, Cincinnati, Ohio 45213.

Status: Open to the public, limited only by the space available.

Purpose: The purpose is to conduct an open meeting for a peer review of a NIOSH project entitled "Method Development For Airborne Mycobacterium Tuberculosis." This project concerns the investigation of proposed sampling and analytical methodology for monitoring exposure to airborne *Mycobacterium* tuberculosis, using molecular biology analytical techniques. Viewpoints and suggestions from industry, labor, academia, other government agencies, and the public are invited.

Contact Person for Additional Information: Millie P. Schafer, Ph.D., NIOSH, CDC, 4676 Columbia Parkway, Mailstop R7, Cincinnati, Ohio 45226, telephone 513/841–4362.

Dated: February 28, 1994.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–5113 Filed 3–4–94; 8:45 am]

BILLING CODE 4163–19–M

Food and Drug Administration

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETING: The following advisory committee meeting is announced:

Joint Meeting of the Antiviral Drugs and Nonprescription Drugs Advisory Committees

Date, time, and place. May 19, 1994, 3:30 p.m., conference rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 3:30 p.m. to 4:30 p.m., unless public participation does not last that long; open committee discussion, 4:30 p.m. to 6 p.m.; Lee L. Zwanziger, Mae Brooks, or Valerie Mealy, Center for Drug Evaluation and Research (HFD–9), Food and Drug

Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

General function of the committees. The Antiviral Drugs Advisory Committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of acquired immune deficiency syndrome (AIDS), AIDS-related complex (ARC), and other viral, fungal, and mycobacterial infections. The Nonprescription Drugs Advisory Committee reviews and evaluates available data concerning the safety and effectiveness of over-the-counter (nonprescription) human drug products for use in the treatment of a broad spectrum of human symptoms and diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committees. Those desiring to make formal presentations should notify the contact person before May 9, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments. Those persons or groups presenting views on this topic at the public hearing before the Commissioner of Food and Drugs, earlier the same day, need not make a second presentation because views presented in the earlier meeting will be taken into consideration in this joint advisory committee meeting.

Open committee discussion. The committees will discuss jointly the issues and concerns relating to over-the-counter availability of acyclovir for the treatment of recurrent genital herpes, taking into consideration the views expressed at the public hearing scheduled earlier the same day. (See a notice of public hearing on the proposed switch of acyclovir from prescription to over-the counter status published elsewhere in this issue of the **Federal Register**.)

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: March 1, 1994.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 94–5129 Filed 3–2–94; 2:55 pm]

BILLING CODE 4160–01–F

[Docket No. 94N–0006]

Proposed Switch of Acyclovir from Prescription to Over-the-Counter Status; Public Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public hearing; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public hearing regarding the proposed over-the-counter (OTC) availability of orally administered acyclovir. The purpose of the hearing is to solicit information from, and the views of, interested persons, including scientists, professional groups, and consumers, on the issues and concerns relating to the proposed OTC availability of acyclovir for the acute and suppressive management of recurrent genital herpes.

DATES: The public hearing will be held on Thursday, May 19, 1994, from 8 a.m. to 3 p.m. Submit written notices of participation and comments by April 29, 1994. Written comments will be accepted until June 20, 1994.

ADDRESSES: The public hearing will be held at the Parklawn Bldg., conference rms. D and E, 5600 Fishers Lane, Rockville, MD 20857. Submit written notices of participation and comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with docket number 94N–0006. Transcripts of the hearing will be available for review at the Dockets Management Branch (address above).

FOR FURTHER INFORMATION CONTACT: Lee L. Zwanziger, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

I. Background

SUPPLEMENTARY INFORMATION: Acyclovir is a synthetic purine nucleoside analogue with in vitro inhibitory activity against herpes simplex viruses 1 and 2 and varicella zoster virus. An oral formulation of acyclovir was approved in 1985 with initial indications for the treatment of first episode and recurrent genital herpes. Since 1985, FDA has also approved the oral formulation of acyclovir for the treatment of herpes zoster and chickenpox, and for the suppression of recurrent genital herpes.

Burroughs-Wellcome has discussed publicly its intention to seek approval for a supplemental new drug application (NDA) to switch acyclovir from prescription to OTC status (e.g., at the July 1993 International Herpesvirus Workshop). Burroughs-Wellcome has also discussed publicly that this application is currently under review at FDA (e.g., at the October 1993 Interscience Conference on Antimicrobial Agents and Chemotherapy).

The proposed switch would apply only to 200-milligram capsules with proposed indications for the acute and suppressive management of recurrent genital herpes. If the supplemental NDA is approved, acyclovir would be the first systemically administered antimicrobial agent available without prescription in the United States, and it would also be the first OTC product for the treatment of a sexually transmitted disease.

II. Scope of the Hearing

In light of the many complex scientific and public health issues raised by this application, FDA is soliciting broad public participation and comment on the potential merits and disadvantages of this proposed switch. The agency encourages investigators with information relevant to this switch, as well as other interested persons, to respond to this notice. Examples of issues that are of interest to the agency include the following: (1) The implications of unrestricted availability of acyclovir for the transmission and asymptomatic shedding of herpes simplex virus; (2) the incidence and clinical significance of acyclovir-resistant herpes simplex virus; (3) the ability of patients to self-diagnose genital herpes (i.e., without consultation with a physician); (4) the potential for misuse for unapproved OTC indications (such as for chickenpox, shingles, and other viral illnesses); (5) the potential for adverse effects on the fetus; and (6) general issues of safety (and the incidence of adverse drug events) during widespread, unrestricted use. In addition, FDA is actively seeking the views of professional and consumer groups regarding the implications of this application for their constituent populations.

Elsewhere in this issue of the **Federal Register**, FDA is announcing a joint meeting of the Antiviral and the Nonprescription Drugs Advisory Committees under 21 CFR part 14. This meeting will allow FDA to receive comments from the advisory committee members as well as the general public. Those persons or groups presenting views at the public hearing before the Commissioner need not make a second presentation at the advisory committee meeting, because views presented in the earlier hearing will be taken into consideration in the joint advisory committee meeting.

III. Notice of Hearing Under 21 CFR Part 15

The Commissioner of Food and Drugs is announcing that the public hearing will be held in accordance with 21 CFR part 15. The presiding officer will be the Commissioner of Food and Drugs or his designee. The presiding officer will be accompanied by a panel of Public Health Service employees with the relevant expertise.

Persons who wish to participate in the part 15 hearing must file a written notice of participation with the Dockets Management Branch (address above) prior to April 29, 1994. To ensure timely handling, any outer envelope should be clearly marked with the docket number 94N–0006 and the statement "Acyclovir Hearing." Groups should submit two copies. The notice of participation should contain the person's name, address, telephone number, affiliation if any, brief summary of the presentation, and approximate amount of time requested for the presentation. The agency requests that interested persons and groups having similar interests consolidate their comments and present them through a single representative. FDA will allocate the time available for the hearing among the persons who file notices of participation as described above. If time permits, FDA may allow interested persons attending the hearing who did not submit a written notice of participation, in advance, to make an oral presentation at the conclusion of the hearing.

After reviewing the notices of participation and accompanying information, FDA will schedule each appearance and notify each participant by telephone of the time allotted to the person and the approximate time the person's oral presentation is scheduled to begin. The hearing schedule will be available at the hearing. After the hearing, it will be placed on file in the Dockets Management Branch under the docket number 94N–0006.

Under § 15.30 the hearing is informal, and the rules of evidence do not apply. No participant may interrupt the presentation of another participant. Only the presiding officer and panel members may question any person during or at the conclusion of their presentation.

Public hearings, including hearings under part 15, are subject to FDA's guideline (21 CFR part 10, Subpart C) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings. Under § 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants. The hearing will be transcribed as stipulated in § 15.30(b). Orders for copies of the transcript can be placed at the meeting or through the Dockets Management Branch (address above).

Any handicapped persons requiring special accommodations in order to attend the hearing should direct those needs to the contact person listed above.

To the extent that the conditions for the hearing, as described in this notice, conflict with any provisions set out in part 15, this notice acts as a waiver of those provisions as specified in § 15.30(h).

To permit time for all interested persons to submit data, information, or views on this subject, the administrative record of the hearing will remain open following the hearing until June 20, 1994. Persons who wish to provide additional materials for consideration should file these materials with the Dockets Management Branch (address above) by June 20, 1994.

Dated: March 1, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–5130 Filed 3–2–94; 2:55 pm]

BILLING CODE 4160–01–F

National Institutes of Health

Prospective Grant of Exclusive Patent License

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice in accordance with 15 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes

of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license in a limited field of use to practice the inventions embodied in U.S. Patent 5,262,359 (formerly U.S. Patent Application 07/611,088), entitled "Method of Propagating Human Paramyxoviruses Using Continuous Cell Lines" to Baxter Diagnostics Inc.—Bartels Division having a place of business at Bellevue, Washington. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license will be for the field of reagents for in vitro diagnostics. It 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, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

These inventions relate to cell lines (NCI–H292) useful for propagating difficult to grow viruses such as parainfluenza and mumps. The availability of U.S. Patent Application 07/611,088 for licensing was published in the April 3, 1991 edition of the **Federal Register.**

ADDRESSES: Requests for a copy of the above identified patent, inquiries, comments and other materials relating to the contemplated license should be directed to: Mr. Mark Hankins, J.D., Office of Technology Transfer, National Institutes of Health, Box OTT, Bethesda, Maryland 20892 (telephone: (301) 496–7735; FAX: (301) 402–0220). Properly filed competing applications for a license filed in response to this notice will be treated as objections to the grant of the contemplated license. Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer within sixty (60) days of this notice will be considered.

Dated: February 18, 1994.

Donald P. Christoferson,

Acting Director, Office of Technology Transfer.

[FR Doc. 94–5087 Filed 3–4–94; 8:45 am]

BILLING CODE 4140–01–M

Prospective Grant of Exclusive Patent License

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice in accordance with 15 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license in a limited field of use to practice the inventions embodied in U.S. Patent Application 07/965,916, entitled "Immunization Against Neisseria Gonorrhoea" to Virus Research Institute, Inc. having a place of business at Cambridge, Massachusetts. The patent application has been continued, with additional data and claims, in U.S. Patent Application 08/145,682, entitled "Immunization Against Neisseria Gonorrhoea and Neisseria Meningitides." The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license will be for the field of vaccines against Neisseria Gonorrhoea. It 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, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

These inventions relate to novel immunization methods and compositions useful in protecting against Neisseria Gonorrhoea and Neisseria Meningitides infections. In particular, the invention claims parenteral component priming-oral immunization methods and compositions of matter useful in practicing these methods.

The availability of U.S. Patent Application 07/965,916 for licensing was published in the April 15, 1993 edition of the **Federal Register.** The availability of U.S. Patent Application 08/145,682 for licensing has not previously been published.

ADDRESSES: Requests for a copy of the above identified patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Mr. Mark Hankins, J.D., Office of Technology Transfer, National Institutes of Health, Box OTT, Bethesda, Maryland 20892 (telephone: (301) 496–7735; FAX: (301) 402–0220). A signed confidentiality agreement will be required to receive copies of the patent application. Properly filed competing applications for a license filed in response to this notice will be treated as objections to the grant of the contemplated license. Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer within sixty (60) days of this notice will be considered.

Dated: February 18, 1994.

Donald P. Christoferson,

Acting Director, Office of Technology Transfer.

[FR Doc. 94–5086 Filed 3–4–94; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the General Counsel

[Docket No. N–94–3728; FR–3670–N–02]

Submission of Proposed Information Collection to OMB; Technical Correction

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice—technical correction.

SUMMARY: On March 3, 1994 (59 FR 10144), the Department published a Notice of Submission of Proposed Information Collection to OMB, which omitted the comment due date. This notice provides that the comment due date is March 14, 1994.

DATES: Comment due date: March 14, 1994 (for Notice of Submission of Proposed Information Collection to OMB published at 59 FR 10144.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal, the text of which appears at 59 FR 10144 (March 3, 1994). Comments should refer to the proposal by name and should be sent to:

Joseph F. Lackey, Jr., OMB Desk, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Monica Hilton Sussman, Deputy General Counsel, (Finance and Regulations), GD.

FOR FURTHER INFORMATION CONTACT: Kay Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development has submitted to OMB, for expedited processing, an information collection package with respect to a guide format which specifies the components of a legal opinion required

by the Department in connection with the insurance of mortgage loans upon multifamily rental projects and health care facilities under Title II of the National Housing Act, 12 U.S.C. 1702, *et seq.* The **Federal Register** Notice of Submission of Proposed Information Collection to OMB for this purpose was published on March 3, 1994 (59 FR 10144), but omitted the comment due date of March 14, 1994. This Notice corrects the Notice of Submission of Proposed Information Collection to OMB at 59 FR 10144 by providing the omitted comment due date of March 14, 1994.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507, Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 3, 1994.

Myra L. Ransick,

Assistant General Counsel for Regulations.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–942–5700–10]

Change in Public Room Hours

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice changes the hours the Public Room of the Utah State Office will be open for filing of applications and other documents and inspection of records. The office hours will be 8 a.m. to 4 p.m., Monday through Friday, with the exception of those days when the office may be closed because of a national holiday or by Presidential or other administrative order.

EFFECTIVE DATE: May 6, 1994.

ADDRESSES: Bureau of Land Management, 324 South Main, P.O. Box 45155, Salt Lake City, Utah 84145–0155.

FOR FURTHER INFORMATION CONTACT: M. Scott Packer, BLM Utah State Office, P.O. Box 45155, Salt Lake City, UT 84145–0155, (801) 539–4126.

G. William Lamb,

Associate State Director.

[FR Doc. 94–5050 Filed 3–4–94; 8:45 am]

BILLING CODE 4310–DQ–M

[OR–135–4191–03; GP4–048]

Availability of Draft Lamefoot Mine Environmental Impact Statement Supplement to the Kettle River Key Project Expansion FEIS

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the draft Lamefoot Mine environmental impact statement supplement to the Kettle River Key Project Expansion FEIS.

SUMMARY: The proposed Lamefoot Mine project is located in north central Washington in Ferry County on the western slope of the Kettle River Mountain Range seven miles northeast of the town of Republic. The Proposed Action consists of extracting gold ore by a long hole open stoping mining technique, loading the ore into underground trucks and transporting it to the surface, transferring it to highway trucks, and hauling it to the existing Key Mill via State and county roads approximately 9 miles distant. The ore will be processed by the conventional carbon-in-leach method. The processed ore will be stored at an existing tailings impoundment located on private land.

Waste rock will be deposited in temporary waste storage piles at the Lamefoot site. Upon completion of the commercial mining phase, the waste rock will be hauled underground and used as back fill to provide ground support and reduce impacts on groundwater quality.

Reclamation plans include the use of topsoil, seeding and if necessary fertilization, to minimize erosion until vegetation has been successfully established. Reclamation objective is to restore wildlife habitat lost or disturbed as a result of the project. The proposed Action is BLM's preferred alternative.

Copies of the Draft EISS will be available for review at the libraries in Coleville, Republic, Okanogan, Tonasket and Spokane, Washington. In addition, copies will also be available for review in the following BLM locations:

Office of Public Affairs, Main Interior Building, room 5600, 18th and C Streets, NW., Washington, DC 20240.

Public Affairs Office, 1300 NE. 44th Avenue, Portland, Oregon 97213.

Spokane District Office, East 4217 Main Avenue, Spokane, Washington 99202.

Wenatchee Resource Area, 1133 N. Western Avenue, Wenatchee, WA 98801.

At the following Forest Service locations:

Colville National Forest, 695 S. Main Street—Federal Building, Colville, WA 99114.

Republic Ranger District, P.O. Box 468, 180 N. Jefferson, Republic, WA 99166.

Tonasket Ranger District, P.O. Box 466, Tonasket, WA 98855.

Okanogan National Forest, P.O. Box 950, 1240 2nd Avenue S., Okanogan, WA 98840.

DATES: Written comments on the Draft EISS must be submitted or postmarked no later than May 6, 1994. A public meeting will be held in Republic, Washington at the Frontier Inn on April 12, 1994 from 4 p.m. to 7 p.m.

ADDRESSES: Written comments on the document should be sent to Ann Aldrich, Border Resource Area Manager, Spokane District, East 4217 Main Avenue, Spokane, Washington 99202.

FOR FURTHER INFORMATION CONTACT: Ann Aldrich, Border Resource Area Manager, Spokane District Office, E. 4217 Main Avenue, Spokane, Washington 99202.

SUPPLEMENTARY INFORMATION: Three alternatives to the Proposed Action were analyzed for the Lamefoot Project. Alternative 1 is the No Action Alternative under which Echo Bay would not receive approval to develop the Lamefoot Project and would be required to carry out reclamation in accordance with the conditions specified in the approved Exploration Plan of Operations. Surface disturbance associated with the exploration/development program and existing surface facilities would not be increased.

Alternative 2 is an alternate method for introducing back fill materials to the underground workings. Drop passes at the base of the back fill borrow area would allow underground access to the workings without crossing the Wolfe Camp Road. Front end loaders would dump back fill materials into the drop pass, by a grated loading chute, and into a truck. Following truck loading, back fill materials would be hauled down an access ramp to the underground workings and placed as described in the Proposal.

Alternative 3 is an alternate ore transportation route utilizing Highway 21 and the Fish Hatchery Road. This route would provide a shorter haul distance than the proposed Old Kettle Falls Road (formerly the Cooke Mountain Road) route. However, local residents have expressed concerns about increased noise, dust, and traffic along the Fish Hatchery Road if it is used for mine-related traffic.

Public participation has occurred throughout the RMP process. A Notice of Intent was filed in the **Federal Register** in May 1994. An open house was held in Republic, Washington on May 20, 1994 and mailings were conducted to solicit comments and ideas. Comments presented throughout the process have been considered in the Draft EISS.

Authority: 40 CFR 1500; 43 CFR 3809.

Joseph K. Buesing,

District Manager.

[FR Doc. 94–5115 Filed 3–4–94; 8:45 am]

BILLING CODE 4310–33–M

Fish and Wildlife Service

Availability of Finding of No Significant Impact and Environmental Assessment and Receipt of an Application for an Incidental Take Permit for a Residential Development in Baldwin County, Alabama

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The owner/developer of a mixed single and multiple family residential development known as Caribe, Caribe East and Caribe West (Caribe) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act (Act). The proposed permit would authorize for a period of 30 years the incidental take of an endangered species, the Perdido Key beach mouse, *Peromyscus polionotus trissyllepsis* incidental to construction of Caribe on suitable habitat located north of Alabama Highway 182, at the westernmost end of Perdido Key, Alabama.

The Service also announces the availability of an environmental assessment (EA) and habitat conservation plan (HCP) for the incidental take application. Copies of the EA or HCP may be obtained by making a request to the Regional Office address below. The Service is soliciting data on *Peromyscus polionotus trissyllepsis* in order to assist in the requirement of the intra-Service consultation. This notice also advises the public that the Service has made a preliminary determination that issuing the incidental take permit is not a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969, as amended. The Finding of No Significant Impact is based on information contained in the EA and HCP. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act Regulations (40 CFR 1506.6).

DATES: Written comments on the permit application, EA, and HCP should be received on or before April 6, 1994.

ADDRESSES: Persons wishing to review the application, HCP and EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection, by appointment, during normal business hours at the Regional Office, or the Jackson Mississippi Field Office. Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Please reference permit under PRT–787698 in such comments:

Assistant Regional Director (ES), U.S. Fish and Wildlife Service, 1875 Century Boulevard, suite 200, Atlanta, GA 30345, (telephone 404/679–7110, FAX 404/679–7081)

Field Supervisor, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, suite A, Jackson, Mississippi 39213 (telephone 601/965–4900, FAX 601/965–4340).

FOR FURTHER INFORMATION CONTACT: Wendell Neal at the above Jackson, Mississippi, Field Office, or Rick G. Gooch at the above Atlanta, Georgia, Regional Office.

SUPPLEMENTARY INFORMATION: Peromyscus polionotus trissyllepsis is a subspecies of the common oldfield mouse Peromyscus polionotus and is restricted to the dune systems of the Gulf Coast of Alabama. The known current range of Peromyscus polionotus trissyllepsis is from Perdido Key, Alabama, to Pensacola Bay, Florida. The sand dune systems inhabited by this species are not uniform; several habitat types are distinguishable. The depth of the habitat from the beach inland varies depending on the configuration of the sand dune system and the vegetation. Generally, these habitat zones are considered as primary dune (dunes immediately fronting the beach) supporting sea oats and other widely scattered grasses, an interdune area consisting of other grasses, and sedges, and a secondary dune zone supporting small trees and shrubs. Carribe proposes to construct a mixed single/multiple family residential development on ± 28 acres of land located north of Alabama Highway 182, at the westernmost end of Perdido Key, Baldwin County, Alabama. Caribe is immediately north of and across the highway from Gulf State Park (Perdido Unit), a designated critical habitat of Peromyscus polionotus trissyllepsis. Initial construction of roads and utilities and subsequent development of individual homesites and community use facilities may result in death of or injury to Peromyscus polionotus trissyllepsis incidental to the carrying out of these otherwise lawful activities. Habitat alteration associated with property development and secondary impacts to adjacent critical habitat (e.g., increased human foot-traffic, and introduction of house cats and house mice) may reduce the availability of feeding, shelter, and nesting habitat or harass extant Peromyscus polionotus trissyllepsis populations.

The EA considers the environmental consequences of three alternatives. The no action alternative may result in some loss of habitat for Peromyscus polionotus trissyllepsis and exposure of the applicant under section 9 of the Act. This action is inconsistent with the purposes and intent of Section 10 of the Act. The delisting of the Peromyscus polionotus trissyllepsis as an alternative was rejected as biologically unjustifiable. Modification of the HCP as an alternative was in part accommodated during the pre-application phase through negotiations between the Caribe and the Service. The HCP attached with the permit is modified to the maximum extent practicable. The proposed action alternative is issuance of the incidental take permit. This provides for restrictions of construction activity, placement of berms and fences, controls on residential outdoor lighting, storage and maintenance of trash and garbage in scavenger proof containers, establishment of a Gulf State Park Management Fund to enhancement management of the adjacent critical habitat, and distribution of educational materials to construction personnel and residents. The HCP also provides a funding mechanism for these mitigation measures.

Dated: February 14, 1994.

Warren T. Olds, Jr.,

Assistant Regional Director, Ecological Services.

[FR Doc. 94–5132 Filed 3–4–94; 8:45 am]

BILLING CODE 4310–55–M

Managing Migratory Bird Subsistence Hunting in Alaska; Proposed Strategy for Regulating the Spring and Summer Taking of Migratory Birds in Alaska for Subsistence Purposes

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of revised draft environmental assessment.

SUMMARY: This Notice is to inform the public that the U.S. Fish and Wildlife Service (Service) has revised and is reissuing the draft environmental assessment (EA) evaluating alternatives for resolving the problem of ongoing

spring and summer migratory bird subsistence hunting. Hunting in Alaska occurs during the closed period specified by the 1916 Convention Between the United States and Great Britain for the Protection of Migratory Birds (Convention). This Convention was executed by Great Britain on behalf of Canada, and is referred to in this Notice and the EA as the U.S.-Canada Convention, or simply the "Convention." The revised draft EA, which tentatively selected a strategy of modifying the Convention to allow a regulation hunt during the closed period, is available from the Service upon request at either the addresses provided below (See **ADDRESSES:** and/or **FOR FURTHER INFORMATION CONTACT:**).

DATES: Comments on this Notice must be received by April 21, 1994.

ADDRESSES: Comments regarding this Notice should be addressed to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, 634 ARLSQ, 1849 C St., NW., Washington, DC 20240, or Regional Director (MBC), Region 7, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, AK 99503. Comments received on this Notice will be available for public inspection during normal business hours in Room 634 Arlington Square Building, 4401 No. Fairfax Drive, Arlington, VA 22203, or, for those comments originating within Alaska, 3rd Floor, room 3387, 1011 Tudor Road, Anchorage, Alaska 99503.

FOR FURTHER INFORMATION CONTACT: Dr. Keith A. Morehouse, Staff Specialist, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, 634 ARLSQ, 1849 C St., NW., Washington, DC 20240 (703/358–1714), or Mr. Robin West, Migratory Bird Coordinator, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, AK 99503 (907/786–3423).

SUPPLEMENTARY INFORMATION: Subsistence hunting of migratory birds for cultural and nutritional purposes occurs in the far northern areas of Alaska and Canada as a customary and traditional activity during what is otherwise the closed period, between March 10 and September 1. (As used herein, and in the EA, subsistence hunting, unless otherwise noted, means spring and summer harvest of migratory birds, not other subsistence activities occurring in Alaska and Canada.) Currently, this closed period is required by the Convention and the Migratory Bird Treaty Act of 1918 (16 U.S.C. 703 *et seq.*), which implements the terms of the Convention. Apparently, the framers of the Convention were aware of migratory bird subsistence hunting activity but unaware of the extent to which it was needed and practiced by far northern rural peoples. Thus, the Convention provides inadequately for this particular subsistence use, with the result that much of the current subsistence hunting activity is illegal. However, restricting subsistence hunting to a time period outside of that in which birds are available neither provides equitable access to the resource nor accommodates customary and traditional uses. Because the Service recognizes the legitimate need for equitable access to the migratory bird resource for subsistence purposes, regulatory strategies have been under evaluation which would bring about successful resolution of the problem.

The Service's completed revised draft EA addresses the problem of illegal subsistence hunting of migratory birds in Alaska, and tentatively selects strategy for resolving it. This revised draft EA evaluates five alternatives for dealing with regulation of migratory bird subsistence hunting, which are: (1) Take no action (status quo) (2) expand the existing base of cooperative agreements; (3) enforce the current terms of the Convention; (4) modify the Convention to allow subsistence take; and (5) modify the Migratory Bird Treaty Act to allow subsistence take, without modifying the Convention. The Service's preliminarily identified preferred alternative is for a modified Convention that allows a regulated harvest during a portion, but not all, of the currently closed period (Item 4, above). The revised EA also identifies "action modifiers" which could be used to further specify the course the Service would take in order to bring about a regulated migratory bird subsistence hunt. The "action modifiers" include such factors as who in Alaska would be able to participate, in what areas, what use could be made of birds and byproducts, which bird species' eggs would be eligible for harvest and other management option constraints that would be imposed upon users.

On Friday, August 13, 1993, the Service published the initial Notice of Availability of the draft EA in the **Federal Register** (58 FR 43119). The comment period for the first draft of the EA closed on October 12, 1993. Many comments were provided to the Service within the comment period specified, and many were received after the comment period had closed. The Service has accepted all of the letters of comment received to date on the revised EA, and has factored these views into revisions of the text and other features of the EA. In addition, the comment views that represent the more salient issues, have been addressed in the Responses provided in Appendix E of the EA.

During the course of the comment period that closed on October 12, 1993, and since, the Service received 54 comments on the EA; 51 of these comments are from outside the Service. One of the most common comments received was a request to expand the EA to incorporate additional materials on such subjects as the migratory bird subsistence hunting situation in Canada and more detailed information on the demographics and harvest situation in Alaska. The Service is acceding to the request for a second draft and has made many modifications and improvements in the EA document that are responsive to the public's requests.

The Service invites comments on the revised draft EA. Comments provided on the revised EA will enable the Service to evaluate its selection of a strategy to resolve the problem. The final decision on selection of a strategy will be provided to the public in the Service's final Notice of Record of Decision, which will be published in the **Federal Register**.

Dated: March 2, 1994.

Richard N. Smith,

Director, Fish and Wildlife Service.

[FR Doc. 94–5102 Filed 3–4–94; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Acadia National Park Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. Ap. 1, Sec. 10), that the Acadia National Park Advisory Commission will hold a meeting on Monday, April 4, 1994.

The Commission was established pursuant to Public Law 99–420, Sec. 103. The purpose of the commission is to consult with the Secretary of the Interior, or his designee, on matters relating to the management and development of the park, including but not limited to the acquisition of lands and interests in lands (including conservation easements on islands) and termination of rights of use and occupancy.

The meeting will convene at the Town Gymnasium, Winter Harbor, Maine, at 1 p.m. to consider the following agenda:

1. Review and approval of minutes from the meeting held December 6, 1994.
2. Report of the Conservation Easement Subcommittee.
3. Report of the Acquisition Subcommittee.

4. Superintendent's report.
5. Public comments.
6. Proposed agenda and date of next Commission meeting.

The meeting is open to the public. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the Superintendent at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from the Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, Maine 04609, tel: (207) 288–3338.

Dated: February 28, 1994.

John C. Reed,

Acting Regional Director.

[FR Doc. 94–5046 Filed 3–4–94; 8:45 am]

BILLING CODE 4310–70–P

Cape Cod National Seashore Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1, Section 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held on Thursday, March 24, 1994.

The Commission was reestablished pursuant to Public Law 99–349, Amendment 24. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of the Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The Commission members will meet at 1 p.m. at Park Headquarters, Marconi Station for their regular business meeting which will be held for the following reasons:

1. Adoption of Agenda.
2. Approval of Minutes of Previous Meeting.
3. Reports of Officers.
4. Old Business.
5. Superintendent's Report.
6. Mission and Vision Statements.
7. Nauset Light Relocation.
8. Public Use Survey.
9. New Business.
10. Agenda for next meeting.
11. Date for next meeting.
12. Communications/Public Comment.
13. Adjournment.

The meeting is open to the public. It is expected that 15 persons will be able to attend the meeting in addition to the Commission members.

Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the park superintendent at least seven days prior to the meeting. Further information concerning the meeting may be obtained from the Superintendent, Cape Cod National Seashore, So. Wellfleet, MA 02663.

Dated: February 28, 1994.

John C. Reed,

Acting Regional Director.

[FR Doc. 94–5047 Filed 3–4–94; 8:45 am]

BILLING CODE 4310–70–P

Missouri National Recreational River Advisory Group; Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule for the forthcoming meeting of the Missouri National Recreational River Advisory Group. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

MEETING DATE AND TIME: Wednesday, March 30, 1994; 1:30 p.m. until 4:30 p.m.

ADDRESSES: Upper Elkhorn Natural Resources District, 301 N. Harrison (Highway 281), O'Neill, Nebraska.

The agenda topics for the meeting consist of an update on the status of the Missouri Recreational River General Management Plan presented by the National Park Service including draft management and draft boundary alternatives; discussion and advisory group response; the opportunity for public comment; and a proposed agenda, date, time, and location for the next meeting.

The meeting is open to the public. Interested persons may make oral/written presentation to the commission or file written statements. Requests for time for making presentations may be made to the Superintendent prior to the meeting or to the Chair at the beginning of the meeting.

The meeting will be recorded for documentation and a summary in the form of minutes will be transcribed for dissemination. Minutes of the meeting will be made available to the public after approval by the commission members. Copies of the minutes may be requested by contacting the Superintendent. An audio tape of the meeting will be available at the headquarters office of the Niobrara/Missouri National Scenic Riverways in O'Neill, Nebraska.

SUPPLEMENTARY INFORMATION: The advisory commission was established by the law that established the Missouri National Recreational River, Public Law 102–50. The purpose of the group, according to its charter, is to advise the Secretary of the Interior on matters pertaining to the development of a management plan, and management and operation of the recreational river. The Missouri National Recreational River is the 39-mile free flowing segment of the Missouri from Fort Randall Dam to the vicinity of Springfield in South Dakota.

FOR FURTHER INFORMATION CONTACT: Warren Hill, Superintendent, Niobrara/Missouri National Scenic Riverways, P.O. Box 591, O'Neill, Nebraska 68763–0591, 402–336–3970.

Dated: February 23, 1994.

F.A. Calabrese,

Acting Regional Director, Midwest Region.

[FR Doc. 94–5045 Filed 3–4–94; 8:45 am]

BILLING CODE 4310–70–P

Native American Graves Protection and Repatriation Review Committee: Meeting

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of meeting of the Native American Graves Protection and Repatriation Review Committee.

Notice is hereby given in accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix (1988), that a meeting of the Native American Graves Protection and Repatriation Act Review Committee will be held on May 12, 13, and 14, 1994, in Rapid City, SD. The Committee will meet at the Hilton Inn, 445 Mount Rushmore Road, Rapid City, SD. Meetings will begin each day at 8:30 a.m. and conclude not later than 5:00 p.m.

The Native American Graves Protection and Repatriation Act Review Committee was established by Public Law 101–601 to monitor, review, and assist in implementation of the inventory and identification process and repatriation activities required under the statute. The matters to be discussed at this meeting include the status of the inventory and identification process conducted under sections 5 and 6 of the statute and the development of regulations implementing the statute, particularly sections reserved for civil penalties and a sample inventory.

The Committee also is soliciting recommendations from members of the public regarding: 1) the disposition of culturally unidentifiable human remains in museum or Federal collections; and 2) the disposition of unclaimed human remains and cultural items from Federal or tribal lands.

Culturally unidentifiable human remains are those in museum or Federal

agency collections for which, following the completion of inventories by November 16, 1995, no lineal descendants or culturally affiliated Indian tribe has been determined. Unclaimed human remains and cultural items are those intentionally excavated or inadvertently discovered on Federal or tribal lands after November 16, 1990, for which, after following the process outlined in section 3 of the statute (25 U.S.C. 3002), no lineal descendant or Indian tribe has made a claim. The Committee is responsible for recommending specific actions for developing a process for disposition of unidentified human remains and unclaimed human remains and cultural items.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Persons will be accommodated on a first-come, first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with Dr. Francis P. McManamon, Departmental Consulting Archeologist.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact Dr. Francis P. McManamon, Departmental Consulting Archeologist, Archeological Assistance Division, National Park Service, P.O. Box 37127–suite 210, Washington, D.C. 20013–7127, Telephone (202) 343–4101. Draft summary minutes of the meeting will be available for public inspection about eight weeks after the meeting at the office of the Departmental Consulting Archeologist, room 210, 800 North Capital Street, Washington, D.C.

Dated: February 28, 1994.

Francis P. McManamon,

Departmental Consulting Archeologist andChief, Archeological Assistance Division.

[FR Doc. 94–5161 Filed 3–4–94; 8:45 am]

BILLING CODE 4310–70–F

Sudbury, Assabet and Concord Rivers Study Committee; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App. 1 § 10), that there will be a meeting of the Sudbury, Assabet and Concord Rivers Study Committee on Thursday, March 24, 1994.

The Committee was established pursuant to Public Law 101–628. The purpose of the Committee is to consult with the Secretary of the Interior and to advise the Secretary in conducting the study of the Sudbury, Assabet and Concord River segments specified in Section 5(a)(110) of the Wild and Scenic Rivers Act. The Committee shall also advise the Secretary concerning management alternatives, should some or all of the river segments studied be found eligible for inclusion in the National Wild and Scenic Rivers System.

The meeting will be held at 7:30 p.m. at the Sudbury Town Hall, in Sudbury, MA. Driving directions are as follows: Sudbury Town Hall is located on the north side of Route 27, east of the Rte. 27/Concord Road intersection. From the east, take Rte. 27 west from Route 20 in Wayland. Town Hall is on the right approx. 1.5 mile past the Sudbury River. From the north, take Concord Rd. or Pantry Brook Rd. south off Rte. 117. Turn left at Rte. 27. Town Hall is on the left just past the intersection.

The agenda for the meeting will be:

I. Welcome and introductions, approval of minutes from 1/27/94 meeting.
II. Brief questions and comments from public.
III. Subcommittee Reports—Subcommittee Chairs.
  A. Water Resources Subcommittee: Water Resources Study and Recreation Task Force.
  B. River Conservation Planning Subcommittee.
  C. Public Participation Subcommittee.
IV. Issues of Local Concern.
V. Opportunity for public questions and comments.
VI. Other Business.
  A. Next meeting dates and locations.

Interested persons may make oral/written presentations to the Committee during the business meeting or file written statements. Further information concerning the meeting may be obtained from Cassie Thomas, Planner, National Park Service, 15 State Street, Boston, MA 02109 or call (617) 223–5014.

Dated: February 28, 1994.

John C. Reed,

Acting Regional Director.

[FR Doc. 94–5048 Filed 3–4–94; 8:45 am]

BILLING CODE 4310–70–P

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before February 26, 1994. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by March 22, 1994.

Carol D. Shull,

Chief of Registration, National Register.

ARIZONA

Maricopa County

Hieroglyphic Canyon Site, Address Restricted, Apache Junction vicinity, 94000269

COLORADO

Denver County

US National Bank, 817 17th St., Denver, 94000264

Jefferson County

Quaintance Block, 805 13th St., Golden, 94000261

IDAHO

Idaho County

Carey Dome Fire Lookout, 9 mi. N of USFS Burgdorf Guard Station, Burgdorf vicinity, 94000268

Chinese Cemetery, 0.5 mi. NW of Warren Wagon Rd. at Bemis Cr., Warren vicinity, 94000270

Warren Guard Station, Building 1206, Address Restricted, Warren vicinity, 94000271

IOWA

Linn County

Marion Carnegie Public Library, 1298 7th Ave., Marion, 94000260

MASSACHUSETTS

Essex County

Salem Willows Historic District, Roughly, Columbus, Bay View, Beach and Fort Aves., Salem, 94000265

NEW YORK

New York County

Parker, Charlie, House, 151 Charlie Parker Pl. (Avenue B), New York, 94000262

OHIO

Belmont County

Belleview Heights, 65100 Candlewick Ln., Belaire, 94000259

Delaware County

Crist Tavern Annex—Millworkers Boarding House (Historic Mill-Related Resources of Delaware and Liberty Townships MPS), 2966 Olentangy River Rd., Delaware vicinity, 94000277

SOUTH CAROLINA

Richland County

Simkins, Modieska Monteith, House, 2025 Marion St., Columbia, 94000263

TEXAS

Harris County

Heyne, Fred J., House, 220 Westmoreland Ave., Houston, 94000266

UTAH

Millard County

Desert Experimental Range Station Historic District, 2.5 mi. N of US 21, 42 mi. W of Milford, Milford vicinity, 94000267

WYOMING

Albany County

Centennial Work Center (Depression-Era USDA Forest Service Administrative Complexes on Medicine Bow NF MPS), Off WY 130 NW of Centennial, Medicine Bow NF, Centennial vicinity, 94000273

Keystone Work Center (Depression-Era USDA Forest Service Administrative Complexes on Medicine Bow NF MPS), W of Albany, Medicine Bow NF, Albany vicinity, 94000275

Carbon County

Brush Creek Work Center (Depression-Era USDA Forest Service Administrative Complexes on Medicine Bow NF MPS), WY 130 E of Saratoga, Medicine Bow NF, Saratoga vicinity, 94000276

Converse County

La Prele Work Center (Depression-Era USDA Forest Service Administrative Complexes on Medicine Bow NF MPS), SW of Douglas, Medicine Bow NF, Douglas vicinity, 94000272

[FR Doc. 94-5121 Filed 3-4-94; 8:45 am]

BILLING CODE 4310-70-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-33685; File No. SR-MCC-93-09]

Self-Regulatory Organizations; Notice of Proposed Rule Change by Midwest Clearing Corporation Relating to the Definition of Settlement Price

February 25, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 23, 1993, the Midwest Clearing Corporation ("MCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared mainly by MCC, a self-regulatory organization ("SRO"). The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will amend MCC's definition of the term "settlement price," which is set forth in Article I, Rule 1 of MCC's Rules. For text of rule change, see Exhibit A.

[1] 15 USC 78s(b)(1) (1988).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MCC has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule filing is to amend the definition of the term settlement price, which is set forth in Article I, Rule 1 of MCC's Rules. The term settlement price, as used in MCC's Rules, is used to determine daily mark-to-market credits or payments, as well as to value settling trades. The definition of settlement price must be uniform among clearing corporations in order for the interfaces between them to function smoothly in the settlement of transactions. This proposed change, in conjunction with a recently proposed change to the rules of the National Securities Clearing Corporation ("NSCC"), will conform MCC's definition of settlement price to actual practice and to NSCC's definition.

MCC believes that the proposed rule change is consistent with Section 17A of the Act in that it will facilitate the prompt and accurate clearance and settlement of securities transactions.[2]

(B) Self-Regulatory Organization's Statement on Burden on Competition

MCC believes that no burden will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

MCC has neither solicited nor received any comments on this rule proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section and at the principal office of MCC. All submissions should refer to File No. SR-MCC-93-09 and should be submitted by March 28, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

Exhibit A

Additions Are Italicized; Deletions Are [Bracketed]

Article I. Definitions and General Provisions

Rule 1. Definitions

The term "Settlement Price," as used on any Business Day in respect of any Security, means the closing price (rounded to the nearest one hundredth (1/100) of a dollar) of such Security on the principal stock exchange on which such Security is listed on the last previous day on which there were trades on such exchange in such Security; or, if such Security is not listed on any exchange, a price determined in such manner as the Corporation may from time to time prescribe, based on [reported trades in or quotations for] *the last sale price for* such Security *in such market as the*

[2] 15 U.S.C. 78q-1 (1988).

[3] 17 CFR 200.30-3(a)(12) (1993).

Corporation shall deem appropriate, for trades on the business day prior to the day such price is used. If no closing price or last sale price is available for the business day prior to the day such price is used, then such price shall be such price as the Corporation shall deem appropriate [on the over-the-counter market on the last previous day with respect to which such trade or quotations, as the case may be, were reported]. Notwithstanding the foregoing, the Corporation may fix the "settlement price" of a Security at such amount (including zero) as it deems necessary and appropriate in the circumstances to protect the respective interests of the Participants and the Corporation (a) whenever trading in such Security has been suspended by order of the Securities and Exchange Commission or by any securities exchange on which such Security is listed or by any other authority having power to suspend trading in such Security, (b) to reflect a dividend or other distribution on such Security, or (c) in other appropriate circumstances.

[FR Doc. 94–5068 Filed 3–4–94; 8:45 am]
BILLING CODE 8010–01–M

[Release No. 34–33693; International Series Release No. 638; File No. SR–PHLX–94–05]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Quote Spread Parameters for Long-Term Foreign Currency Options

February 28, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 7, 1994, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX proposes to amend Exchange Rule 1014, "Obligations and Restrictions Applicable to Specialists and Registered Options Traders," and Floor Procedure Advice ("Advice") F–6, "Option Quote Spread Parameters" to: (1) Establish quote spread parameters for long-term foreign currency options ("FCOs"); (2) revise the quote spread parameters for options on the French franc; and (3) revise the quote spread parameters for cross-rate FCOs. Specifically, the PHLX proposes to establish the following quote spread parameters for long-term FCOs: for options on the British pound, bidding and/or offering so as to create differences of no more than $.0100 between the bid and the offer for each option contract for which the bid is $.1500 or less and no more than $.0150 where the bid is more than $.1500; for options on the French franc, bidding and/or offering so as to create differences of no more than $.00100 between the bid and the offer for each option contract where the bid is $.01500 or less and no more than $.00150 where the bid is more than $.01500; for options on the German mark and Swiss franc, bidding and/or offering for each option contract so as to create differences of no more than $.0030 where the bid is $.0500 or less and no more than $.0050 where the bid is more than $.0500; and for options on the Japanese yen, bidding and/or offering for each option contract so as to create differences of no more than $.000040 where the bid is $.000500 or less and $.000070 where the bid is over $.000500.

The text of the proposal is available at the Office of the Secretary, PHLX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The PHLX proposes to adopt quote spread parameters for long-term FCOs. Quote spread parameters, also referred to as bid/ask differentials, govern the width of market quotations; [1] specifically, maximum widths between the bid and ask for PHLX options are mandated by PHLX Rule 1014(c). The Exchange notes that although a violation of the maximum quote spread may result in a fine, [2] the quote spreads are not applicable during fast market conditions, pursuant to Advice F–10, "Extraordinary Market Conditions." [3]

Currently, FCOs are generally subject to the quote spread parameters that appear in Exchange Rule 1014 as well as Advice F–6. The PHLX has traded long-term FCOs since 1992, when PHLX Rule 1012 was amended to permit the listing of options with an expiration of up to 36 months in the future. [4] The Long-Term FCO Approval Order stated specifically that long-term FCOs would not be subject to existing quote spread parameters because, at that time, no basis had been determined for establishing reasonable prices for longer term FCOs as a result of the lack of historical pricing. Currently, long-term FCOs become subject to Advice F–6 once there is less than twelve months remaining until expiration.

Currently, the PHLX trades four long-term FCOs: British pound, German mark, French franc, and Japanese yen. [5] The PHLX proposes to codify specific parameters in order to demonstrate consistency in quote width to FCO customers and to prevent overly wide quotes. The proposed parameters for long-term FCOs would be wider than the quote spread parameters applicable to regular FCOs (FCOs with less than 12 months to expiration) due to the lack of historical pricing in pricing an option with 12 to 36 months to expiration. Accordingly, the PHLX proposes to add these quote spread parameters to Advice F–6 and to Exchange Rule 1014(c)(ii).

The PHLX is also proposing minor changes to Exchange Rule 1014, including adding headings and punctuation. In addition, the PHLX proposes to correct the parameters for cross-rate FCOs, which appear in the

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[1] For example, if the maximum quote spread for a Canadian dollar options is $.0005 where the bid is $.0050 or less, then the following is an acceptable quotation: .0020–.0025.

[2] Violations of Advice F–6 may result in the issuance of a fine pursuant to the Exchange's minor rule violation enforcement and reporting plan.

[3] Advice F–10 states that in the interest of a fair and orderly market, two floor officials may declare a "fast market," during which displayed quotes are not firm and the volume guarantees of Advice A–11, "Responsibility to Make Ten-Up Markets," are not applicable; nevertheless, best efforts are required to display quotes and fill orders.

[4] *See* Securities Exchange Act Release No. 30672 (May 6, 1992), 57 FR 20546 (order approving File No. SR–PHLX–91–30) ("Long-Term FCO Approval Order").

[5] Although the PHLX has not yet listed a long-term option on the Swiss franc, the PHLX is proposing a long-term quote spread parameter because it would be identical to the proposed quote spread parameter applicable to the long-term German mark option.

incorrect base currency, and for French franc options, which cannot be quoted in odd numbers due to system limitations. Specifically, for options on the French franc, the PHLX proposes to establish a maximum quote spread of $.00014 where the bid is $.00250 or less; $.00024 where the bid is between $.00252 and .00750; and $.00034 where the bid is over $.00750.

With respect to cross-rate options, the PHLX states that the original quote spread parameters were incorrect because the bids, which determine the quote spread, should be based on bids relating to the first currency. Under the current rule, for British pound/German mark cross-rate options, if the bid is .0100 German marks or less, the maximum quote spread is .0015 German marks. The PHLX states that this has proved incorrect and incompatible with the parameters commonly employed by traders to quote the British pound/German mark cross-rate option for two reasons: (1) The range of bids did not correspond to the ranges previously used for British pound quotes;[6] and (2) the actual parameters (.0015, .0025 and .0035 German marks) proved to be too narrow in view of the unique pricing and settlement of cross-rate options. Thus, for British pound/German mark cross-rate options, the PHLX proposes the following parameters: Bidding and/or offering to create differences of no more than .0030 German marks between the bid and the offer where the bid is .0250 German marks or less; no more than .0050 German marks where the bid is more than .0250 but does not exceed .0750 German marks; and no more than .0070 German marks where the bid is more than .0750 German marks.[7]

For German mark/Japanese yen cross-rate options, the PHLX proposes the following parameters: Bidding and/or offering to create differences of no more than .12 Japanese yen between the bid and the offer where the bid is .40 Japanese yen or less; no more than .16 Japanese yen where the bid is more than .40 but does not exceed 1.60 Japanese yen; and no more than .20 Japanese yen where the bid is more than 1.60 Japanese yen.

For British pound/Japanese yen options, the PHLX proposes to establish the following parameters: Bidding and/or offering to create differences of no more than .0030 Japanese yen between the bid and the offer where the bid is .0250 Japanese yen or less; no moore than .0050 Japanese yen where the bid is more than .0250 but does not exceed .0750 Japanese yen; and no more than .0070 Japanese yen where the bid is more than .0750 Japanese yen. The Exchange proposes to correct the cross-rate parameters both in the text of Exchange Rule 1014 as well as in Advice F–6 in order to facilitate the efficient trading and quoting of the relevant cross-rate options, as well as to inform members and customers of the maximum quote spread parameters.

The PHLX believes that the proposed rule change is consistent with section 6 of the Act, in general, and, in particular, with section 6(b)(5), in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and to protect investors and the public interest. Specifically, the PHLX believes that established quote spread parameters for long term FCOs should prevent overly wide quotes and foster uniformity in quote width, consistent with section 6(b)(5). In addition, the PHLX believes that the correction to cross-rate quote spread parameters should promote just and equitable principles of trade by providing a more feasible bid/ask differential, which, in turn, should facilitate trading in those options.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes is reason for so finding or (ii) as to which the self-regulatory organization consent, the Commission will:

(a) By other approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 28, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–5069 Filed 3–4–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 33694/February 28, 1994]

B.A.T. Industries, p.l.c., Sponsored American Depositary Receipts

The American Stock Exchange Inc. ("Amex" or "Exchange") has filed an application pursuant to rule 12f–2(b) under the Securities Exchange Act of 1934 ("Act")[1] for a determination that the above-mentioned stock is substantially equivalent to the unsponsored American Depositary Receipts ("unsponsored ADRs") representing American Depositary Shares ("ADS"), in turn representing ordinary shares of B.A.T. Industries, p.l.c. ("B.A.T." or "Company") currently admitted to unlisted trading privileges on the applicant Exchange.

According to the Exchange, the ordinary shares of B.A.T. were admitted to unlisted trading privileges on the Amex on June 27, 1921. The shares were thereafter converted to unsponsored ADR form in March 1928, and those

[6] The range of bids that determine the quote spread parameters applicable to British pound options is: $.0250 or less, $.0251 to $.0750, and over $.0750.

[7] Although the PHLX has not yet listed the British pound/Japanese yen option, the same inconsistency with British pound bid ranges requires correction and the quote spread parameters were also proposed too narrowly.

[1] 17 CFR 240.12f–2 (1993).

unsponsored ADRs are presently trading on the Amex.

According to the Exchange, the Company is proposing to consolidate these unsponsored ADRs into one sponsored ADR pursuant to an arrangement with the Bank of New York. The sponsored ADR represents an ADS evidencing two B.A.T. ordinary shares of nominal value of 25 pence each. The unsponsored ADRs similarly represented an ADS evidencing one B.A.T. ordinary share. The Exchange states that the change does not alter the capitalization of B.A.T. and is, if anything, beneficial to the rights of the ADR holders.

The Commission having duly considered this matter, and having due regard for the maintenance of fair and orderly markets and the protection of investors, finds that the above-mentioned sponsored ADRs are substantially equivalent to the unsponsored ADRs theretofore admitted to unlisted trading privileges.

It is ordered, pursuant to sections 12(f) of the Act and rule 12f–2(b) thereunder, that the above-mentioned application of the Amex is hereby granted.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–5108 Filed 3–4–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20100; File No. 812–8682]

Lincoln Benefit Life Company, et al.

February 28, 1994.

AGENCY: Securities and Exchange Commission (the "SEC" or the "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Lincoln Benefit Life Company ("Lincoln Benefit"), Lincoln Benefit Life Variable Annuity Account (the "Account") and Lincoln Benefit Financial Services, Inc. (collectively, the "Applicants").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act for exemption from Section 22(d) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order to the extent necessary to allow Lincoln Benefit to waive, under certain circumstances, the contingent deferred sales charge that would otherwise be imposed on certain flexible premium individual deferred variable annuity contracts (the "Contracts").

FILING DATE: The application was filed on November 17, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on March 25, 1994 and accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants: Carol S. Watson, General Counsel, Lincoln Benefit Life Company, 134 South 13th Street, Lincoln, Nebraska 68508.

FOR FURTHER INFORMATION CONTACT: Barbara J. Whisler, Senior Attorney, or Wendell M. Faria, Deputy Chief, on (202) 272–2060, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application the complete application is available for a fee from the Public Reference Branch of the SEC.

Applicant's Representations

1. Lincoln Benefit, a stock life insurance company organized under the laws of Nebraska, is a wholly owned subsidiary of Allstate Life Insurance Company. Allstate Life Insurance Company is an Illinois corporation wholly owned indirectly by The Allstate Corporation. Approximately 80.1% of the common stock of The Allstate Corporation is indirectly owned by Sears, Roebuck & Co.

2. The Account, established by Lincoln Benefit on August 3, 1992 as a segregated asset account under Nebraska law, serves as a funding medium for the Contracts. The application states that the Account meets the definition of a "separate account" under the federal securities laws. The Account is registered with the Commission under the 1940 Act as a unit investment trust. The application incorporates by reference the registration statement, currently on file with the Commission (File No. 33–66786), for the Account.

3. Lincoln Financial, a wholly owned subsidiary of Lincoln Benefit, is the distributor of the Contracts. Lincoln Financial is registered as a broker-dealer under the Securities Exchange Act of 1934, as amended, and is a member of the National Association of Securities Dealers, Inc.

4. The Contracts are available for retirement plans which qualify for federal tax advantages under the Internal Revenue Code and for those plans which do not qualify for advantageous treatment. The Contracts require a minimum initial premium payment of $1,200. Additional premium payments must be in amounts of at least $100.

5. Purchase payments may be allocated, according to a Contract owner's instructions, to one or more of the subaccounts of the Account. Upon annuitization, Contract owners may select from a number of variable or fixed annuity options. If the owner of a Contract dies prior to the annuity date and the Contract is in force, a death benefit is payable under the Contract.

6. One transfer among subaccounts is permitted monthly without charge. For each transfer among subaccounts in excess of once monthly, a transfer fee of $25 is assessed. The transfer fee is deducted from Contract values which remain in the subaccount or subaccounts from which the transfer is made. Applicants represent that the transfer fee is designated to be at cost with no margin included for profit. Lincoln Benefit is currently waiving this fee.

7. Applicants impose an annual Contract maintenance charge of $25 per Contract year. Applicants guarantee that this charge will not increase and state that the charge reimburses Lincoln Benefit for expenses incurred in maintaining the Contracts. This charge will be deducted on each Contract anniversary prior to the annuity date, but is not imposed during the annuity period. If a Contract is surrendered, the charge is assessed as of the surrender date without proration.

8. Lincoln Benefit deducts an administrative expense charge equal to an annual effective rate of .15% of the net asset value of the subaccount. The application states that this charge will compensate Lincoln Benefit for administering the Contracts and the Account. This charge is assessed during both the accumulation and the annuity periods. Applicants state that the Contract maintenance charge and the administrative expense charge are designed, in the aggregate, to be at cost with no margin included for profit.

9. A contingent deferred sales charge (the "Sales Charge") of up to 7% of the amount withdrawn is imposed on certain surrenders or withdrawals of Contract value. No Sales Charge is

applied on annuitization or on the payment of a death benefit unless the settlement option chosen is payment over a period certain of less than five years. The Sales Charge is deducted from the Contract value remaining after withdrawal so that the reduction in Contract value as a result of a withdrawal will be greater than the withdrawal amount requested. Amounts obtained from imposition of the Sales Charge will be used to pay sales commissions and other promotional or distribution expenses associated with the marketing of the Contracts. To the extent that the Sales Charge does not cover all sales commissions and other promotional or distribution expenses. Applicants state that Lincoln Benefit may use any of its corporate assets, including potential profit from the mortality and expense risk charge, to make up the shortfall.

10. Lincoln Benefit will impose a daily charge equal to an annual effective rate of 1.25% of the value of the net assets of the Account to compensate Lincoln Benefit for bearing certain mortality and expense risks in connection with the Contracts. Approximately .85% of the 1.25 charge is attributable to mortality risks, and approximately .40% is attributable to expense risk. Applicants represent that the charge for mortality and expense risks will not increase. If the mortality and expense risks charge is insufficient to cover actual costs and assumed risks, Lincoln Benefit will bear the loss. Conversely, if the charge exceeds costs, this excess will be profit to Lincoln Benefit. If Lincoln Benefit realizes a gain from the charge for mortality and expense risks, the amount of such gain may be used in the discretion of Lincoln Benefit.

11. Applicants state that the mortality risks borne by Lincoln Benefit consist of: (a) Bearing the risk that the life expectancy of an annuitant will be greater than that assumed in the guaranteed annuity purchase rates; (b) waiving the Sales Charge upon the death of a Contract owner; and (c) providing a death benefit prior to the annuity date. Applicants state that the expense risk assumed by Lincoln Benefit is the risk that the costs of administering the Contracts and the Account will exceed amounts received by Lincoln Benefit through imposition of the Contract maintenance charge and the administrative expense charge.

12. Where available under applicable state law, Applicants offer a Confinement Waiver benefit. The Confinement Waiver benefit provides that any applicable Sales Charge will be waived where the following conditions are satisfied:

a. The Annuitant must be confined to a Long Term Care Facility or a Hospital for at least 60 consecutive days. Confinement must begin after the Issue Date;

b. The Contract owner must request the withdrawal no later than 90 days following the date that confinement has ceased. Written proof of confinement must accompany the withdrawal request; and

c. For confinements in a Long Term Care Facility, confinement must be prescribed by a Physician and be Medically Necessary.[1]

Applicants' Legal Analysis

1. Pursuant to section 6(c) of the 1940 Act, the Commission may, by order upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the 1940 Act or from any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Pursuant to section 6(c), Applicants request that the Commission issue an order to provide exemptive relief set forth below.

2. Section 22(d) of the 1940 Act prohibits a registered investment company, its principal underwriter or a dealer in its securities from selling any redeemable security issued by such registered investment company to any person except at a public offering price described in the prospectus. Rule 6c–8 adopted under the 1940 Act permits variable annuity separate accounts to impose a deferred sales charge. Although Rule 6c–8, unlike proposed Rule 6c–10, does not impose any conditions on the ability of the investment company involved to provide for variations in the deferred sales charges, Rule 6c–8 (again unlike proposed Rule 6c–10) does not provide an exemption from section 22(d). Applicants recognize that the proposed waiver of the Sales Charge in connection with the Confinement Waiver benefit could be viewed as causing the Contracts to be sold at other than a uniform offering price. Rule 22d–1 is not directly applicable to Applicants' proposed waiver of the Sales Charge because that Rule has been interpreted as granting relief only for scheduled variations in front-end loads, not deferred sales load such as the Sales Charge.

3. Rule 22d–2 under the 1940 Act exempts registered variable annuity accounts, their principal underwriters, dealers and their sponsoring insurance companies from section 22(d) to the extent necessary to permit variations in the sales load or in any administrative charge or other deductions from the purchase payments, provided that such variations reflect differences in costs or services, are not unfairly discriminatory and are adequately described in the prospectus. Applicants, however, do not represent that the Confinement Waiver benefit reflects differences in sales costs or services, and, for that reason, Applicants do not rely on Rule 22d–2 for the requested relief, even assuming that Rule 22d–2 does apply to deferred sales load.

4. Nonetheless, Applicants submit that the proposed waiver is consistent with the policies of section 22(d) and the rules promulgated thereunder. One of the purposes of section 22(d) is to prevent an investment company from discriminating among investors by charging different prices to different investors. Applicants represent that, in jurisdictions where the Confinement Waiver benefit is permitted by state law, the benefit will be available to any Contract owner if the annuitant under the Contract becomes confined to a hospital or long term care facility for 60 days or more, and, therefore, the benefit will not unfairly discriminate among Contract owners. Moreover, Applicants argue that the benefit is advantageous to Contract owners by permitting any such owner, upon a triggering of the Confinement Waiver benefit, to surrender the Contract without imposition of the Sales Charge. Applicants further state that the Confinement Waiver benefit will not result in dilution of the interests of any other Contract owner. Finally, Applicants argue that waiving the Sales Charge under such circumstances will not result in the occurrence of any of the abuses that section 22(d) is designed to prevent.

5. Applicants represent that the Confinement Waiver benefit meets the substantive requirements of Rule 22d–1 in that Applicants specifically represent that: (a) The Confinement Waiver will be uniformly available to all eligible (as described in paragraph four above) Contract owners except where prohibited by state law; and (b) that the Confinement Waiver benefit will be adequately described in the Account's prospectus for the Contracts. Applicants

[1] Capitalized terms used but not defined in this paragraph twelve, shall have the meanings assigned such terms in the application.

also note that there are no existing Contract owners since the public offering of Contracts has not yet commenced.

Conclusion

For the reasons stated above, Applicants believe that the requested exemptions, in accordance with the standards of section 6(c), are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–5070 Filed 3–4–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20048A; No. 811–1671]

The Travelers Fund B for Variable Contracts

February 28, 1994.

On February 1, 1994, the Securities and Exchange Commission issued a notice of an Application for an Order under Section 8(f) of the Investment Company Act of 1940 ("1940 Act") (Rel. No. IC–20048). The notice stated that interested persons had until January 28, 1994 to request a hearing on this application. This corrects the prior notice, which should have stated that interested persons had until 5:30 p.m. on February 28, 1994 to request a hearing on this application.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–5071 Filed 3–4–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

Bureau of Politico-Military Affairs

[Public Notice 1959]

Determinations Under the Arms Export Control Act and the Foreign Assistance Act of 1961

Pursuant to section 654(c) of the Foreign Assistance Act of 1961, as amended (the "Act"), notice is hereby given that the Under Secretary of State for International Security Affairs has made a determination pursuant to section 81 of the Arms Export Control Act and has concluded that publication of the determination would be harmful to the national security of the United States.

Dated: February 16, 1994.

Robert L. Gallucci,

Assistant Secretary of State for Political-Military Affairs.

[FR Doc. 94–5103 Filed 3–4–94; 8:45 am]

BILLING CODE 4710–25–M

Bureau of Political-Military Affairs

[Public Notice 1958]

Imposition of Chemical and Biological Weapons Proliferation Sanctions Against Entities in Thailand

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The United States Government has determined that three entities in Thailand have engaged in chemical weapons proliferation activities that require the imposition of sanctions pursuant to the Arms Export Control Act and the Export Administration Act of 1979, as amended by the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991.

EFFECTIVE DATE: February 8, 1994.

FOR FURTHER INFORMATION CONTACT: Vann H. Van Diepen, Office of Chemical, Biological and Missile Nonproliferation, Bureau of Political-Military Affairs, Department of State (202–647–4930).

SUPPLEMENTARY INFORMATION: Pursuant to sections 81(a) and 81(b) of the Arms Export Control Act (22 U.S.C. 2798(a), 2798(b)), sections 11C(a) and 11C(b) of the Export Administration Act of 1979 (50 U.S.C. app. 2410c(a), 2410c(b)), section 305 of the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (Pub. L. 102–182), and Executive Order 12851 of June 11, 1993, the United States Government determined that the following foreign persons have engaged in chemical weapons proliferation activities that require the imposition of the sanctions described in section 81(c) of the Arms Export Control Act (22 U.S.C. 2798(c)) and section 11C(c) of the Export Administration Act of 1979 (50 U.S.C. app. 2410c(c)):

1. W & M Limited Partnership (AKA W & M Engineering, the Wintrade Company, and the Winman Company) (Thailand),
2. SPC Supachoke (AKA Super Trade) (Thailand),
3. The Handle Group Company (Thailand).

Accordingly, the following sanctions are being imposed:

(A) Procurement Sanction.—The United States Government shall not procure, or enter into any contract for the procurement of, any goods or services from any of the sanctioned entities; and

(B) Import Sanction.—The importation into the United States of products produced by any sanctioned entity shall be prohibited.

These sanctions apply not only to the entities described above, but also to their divisions, subunits, and any successor entities. The sanctions shall commence on February 8, 1994. They will remain in place for at least one year and until further notice.

These measures shall be implemented by the responsible agencies as provided in Executive Order 12851 of June 11, 1993.

Dated: February 27, 1994.

Robert L. Gallucci,

Assistant Secretary of State for Political-Military Affairs.

[FR Doc. 94–5104 Filed 3–4–94; 8:45 am]

BILLING CODE 4710–10–M

RESOLUTION TRUST CORPORATION

Interim Statement of Policy Regarding Procedures To Be Used With Regard to Claims Based Upon Acts or Omissions of the Receiver

AGENCY: Resolution Trust Corporation.

ACTION: Interim statement of policy.

SUMMARY: This Policy sets forth the Resolution Trust Corporation's current procedures for considering administrative claims based upon acts or omissions of the Corporation as receiver. This Policy reflects the Corporation's current policy that it does not consider these claims to be subject to the published bar date for filing claims with the Corporation as receiver and sets forth the circumstances under which the Corporation will consider these claims to be timely filed.

EFFECTIVE DATE: This interim policy is effective March 7, 1994.

FOR FURTHER INFORMATION CONTACT: Munsell St. Clair, Counsel, at (202) 736–3034. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

1. Purpose

The purpose of this Policy is to set forth the Resolution Trust Corporation's current procedures for considering claims filed pursuant to 12 U.S.C. 1821(d) (3) through (13) based upon acts

or omissions of the Corporation as receiver.

2. Scope and Applicability

This Policy sets forth the Corporation's current procedures for considering claims filed pursuant to 12 U.S.C. 1821(d) (3) through (13) based upon acts or omissions of the Corporation as receiver, including, but not limited to, any claim based upon an agreement of the receiver, any claim based upon an act or omission of the receiver with respect to an executory agreement or unexpired lease of the institution, and any claim based upon a repudiation by the receiver of any agreement or lease. As more fully set forth later, this Policy applies only to claims that were not in existence as of the date of the receiver's appointment and that rely for their existence upon an act or omission of the receiver.

3. Background

12 U.S.C. 1821(d)(13)(D) deprives all courts of jurisdiction over, *inter alia*, any claim or action seeking payment from, or a determination of rights with respect to, the assets of an insured depository institution for which the Corporation has been appointed receiver and any claim relating to any act or omission of the Corporation as receiver, unless the claims process described in 12 U.S.C. 1821(d) has first been complied with.

The legislative history of 12 U.S.C. 1821(d) reveals that the dual purpose behind requiring exhaustion of claims before suit can be filed is: (1) To minimize costs to the receivership estate and to the legitimate claimants who share in the distributions from the estate, and (2) to minimize the burden on federal courts by avoiding needless litigation. H.R. Rep. No. 101–54(I), 101st Cong., 1st Sess. 2, reprinted in 1989 U.S.C.C.A.N. at 215. These purposes are fulfilled by requiring that the receivership claims process be exhausted with respect to post-receivership claims before suit can be filed, since litigation and its accompanying burden on the receivership estate and the courts can be avoided if the receiver is given an initial opportunity to allow meritorious claims outside of litigation.

Thus, both the literal terms of 12 U.S.C. 1821(d)(13)(D) and the purposes of the statute make it clear that no suit can be maintained against the Corporation as receiver based upon any act or omission of the Corporation as receiver unless and until the claims process has been pursued.

As of June 30, 1993, the Corporation held approximately 785,000 assets, such as real estate, mortgages and deeds of trust, and commercial and consumer loans. The Corporation, as receiver, has entered into and will continue to enter into numerous contracts for the sale of these assets. In addition, the Corporation, as receiver, enters into many other contracts relating to its operations. Further, many additional claims arise relating to the conduct of receivership affairs.

Because of the number of contracts that the Corporation enters into as receiver and because the Corporation, as receiver, acts in a wide variety of ways, disputes necessarily arise between the Corporation and other persons. In order to fulfill the purposes of the claims process set forth in 12 U.S.C. 1821(d), the Corporation is promulgating this Policy to set out the procedures for considering claims based upon acts or omissions of the Corporation as receiver.

4. Policy Regarding the Applicability of the Claims Process (12 U.S.C. 1821(d)(3)–(13)) to Claims Based Upon Acts or Omissions of the Receiver

a. Definition of "Post-Receivership Claim"

A "Post-Receivership Claim" means any claim based upon any act or omission of the Corporation as receiver, including, but not limited to, any claim based upon an agreement of the receiver, any claim based upon an act or omission of the receiver with respect to an executory agreement or unexpired lease of the institution, and any claim based upon a repudiation by the receiver of any agreement or lease; provided, however, that Post-Receivership Claims shall include only claims that were not in existence as of the date of the receiver's appointment and that rely for their existence upon an act or omission of the receiver; a Post-Receivership Claim shall not include any claim in existence as of the date of the appointment of the receiver, regardless of whether the claim was then contingent, unliquidated, not matured or not known or discovered.

b. Applicability

This Policy shall apply only to Post-Receivership Claims.

c. Inapplicability of General Bar Date

The bar date established pursuant to 12 U.S.C. 1821(d)(3)(B)(i) and 1821(d)(5)(C) for filing claims against a receivership (the "General Bar Date") does not apply to any Post-Receivership Claim and the receiver will not time bar any Post-Receivership Claim for failure to be presented to the receiver by the General Bar Date.

5. Procedures with regard to Post-Receivership Claims

a. Notice to File Claims

Whenever the Corporation as receiver becomes aware that any party may have a Post-Receivership Claim (and whenever the receiver repudiates any contract or lease), it shall be the policy of the Corporation as receiver to mail a notice to the party requiring that any claim the party may have be filed, together with proof, no later than 90 days after the notice is mailed.

b. Consideration of Post-Receivership Claims

The Corporation as receiver will consider timely any Post-Receivership Claim filed with the receiver provided that:

(1) If the receiver mails a notice pursuant to paragraph 5(a) above, the claim is filed by the date specified in the notice, which shall be 90 days after the date the notice is mailed; or

(2) If the receiver does not mail a notice pursuant to paragraph 5(a) above, the claim is filed no later than the 30th day after the Corporation first publishes notice of its intention to terminate the receivership.

Otherwise, the claim will be considered untimely and will be disallowed as such by the receiver, the disallowance will be final and in no event will any distribution ever be made on the claim.

6. Limitations of Actions

No person shall have any right to bring any action to direct or compel the Corporation to take any action contemplated by this Policy, or to pursue any claim or cause of action based on the alleged failure of the Corporation or any person acting on its behalf to take any action whatsoever under this Policy.

By order of the Deputy Chief Executive Officer.

Dated at Washington, DC this 1st day of March 1994.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Secretary.

[FR Doc. 94–5089 Filed 3–4–94; 8:45 am]

BILLING CODE 6714–01–M

Coastal Barrier Improvement Act; Property Availability; Montauk, Suffolk County, NY, et al.

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the properties known as Montauk, located on Pine Neck Landing, Suffolk

County, New York, and Winter's Landing, located in north central Spotsylvania County, Virginia, are affected by Section 10 of the Coastal Barrier Improvement Act of 1990 as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of all or any portion of these properties may be mailed or faxed to the RTC until June 6, 1994.

ADDRESSES: Copies of detailed descriptions of these properties, including maps, can be obtained from or are available for inspection by contacting the following person:

Montauk Property:

Mr. Jerry McDonnell, Resolution Trust Corporation, Valley Forge Field Office, P.O. Box 1500, Valley Forge, PA. 19482–1500, (800) 782–6326; Fax (610) 631–3703.

Winter's Landing Property:

Mr. Dan Hummer, Resolution Trust Corporation, Atlanta Field Office, 245 Peachtree Center Avenue NE., Marquis One Tower, 10th Floor, Atlanta, GA. 30303, (404) 230–6594; Fax (404) 225–5092.

SUPPLEMENTARY INFORMATION: The Montauk property is located on Pine Neck Landing at 7 Widgeon Lane, East Quogue, Suffolk County, New York. The site contains wetlands, an undeveloped floodplain, and is located within the Tiana Beach (F13) Unit of the Coastal Barrier Resources System. The Montauk property consists of approximately 2.5 acres of undeveloped land bordered to the east by residential housing and to the south by Shinnecock Bay. The site is tree covered and flat.

The Winter's Landing property is located in north central Spotsylvania County, Virginia, approximately eight miles southwest of Interstate Highway 95 and the Route 3 interchange. The site is situated in an undeveloped floodplain on the eastern shore of the Ni River Reservoir which is managed by the Spotsylvania County Parks and Recreation Department. The Winter's Landing property consists of approximately 489.4 acres of undeveloped land and is irregular in shape with frontage on Route 612, Route 625, and Route 714. The topography is gently rolling with a mix of open fields and heavily wooded areas. These properties are covered properties within the meaning of Section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101–591 (12 U.S.C. 1441a–3).

Written notice of serious interest in the purchase or other transfer of all or any portion of these properties must be received on or before June 6, 1994 by the Resolution Trust Corporation at the appropriate address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;
2. Agencies or entities of State or local government; and
3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest must be submitted in the following form:

Notice of Serious Interest

RE: [insert name of property]
Federal Register Publication Date: _____
[insert Federal Register publication date]

1. Entity name.

2. Declaration of eligibility to submit Notice under criteria set forth in the Coastal Barrier Improvement Act of 1990, Public Law 101–591, section 10(b)(2), (12 U.S.C. 1441a–3(b)(2)), including, for qualified organizations, a determination letter from the United States Internal Revenue Service regarding the organization's status under section 501(c)(3) of the U.S. Internal Revenue Code (26 U.S.C. 170(h)(3)).

3. Brief description of proposed terms of purchase or other offer for all or any portion of the property (e.g., price, method of financing, expected closing date, etc.).

4. Declaration of entity that it intends to use the property for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes (12 U.S.C. 1441a–3(b)(4)), as provided in a clear written description of the purpose(s) to which the property will be put and the location and acreage of the area covered by each purpose(s) including a declaration of entity that it will accept the placement, by the RTC, of an easement or deed restriction on the property consistent with its intended conservation use(s) as stated in its notice of serious interest.

5. Authorized Representative (Name/Address/Telephone/Fax).

List of Subjects

Environmental protection.

Dated: March 1, 1994.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Secretary.

[FR Doc. 94–5090 Filed 3–4–94; 8:45 am]

BILLING CODE 6714–01–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

February 25, 1994.

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 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0017.
Form Number: ATF F 6 Part I (5330.3A).
Type of Review: Extension.
Title: Application and Permit for Importation of Firearms, Ammunition and Implements of War.
Description: This information collected is needed to determine whether firearms, ammunition and implements of war are eligible for importation into the United States. Used to secure authorization to import such articles. All persons who desire to import such articles except for persons who are members of the United States Armed Forces.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 9,000.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 4,500 hours.

OMB Number: 1512–0092.
Form Number: ATF F 5100.31 (1648/1649/1650).
Type of Review: Extension.
Title: Application for Certification/Exemption of Label/Bottle Approval Under the Federal Alcohol Administration Act.
Description: The Federal Alcohol Administration Act regulates the labeling of alcoholic beverages and designates the Treasury Department to oversee compliance with regulations. This form is completed by the regulated industry and submitted to Treasury as an application to label their products.

Treasury oversees label application to prevent consumer deception and to deter falsification of unfair advertising practices on alcoholic beverages.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 6,060.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 27,300 hours.

OMB Number: 1512–0138.

Form Number: ATF F 5120.20 (2605).

Type of Review: Extension.

Title: Certification of Tax Determination-Wine.

Description: Wine that has been manufactured, produced, bottle or packaged in bulk containers in the U.S. and then exported, may have the revenue tax already paid or determined on the refunded to the exporter. The form validated from the producing winery that the wine was produced in the U.S. and was taxpaid on withdrawal from bond.

Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 1,000.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 500 hours.

Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.

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. 94–5080 Filed 3–4–94; 8:45 am]

BILLING CODE 4810–31–P

Public Information Collection Requirements Submitted to OMB for Review

February 28, 1994.

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 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Comptroller of the Currency

OMB Number: 1557–0081.

Form Number: FFIEC 031, 032, 033 and 034.

Type of Review: Revision.

Title: (MA)—Reports of Condition and Income (Interagency Call Report).

Description: National banks file reports pursuant to 12 U.S.C. 161 and other statutes. Data are used to evaluate and monitor the financial condition and earnings performance of individual banks as well as the entire banking industry.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 3,400.

Estimated Burden Hours Per Respondent: 36 hours, 54 minutes.

Frequency of Response: Quarterly.

Estimated Total Reporting Burden: 501,840 hours.

Clearance Officer: John Ference (202) 874–4697, Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

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. 94–5081 Filed 3–4–94; 8:45 am]

BILLING CODE 4810–33–P

Public Information Collection Requirements Submitted to OMB for Review

February 28, 1994.

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 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–1029.

Form Number: IRS Form 8693.

Type of Review: Reinstatement.

Title: Low-Income Housing Credit Disposition Bond.

Description: Form 8693, Low-Income Housing Credit Disposition Bond, is needed per Internal Revenue Code (IRC) section 42(j)(6) to post bond and waive the recapture requirement under section 42(j) for certain dispositions of a building on which the low-income housing credit was claimed. Internal Revenue regulations section 301.7101–1 requires that the posting of a bond must be done on the appropriate form as determined by the Internal Revenue Service.

Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents/ Recordkeepers: 1,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping: 13 minutes.

Learning about the law or the form: 13 minutes.

Preparing, copying, assembling and sending the form to the IRS: 40 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 1,100 hours.

OMB Number: 1545–1233.

Regulation ID Number: IA–14–91 Final.

Type of Review: Extension.

Title: Adjusted Current Earnings.

Description: This regulation affects business and other for-profit institutions. This information required by the IRS to ensure the proper application of 1.56(g)–1 of the regulation. It will be used to verify that taxpayers have properly elected the benefits of § 1.56(g)–1(r) of the regulations.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 1,000.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: Other (once only).

Estimated Total Reporting Burden: 1,000 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management

and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94–5082 Filed 3–4–94; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

February 28, 1994.

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 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of the Public Debt

OMB Number: 1535–0086.

Form Number: PD F 5262.

Type of Review: Extension.

Title: Reinvestment Request for Treasury Notes and Bonds.

Description: This form is used to request the reinvestment of a Treasury note or bond at maturity, to cancel a reinvestment request or change a reinvestment that was previously requested.

Respondents: Individuals or households, Businesses or other for-profit.

Estimated Number of Respondents: 140,000.

Estimated Burden Hours Per Response: 6 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 14,000 hours.

Clearance Officer: Vicki S. Ott (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328.

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. 94–5083 Filed 3–4–94; 8:45 am]

BILLING CODE 4810–40–M

Public Information Collection Requirements Submitted to OMB for Review

February 28, 1994.

The Department of the 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 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0137.

Form Number: ATF F 5150.22.

Type of Review: Extension.

Title: Application for an Industrial Alcohol User Permit.

Description: ATF F 5150.22 is used to determine the eligibility of the applicant to engage in certain operations and the extent of the operations for the production and distribution of specially denatured spirits (alcohol/rum). The form identifies the location of the premises and establishes whether the premises will be in conformity with Federal laws and regulations.

Respondents: Small businesses or organizations.

Estimated Number of Respondents: 850.

Estimated Burden Hours Per Respondent: 2 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1,700 hours.

OMB Number: 1512–0469.

Form Number: None.

Type of Review: Extension.

Title: Labeling of Sulfites in Alcoholic Beverages.

Description: In a final rule published in the **Federal Register** on July 9, 1986 (51 FR 25012) the Food and Drug Administration established 10 parts per million as the threshold for declaration of sulfites in food and wine products. The Bureau of Alcohol, Tobacco and Firearms on September 30, 1986, published a final rule (ATF–236) (51 FR 34706) establishing the threshold for declaration of sulfites in alcoholic beverages.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 4,787.

Estimated Burden Hours Per Respondent: 40 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 3,159 hours.

OMB Number: 1512–0482.

Form Number: ATF Reporting Requirement 5100/1.

Type of Review: Extension.

Title: Labeling and Advertising Requirements under the Federal Alcohol Administration Act.

Description: Under the Federal Alcohol Administration Act, bottlers and importers of alcoholic beverages are required to display certain information for consumers on labels and in advertisements. Other optional statements are also required.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 6,060.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1 hour.

Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.

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. 94–5084 Filed 3–4–94; 8:45 am]

BILLING CODE 4810–31–P

Office of Thrift Supervision

[No. 94–17]

Capital and Accounting Standards; Annual Report to Congressional Committees

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice.

SUMMARY: Pursuant to the reporting requirements of section 121 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), we have submitted our annual report to the Chairman and ranking minority member of the Committee on Banking, Housing, and Urban Affairs of the Senate and the Chairman and ranking minority member of the Committee on Banking, Finance and Urban Affairs of the House of Representatives identifying the differences between the capital and

accounting standards used by the Office of Thrift Supervision (OTS) and the capital and accounting standards used by the other Federal banking agencies (Banking Agencies).

Our report contains two attachments. Attachment I, "Summary of Differences in Capital Standards," identifies and explains the reasons for differences in the capital standards applied by OTS from those capital standards applied by the Banking Agencies. Attachment II, "Summary of Differences in Accounting Practices," identifies and explains the reasons for the major differences between OTS and the Banking Agencies in supervisory reporting practices that affect their respective capital standards.

Despite some differences, the capital and accounting rules of OTS generally parallel those of the Banking Agencies (collectively, the "Agencies"). Many of the differences are a result of either statutory requirements (*e.g.*, goodwill) or historical differences between the banking and thrift industries (*e.g.*, investment authorities, mutual form of organization). Moreover, the Agencies continue to work together to minimize the differences.

The capital standards of OTS comply with the statutory requirement of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), which provides that OTS standards be no less stringent than the standards applied to national banks.

FOR FURTHER INFORMATION CONTACT: Robert Pomeranz, Senior Accountant, Accounting Policy, (202) 906–5650; John F. Connolly, Program Manager for Capital Policy, (202) 906–6465; Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION:

Attachment I

Summary of Differences in Capital Standards

FDICIA requires a report to Congress on the differences in the bank and savings association capital standards. Below is a summary of the differences.

A. Major Differences

1. Interest Rate Risk Component

Interest Rate Risk Component: OTS adopted an interest rate risk component to its risk-based capital rule, which is effective January 1, 1994. Under the new rule, institutions with an above normal level of interest rate risk will be subject to a capital charge commensurate with their risk exposure. The Banking Agencies intend to adopt an interest rate risk component in 1994. The interest rate risk component adopted by OTS will differ from that which is expected to be adopted by the Banking Agencies in important respects, namely, the methodology used to measure interest rate exposure and the data used to measure exposure.

Reason for OTS Difference: Because interest rate risk is a significant risk to savings associations, OTS believes that it is important to use a relatively sophisticated model to measure the interest rate risk exposure of individual institutions. OTS believes that it is particularly important to use a model that is capable of measuring the option component in mortgages and the effect of financial derivatives on an institution's overall interest rate risk exposure. As a consequence, OTS uses an option-based pricing model to measure exposure and collects detailed financial data on a reporting form that was designed to provide the financial data that OTS needs to measure exposure.

2. Core Capital

Core Capital Requirement: The leverage ratio requirements of the Office of the Comptroller ("OCC"), the Federal Deposit Insurance Corporation ("FDIC"), and the Board of Governors of the Federal Reserve System ("FRB") are tied to Tier 1 capital. These requirements set the minimum leverage ratio rule requirement at 3 percent plus at least 100 to 200 basis points (depending on the CAMEL ratings). The OTS has proposed to adopt a leverage ratio rule conforming with the leverage ratios of the other bank regulatory agencies.

During 1992, the Agencies adopted uniform prompt corrective action regulations, as mandated by section 131 of FDICIA. These regulations require the establishment of specific capital categories based on risk-based capital ratio and leverage ratio measures. The Prompt Corrective Action ("PCA") rules of the Agencies, including the OTS, require compliance with a 4 percent leverage ratio for associations to be in the "adequately capitalized" category.

Goodwill: FIRREA requires "qualifying supervisory goodwill" to be included in core capital under the OTS capital rule through December 31, 1994. The Banking Agencies, in general, do not allow goodwill to be included in calculating core capital.

Reason for OTS Differences: FIRREA requires that the OTS capital rule include a limited amount of qualifying supervisory goodwill in core capital until December 31, 1994 (HOLA 5(t)(3)(A)).

3. Subsidiaries

Subsidiary (general): OTS defines a subsidiary as a 5 percent or greater ownership interest in an entity. The OTS requires consolidation of any subsidiary with the insured institution if the subsidiary is considered to be controlled by the insured institution under generally accepted accounting principles ("GAAP") (except for those engaged in activities impermissible for national banks, as described below). If an association owns a 5 percent or greater interest, but does not have control under GAAP, OTS requires pro-rata consolidation, as discussed below. For the Banking Agencies, subsidiaries are generally consolidated if the parent institution holds more than 50 percent of the outstanding voting stock, or if the subsidiary is otherwise controlled or capable of being controlled by the parent institution (see exception for depository institutions).

Reason for OTS difference: Savings associations, particularly state-chartered institutions, have in the past been allowed to invest in a more expansive list of subsidiaries and equity investments than national banks. OTS has adopted its more stringent policy of requiring pro-rata consolidation of ownership interests of 5 percent or greater, but not constituting GAAP control, because it better reflects the risk that may be posed by such subsidiaries.

Subsidiaries ("impermissible"): FIRREA and the OTS capital rule require the deduction from capital of investments in and loans to subsidiaries that engage in activities not permissible for a national bank. FIRREA originally provided for a five year phase-out of such investments and loans that were made prior to April 13, 1989. In 1992, the Director of OTS was given discretionary authority to extend the phase-out period until mid-1996 for investments in certain real estate subsidiaries provided the conditions contained in the statute are satisfied. During the phase-out period, the percentage of assets corresponding with the non-deducted portion of the assets is consolidated. The Banking Agencies may require deduction on a case-by-case basis.

The FRB deducts investments in, and unsecured advances to, Section 20 securities subsidiaries from a member bank's capital. The FDIC similarly deducts investments in, and unsecured advances to, securities subsidiaries and mortgage banking subsidiaries.

Reason for OTS difference: Although savings associations may own subsidiaries that engage in activities that are prohibited for national banks, the

Home Owners' Loan Act ("HOLA") requires the deduction of investments and loans to such subsidiaries, in accordance with a statutorily prescribed phase-out period. (HOLA 5(t)(5)).

The deduction of investments in subsidiaries from the parent's capital is designed to ensure that the capital supporting the subsidiary is not also used as the basis of further leveraging and risk-taking by the parent association. In deducting investments in and advances to certain subsidiaries from the parent association's capital, the OTS expects the parent savings association to meet or exceed minimum regulatory capital standards without reliance on the capital invested in the particular subsidiary, consistent with FIRREA's mandate.

The deduction of investments in and extensions of credit to impermissible subsidiaries is consistent with, but more broadly applicable than, the FRB's and FDIC's treatment of securities subsidiaries and the FDIC's treatment of mortgage banking subsidiaries.

Consolidation of the remaining assets of the impermissible subsidiaries is required to ensure that sufficient capital is held by savings associations during the phase-out period.

Subsidiaries ("permissible—minority ownership"): The OTS rule requires the pro-rata consolidation of subsidiaries where the association does not have control, as defined under GAAP, but owns a five percent or greater ownership interest in the subsidiary. The bank regulators generally require capital to be held only against the investments in such subsidiaries but may, on a case-by-case basis, deduct them from capital or consolidate them either fully or on a pro-rata basis.

Reason for OTS Difference: OTS believes that its treatment is appropriate and that sufficient capital should be held against the risks of such investments. OTS believes associations are better protected from the economic risk presented by their subsidiaries by requiring capital to be held against the amount of the subsidiaries' assets rather than only assessing an 8 percent capital charge against an institution's investment in such nonconsolidated subsidiaries.

Subsidiaries (lower-tier depository institutions): Under OTS rules, a depository institution subsidiary is automatically consolidated with its parent association if the subsidiary was acquired prior to May 1, 1989. The parent association's investment in such subsidiaries is automatically excluded from the parent association's capital if the depository institution subsidiary was acquired on or after May 1, 1989 (except if it engages only in activities permissible for a national bank, in which case it is consolidated). OTS requires consolidation of lower-tier depository institutions, if consolidation results in a higher capital requirement than the exclusion requirement. For purposes of the risk-based capital regulations, the Banking Agencies generally consolidate majority-owned banking and finance subsidiaries.

Reason for OTS Difference: OTS's policy addresses its concerns about (i) "double-leveraging" of the parent association's capital and (ii) incentives to minimally capitalize lower-tier depository institutions. It also ensures that OTS capital standards are at least as stringent as those imposed on banks. (HOLA 5(t)(5)(A),(C),(E)).

4. *Equity Investments:* OTS requires associations to deduct equity investments from their capital over a five year transition period. Bank regulators allow only a limited range of equity investments and place those investments in the 100 percent risk-weight category, rather than requiring deduction.

In March 1993, OTS issued a final rule that provides parallel treatment of equity investments for thrifts and national banks. Equity investments of thrifts (primarily stock of the Federal Home Loan Mortgage Corporation ("FHLMC"), stock of the Federal National Mortgage Association ("FNMA"), and certain loans with equity characteristics) that are permissible for national banks would be placed in the 100 percent risk weight category.

Reason for OTS Difference: OTS will continue to require the deduction from capital of equity investments that are impermissible for national banks. This approach is designed to insulate the institution and the insurance fund from the risk of these investments. This policy is intended to result in such investments being either divested or "pushed down" into subsidiaries, where savings associations can limit their liability and attempt to attract partial market funding for the subsidiaries. The OTS will address the safety and soundness of equity investments of thrifts that are permissible for national banks through the same capital and supervisory approach used by the Banking Agencies.

5. *20 Percent Risk-Weight for High Quality MBS:* OTS includes agency securities (*i.e.*, issued by FNMA or FHLMC) in the 20 percent risk-weight category. OTS also places high-quality, private-issue, mortgage-related securities (*i.e.*, eligible securities under the Secondary Mortgage Market Enhancement Act ("SMMEA")) in the 20 percent risk-weight category. These private-issue mortgage-backed securities represent interests in residential or mixed use real estate and are rated in one of the two highest investment grade rating categories by a nationally recognized rating agency. Generally, the Banking Agencies place private-issue MBS in the 50 percent or 100 percent risk-weight category.

Reason for OTS Difference: Policy decision to take the high credit quality of these securities into account in risk-weighting these securities.

6. *Qualifying Multi-family Mortgage Loans:* OTS allows certain low-risk multi-family mortgage loans (*i.e.*, buildings with 5–36 units, maximum 80 percent loan-to-value ratios and minimum 80 percent occupancy rates) to qualify for the 50 percent risk-weight category. The Banking Agencies currently place all multi-family mortgage loans in the 100 percent risk-weight category.

OTS and the Banking Agencies are in the process of issuing final rules to implement section 618(b) of the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991 ("RTC Act"), by reducing the risk weight of multi-family mortgage loans meeting the specified statutory and regulatory criteria to the 50 percent risk weight.

The RTC Act requires OTS and the Banking Agencies to place multi-family mortgage loans in the 50 percent risk weight category if they meet the following criteria: (1) The loan is secured by a first lien, (2) the ratio of the principal obligation to the appraised value of the property, that is, the loan-to-value ratio, does not exceed 80 percent (75 percent if the loan is based on a floating interest rate), (3) the annual net operating income generated by the property (before debt service) is not less than 120 percent of the annual debt service on the loan (115 percent if the loan is based on a floating interest rate), (4) the amortization of principal and interest occurs over a period of not more than 30 years and the minimum maturity for repayment of principal is not less than seven years, (5) all principal and interest payments have been made on time for a period of not less than one year, and (6) meets other prudential underwriting criteria imposed by the Banking Agencies.

Reason for OTS Difference: Policy decision to assess a lower capital charge on such loans and securities in accordance with the requirement of Section 618(b). OTS is working with the Banking Agencies to implement the

statutory mandate on a uniform interagency basis.

7. *Intangible Assets:* The final rule on the capital treatment of intangible assets adopted by the OTS generally is consistent with the rules adopted by the Banking Agencies. The final OTS rule, however, contains a grandfathering provision and a transition provision for purchased mortgage servicing rights included in capital prior to adoption of the revised final rule.

The OTS rule also contains a grandfather provision allowing continued inclusion of core deposit premiums included in associations' capital on the effective date of the final rule. These core deposit premiums were previously includable in capital pursuant to temporary OTS guidance if an association's management determined that they passed a three-part test and the amount included did not exceed 25 percent of core capital. The new rule requires the deduction of nongrandfathered core deposit premiums from capital.

Reason for OTS Difference: Policy decision to permit purchased mortgage servicing rights and core deposit premiums to be included in capital if they were previously included pursuant to OTS rule or policy.

8. Recourse Arrangements

Assets Sold with Recourse (Non-Mortgage): If a savings association sells non-mortgage assets with recourse (where the transaction is treated as a sale under GAAP), OTS (i) considers it a sale, and (ii) requires capital to be held against the total amount of the loans sold with recourse through the use of the 100 percent off-balance sheet conversion factor. If a bank sells a non-mortgage asset with recourse (even when the transaction is treated as a sale under GAAP), it is not considered a sale by the Banking Agencies.

Reason for OTS Difference: OTS follows GAAP in determining whether a transaction is a sale. The OTS policy is designed to ensure that sufficient capital is available to absorb the risk associated with the recourse obligation.

Assets Sold with Recourse (Mortgages—Private Transactions): If savings associations sell mortgage assets with recourse to private entities and the transaction is treated as a sale under GAAP, OTS follows the same policy as it follows regarding sales of non-mortgage assets. Under this policy, OTS (i) considers the transaction a sale and (ii) requires capital to be held under the risk-based capital computations through the use of the 100 percent off-balance sheet conversion factor.

Banks that sell pools of residential mortgages to private entities with recourse generally are required to hold the full amount of capital against the mortgages sold regardless of the amount of recourse retained and the treatment of the transaction for regulatory reporting purposes.

The rules of the FRB and OCC, however, provide that no capital is required against pools of 1- to 4- family mortgages sold to private entities with "insignificant recourse" (*i.e.*, less than expected losses) for which a specific non-capital reserve or liability account is established and maintained for the maximum amount of possible loss under the recourse provision.)

If "*significant*" recourse is retained, the transaction is not reported as a sale and the assets remain on the balance sheet. Capital is required to be held against the on-balance sheet amount of the assets. The FDIC follows this approach for all sales with recourse; the FDIC has not adopted an "insignificant recourse" policy.

Reason for OTS Difference: Policy decision to ensure appropriate capital against risk of these assets. OTS, in general, follows GAAP in determining whether a transaction is a sale. Regardless of "sale" treatment, OTS requires capital if savings associations are liable for losses.

Assets Sold with Recourse (Limited Recourse): For risk-based capital purposes only, the OTS limits the capital required on mortgage and non-mortgage assets sold with recourse (that are treated as sales under GAAP) to the lesser of (i) the maximum contractual liability under the recourse arrangement or (ii) the "normal" capital charge on the off-balance sheet assets.

Reason for OTS Difference: Policy decision to ensure appropriate capital against risk of these assets, which is limited to an association's maximum contractual liability under such arrangements.

Recourse servicing: Where savings associations are responsible for credit losses on loans they service, OTS requires capital against the amount of the underlying loans consistent with the recourse policy set forth above. Although savings associations do not "own" the underlying assets, they have a contingent liability and are subject to losses on those loans. OTS requires associations to hold capital against the underlying loans posing economic risk for the associations. The Banking Agencies do not assess capital on the underlying loans but only on the amount of the servicing rights.

Reason for OTS difference: Policy decision to assess capital on underlying loans to buffer associations from risk of loss on such loans.

9. *Purchased Subordinated Securities*: Savings associations are required to hold capital against the amount of subordinated securities and all more senior securities regardless of whether the subordinated securities were originated by the institution or purchased from other parties. Banks are only required to hold capital against the amount of more senior securities if the institution originated and sold the underlying loans. The Banking Agencies do not require banks to hold capital against securities senior to acquired subordinated securities if a bank did not originate and sell the underlying loans.

Reason for OTS difference: Policy decision to ensure appropriate capital against risk of these assets. Whether institutions create subordinated securities or purchase subordinated securities, the risks are similar.

10. *Consequences of Failure to Meet Capital Standards:* The PCA provisions of FDICIA impose a stringent regulatory regimen on thrifts and banks failing their capital requirements. The PCA provisions of section 131 of FDICIA establish five regulatory categories, with the distinctions primarily based on institutions' capital ratios. Section 131 imposes various sanctions and restrictions on institutions in the lower three PCA categories, while other regulations (brokered deposits and the risk-based premium rules of the FDIC) provide preferential treatment to the well-capitalized institutions. The Agencies issued a joint preamble and parallel rules implementing PCA.

Savings associations are also subject to additional restrictions and requirements under the HOLA, as enacted in FIRREA. The OTS will continue to apply these provisions to savings associations, but is coordinating their implementation with the PCA provisions to the extent possible. The HOLA provisions do not apply to banks.

Reason for OTS Difference: The Agencies have adopted uniform rules implementing the PCA provisions of FDICIA. The HOLA, however, continues to impose additional restrictions on savings associations (HOLA 5(t)(6)).

B. Minor Differences

1. *1.5 Percent Tangible Capital Requirement:* OTS has an explicit 1.5 percent tangible capital requirement; the bank regulators do not.

Reason for OTS Difference: FIRREA requires OTS to establish a tangible capital requirement of at least 1.5 percent of assets (HOLA 5(t)(2)(B)). 2.

2. *Collateralized Mortgage Obligations ("CMO") Tranches:* In its final interest

rate risk rule, OTS eliminated the placement of stripped securities and certain collateralized mortgage obligations in the 100 percent risk weight category because of interest rate risk sensitivity. The interest rate risk component will address this risk directly. OTS is keeping residual securities in the 100 percent risk-weight in light of the risks associated with residual securities.

The Banking Agencies vary in their approach: OCC has stated that any CMO tranche absorbing more than its pro-rata share of principal loss risk is risk-weighted at 100 percent (others generally at 20 percent); FRB has stated that any CMO tranche absorbing more than its pro-rata share of loss is risk weighted at 100 percent (others generally at 20 percent); FDIC undertakes a case-by-case review.

Reason for OTS Difference: Policy decision to address the interest rate risk of these securities by imposing capital charge in accordance with interest rate risk rule. The risks involved with residual securities warrant their continued placement in the 100 percent risk weight.

3. *Pledged Deposits/Nonwithdrawable Accounts:* OTS includes these instruments as core capital for mutual associations if they meet the same requirements as non-cumulative perpetual preferred stock. If they do not meet the requirements for inclusion in core capital, OTS includes them as supplementary capital provided they meet the standards for preferred stock or subordinated debt. The Banking Agencies do not address this issue since these instruments do not exist in the banking industry.

Reason for OTS Difference: Policy decision to treat items that offer equivalent protection to the insurance fund and the institution in the same way.

4. *Qualifying Single Family Mortgage Loans:* In order to be placed in the 50 percent risk-weight category, OTS requires that mortgages have no more than an 80 percent loan-to-value ("LTV") ratio (unless they have private mortgage insurance ("PMI") bringing the LTV ratio down to 80 percent). The Banking Agencies require "prudent, conservative" underwriting without specific LTV ratio requirements.

Reason for OTS Difference: Policy decision to make explicit what OTS believes is generally "prudent and conservative"; the Banking Agencies have indicated to OTS that they may use the 80 percent LTV ratio in examiner guidance.

5. *Loans to Individual Purchasers for the Construction of Their Homes:* OTS and OCC place these assets in the 50 percent risk-weight category. The FRB and FDIC may treat them as construction loans (100 percent) or as mortgage loans (50 percent) depending on their characteristics.

Reason for OTS difference: Policy decision to include such loans in standard treatment of 1–4 family mortgage loans, as does the OCC.

6. *Holding of First and Second Liens on Home Mortgages by the Same Institution:* The FDIC, FRB, and OTS generally treat first and second liens held by the same institution as single loans if there are no intervening liens. The OCC generally places second liens in the 100 percent risk-weight category.

Reason for OTS Difference: Policy decision generally to treat combined loans same as single loans. Second mortgages (depending on their characteristics) should be placed in the 50 percent risk weight if both loans are held by the same institution, there are no intervening liens, and they meet the criteria for qualifying mortgage loans.

7. *Rules on Maturing Capital Instruments ("MCI"):* OTS and the Banking Agencies use different rules to determine how much of MCI counts toward capital. OTS (i) grandfathers issuances of MCI issued on or before November 7, 1989 (which was the date of the rule change) and (ii) allows two options for issuances of MCI after November 7, 1989 (a) the bank rule (five year amortization) or (b) a limit of 20 percent of total capital maturing in any one year for instruments within seven years of maturity. Bank regulators use a five year amortization rule.

Reason for OTS Difference: Policy decision to minimize unnecessary disincentives for issuance of subordinated debt and to avoid unduly penalizing pre-FIRREA issuances of MCI.

8. *Limitation on Subordinated Debt:* The Banking Agencies limit subordinated debt to 50 percent of core capital. OTS has no limit on the amount of subordinated debt that can count as supplementary capital.

Reason for OTS Difference: Policy decision to encourage issuance of supplementary capital.

9. *Non-residential Construction and Land Loans:* OTS requires the amount of these loans above an 80 percent LTV ratio to be deducted from total capital (with a five year phase-in). The Banking Agencies place the whole loan amount in the 100 percent risk-weight category.

Reason for OTS Difference: Policy decision to ensure appropriate capital against risk of these assets. OTS experience indicates that high LTV ratio land loans and nonresidential construction loans present particularly high levels of risk.

10. *FSLIC/FDIC-covered Assets:* OTS places these assets in the zero percent risk-weight category. The Banking Agencies generally place these assets in the 20 percent risk-weight category.

Reason for OTS Difference: Policy decision to ensure appropriate capital against risk of these assets. OTS notes that these government guaranteed obligations are supported by a "backup" call on the United States Treasury.

11. *Mutual Funds:* In general, OTS establishes the risk weighting for mutual funds on the asset with the highest capital requirement actually held by the mutual fund. The Banking Agencies base their capital charge on the highest risk-weighted asset that is a permissible investment by the mutual fund. OTS allows, on a case-by-case basis, "pro-rata" risk-weighting of investments in mutual funds, based on the assets of the mutual fund (i.e., if 90 percent of a mutual fund's assets are 20 percent risk-weight assets and 10 percent are 100 percent risk-weight assets, we may allow 90 percent of the investment in 20 percent risk-weight category and 10 percent in the 100 percent risk-weight category). The Banking Agencies do not allow banks to pro-rate mutual fund investments between risk-weight categories.

Reason for OTS Difference: Policy decision to ensure appropriate capital against risk of these assets. OTS believes that allowing institutions to pro-rate their investments and focus on actual assets ensures that savings associations hold capital in an amount essentially equivalent to that required if they directly held the assets in which the mutual fund invested.

12. *Capital Requirement on Holding Companies:* FRB applies the risk-based capital requirements to bank holding companies; OTS does not apply them to thrift holding companies.

Reason for OTS Difference: OTS policy decision to not impose capital requirements on corporate entities that do not pose a risk to the deposit insurance fund.

13. *Agricultural Loan Losses:* The Banking Agencies, due to a statutory requirement, allow such losses to be deferred (and, effectively, allow these losses to be "included" in supplementary capital). OTS does not allow such losses to be deferred or included in assets or capital.

Reason for OTS Difference: OTS has no statutory requirement to allow such deferred losses in assets or capital.

14. *Income Capital Certificates ("ICCs") and Mutual Capital Certificates ("MCCs"):* OTS allows inclusion in

supplementary capital. Because these items do not exist in the banking industry, the Banking Agencies do not address them.

Reason for OTS Difference: ICCs/MCCs are counted as supplementary capital due to their being functionally equivalent to net worth certificates (which are required, by statute, to be included in capital).

15. *Restrictions on Hybrid Capital Instruments:* The Banking Agencies' capital rules contain certain restrictions on hybrid capital instruments (priority of debt, etc.). OTS does not have these restrictions in its capital rule (rather, they are elsewhere in OTS regulations or policy statements).

Reason for OTS Difference: Policy decision to retain flexibility to adapt to innovations in capital instruments. (There is no difference in practice.)

Attachment II

Summary of Differences in Accounting Practices

Differences by each agency in accounting or supervisory reporting practices may cause differences in the amount of regulatory capital maintained by depository institutions. These differences are the result of an evolutionary process that primarily reflects historical agency philosophy and industry trends. A summary of these differences is presented below.

1. Futures and Forward Contracts

OTS practice is to follow generally accepted accounting principles ("GAAP"). In accordance with SFAS 80, when hedging criteria are satisfied, the accounting for the futures contract is to be related to the accounting for the hedged item. Changes in the market value of the futures contract are recognized in income when the effects of related changes in the price or interest rate of the hedged item are recognized. Such reporting can result in deferred gains and losses in accordance with GAAP.

The Banking Agencies do not follow GAAP, but require that banks report changes in the market value of futures contracts even when used as hedges in the current period's income statement. However, futures contracts used to hedge mortgage banking operations are reported in accordance with GAAP.

2. Excess Servicing Fees

OTS practice is to follow GAAP in valuing excess servicing fees. When loans are sold with servicing retained and the stated servicing fee rate differs materially from a normal servicing fee rate, the sales price should be adjusted in determining the gain or loss from the sale of the loans. This provides for the recognition of a normal fee in each subsequent year that servicing continues on the loans. The gain recorded at the date of sale cannot be larger than the gain assuming the loans were sold servicing released. The subsequent valuation of the excess servicing is adjusted based upon anticipated prepayment rates and interest rates.

The Banking Agencies follow GAAP for residential mortgage loan pools. For all other loans (including individual residential mortgage loans), the Banking Agencies do not follow GAAP. In those cases, they require that excess servicing fees retained on loans sold be reported as realized over the contractual life of the transferred asset.

3. In-Substance Defeasance of Debt

OTS practice is to follow GAAP. In accordance with SFAS 76, when a debtor irrevocably places risk-free monetary assets in a trust solely for satisfying the debt and the possibility that the debtor will be required to make further payments is remote, the debt is considered extinguished. The transfer can result in a gain or loss in the current period.

The Banking Agencies do not follow GAAP. The Banking Agencies continue to report the defeased debt as a liability and the securities contributed to the trust as assets with no recognition of any gain or loss on the transaction.

4. Sales of Assets with Recourse

OTS practice is to follow GAAP. A transfer of receivables with recourse is recognized as a sale if (i) the transferor surrenders control of the future economic benefits, (ii) the transferor's obligation under the recourse provisions can be reasonably estimated, and (iii) the transferee cannot require repurchase of the receivables except pursuant to the recourse provisions.

However, in the calculation of OTS risk-based capital, certain off-balance sheet conversions are performed that result in capital being required for the risk retained. See further discussion of capital differences with respect to this item in Attachment I, Capital Differences.

The practice of the Banking Agencies is generally to report transfers of receivables with recourse as sales only when the transferring institution (i) retains no risk of loss from the assets transferred and (ii) has no obligation for the payment of principal or interest on the assets transferred. As a result, assets transferred with recourse are reported as financings, not sales.

However, this general rule does not apply to the transfer of mortgage loans under one of the government programs: Government National Mortgage Association, FNMA, and FHLMC. Transfers of mortgages under one of these programs are automatically treated as sales. Furthermore, private transfers of mortgages are also reported as sales under the rules of the FRB and OCC if the transferring institution does not retain a significant risk of loss on the assets transferred.

5. Negative Goodwill

OTS permits negative goodwill to offset goodwill reported as an asset.

The Banking Agencies require that negative goodwill be reported as a liability, not netted against goodwill assets.

6. Push-Down Accounting

OTS requires push-down accounting when there is at least a 90 percent change in ownership.

The Banking Agencies require push-down accounting when there is at least a 95 percent change in ownership.

7. Offsetting of Amounts Related to Certain Contracts

OTS practice is to follow GAAP. It is a general accounting principle that the offsetting of assets and liabilities in the balance sheet is improper except where a right of setoff exists. FASB Interpretation No. 39, "Offsetting of Amounts Related to Certain Contracts" (FIN 39), effective in 1994, defines right of setoff and specifies that four conditions must be met to net assets and liabilities, as well as off-balance sheet instruments.

The three Banking Agencies are planning to adopt FIN 39 solely for on-balance sheet items arising from off-balance sheet derivatives. The Call Report's existing guidance generally prohibits netting of assets and liabilities.

8. Specific Valuation Allowance for and Charge-offs of Troubled Loans

Prior to September 30, 1993, OTS required specific valuation allowances or charge-offs for troubled loans based on the net realizable value of the collateral. Effective September 30, 1993, OTS issued a revised policy that requires charge-offs or specific valuation allowances against a loan when its book value exceeds its "value," as defined. The "value" is either the present value of the expected future cash flows discounted at the loan's effective interest rate, the observable market price of the loan, or the fair value of the collateral. This revised policy, which is similar to the requirements of FASB Statement No. 114, narrows the differences between banks and thrifts.

The Banking Agencies generally consider real estate loans, where repayment is expected to come solely from the collateral that secures the loan, to be "collateral dependent." For such a loan, any portion of the loan balance that is not adequately secured by the value of the collateral, and that can be clearly identified as uncollectible, should be charged off. This approach is consistent with GAAP applicable to banks.

Dated: February 23, 1994.

By the Office of Thrift Supervision.

Jonathan L. Fiechter,

Acting Director.

[FR Doc. 94–5049 Filed 3–4–94; 8:45 am]

BILLING CODE 6720–01–P

Sunshine Act Meetings

Federal Register

Vol. 59, No. 44

Monday, March 7, 1994

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

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 59 F.R. 9803.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:30 a.m., Tuesday, March 8, 1994.

CHANGES IN THE MEETING: The Commodity Futures Trading Commission has canceled the meeting to discuss a rule enforcement review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–5293 Filed 3–3–94; 3:18 pm]

BILLING CODE 6351–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of March 7, 14, 21, and 28, 1994.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of March 7

Thursday, March 10

2:00 p.m.
Periodic Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)
(Contact: John Larkins, 301–492–4516)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Sequoyah Fuels Corp.—Petition for Review of LBP–93–25 (Tentative)
(Contact: Cecilia Carson, 301–504–1625)

Week of March 14—Tentative

Monday, March 14

2:00 p.m.
Briefing by Nuclear Waste Technical Review Board (NWTRB) (Public Meeting)
(Contact: Paula Alford, 703–235–4473)

Friday, March 18

10:00 a.m.
Briefing on Status of Action Plan for Fuel Cycle Facilities (Public Meeting)
(Contact: Ted Sherr, 301–504–3371)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Supplemental Ethics Regulations (Tentative)
(Contact: John Szabo, 301–504–1610)

2:00 p.m.
Briefing on Investigative Matters (Closed—Ex. 5 & 7)

Week of March 21—Tentative

There are no meetings scheduled for the Week of March 21.

Week of March 28—Tentative

Thursday, March 31

10:00 a.m.
Briefing by Nuclear Energy Institute (NEI) (Public Meeting)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

2:00 p.m.
Briefing by ABB/CE on Status of System 80+ Application for Design Certification (Public Meeting)
(Contact: 301–681–7040)

Friday, April 1

10:00 a.m.
Briefing on Low Level Radioactive Waste Performance Assessment Development Plan (Public Meeting)
(Contact: John Greeves, 301–504–3334)

ADDITIONAL INFORMATION:

By a 4–0 vote on February 28, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of 'Issuance of Final Rule Reinstating Nonprofit Educational Exemption and Denial of Petition for Rulemaking' and 'Sacramento Municipal Utility District—Licensing Board's Second Prehearing Conference Order, LBP–93–23' " be held on March 1, and on less than one week's notice to the public.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504–1661.

Dated: March 2, 1994.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 94–5232 Filed 3–3–94; 12:23 pm]

BILLING CODE 7590–01–M

Corrections

Federal Register
Vol. 59, No. 44
Monday, March 7, 1994

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

National Oceanic and Atmospheric Administration

[Docket No. 940119-4019; I.D. 123093G]

Coral and Coral Reefs of the Gulf of Mexico and South Atlantic

Correction

In notice document 94-2417 beginning on page 5179 in the issue of Thursday, February 3, 1994, make the following correction:

On page 5180, in the first column, under **ADDRESSES**, beginning in the fifth line, remove the phrase "the Gulf of Mexico and South Atlantic may be obtained from".

BILLING CODE 1505-01-D

DEPARATMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 641

[Docket No. 931070-4010; I.D. 100493A]

RIN 0648-AF84

Reef Fish Fishery of the Gulf of Mexico

Correction

In rule document 94-3176 beginning on page 6588 in the issue of Friday, February 11, 1994, make the following corrections:

1. On page 6588, in the second column, under **EFFECTIVE DATE**, in the first line, "March 14, 1994" should read "March 9, 1994".

2. On page 6590, in the first column, in the fourth full paragraph, in the last line, "March 14, 1994" should read "March 9, 1994".

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1400LI-94; AG Order No. 1854-94]

RIN 1115-AC30

Extension of Designation of Liberia Under Temporary Protected Status Program

Correction

In notice document 94-4742 beginning on page 9997 in the issue of Wednesday, March 2, 1994, in the second column, under **EFFECTIVE DATES**, in the fourth and fifth lines, "March 3, 1994" and "April 4, 1994" should read "March 2, 1994" and "April 1, 1994" respectively.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended February 18, 1994

Correction

In notice document 94-4577 appearing on page 9800 in the issue of Tuesday, March 1, 1994, in the second column, the heading should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8508]

RIN 1545-AE26

Adjustments to Basis of Stock and Indebtedness to Shareholders of S Corporations and Treatment of Distributions by S Corporations to Shareholders

Correction

In proposed rule document 93-31928 beginning on page 12 in the issue of Monday, January 3, 1994, make the following corrections:

1. On page 13, in the third column, in the first full paragraph, in the fourth line, "The" should read "the".

§ 1.1367-1 [Corrected]

2. On page 15, in the 3rd column, in § 1.1367-1(c)(2), in the 11th line, insert a period after "year"; and in the 19th line, replace the comma with a semicolon.

§ 1.1367-2 [Corrected]

3. On page 17, in the second column, in § 1.1367-2(d)(1), in the eighth line from the bottom, insert a period after "corporation".

§ 1.1368-1 [Corrected]

3. On page 19, in the second column, in § 1.1368-1(d), in the second line, "(l) General treatment of distribution." should read "(1) *General treatment of distribution.*"

§ 1.1368-2 [Corrected]

4. On page 21, in the third column, in § 1.1368-2(d), in the second line, "(l)" should read "(1)".

§ 1.1368-3 [Corrected]

5. On page 22, in the third column, in § 1.1368-3, replace the dash with a minus sign in the following places:

a. In *Example 2* (iii), in the fourth line from the bottom.

b. In *Example 3* (ii), in the fifth and ninth lines.

c. In *Example 3* (iv), in the fourth line.

BILLING CODE 1505-01-D

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AG29

Claims Based on Chronic Effects of Exposure to Vesicant Agents

Correction

In proposed rule document 94-1484 beginning on page 3532 in the issue of Monday, January 24, 1994, make the following correction:

§ 3.316 [Corrected]

On page 3534, in the second column, in § 3.316(b), the last line should read "(See § 3.303)."

BILLING CODE 1505-01-D

DEPARTMENT OF VETERANS

38 CFR Part 4

RIN 2900-AE11

Schedule for Rating Disabilities; Genitourinary System Disabilities

Correction

In rule document 94-1045 beginning on page 2523 in the issue of Tuesday, January 18, 1994, make the following correction:

§ 4.115a [Corrected]

On page 2528, in § 4.115a, in the table, in the first entry under "Obstructed voiding", in the second line, "characterization" should read "catheterization".

BILLING CODE 1505-01-D

Federal Register

Monday
March 7, 1994

Part II

Federal Reserve System

12 CFR Part 205

Electronic Fund Transfer; Final Rule, Proposed Rule and Proposed Official Staff Interpretation

FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Regulation E; Docket No. R–0829]

Electronic Fund Transfers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is publishing a final rule to amend Regulation E, pursuant to its authority under sections 904(c) and (d) of the Electronic Fund Transfer Act, to cover electronic benefit transfer (EBT) programs established by federal, state, or local government agencies. EBT programs involve the issuance of access cards and personal identification numbers to recipients of government benefits so that they can obtain their benefits through automated teller machines and point-of-sale terminals. The final rule applies Regulation E to EBT programs but sets forth certain limited modifications under authority granted to the Board by section 904(c) of the act. In particular, periodic account statements are not required if account balance information and written account histories are made available to benefit recipients by other specified means. This rulemaking directly affects government agencies that administer EBT programs and indirectly affects depository institutions and other private-sector entities.

DATES: *Effective date:* February 28, 1994. *Compliance date.* To provide adequate time to prepare for compliance, the Board has delayed mandatory compliance until March 1, 1997.

FOR FURTHER INFORMATION CONTACT: Jane Jensen Gell or Mary Jane Seebach, Staff Attorneys, or John C. Wood, Senior Attorney, Division of Consumer and Community Affairs, at (202) 452–2412 or (202) 452–3667. For the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD), at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

(1) Background

EFT Act and Regulation E

Regulation E implements the Electronic Fund Transfer Act (EFTA). The act and regulation cover any electronic fund transfer initiated through an automated teller machine (ATM), point-of-sale (POS) terminal, automated clearinghouse, telephone bill-payment system, or home banking program and provide rules that govern these and other electronic transfers. The regulation sets rules for the issuance of ATM cards and other access devices; disclosure of terms and conditions of an EFT service; documentation of electronic fund transfers by means of terminal receipts and account statements; limitations on consumer liability for unauthorized transfers; procedures for error resolution; and certain rights related to preauthorized transfers.

The EFTA is not limited to traditional financial institutions holding consumers' accounts. For EFT services made available by entities other than an account-holding financial institution, the act directs the Board to assure, by regulation, that the provisions of the act are made applicable. The regulation also applies to entities that issue access devices and enter into agreements with consumers to provide EFT services.

Government Programs Involving Electronic Delivery of Benefits

The federal government, in conjunction with state and local agencies, is working to expand electronic delivery of government benefits both for direct federal benefit programs and for federally funded programs that are state administered. An electronic benefit transfer (EBT) system functions much like a private-sector EFT program. Benefit recipients receive plastic magnetic-stripe cards and personal identification numbers (PINs) and access benefits through electronic terminals. For cash benefits such as Aid to Families with Dependent Children (AFDC) or Supplemental Security Income (SSI), the programs may use existing private-sector ATM networks as well as POS terminals to disburse benefits. For food stamp purchases, the programs use POS terminals in grocery stores. In some cases the POS equipment is dedicated solely to the EBT program, while in others it also is used for private-sector transactions.

For many state and local agencies, EBT may provide a way to increase operational efficiency, to reduce costs, and to improve service to benefit recipients. Federal legislation that took effect April 1, 1992, provided new impetus for the use of EBT, authorizing the states to use electronic delivery of food stamp benefits in place of paper coupons. States previously could seek approval to use EBT for food stamp benefits only on a demonstration basis. Currently, about 30 states have EBT programs in different stages of operation or development.

In November 1993, the Clinton administration established a Federal Electronic Benefits Task Force. The group's assigned task is to develop and implement a nationwide system for the electronic delivery of benefits from government programs, pursuant to a recommendation from the National Performance Review. In December, the EBT Task Force wrote to the Federal Reserve Board, expressing the federal agencies' commitment to providing consumer protection for EBT recipients, and noting at the same time the need for program integrity and accountability for public funds. The EBT Task Force asked that the Board provide a three-year delay in the effective date if the Board should ultimately decide to apply Regulation E to EBT programs. The EBT Task Force stated that this delay was necessary for implementing EBT in accordance with Regulation E; among other things, the agencies needed the time to collect and evaluate comparative loss data at EBT test sites, data that they could then use as the basis for seeking legislative authorization and funding to pay for replacing benefits lost due to unauthorized transfers.

(2) Discussion

Board Authority

The Federal Reserve Board has a broad mandate under the EFTA to determine coverage when electronic services are offered by other than traditional financial institutions. Section 904(d) provides that in the event EFT services are made available to consumers by a person other than a financial institution holding a consumer's account, the Board shall ensure that the act's provisions are made applicable to such persons and services.

The legislative history of the EFTA provides guidance on the Board's authority to determine if particular services should be covered by the act, based on whether transfers are initiated electronically, whether current laws provide adequate consumer safeguards, and whether coverage is necessary to achieve the act's basic objectives. A Senate Banking Committee report noted that the statutory delegation of authority to the Board enables the Board to examine new services on a case-by-case basis, thereby contributing substantially to the act's overall effectiveness. The Congress contemplated that, as no one could foresee EFT developments in the future, regulations would keep pace with new services and assure that the act's basic protections continue to apply. See S. Rep. No. 915; S. Rep No. 1273, 95th Cong., 2d Sess. 25–26 (1978).

In February 1993 the Board published a proposal to amend Regulation E to cover EBT programs, with certain modifications. 58 FR 8714, February 17, 1993. The Board believes that a number

of factors support Regulation E coverage of EBT programs. EBT recipients use the same kinds of access devices and electronic terminals in conducting transactions as do consumers of EFT services in general. Indeed, in EBT systems that piggyback on existing EFT networks, the terminals used are one and the same. The transactions themselves, such as cash withdrawals and purchases, are also similar.

To obtain benefits, recipients insert a magnetic-stripe card into a terminal that reads the encoded information, and enter a PIN to verify their identity. The terminal communicates with a database to ascertain that a recipient is eligible for benefits, that the card has not been reported lost or stolen, and that benefits are available in an amount sufficient to cover the requested transaction. In cash benefit programs, the recipient receives a cash disbursement; in the case of food stamp benefits, the recipient's allotment is charged and the merchant's account credited for the amount of the food purchase. From a recipient's viewpoint, an EBT system functions much the same as if the recipient had an ordinary checking account with direct deposits of government benefits and with ATM and POS service available to access the benefits.

The Board believes that the strong similarity of EBT systems and other EFT services, the act's legislative history, and the language of the EFTA and Regulation E support coverage of EBT programs under the act and regulation. Therefore, the Board has determined that EBT programs must comply with the requirements of Regulation E as modified by this final rule, pursuant to its authority under 904(c) and (d) of the EFTA.

The Board's action, amending the regulation, supersedes an interpretation in the Official Staff Commentary to Regulation E (12 CFR part 205, supp. II). The commentary stated that an electronic payment of government benefits was not a credit or debit to a "consumer asset account" because the account was established by a government agency rather than the consumer (the recipient). The Board has reexamined that interpretation, and has concluded that a sufficient basis does not exist for excluding these accounts from Regulation E's coverage.

The act defines the term "account" to mean "a demand deposit, savings deposit, or other asset account * * * as described in regulations of the Board, established primarily for personal, family, or household purposes * * *." Regulation E uses substantially the same wording, and refers to "other consumer asset account." The reference to "consumer" asset accounts distinguishes them from business-purpose accounts, which are not subject to the regulation.

The EFTA's coverage is not limited to traditional depository institutions, but may extend to any person (including a government agency) "* * * who issues an access device and agrees with a consumer to provide electronic fund transfer services." In the case of EBT programs, the Board's action will affect primarily government agencies that administer EBT programs and issue EBT cards to benefit recipients for accessing benefits, or that arrange for such services to be provided. The revised rule will affect only indirectly most depository institutions and other private-sector entities.

Board's Proposal

While the Board proposed general coverage of EBT under the EFTA, the proposal published in February 1993 modified certain documentation requirements, recognizing differences between EBT and EFT systems. A periodic statement would not be required if information about account balances and account histories were otherwise made available to consumers. In addition, modifications were proposed in the rules on the issuance of access devices, initial disclosures, and the notices on error resolution procedures, to tailor the requirements to EBT programs.

The Board received approximately 175 comment letters on its proposal from a broad range of commenters. About 125 commenters—including state and local agencies that provide benefits, federal agencies, financial institutions, and a bank trade association—opposed the Board's proposal. Many of them requested an exemption for EBT programs from the Regulation E liability and error resolution rules. They asserted that full application of Regulation E would increase the costs of delivering benefits to the point that offering EBT might not be economically feasible, because EBT programs may be only marginally cost-effective even without factoring in Regulation E compliance costs. They expressed the view that the expected advantages of EBT might not be realized if Regulation E were to apply, and that its application would hinder the introduction or expansion of EBT programs.

In place of the Board's proposal, the majority of the commenters supported recommendations given to the Board in May 1992 by an interagency steering committee established within the federal government to coordinate EBT efforts among program agencies. Agencies represented on that group included the Treasury Department's Financial Management Service, the Agriculture Department's Food and Nutrition Service, the Health and Human Services Department's Social Security Administration and Administration for Children and Families, the Office of Management and Budget, and other federal agencies that have an interest in planning for EBT systems. The steering committee's proposal primarily differed from the Board's proposal in that benefit recipients would be liable for unauthorized transfers subject to certain conditions, and the error resolution requirements would not apply if an agency maintained "efficient, fair, and timely procedures" for resolving errors and disputes, including an appeals process.

Anticipating public opposition to Regulation E coverage, the Board in the proposal indicated that commenters should offer explanations of why modifications in the regulatory requirements were needed, together with specifics such as data on costs. Approximately 35 commenters included estimates of the additional cost they believed would be imposed by Regulation E. In some cases the estimates were quite detailed. A few estimates were based on agency experience with the replacement of lost or stolen cards in EBT programs. Most of the cost estimates were based on loss and fraud experience under existing paper-based benefit programs (such as mailed AFDC checks and mailed food coupons). Nationwide, one group estimated the projected costs due to Regulation E, in worst-case scenarios, to be between $164 million and $986 million annually.

Many commenters suggested that private-sector financial institutions differ from government agencies in ways that relate to how compliance costs can be borne. For example, financial institutions can control their costs by selecting the customers to whom they are willing to offer EFT services, while program agencies must accept all who qualify for the benefit program. If a customer of a financial institution is suspected of engaging in fraud, the institution can terminate the account relationship. In a like situation, an agency could shift a recipient from EBT back to the paper-based system, but commenters believe it may not be feasible to operate dual systems.

Similarly, commenters noted, private-sector institutions handle losses related to the Regulation E customer-liability limitations by spreading the losses over their entire customer base in the form of

increased fees or reduced interest paid. Agencies cannot do so, and thus losses would have to be paid out of tax revenues, or, where permitted, by reducing benefits. If neither method is available, then the EBT program would be eliminated or cut back.

Approximately 35 commenters supported the Board's proposal. This group included advocacy groups for benefit recipients, financial institutions, a bank trade association, and individuals. These commenters agreed with the premise that the same rules should apply to both EBT recipients and EFT users in the general public, and that both government and private-sector organizations offering EFT services should be subject to the same rules.

Some commenters in this group called for even greater consumer protection for EBT recipients than would be provided by existing Regulation E. For example, one advocacy group argued that the regulation should prohibit mandatory EBT programs. Other commenters urged the Board to require disputed amounts to be provisionally credited to the consumer's account within one business day (instead of 10 business days for ATM transactions, or 20 business days for POS transactions, as allowed by existing Regulation E). A coalition of consumer groups suggested that the limits on liability for unauthorized transactions are too high in the EBT context, and that, for example, the $50 liability that can be imposed even if a recipient promptly reports a lost or stolen debit card should be reduced or eliminated.

Final Action on Proposal

After a review of the comments, further analysis, and a weighing of policy considerations, the Board has adopted a final rule pursuant to its authority under 904 (c) and (d) of the EFTA. The Board's action requires EBT programs to comply with the requirements of Regulation E as modified by this final rule. The Board continues to believe that all consumers using EFT services should receive substantially the same protection under the EFTA and Regulation E, absent a showing that compliance costs outweigh the need for consumer protections. The Board recognizes that benefit program agencies are concerned about the operational and cost impacts of coverage, specifically in the areas of liability for unauthorized transfers and error resolution, but believes that the cost data presented to support exemptions in these areas were not definitive.

The Board has provided a delayed implementation date, making compliance optional until March 1, 1997, in keeping with a request received in December 1993 from the Federal EBT Task Force. As discussed above, the EBT Task Force, which represents all the major agencies with large individual benefit programs, asked for the three-year delay so that agencies could develop and implement a nationwide system for delivering multiple-program benefits in compliance with Regulation E.

The Board's modified rules for EBT programs are limited to programs for disbursing welfare and similar government benefits. Some of the military services, as well as certain private-sector employers, have installed ATMs through which salary and other payments can be made in a manner similar to EBT systems. Such systems remain fully covered by Regulation E.

In bringing EBT accounts within the scope of the EFTA's definition of "account," the Board does not take a position about the legal status of the funds for any other purpose. For example, legal ownership of the funds in EBT accounts (by the recipient or a state, for instance) is not affected by this rulemaking.

Some commenters asked for clarification on whether the Board viewed specialized types of programs, such as Medicaid, or programs using different technology (specifically, smart card programs) as covered by the EFTA and Regulation E. The Board believes that when a consumer can access funds in an account using electronic means, Regulation E is applicable. The Board believes that Medicaid programs do not involve an account within the meaning of Regulation E, given that benefits under these programs are not made available to the consumer in terms of a dollar amount available to be accessed by the consumer, as is the case in EBT programs such as AFDC, SSI, and food stamps.

With regard to smart card systems, the Board has issued a proposal to review Regulation E, also published in today's **Federal Register**, that solicits comment on the question of coverage of smart card systems in general (both public and private sector). Any determination made on coverage of smart cards in the review could apply to EBT smart card programs.

(3) Explanation of New § 205.15

Section 205.15—Electronic Fund Transfer of Government Benefits

A new section is added to the regulation to specifically address the rules on the electronic fund transfer of government benefits. Agencies are generally required to comply with all applicable sections of the regulation. Section 205.15 contains the modified rules for EBT programs on the issuance of access devices, periodic statements, initial disclosures, liability for unauthorized use, and error resolution notices.

Paragraph (a)—Government Agency Subject to Regulation

Paragraph (a)(1)

The act and regulation define coverage in terms of "financial institution." Coverage applies to entities that provide EFT services to consumers whether these entities are banks, other depository institutions, or other types of organizations entirely. The substance of paragraph (a)(1), which defines when a government agency is a financial institution for purposes of the act and regulation, is unchanged from the proposal. Editorial changes have been made for clarity.

Paragraph (a)(2)

The term "account," which is defined generally in § 205.2(b), is defined for purposes of § 205.15 to mean an account established by a government agency for distributing benefits to a consumer electronically, such as through ATMs or POS terminals, whether or not the account is directly held by the agency or a bank or other depository institution. For example, an "account" under this section would include use of a database containing the consumer's name and record of benefit transfers that is accessed for verification purposes before a particular transaction is approved. For purposes of this section, government benefits include cash benefits such as AFDC and SSI and noncash benefits such as benefits under the food stamp program.

Paragraph (b)—Issuance of Access Devices

Under § 205.5, debit cards, PINs, and other access devices may not be issued except in response to a consumer's request or application for a device, or to replace a device previously accepted by the consumer. Financial institutions are permitted to issue unsolicited access devices in limited circumstances under § 205.5(b). The general prohibition against unsolicited issuance is intended to protect a consumer against the issuance of an access device that could be used to access the consumer's funds without the consumer's knowledge and approval or without the consumer's being informed of the terms and conditions applicable to the device.

The Board's final rule makes clear that in the case of EBT, an agency may

issue an access device to a recipient without a specific request. A recipient of government benefits is deemed to have requested an access device by applying for benefits that the agency disburses or will disburse by means of EBT. The Board believes that it is unlikely that a government agency would issue an access device without the recipient's being made aware that the way to access benefits is by use of the device and that to safeguard benefits the device must be protected. Moreover, given that initial disclosures would be provided during training, the recipient will be informed of the account's terms and conditions.

The Board does recognize, however, commenters' concerns about the need for agencies to verify the identity of the consumer receiving the device before it is activated. As in the case of the private sector, an issuing agency will have to verify the identity of the consumer by a reasonable means before a device is activated. Reasonable means include methods of identification such as a photograph or signature comparison.

Some commenters expressed concern about the statutory prohibition against the compulsory use of EFT and its implications for EBT programs. Section 913 of the EFTA prohibits requiring a consumer to establish an account at a particular institution for receiving electronic fund transfers as a condition of employment or receipt of government benefits. This prohibition does not prevent an agency from requiring benefits to be delivered electronically.

In EBT programs, agencies do not require recipients to open or maintain bank accounts at a particular institution for the electronic receipt of government benefits. This is the case even when an agency enters into an arrangement with a single financial institution that then serves as the agency's financial intermediary. Consequently, the Board believes that the prohibition against compulsory use is not an impediment to mandatory EBT programs. Nevertheless, pursuant to its authority under section 904(c) of the EFTA, the Board has determined that a government agency with a mandatory EBT program should ensure that recipients of cash benefits have access to other electronic options (for example, direct deposit of benefits to an existing bank account or to an account established by the recipient for that purpose).

Paragraph (c)—Alternative to Periodic Statement

Regulation E requires financial institutions to provide periodic statements for an account to or from which EFTs can be made. Periodic statements are a central component of Regulation E's disclosure scheme. But as long as other means of obtaining account information are available to benefit recipients, the Board believes that periodic statements are not absolutely necessary for EBT programs due to the limited types of transactions involved, particularly given the expense of routinely mailing monthly statements to all recipients. Moreover, requiring periodic statements could impede the effort to eliminate paper and move toward a fully electronic system. Most commenters supported the Board's proposal to exempt government agencies from the requirement if the agency furnishes the consumer with other means of accessing account information.

Under the proposal, agencies were to provide balance information by means of an electronic terminal, balance inquiry terminal, or a readily available telephone line, and to make available a written account history upon request. The final rule contains these alternatives with modifications that respond to the comments.

To make balance information readily available, the proposal also would have required that the terminal receipt show the balance available to the consumer after the transfer. A number of commenters stated that this requirement would be difficult for some EBT systems to implement because existing ATM networks may not be capable of providing current account balances at all times. Commenters suggested that giving consumers access to balance information by other means (such as telephone or balance inquiry terminals) would achieve the same purpose. Accordingly, the final rule does not require that terminal receipts include the account balance as long as a consumer can access balance information by the other means set forth in paragraph (c) of this section.

A number of commenters urged that agencies should not make telephone access the only method by which a recipient can obtain an account balance. Taking these comments into consideration, the Board has modified the final rule. The final rule requires, in addition to a telephone line, at least one alternative method (such as a balance inquiry terminal) for access to balance information.

Commenters suggested that the telephone line be toll-free and available on a 24-hour basis. For EFT systems generally, the Board interprets a readily available telephone line to mean at least a local or toll-free line available during standard business hours. The Board believes that the same interpretation is appropriate for EBT systems, although an agency may of course choose to provide recipients with a 24-hour line.

Commenters requested that the Board provide certainty by clarifying how a consumer may request a written account history and the time period for compliance. The final rule clarifies that a request may be either written or oral, that the history should cover the 60 calendar days preceding the request date, and that the history should be provided promptly upon request. In addition, commenters asked for clarification about whether an agency could charge for written account histories or other disclosures required by the regulation. The Board believes that imposing fees in such instances would be contrary to public policy.

The Board had solicited comment on whether more complex EBT systems developed in the future (for example, systems allowing third-party payments) may necessitate periodic statements or other documentation, and whether the Board should address this issue at present. Several commenters encouraged the Board not to address the issue at this time, but to delay a decision until performance under the final rule can be assessed. Accordingly, the Board has deferred taking a position at this time.

Paragraph (d)—Modified Requirements

Paragraph (d)(1)—Initial Disclosures

Section 205.7 requires that written disclosures of the terms and conditions of an EFT service be given at or before the commencement of the service. Three disclosures have been modified for EBT programs. Under paragraph (d)(1)(i), government agencies must disclose the means by which the consumer may obtain account balance information, including the telephone number for that purpose. The disclosures will explain the ways in which balance information will be made available. (See model disclosure form A(12) below.) Under paragraph (d)(1)(ii), agencies must disclose that the consumer has the right to receive a written account history, upon request, and must provide a telephone number for obtaining the account history. This disclosure substitutes for the disclosure of a summary of the consumer's right to a periodic statement under § 205.7(a)(6) of the regulation. Under paragraph (d)(1)(iii), agencies must provide an error resolution notice substantially similar to model disclosure form A(13) rather than the notice currently contained in § 205.7(a)(10).

Paragraph (d)(2)—Annual Error Resolution Notice

Section 205.8(a) of the regulation requires that financial institutions provide a notice in advance of certain adverse changes to terms that were disclosed in the initial disclosures. No modification has been made for EBT programs. Consequently, agencies will have to provide a notice for certain changes in terms, such as in transaction limitations. Other changes, such as a decrease in the amount of a consumer's benefits, continue to be governed only by the agencies' program rules.

Section 205.8(b) of the regulation requires financial institutions to provide periodic error resolution notices to consumers, either annually or with each monthly account statement. In substitution for these notices, paragraph (d)(2) requires agencies to provide an error resolution notice substantially similar to model disclosure form A(13). The notice is to be provided annually.

Paragraph (d)(3)—Limitations on Liability

Section 205.6 of the regulation limits a consumer's liability for unauthorized transfers. If the consumer notifies the account-holding institution within two business days after learning of the loss or theft of a debit card, the consumer's liability is limited to $50. If notification is not made until after two business days, liability can rise another $450 for transfers made after two business days, for a total of $500. If the consumer does not notify the institution until more than 60 days after a periodic statement is sent showing an unauthorized transfer, the consumer's liability is unlimited for unauthorized transfers occurring after the 60th day and before notification.

The Board believes that the EFTA generally mandates the same degree of protection for benefit recipients as for the general public. The Board solicited comment on potential costs associated with implementing the liability rules for EBT programs and why such implementation would present a greater burden for government agencies than that experienced by financial institutions. Commenters submitted data on the expected cost impact of Regulation E on EBT programs, specifically on costs related to the limitations on consumer liability for unauthorized transfers and error resolution requirements; as discussed earlier, however, the Board believes the data are not definitive. Under the final rule, therefore, the limits on liability for unauthorized use, the error resolution requirements, and most other provisions of Regulation E would apply to EBT.

The Board recognizes the concerns about the potential cost impact of coverage, especially in regard to unauthorized use because of the potential for abuse through fraudulent claims. The Board believes, however, that through the leadership of the Federal Electronic Benefits Task Force, which has the goal of developing a nationwide system for delivering government benefits electronically, it should be possible for the agencies to implement cost-effective procedures that will help minimize the risk of fraudulent claims and potential abuse of EBT systems.

The Board notes in particular that Regulation E does not mandate an automatic replacement when a claim of lost or stolen funds is made. In the case of EBT as in the private sector, the agency would investigate the claim, consider the available evidence, and exercise judgment in making a determination about whether the transfer was unauthorized or was made by the recipient or by someone to whom the recipient gave access. The Board does not underestimate the difficulties that these investigations may pose for EBT program agencies. But the Board also believes that practical ways can be found, within the scope of Regulation E, that will enable EBT administrators to control potential losses.

The operational procedures developed to minimize risk will need to address some aspects of EBT that are different from the commercial setting—such as the fact that program agencies, unlike private sector institutions, may not be able in cases of suspected fraud or abuse simply to terminate their relationship with the recipient. Some of the measures that federal agencies have inquired about, which may be compatible with the special requirements of EBT, relate to aspects of the relationship that are not addressed by Regulation E. Thus their implementation would not conflict with regulatory requirements. Some of these include putting recipients on restricted issuance systems—requiring, for instance, that the recipient call in advance for authorization before each access to benefits, or restricting the sites at which the recipient could obtain benefits, or crediting the recipient's benefits in weekly increments rather than the full monthly amounts. Or the agency could appoint a representative payee, or place the recipient on a backup paper-based benefit payment system. Imposing these or other limitations may not be desirable from either an agency's or the recipients' perspective except in circumscribed situations. But if found to be cost-effective, such measures represent some possible approaches for dealing with recipients who show themselves to be irresponsible in their use of the EBT system.

In regard to recurring claims for the replacement of benefits, EBT agencies may not establish a presumption that, because a recipient has filed a claim in the past, the recipient's assertion of a second claim of unauthorized withdrawals can be automatically rejected. On the other hand, depending on the circumstances, it would not be unreasonable for the agency, in making its determination about the validity of a claim, to give weight to the fact that a particular recipient within a certain period of time has previously filed a claim, or multiple claims, of stolen funds. The Board believes that these are just some of the areas in which the Federal EBT Task Force can be helpful in setting operating guidelines and procedures.

Regulation E provides that a consumer may bear unlimited liability for failing to report within 60 days any unauthorized transfers that appear on a periodic statement. Because EBT recipients will not receive periodic statements, under the Board's proposal the 60 days would have run from the transmittal of a written account history provided upon the consumer's request. The final rule differs somewhat in that the 60-day period also can be triggered when the consumer obtains balance information via a terminal or telephone or on a terminal receipt.

Paragraph (d)(4)—Error Resolution

Section 205.11 of Regulation E sets certain time limits within which a consumer must file a notice of an alleged error. Under the Board's proposal for EBT, government agencies were to comply with the error resolution procedures in § 205.11 in response to an oral or written notice of error from the consumer received no later than 60 days after the consumer obtained a terminal receipt or a written account history on which the alleged error was reflected. The final rule differs somewhat, in that error resolution procedures can be triggered by any information provided to the consumer under paragraph (c).

List of Subjects in 12 CFR Part 205

Consumer protection, Electronic fund transfers, Federal Reserve System, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board amends 12 CFR part 205 as follows:

PART 205—ELECTRONIC FUND TRANSFERS (REGULATION E)

1. The authority citation for part 205 is revised to read as follows:

Authority: 15 U.S.C. 1693.

2. Section 205.15 is added to read as follows:

§ 205.15 Electronic fund transfer of government benefits.

(a) *Government agency subject to regulation.* (1) A government agency is deemed to be a financial institution for purposes of the act and regulation if directly or indirectly it issues an access device to a consumer for use in initiating an electronic fund transfer of government benefits from an account. The agency shall comply with all applicable requirements of the act and regulation, except as provided in this section.

(2) For purposes of this section, the term *account* means an account established by a government agency for distributing government benefits to a consumer electronically, such as through automated teller machines or point-of-sale terminals.

(b) *Issuance of access devices.* For purposes of this section, a consumer is deemed to request an access device when the consumer applies for government benefits that the agency disburses or will disburse by means of an electronic fund transfer. The agency shall verify the identity of the consumer receiving the device by reasonable means before the device is activated.

(c) *Alternative to periodic statement.* A government agency need not furnish the periodic statement required by § 205.9(b) if the agency makes available to the consumer:

(1) The consumer's account balance, through a readily available telephone line and at a terminal (which may include providing balance information at a balance-inquiry terminal or providing it, routinely or upon request, on a terminal receipt at the time of an electronic fund transfer); and

(2) A written history of the consumer's account transactions for at least 60 days preceding the date of a request by the consumer. The account history shall be provided promptly in response to an oral or written request.

(d) *Modified requirements.* A government agency that does not furnish periodic statements, pursuant to paragraph (c) of this section, shall comply with the following requirements:

(1) *Initial disclosures.* The agency shall modify the disclosures under § 205.7(a) by providing:

(i) *Account balance information.* The means by which the consumer may obtain information concerning the account balance, including a telephone number. This disclosure may be made by providing a notice substantially similar to the notice contained in section A(12) of appendix A of this part.

(ii) *Written account history.* A summary of the consumer's right to receive a written account history upon request, in substitution for the periodic statement disclosure required by § 205.7(a)(6), and a telephone number that can be used to request an account history. This disclosure may be made by providing a notice substantially similar to the notice contained in section A(12) of appendix A of this part.

(iii) *Error resolution notice.* A notice concerning error resolution that is substantially similar to the notice contained in section A(13) of appendix A of this part, in substitution for the notice required by § 205.7(a)(10).

(2) *Annual error resolution notice.* The agency shall provide an annual notice concerning error resolution that is substantially similar to the notice contained in section A(13) of appendix A of this part, in substitution for the notice required by § 205.8(b).

(3) *Limitations on liability.* For purposes of § 205.6(b) (2) and (3), in regard to a consumer's reporting within 60 days any unauthorized transfer that appears on a periodic statement, the 60-day period shall begin with the transmittal of a written account history or other account information provided to the consumer under paragraph (c) of this section.

(4) *Error resolution.* The agency shall comply with the requirements of § 205.11 in response to an oral or written notice of an error from the consumer that is received no later than 60 days after the consumer obtains the written account history or other account information, under paragraph (c) of this section, in which the error is first reflected.

3. Appendix A to part 205 is revised by adding sections A(12) and A(13) to read as follows:

Appendix A to Part 205—Model Disclosure Clauses

* * * * *

Section A(12)—Disclosure by Government Agencies of Information About Obtaining Account Balances and Account Histories (§ 205.15(d)(1) (i) and (ii))

You may obtain information about the amount of benefits you have remaining by calling [telephone number]. That information is also available [on the receipt you get when you make a transfer with your card at (an ATM)(a POS terminal)][when you make a balance inquiry at an ATM][when you make a balance inquiry at specified locations].

You also have the right to receive a written summary of transactions for the 60 days preceding your request by calling [telephone number]. [Optional: Or you may request the summary by contacting your caseworker.]

Section A(13)—Disclosure of Error Resolution Procedures for Government Agencies That Do Not Provide Periodic Statements (§ 205.15(d)(1)(iii) and (d)(2))

In Case of Errors or Questions About Your Electronic Transfers Telephone us at [telephone number] or Write us at [address] as soon as you can, if you think an error has occurred in your [EBT][agency's name for program] account. We must hear from you no later than 60 days after you learn of the error. You will need to tell us:

- Your name and [case] [file] number.
- Why you believe there is an error, and the dollar amount involved.
- Approximately when the error took place.

If you tell us orally, we may require that you send us your complaint or question in writing within 10 business days. We will generally complete our investigation within 10 business days and correct any error promptly. In some cases, an investigation may take longer, but you will have the use of the funds in question after the 10 business days. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account during the investigation.

For errors involving transactions at point-of-sale terminals in food stores, the periods referred to above are 20 business days instead of 10 business days.

If we decide that there was no error, we will send you a written explanation within three business days after we finish our investigation. You may ask for copies of the documents that we used in our investigation.

If you need more information about our error resolution procedures, call us at [telephone number][the telephone number shown above].

By order of the Board of Governors of the Federal Reserve System, February 24, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–4681 Filed 3–2–94; 12:38 pm]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Regulation E; Docket No. R–0830]

Electronic Fund Transfers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is publishing for comment a proposal to revise Regulation E, which implements the Electronic Fund Transfer Act. The proposal stems from the Board's review of Regulation E pursuant to its policy of periodically reviewing all of its regulations. The Board's review considered ways the regulation could be simplified to ease the burdens imposed on financial institutions, consistent with the Board's responsibility for implementing the act, and considered also whether the regulation could more effectively carry out the purposes of the act. The proposal contains several substantive revisions, including changes to the existing exemptions for securities or commodities transfers and for preauthorized transfers to or from accounts at small institutions. In addition, the proposal includes changes intended to make Regulation E more consistent with the requirements of other regulations governing deposit accounts. The proposal also simplifies the language and format of the regulation, deleting obsolete provisions and eliminating all of the footnotes. In conjunction with the proposed revisions to the regulation, the Board also has proposed revisions to the staff commentary published elsewhere in today's **Federal Register**.

DATES: Comments must be received on or before May 31, 1994.

ADDRESSES: Comments should refer to Docket No. R–0830 and be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551. They may also be delivered to the guard station in the Eccles Building Courtyard on 20th Street, NW. (between Constitution Avenue and C Street) between 8:45 a.m. and 5:15 p.m. weekdays. Except as provided in the Board's rules regarding the availability of information (12 CFR 261.8), comments will be available for inspection and copying by members of the public in the Freedom of Information Office, room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Jane Jensen Gell, Mary Jane Seebach, Staff Attorneys, or John Wood, Senior Attorney, Division of Consumer and Community Affairs, at (202) 452–2412 or (202) 452–3667. For the hearing impaired only, Telecommunications Device for the Deaf (TDD), Dorothea Thompson, at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

(1) Background

The Electronic Fund Transfer Act (EFTA) (15 U.S.C. 1693), enacted in 1978, provides a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer (EFT) systems. The Federal Reserve Board was given rulewriting authority to issue implementing regulations. Types of transfers covered by the act and regulation include transfers initiated through an automated teller machine (ATM), point-of-sale terminal, automated clearinghouse, telephone bill-payment system, or home banking program. The act and Regulation E (12 CFR part 205) provide rules that govern these and other EFTs. The rules prescribe restrictions on the unsolicited issuance of ATM cards and other access devices; disclosure of terms and conditions of an EFT service; documentation of EFTs by means of terminal receipts and periodic account statements; limitations on consumer liability for unauthorized transfers; procedures for error resolution; and certain rights related to preauthorized EFTs.

The Board's policy under its Regulatory Planning and Review (RPR) program calls for periodic review of each Board regulation. The RPR program has four goals: to clarify and simplify the regulatory language; to amend the regulation to reflect technological and other developments; to reduce undue regulatory burden on the industry; and to delete obsolete provisions. In keeping with that policy, the Board has made a detailed review of Regulation E to determine whether it can be simplified to ease compliance burdens for financial institutions, while meeting the Board's responsibility for implementing the consumer protections of the EFTA.

Based on its review, the Board now proposes revisions to Regulation E. While certain substantive revisions have been made to the regulation (see the section-by-section discussion below), the proposal leaves most of the regulatory provisions substantively unchanged. The regulation closely follows the language of the statute, which contains detailed requirements in most areas, and major changes to the regulation are not possible unless the act itself is amended. Therefore, the Board is soliciting comment on whether specific legislative revisions to the EFTA are necessary and achievable without imposing a significant adverse impact on consumer protections.

The proposal simplifies the language and format of each section of the regulation to state the requirements more clearly. All of the footnotes have been either integrated into the text of the regulation or moved to the proposed staff commentary, making the regulation itself less cumbersome to use. The proposed regulation is shorter than current Regulation E by about fifteen percent, a reduction largely attributable to the deletion of obsolete provisions and to the transfer of explanatory material to the commentary. In addition to commenting on the proposed changes, the Board requests specific suggestions, as well as rationale, for additional changes to the regulation that would facilitate compliance.

(2) Proposed Regulatory Revisions

The following discussion covers the proposed revisions to Regulation E section-by-section. In many cases, the proposed changes would simplify or clarify the current text, with no substantive change in the regulatory requirements; where these changes are self-evident from reading the proposed text itself, they are not discussed.

Section 205.1—Authority and Purpose

The proposal simplifies the current section. Discussion of the Congressional findings has been deleted. Coverage issues currently addressed in § 205.1(b) have been moved to § 205.3.

Section 205.2—Definitions

Paragraph (b)(2)

The proposal incorporates the exemption for trust accounts (currently § 205.3(f)) into the definition of account. The definition more closely tracks the statutory language contained in section 903(2) of the EFTA.

Paragraph (d)—Business Day

The act and regulation define business day as any day on which the offices of the consumer's financial institution are open to the public for carrying on substantially all business functions. This currently requires that each financial institution determine when its offices are "carrying on substantially all business functions." Using its exception authority under section 904(c) of the EFTA, the Board proposes to change the definition so that it will mirror that used in Regulations CC (12 CFR part 229) and DD (12 CFR

part 230). Those regulations define a business day as a calendar day other than a Saturday, Sunday, or any legal public holiday specified in 5 U.S.C. 6103(a). The Board believes compliance with the multiple regulations that govern deposit accounts would be simplified if similar definitions were used and solicits comment on whether such a change will reduce burden without adversely affecting consumer protections.

Paragraph (g)—Financial Institution

The Board proposes to simplify the definition of financial institution (currently § 205.2(i)) by eliminating references to both state and federal institutions. Instead, the definition would include "a bank, savings association, credit union, or any other person that directly or indirectly holds an account belonging to a consumer." This is not intended as a substantive change in coverage.

Paragraph (h)—Person

The proposal adds a definition of "person," incorporating language from Regulations B (12 CFR 202.2(x)) and Z (12 CFR 226.2(a)(22)). The term is used in several places in the regulation, most notably in § 205.3(a), defining the regulation's coverage, and in § 205.10(e) on compulsory use.

Section 205.3—Coverage

The proposal includes a new section defining the regulation's coverage. The Board solicits comment on whether having a self-contained section on coverage would facilitate use of the regulation.

Paragraph (a)—General

The proposal clarifies that the regulation applies to any EFT that authorizes a financial institution to debit or credit a consumer's account. It also incorporates the discussion of coverage currently addressed in § 205.1(b).

Paragraph (b)—Electronic Fund Transfer

The definition of "electronic fund transfer" (currently § 205.2(g)), which is central to determining coverage under the regulation, has been moved into the coverage section. A minor change to the definition of an EFT makes clear that the term includes transfers initiated through a computer or through magnetic tape. This change is proposed because a strict reading of the current regulation might lead to the unintended conclusion that an EFT does not include transfers initiated through a computer not involving tape. The definitions of "preauthorized electronic fund transfer" and "unauthorized electronic fund transfer" remain in the definitions section.

Questions have arisen about Regulation E coverage of smart cards. Generally, smart cards are plastic cards that have the capacity to either compute or communicate information. At one time, it was believed that smart card systems were not subject to Regulation E because no account existed within the definition of the act or regulation. With advances in smart card technology, that assumption is less clear. Increasingly more uses are available for smart cards. The Board believes that smart cards are subject to Regulation E if the cards are used to access an account. A similar analysis might be applied to value-added or prepaid cards.

The determination about whether smart cards and value-added cards are subject to the regulation has implications both for the private and public sectors. For example, any determination made on coverage of smart cards in the review could apply to electronic benefit transfer system programs. (See Docket No. R–0829 elsewhere in today's **Federal Register** in which the Board deferred to the review of Regulation E for discussion of smart cards and its implication on electronic benefit transfer systems.) The Board solicits comment on the coverage of smart cards.

Paragraph (c)—Exclusions From Coverage

The proposal's expanded section on coverage retains the exemptions currently contained in § 205.3. Including these exemptions with the definition of "electronic fund transfer" more closely tracks the statutory provisions. In addition, the Board believes having both coverage and exemption provisions in one section would facilitate the determination of whether compliance with the regulation is required. The paragraph contains several proposed revisions to current exemptions.

Paragraph (c)(3)—Wire Transfers

The proposal amends the exemption for wire transfers currently contained in § 205.3(b) to clarify that it exempts transfers through Fedwire (or similar wire transfer systems) and not all transfers through the Federal Reserve Communications System. The proposed amendment does not represent a substantive change in the scope of the exemption. Rather, it would correct the reference to more accurately reflect the statutory intent.

Paragraph (c)(4)—Securities and Commodities Transfers

The Board proposes to revise the exemption for certain securities and commodities transfers. When the current exemption was initially adopted, the Board omitted the requirement that the purchase or sale be through a broker-dealer registered with the Securities Exchange Commission (SEC). The intent of this change was to broaden the scope of the exemption to include securities transactions made by mutual funds and pension and profit-sharing plans. The Board noted at the time that existing federal laws and the regulations of the SEC and the Commodity Futures Trading Commission (CFTC), although not specifically promulgated for the regulation of payment transfers, provided protections to consumers that were consistent with the requirements of the EFTA and Regulation E.

As currently written, however, the exemption does not extend to a transfer for the purchase or sale of securities if the securities (for example, municipal securities) are not regulated by the SEC, even if the transfer is executed by a broker-dealer who is regulated by the SEC. In keeping with the statutory language, the proposed change would exempt transfers involving unregulated securities if the purchase or sale is transacted by a broker-dealer regulated by the SEC or a futures commission merchant regulated by the CFTC. The Board believes that the regulation of broker-dealers and futures commission merchants offers sufficient protection of payment transfers for consumers and that the application of the protections in Regulation E would only duplicate available safeguards.

The Board proposes to extend the exemption to all securities or commodities held in book-entry form by Federal Reserve Banks on behalf of the Treasury Department and other federal agencies (for example, Treasury Direct issues). Currently a transfer to purchase Treasury securities is technically covered by Regulation E because it is not regulated by the SEC or the CFTC and, when purchased from the Federal Reserve Banks, is not purchased or sold by a registered broker-dealer. The Board believes there is adequate regulation of transfers that involve Federal Reserve Banks and federal agencies, offering sufficient consumer protection (see 31 CFR part 370, regulations governing payments by the automated clearing house method on account of United States securities).

The Board solicits comments on whether these proposed changes strike

the appropriate balance between facilitating greater use of EFTs for securities transactions and providing adequate consumer protection.

Paragraph (c)(7)—Small Institutions

The Board proposes to increase the current-asset size cutoff of the small institution exemption in current § 205.3(g). Section 904(c) of the EFTA gives the Board authority to modify the requirements imposed by the regulation on small financial institutions if the Board determines that such modifications are necessary to alleviate any undue compliance burden on small institutions and that such modifications are consistent with the purposes and objective of the act. In 1982, the Board exempted preauthorized transfers to or from accounts at financial institutions with assets of less than $25 million. The regulation exempts the preauthorized transfers as a class of transfers, and not the financial institutions themselves. A small financial institution that provides EFT services besides preauthorized transfers must comply with the regulation for those other services. For example, a small financial institution that offers ATM services must comply with Regulation E in regard to the issuance of debit cards, terminal receipts, periodic statements, and other requirements. In addition, the institution must comply with provisions of the act that apply to the financial institution's conduct rather than to the exempted transfers. For example, the prohibition against compulsory use of EFTs in section 913 of the act—in regard to credit or employment (see discussion below in § 205.10(e))—remains applicable.

When the Board adopted the exemption in 1982, many small institutions that did not offer EFT services such as ATM access benefitted from the exemption. Given the growth in assets of financial institutions in the past ten years, increasing the asset-size cutoff of the exemption to $100 million could reduce burden without lessening the extent of consumer protection originally provided. Because many small institutions now offer a variety of EFT services, it appears that only a limited number of institutions would be exempted from Regulation E under the proposed increase. The Board solicits comment on the proposed increase in the exemption level. In addition, the Board requests comment on other ways the burden on small institutions could be reduced without sacrificing the consumer protections intended by the act.

Questions have been raised about the impact of Article 4A of the Uniform Commercial Code (UCC) on the small institution exemption. In the revised commentary to Regulation E, the Board clarifies that Article 4A is not applicable to the preauthorized transfers that qualify for the small institution exemption. Article 4A applies primarily to large-dollar commercial wire transfers made, for example, via Fedwire, CHIPs, SWIFT, and Telex. Section 4A–108 excludes any transaction that is subject to the EFTA from coverage under Article 4A. The question is whether the transfers initiated by small financial institutions that take advantage of the regulatory exemption may be subject to the requirements of Article 4A as a consequence. For example, would a direct deposit to a consumer account at a small bank be covered by Article 4A if exempt from Regulation E? The Board regards these preauthorized transfers as remaining subject to certain requirements of the EFTA, and therefore not covered by Article 4A. The Board solicits comment on whether specific language is needed in the regulation to clarify this issue.

The Board proposes deleting footnote 1a, which refers to sections 913, 915, and 916 of the EFTA. Section 913 places restrictions on the compulsory use of EFTs. For example, an institution may not condition the extension of credit on repayment by preauthorized debit. The statutory language from section 913 has been incorporated in proposed § 205.10(e). Sections 915 and 916 provide for civil and criminal liability, respectively, for violations of the EFTA. References to sections 915 and 916 are contained in proposed § 205.3(c)(5)(ii). The Board has also added cross-references to § 205.10 and sections 915 and 916 in the appropriate paragraphs to replace footnote 1a.

Section 205.4—General Disclosure Requirements; Jointly Offered Services

Current § 205.4 describes certain requirements under the regulation. The Board proposes to consolidate the general disclosure requirements currently dispersed throughout the regulation in this section. In addition to adding paragraph (a), the proposal contains various editorial changes including a reordering of the section; no substantive change is intended.

Paragraph (a)—Form of Disclosures

The proposal incorporates the format requirements for disclosures currently found in §§ 205.7(a) and 205.9. The Board interprets these requirements as generally applying to all disclosures, in addition to the terminal receipts and periodic statements required by the regulation. The phrase "in a form the consumer may keep" would replace the wording "the financial institution shall make available to the consumer a written receipt of the transfer(s) * * *." currently contained in § 205.9(a). The proposed change is consistent with language in Regulation Z (12 CFR 226.17(a)) and Regulation DD (12 CFR 230.3(a)), for example. The Board does not consider this to be a substantive change, as the proposed language is drawn from the current commentary.

The paragraph also incorporates language currently in § 205.9(e) that permits an institution to use commonly accepted or readily understandable abbreviations in complying with the documentation requirements of the regulation.

Section 205.5—Issuance of Access Devices

The proposal contains extensive editorial changes to this section, including the addition of headings to help distinguish the rules for solicited and unsolicited issuance of access devices.

The proposal deletes the obsolete language in current § 205.5(a)(3), a paragraph that grandfathered renewals of pre-1979 access devices from the requirements of the section. In addition, the Board proposes to move the provisions relating to the Truth in Lending Act (TILA) contained in current § 205.5(c) to proposed § 205.12 to simplify the regulation by placing all references to TILA in the same section. (See the discussion of § 205.12 below.)

Footnote 1b, which provides guidance on issuance of an access device for a joint account, has been deleted from the regulation and moved to the commentary.

Section 205.6—Liability of Consumer for Unauthorized Transfers

Section 205.6 specifies the rules governing consumer liability for unauthorized use. The proposal significantly revises the section in an effort to simplify the text and make it easier to understand.

The Board proposes moving explanatory or illustrative material to the commentary. This includes the parenthetical in current § 205.6(a)(2), which provides examples of how a financial institution may identify the consumer to whom an access device is issued; § 205.6(b)(3), which explains the relationship between the various tiers of liability; and examples of extenuating circumstances that would permit delayed notification by consumers in current § 205.6(b)(4). The provisions in current § 205.6(d) concerning the

relation to the TILA now appear in proposed § 205.12.

Paragraph (a)—Conditions for Liability

The current regulation appears to condition consumer liability solely on the issuance of an accepted access device (§ 205.6(a)). The commentary, on the other hand, states that if the consumer fails to report an unauthorized EFT within 60 days of transmittal of the periodic statement reflecting the transfer, the consumer could be subject to liability for subsequent transfers (Q6–1). The Board interprets section 909 of the EFTA as precluding consumer liability for unauthorized transfers not involving an access device until 60 days after transmittal of the periodic statement reflecting the transfer. At that time, the consumer could be subject to unlimited liability for those transfers occurring after the 60 days.

The proposal incorporates the current commentary position that a consumer could be held liable for unauthorized EFTs that did not involve an access device. The Board believes a consumer cannot, however, be held liable for unauthorized transfers occurring before the 60-day period expires.

The proposed section slightly alters the current rule by requiring that a financial institution provide all of the disclosures required by § 205.7 in order to impose liability on the consumer. Currently § 205.6(a)(3) requires that only three of the disclosures from § 205.7 be provided before a consumer can be held liable for unauthorized transfers. The Board believes this proposed change would not impose a significant additional burden as institutions must initially provide *all* of the disclosures to comply with § 205.7(b). The Board solicits comment on whether this change increases the risk of liability for institutions.

Paragraph (b)—Limitations on Amount of Liability

Proposed paragraph (b) incorporates the substance of current paragraphs (b) (limitations on amount of liability) and (c) (notice to financial institution). In addition, the proposal spells out more clearly each of the three tiers of a consumer's liability ($50, $500, or unlimited). Subheadings provide further clarification.

Section 205.7—Initial Disclosures

The proposal includes structural and editorial changes to this section. To provide greater clarity, text has been organized into separate paragraphs on timing and content of disclosures, and subheadings have been added to make the section easier to understand. Format requirements have been moved to proposed § 205.4(a).

The provision in current § 205.7(a)(1), giving financial institutions the option of informing the consumer about the advisability of promptly reporting lost or stolen access devices, has been moved to the commentary.

The Board proposes to move the error resolution notice from current § 205.7(a)(10) to appendix A (Model Form A–3), to streamline the regulation and place all model disclosures together.

The proposal deletes as obsolete current § 205.7(b) regarding disclosures for accounts that predate the statute.

Paragraph (a)(3)—Business Days

As described in the supplemental information to paragraph (d), the Board proposes to change the definition of business day to mean a calendar day other than a Saturday, Sunday, or any legal public holiday specified in 5 U.S.C. 6103(a). Accordingly, initial disclosures would have to include the revised definition of business day to assist consumers in understanding the timing provisions of the liability and error resolution rules under the regulation.

Section 205.8—Change in Terms Notice; Error Resolution Notice

The proposal makes two substantive changes in this section. In addition, the Board proposes to restructure the requirements of § 205.8 and add subheadings to make it easier to understand.

Paragraph (a)(1)—Prior Notice Required

Section 905(b) of the EFTA requires a financial institution to notify a consumer in writing at least twenty-one days before the effective date of certain adverse changes in terms or conditions contained in the initial disclosures. The Truth in Savings Act (TISA) (12 U.S.C. 4301) also requires institutions to provide a change in terms notice for deposit accounts. Section 266(c) of TISA requires a notice 30 days before the effective date of any adverse change in terms or conditions. In the proposed official staff interpretation of Regulation DD, the Board stated that if a financial institution changes a term that also triggers a change in terms notice under Regulation E, the institution may use the timing rules of Regulation E for sending the notice to affected consumers (see 59 FR 5543, February 7, 1994). The Board proposes to use its exception authority under the EFTA to extend the timing of the change-in-terms notice in Regulation E to 30 days to coincide with the timing requirements of Regulation DD in order to facilitate compliance with the requirements of both regulations. The Board solicits comment on whether it is preferable to retain the flexibility offered by the two different timing requirements.

Paragraph (a)(2)—Prior Notice Exception

Currently, prior notice is not required when an immediate change in terms is needed to maintain or restore the security of an EFT system or account. If a change is made permanent, however, a financial institution must notify the consumer "on or with the next regularly scheduled periodic statement or within 30 days" of the change if disclosure would not raise security concerns. In certain circumstances, periodic statements are sent on a quarterly basis, and thus the consumer might not receive notification for up to ninety days after the change. The Board proposes to substitute a more specific timing rule for this subsequent notice. Under the proposal, if the change is made permanent, a financial institution must provide written notice within 45 days of the change unless disclosure raised security concerns. The Board requests comment on the proposed timing requirement.

Paragraph (b)—Error Resolution Notice

The Board proposes to move the alternate error resolution notice, which an institution may give with each periodic statement in place of the longer annual notice, from current § 205.8(b) to appendix A (Model Form A–3). This will streamline the regulation and place all model disclosures in one location.

Section 205.9—Receipts at Electronic Terminals; Periodic Statements

The proposed section contains a number of editorial revisions and two substantive changes. New paragraphs and headings have been added to better organize the text concerning the timing and contents of disclosures. As noted earlier, disclosure format requirements have been moved to § 205.4. Current paragraph (e), concerning use of abbreviations, was also moved to § 205.4.

The Board proposes to move footnote 2, which permits a financial institution to make receipts available through a third party, to the commentary.

The proposal deletes two obsolete paragraphs, (f) and (g), which dealt with receipts from terminals purchased prior to 1980 and delayed effective dates for certain periodic statements.

Paragraph (a)(1)—Amount

The current regulation allows financial institutions *other* than the account-holding institution to include a charge for the transfer in the total amount of the transfer, provided the amount of the charge is disclosed on the receipt and on a sign posted on or at the terminal. The proposal makes two changes. First, it would permit all financial institutions (including the account-holding institution) to include the charge in the total amount of the transfer, if the appropriate disclosures are made. Second, it would permit institutions to display the fee on or at the terminal—meaning either on a sign or on the ATM screen itself. The Board solicits comment on whether consumers would need added protections if the fee is displayed on the screen, for example, allowing the consumer to cancel the transaction after the fee is disclosed.

Paragraph (a)(3)—Type

This paragraph corresponds to current paragraph (a)(3) regarding disclosure of types of transfer and accounts. The examples included in the current paragraph have been moved to the proposed commentary.

Currently the regulation requires that a financial institution uniquely identify each account on the terminal receipt if more than one account of the same type may be accessed by a single access device. Footnote 3 provided an exception for instances in which the terminal is incapable of uniquely identifying each account, as well as for transactions at terminals purchased or ordered by the financial institution prior to 1980. The portion of the footnote which permits financial institutions to exclude identification of the type of account if the access device may access only one account at a terminal has been incorporated into the text of the proposed regulation at § 205.9(a)(3). The remainder of the footnote has been deleted as obsolete.

Paragraph (a)(4)—Identification

Currently, the regulation requires that financial institutions disclose on terminal receipts a number or code that uniquely identifies the consumer initiating the transfer, the consumer's account(s), or the access device used to initiate the transfer (§ 205.9(a)(4)). The Board proposes to delete the reference to a number or code that uniquely identifies the "consumer initiating the transfer" as superfluous. The Board believes that the remaining identification requirements sufficiently identify the consumer.

Paragraph (a)(5)—Terminal Location

This paragraph incorporates the substance of current § 205.9(b)(1)(iv). The detail contained in the current regulation which specifies appropriate location descriptions has been moved to the commentary.

The proposal deletes footnotes 5, 6, and 8 from the regulation. Footnote 5 allows institutions to omit the name of the state on terminal receipts for transfers occurring at terminals within 50 miles of the institution's main office. Footnotes 6 and 8 refer back to the text of footnote 5. The proposal incorporates this exception into the regulatory text. Footnote 5 also allows institutions to omit the name of the city and state if all of the terminals are located in the same city, and to omit the name of the state if all of the terminals are located in the same state. These exceptions have been deleted as obsolete, since most institutions that offer ATM access belong to networks operating on an interstate basis. Accordingly, few if any financial institutions are able to take advantage of the exception provided by the footnote. The Board solicits comment on whether these latter exceptions are still used by institutions.

The rules regarding terminal identification on the receipt have been slightly modified. Section 205.9(b)(1)(iv)(C) allows financial institutions to identify the terminal location by using the name of the entity at whose place of business the terminal is located, including identifying the name of the financial institution. Footnote 7 requires, however, that if the institution owns or operates terminals at more than one location, the terminal location must be identified on the periodic statement. Therefore, if an institution owns only one terminal (and does not belong to a network) it could identify the terminal using its own name. The proposal provides that the receipt and the periodic statement may provide the terminal location by giving the name of the institution if it is other than the account-holding institution. In the previous example, the institution would have to provide either a street address or a generally accepted name for the location. The Board believes this change makes the provision available to more institutions, since very few institutions own and operate only one terminal and do not belong to a network. The Board solicits comment on whether this imposes a burden on small institutions, and also on whether the change adversely reduces consumer information.

Paragraph (a)(6)—Third Party Transfer

Proposed paragraph (a)(6) incorporates the substance of current paragraph (a)(6). The excluded language, describing the use of codes or circumstances when the name of the payee cannot be duplicated by the terminal, has been incorporated into the proposed commentary.

Paragraph (b)—Periodic Statements

Paragraph (b)(1)—Transaction Information

The regulation requires financial institutions to disclose on the periodic statement either the location of the terminal as it appeared on the receipt or, if a code or terminal number was used to identify the location, both the code and a description of the location as specified in the regulation (§ 205.9(b)(1)(iv)). The proposed regulation simplifies the rule by not requiring a restatement of the code in addition to the location description (see the discussion in paragraph (a)(5) above). Proposed paragraph (b)(1)(iv) also incorporates the substance of footnote 4a, which provides that a financial institution need not identify the terminal location for transactions that involve the deposit of cash, checks, drafts, or similar paper instruments at electronic terminals.

Footnote 4 currently permits financial institutions to provide certain information on documents that accompany the periodic statement; and it permits the use of codes, if explained on either the statement or the accompanying documents. The footnote has been deleted and the substance moved to the proposed commentary. Footnote 9 allows an institution to omit the identification of third parties from periodic statements if their names appear on checks, drafts, or similar paper instruments deposited to the consumer's account at an electronic terminal. The footnote has been deleted and the substance moved to the proposed commentary.

Paragraph (b)(3)—Fees

Currently, § 205.9(b)(3) makes clear that a periodic statement required by Regulation E need not disclose any finance charge imposed under 12 CFR 226.7(f). The proposal eliminates the reference from the regulation, and moves the substance to the commentary.

Regulation DD requires institutions that provide periodic statements to itemize by type and amount certain fees imposed during the statement period (§ 230.6(a)(3)). Currently, § 205.9(b)(3) of Regulation E requires the disclosure of any fee that was assessed against the

account during the period for EFTs. The commentary to Regulation E (Q9–31) allows fees to be shown as a total dollar figure or to be itemized in part or in full, at the institution's option. Under Regulation DD, the Board has provided that institutions may follow the more flexible rules in Regulation E for fees associated with EFTs even though Regulation DD otherwise requires a more specific disclosure. The Board solicits comment on whether regulatory burden would be eased if the disclosure requirement in Regulation E mirrored the requirement in Regulation DD (see 12 CFR 230.6(a)(3)).

Paragraph (c)—Exceptions to the Periodic Statement Requirements for Certain Accounts

The proposal incorporates current paragraphs (c), (d), (h), and footnote 9a in revised § 205.9(c), pertaining to those circumstances in which a periodic statement is not required (for example, for a passbook account that can be accessed electronically only by preauthorized transfers to the account). No substantive change is intended.

Paragraph (d)—Documentation for Foreign-Initiated Transfers

Proposed paragraph (d) incorporates the essence of current paragraph (i) without substantive change.

Section 205.10—Preauthorized Transfers

The Board has reformatted this section and has added subheadings. The proposed section contains a substantive change from the current regulation and a new paragraph on compulsory use.

Paragraph (a)—Preauthorized Transfers to Consumer's Account

Section 205.10 sets forth general requirements for preauthorized transfers. The regulation currently requires that when a consumer's account will be credited by a preauthorized transfer from the same payor at least once every 60 days, the institution must credit the funds to the account as of the day the funds are received; this requirement would be deleted from the regulation as obsolete. The Board believes that mandating when funds must be credited to an account is no longer necessary since other regulations address both when funds must be made available to the consumer and when interest must be paid on the deposit (see Regulation CC, 12 CFR part 229; Treasury regulations, 31 CFR part 210; and ACH association rules). The Board solicits comment on whether there is a need to maintain the requirement in the regulation.

Paragraph (b)—Written Authorization for Preauthorized Transfers From Consumer's Account

The requirement that preauthorized EFTs from a consumer's account be authorized by the consumer only in writing has been revised. The requirement for the consumer's authorization to be a writing has been expanded to include authorizations which are "similarly authenticated" by the consumer. This proposed expansion addresses developments in electronic services, such as home banking. The broader interpretation of a "writing" would include, for example, electronic authorization by the consumer recorded on a computer memory unit. The Board believes this broader interpretation is consistent with the requirement in section 907 of the EFTA that the authorization be in writing. The Board solicits comment on whether additional safeguards are necessary to protect consumers in this situation. In addition, the Board solicits comment on other examples that might constitute "similarly authenticated" for purposes of this section. The Board notes that the revised requirement for a signed writing makes clear that only the consumer could produce the written authorization and not, for example, a third-party merchant on behalf of the consumer.

Paragraph (e)—Compulsory Use

Section 913 of the statute places certain restrictions on compulsory use of EFTs as a condition of credit, employment, or receipt of government benefits. The current regulation mentions the prohibition against compulsory use in footnote 1a, which references a financial institution's continuing duty to comply with section 913. The proposed paragraph is a counterpart to the statutory provision and would clarify that the provision applies to other persons (such as employers) and not just to financial institutions.

Section 205.11—Procedures for Resolving Errors

The Board proposes to reformat this section and add subheadings to facilitate compliance. The editorial revisions, with one exception, are not intended to make substantive changes.

Provisions contained in three footnotes have been moved to the proposed commentary: Footnote 10, which permits an institution to prescribe procedures for giving an error notice; footnote 11, which defines an agreement for purposes of § 205.14; and footnote 12, which allows institutions to use a periodic statement to inform consumers that no error has occurred.

The provisions in current paragraph (i) relating to the TILA have been moved to proposed § 205.12.

Paragraph (c)—Time Limits and Extent of Investigation

Proposed paragraph (c) combines current paragraphs (c) and (d)(2) of § 205.11 concerning investigation of errors. The regulation currently requires a financial institution to provide the consumer with a written explanation, within the prescribed time period (either 10 business days or 45 calendar days), if an error occurred. If an error did not occur and the financial institution is operating under the 45-calendar-day rule, the institution has three additional days to notify the consumer of its findings. Section 908 of the EFTA makes clear the extra time is available when no error occurred, but is silent on the availability of extra time when an error is found (see the discussion in paragraph (e) below).

To facilitate compliance, the Board proposes to use its exception authority under section 904(c) to permit institutions to give notice within three business days of concluding its investigation regardless of the procedure being followed and whether or not an error has been found. The statutory language contained in section 908(d) lends itself to such an interpretation, and the Board believes the change will facilitate compliance with the section without any significant loss of consumer protection.

Paragraph (d)—Procedures if Financial Institution Determines No Error or Different Error Occurred

As discussed in the preceding paragraph, the Board proposes to allow institutions to provide notice within three business days of concluding an investigation, regardless of which time period is being followed.

Section 205.12—Relation to Other Laws

The proposed section contains the various references to the TILA and Regulation Z currently dispersed throughout Regulation E. The section also includes the standards applied by the Board in granting a state law preemption or in making an exemption determination.

Paragraph (a)—Relation to Truth in Lending

The Board proposes to consolidate all references from §§ 205.5, 205.6, and 205.11 to compliance with both the TILA and the EFTA in a single paragraph. The Board believes

consolidating these references in one section will facilitate compliance.

Paragraph (b)—Preemption of Inconsistent State Laws

Current § 205.12(a) and (b) are incorporated in proposed paragraph (b), with numerous editorial revisions.

Paragraph (c)—State Exemptions

Proposed paragraph (c) contains the rules the Board applies in granting a state exemption.

Section 205.13—Administrative Enforcement; Record Retention

Current § 205.13 contains information about administrative enforcement, issuance of staff interpretations, and record retention. With the exception of the record retention requirements, the proposal moves much of this information to the appendices.

Paragraph (b)—Record Retention

Certain provisions of the act and regulation apply to persons other than financial institutions (for example, the compulsory use provisions of section 913, which apply to all employers). The proposal differs from the current rule by limiting the record retention requirements to financial institutions, rather than covering "any person subject to the act and regulation." The Board solicits comment on whether this proposed change will produce an adverse impact on enforcement activities.

Section 205.14—Electronic Fund Transfer Service Provider Not Holding Consumer's Account

The Board proposes substantial editorial revisions to this section to simplify the text. Text has been reorganized into appropriate categories and subheadings added for greater clarity. Footnote 13 regarding delayed effective dates has been deleted as obsolete. The Board solicits comment on other ways the section could be simplified to facilitate compliance with the regulation.

Section 205.15—Electronic Fund Transfer of Government Benefits

The Board has issued a final rule in regard to the coverage by the EFTA and Regulation E of government benefits that federal, state, and local governments disburse to recipients by means of electronic benefit transfer (EBT) programs. (See Docket No. R–0829 elsewhere in today's **Federal Register**.) Having just issued that final rule, the Board is not incorporating the provisions governing EBT programs, contained in a new § 205.15, in this proposal.

Appendix A—Model Disclosure Clauses and Forms

Most of the model disclosure clauses contained in appendix A remain unchanged. As noted earlier, the error resolution notices currently contained in §§ 205.7 and 205.8 have been moved from the regulation into appendix A to streamline the regulation (see Model Form A–3).

Appendix B—Administrative Enforcement

Appendix B lists the federal enforcement agencies responsible for enforcing Regulation E for particular classes of institutions.

Appendix C—Issuance of Staff Interpretations

The proposal includes a new appendix to replace current § 205.13(b) pertaining to requests for and issuance of staff interpretations of Regulation E. Much of the information contained in the current regulation, describing issuance of staff interpretations, has been deleted. The Board will continue to rely on the publication of interpretations in the official staff commentary as the primary means of interpreting the regulation. Specifically, and in keeping with the practice that has been in place for years, the proposal deletes any reference to unofficial staff interpretations that are in writing, limiting written interpretations to those that appear in the staff commentary, as revised. The Board believes this to be the most efficient and useful way to facilitate compliance.

(3) Form of Comment Letters

Comment letters should refer to Docket No. R–0830. The Board requests that, when possible, comments be prepared using a standard typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text into machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Comments may also be submitted on computer diskettes, using either the 3.5" or 5.25" size, in any DOS-compatible format. Comments on computer diskettes must be accompanied by a hard copy version.

(4) Economic Impact Statement

The Board's Division of Research and Statistics has prepared an economic impact statement on the proposed regulation. A copy of the analysis may be obtained from Publications Services, Board of Governors of the Federal Reserve System, Washington, DC 20551, or by telephone at (202) 452–3245.

List of Subjects in 12 CFR Part 205

Banks, banking, Consumer protection, Electronic fund transfers, Reporting and recordkeeping requirements.

Text of Proposed Revisions

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 205 as follows:

PART 205—ELECTRONIC FUND TRANSFERS (REGULATION E)

1. The authority citation for part 205 would be revised to read as follows:

Authority: 15 U.S.C. 1693.

2. Sections 205.1 through 205.14 are revised to read as follows:

§ 205.1 Authority and purpose.

(a) *Authority.* This part is issued by the Board of Governors of the Federal Reserve System pursuant to the Electronic Fund Transfer Act (15 U.S.C. 1693 *et seq.*). The information-collection requirements have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and have been assigned OMB No. 7100–0200.

(b) *Purpose.* This part carries out the purposes of the Electronic Fund Transfer Act, which establishes the basic rights, liabilities, and responsibilities of consumers who use electronic fund transfer services and of financial institutions that offer these services. The primary objective of the act and this regulation is the protection of individual consumers engaging in electronic fund transfers.

§ 205.2 Definitions.

For purposes of this part, the following definitions apply:

(a)(1) *Access device* means a card, code, or other means of access to a consumer's account, or any combination thereof, that may be used by the consumer to initiate electronic fund transfers.

(2) An access device becomes an *accepted access device* when the consumer:

(i) Requests and receives, or signs, or uses (or authorizes another to use) the access device to transfer money between accounts or to obtain money, property, or services;

(ii) Requests validation of an access device issued on an unsolicited basis; or

(iii) Receives an access device in renewal of, or in substitution for, an accepted access device from either the financial institution that initially issued the device or a successor.

(b)(1) *Account* means a demand deposit (checking), savings, or other

consumer asset account (other than an occasional or incidental credit balance in a credit plan) held directly or indirectly by a financial institution and established primarily for personal, family, or household purposes.

(2) The term does not include an account held by a financial institution under a bona fide trust agreement.

(c) *Act* means the Electronic Fund Transfer Act (title IX of the Consumer Credit Protection Act, 15 U.S.C. 1693 *et seq.*).

(d) *Business day* means any day other than a Saturday, a Sunday, or any of the legal public holidays specified in 5 U.S.C. 6103(a).

(e) *Consumer* means a natural person.

(f) *Electronic terminal* means an electronic device, other than a telephone operated by a consumer, through which a consumer may initiate an electronic fund transfer. The term includes, but is not limited to, point-of-sale terminals, automated teller machines, and cash dispensing machines.

(g) *Financial institution* means a bank, savings association, credit union, or any other person that directly or indirectly holds an account belonging to a consumer, or that issues an access device and agrees with a consumer to provide electronic fund transfer services.

(h) *Person* means a natural person or an organization, including a corporation, government agency, estate, trust, partnership, proprietorship, cooperative, or association.

(i) *Preauthorized electronic fund transfer* means an electronic fund transfer authorized in advance to recur at substantially regular intervals.

(j) *State* means any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of the above.

(k) *Unauthorized electronic fund transfer* means an electronic fund transfer from a consumer's account initiated by a person other than the consumer without actual authority to initiate the transfer and from which the consumer receives no benefit. The term does not include an electronic fund transfer initiated:

(1) By a person who was furnished the access device to the consumer's account by the consumer, unless the consumer has notified the financial institution that transfers by that person are no longer authorized;

(2) With fraudulent intent by the consumer or any person acting in concert with the consumer; or

(3) By the financial institution or its employees.

§ 205.3 Coverage.

(a) *General.* This part applies to any electronic fund transfer that authorizes a financial institution to debit or credit a consumer's account. Generally, the part applies to financial institutions. For purposes of §§ 205.10(b), (d), (e) and 205.13 of this part, the part applies to any person.

(b) *Electronic fund transfer.* The term electronic fund transfer means any transfer of funds that is initiated through an electronic terminal, telephone, computer, or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account. The term includes, but is not limited to:

(1) Point-of-sale transfers;

(2) Automated teller machine transfers;

(3) Direct deposits or withdrawals of funds;

(4) Transfers initiated by telephone; and

(5) Transfers resulting from debit card transactions, whether or not initiated through an electronic terminal.

(c) *Exclusions from coverage.* The term electronic fund transfer does not include:

(1) *Checks.* Any transfer of funds originated by check, draft, or similar paper instrument; or any payment made by check, draft, or similar paper instrument at an electronic terminal.

(2) *Check guarantee or authorization services.* Any transfer of funds that guarantees payment or authorizes acceptance of a check, draft, or similar paper instrument which does not directly result in a debit or credit to a consumer's account.

(3) *Wire transfers.* Any transfer of funds through Fedwire or through a similar wire transfer system that is used primarily for transfers between financial institutions or between businesses.

(4) *Securities and commodities transfers.* Any transfer of funds the primary purpose of which is the purchase or sale of a security or commodity, if the security or commodity is:

(i) Regulated by the Securities and Exchange Commission or the Commodity Futures Trading Commission;

(ii) Purchased or sold through a broker-dealer regulated by the Securities and Exchange Commission or through a futures commission merchant regulated by the Commodity Futures Trading Commission; or

(iii) Held in book-entry form by a Federal Reserve Bank or federal agency.

(5) *Automatic transfers by account-holding institution.* Any transfer of funds under an agreement between a consumer and a financial institution which provides that the institution will initiate individual transfers without a specific request from the consumer:

(i) Between a consumer's accounts within the financial institution;

(ii) From a consumer's account to an account of a member of the consumer's family held in the same financial institution; or

(iii) Between a consumer's account and an account of the financial institution, except that these transfers remain subject to § 205.10(e) of this part regarding compulsory use and sections 915 and 916 of the act regarding civil and criminal liability.

(6) *Telephone-initiated transfers.* Any transfer of funds that:

(i) Is initiated by a telephone conversation between a consumer and an officer or employee of a financial institution; and

(ii) Does not take place under a telephone bill-payment plan or other written agreement in which periodic or recurring transfers are contemplated.

(7) *Small institutions.* Any preauthorized transfer to or from an account if the assets of the account-holding financial institution are $100 million or less on the preceding December 31. If assets of the account-holding institution subsequently exceed $100 million, the institution's exemption for preauthorized transfers terminates one year from the end of the calendar year in which the assets exceed $100 million. Preauthorized transfers exempt under this paragraph remain subject to § 205.10(e) of this part regarding compulsory use and sections 915 and 916 of the act regarding civil and criminal liability.

§ 205.4 General disclosure requirements; jointly offered services.

(a) *Form of disclosures.* Disclosures required under this part shall be clear and readily understandable, in writing, and in a form the consumer may keep A financial institution may use commonly accepted or readily understandable abbreviations in complying with the disclosure requirements of the part.

(b) *Additional information; disclosures required by other laws.* Information or disclosures required by other laws (such as the Truth in Lending Act or the Truth in Savings Act) may be combined with the disclosures required by this part.

(c) *Multiple accounts and account holders*—(1) *Multiple accounts.* If a consumer holds more than one account at a financial institution, the institution may combine the required disclosures into a single statement.

(2) *Multiple account holders.* For joint accounts held by two or more consumers, the financial institution need provide only one set of the required disclosures and it may provide them to any of the account holders.

(d) *Services offered jointly.* Financial institutions that provide electronic fund transfer services jointly may contract among themselves to comply with the requirements that this regulation imposes on any or all of them. An institution that provides electronic fund transfer services under an agreement with other institutions need make only those disclosures required by §§ 205.7 and 205.8 of this part that are within the purview of its relationship with the consumer for whom it holds an account.

§ 205.5 Issuance of access devices.

(a) *Solicited issuance.* A financial institution may issue an access device to a consumer only:

(1) In response to an oral or written request for the device; or

(2) As a renewal of, or in substitution for, an accepted access device whether issued by the institution or a successor.

(b) *Unsolicited issuance.* A financial institution may distribute an access device to a consumer on an unsolicited basis if the access device is:

(1) Not validated, which means the institution has not yet performed all the procedures that would enable a consumer to initiate an electronic fund transfer using the access device;

(2) Accompanied by a clear explanation that the access device is not validated and how the consumer may dispose of it if validation is not desired;

(3) Accompanied by a complete disclosure, in accordance with § 205.7 of this part, of the consumer's rights and liabilities that will apply if the access device is validated; and

(4) Validated only in response to the consumer's oral or written request for validation, after the institution verifies the consumer's identity by a reasonable means (such as by photograph, fingerprint, personal visit, or signature comparison).

§ 205.6 Liability of consumer for unauthorized transfers.

(a) *Conditions for liability.* A consumer may be held liable, within the limitations described in paragraph (b) of this section, for an unauthorized electronic fund transfer involving the consumer's account only if the financial institution has provided the disclosures required by § 205.7(b) of this part. If the unauthorized transfer involved an access device, it must be an accepted access device and the financial institution must have provided a means to identify the consumer to whom it was issued.

(b) *Limitations on amount of liability.* The extent of a consumer's liability for an unauthorized electronic fund transfer or a series of related unauthorized transfers shall be determined as follows:

(1) *Timely notice given.* If the consumer notifies the financial institution within two business days after learning of the loss or theft of the access device, the consumer's liability shall not exceed the lesser of $50 or the amount of unauthorized transfers that occur before notice to the financial institution.

(2) *Timely notice not given.* If the consumer fails to notify the financial institution within two business days after learning of the loss or theft of the access device, the consumer's liability shall not exceed the lesser of $500 or the sum of:

(i) $50 or the amount of unauthorized transfers that occur within the two business days, whichever is less; and

(ii) The amount of unauthorized transfers that occur after the close of two business days and before notice to the institution and that the institution establishes would not have occurred had the consumer notified the institution within that time.

(3) *Periodic statement; timely notice not given.* If the consumer fails to report an unauthorized electronic fund transfer that appears on a periodic statement within 60 days of the financial institution's transmittal of the statement, the consumer's liability shall not exceed the amount of the unauthorized transfers that occur after the close of the 60 days and before notice to the institution and that the institution establishes would not have occurred had the consumer notified the institution within that time. If an access device is involved, the consumer's liability may also extend to the amounts set forth in paragraphs (b)(1) or (b)(2) of this section, as applicable.

(4) *Extension of time limits.* If the consumer's delay in notifying the financial institution was due to extenuating circumstances, the institution shall extend the times specified above to a reasonable period.

(5) *Notice to financial institution*—(i) Notice to a financial institution is given when a consumer takes steps reasonably necessary to provide the institution with the pertinent information, whether or not an employee or agent of the institution actually receives the information.

(ii) The consumer may notify the institution in person, by telephone, or in writing.

(iii) Written notice is considered given at the time the consumer mails the notice or delivers it for transmission by any other usual means to the institution. Notice may be considered constructively given when the institution becomes aware of circumstances leading to the reasonable belief that an unauthorized transfer involving the consumer's account has been or may be made.

(6) *Liability under state law or agreement.* If state law or an agreement between the consumer and the financial institution imposes less liability than is provided by this section, the consumer's liability shall not exceed the amount imposed under the state law or the agreement.

§ 205.7 Initial disclosures.

(a) *Timing of disclosures.* A financial institution shall make the disclosures required by this section at the time a consumer contracts for an electronic fund transfer service or before the first electronic fund transfer is made involving the consumer's account.

(b) *Content of disclosures.* The following disclosures shall be provided, as applicable:

(1) *Liability of consumer.* A summary of the consumer's liability, under § 205.6 of this part or under state or other applicable law or agreement, for unauthorized electronic fund transfers.

(2) *Telephone number and address.* The telephone number and address of the person or office to be notified when the consumer believes that an unauthorized electronic fund transfer has been or may be made.

(3) *Business days.* The financial institution's business days.

(4) *Types of transfers; limitations.* The type of electronic fund transfers that the consumer may make and any limitations on the frequency and dollar amount of transfers. The details of the limitations need not be disclosed if confidentiality is essential to maintain the security of the electronic fund transfer system.

(5) *Fees.* Any fees imposed by the financial institution for electronic fund transfers or for the right to make transfers.

(6) *Documentation.* A summary of the consumer's right to receive documentation of electronic fund transfers, as provided in §§ 205.9, 205.10(a), and 205.10(d) of this part.

(7) *Stop payment.* A summary of the consumer's right to stop payment of a preauthorized electronic fund transfer and the procedure for placing a stop-payment order, as provided in § 205.10(c) of this part.

(8) *Liability of institution.* A summary of the financial institution's liability to

the consumer under section 910 of the act for failure to make or to stop certain transfers.

(9) *Confidentiality.* The circumstances under which, in the ordinary course of business, the financial institution may provide information concerning the consumer's account to third parties.

(10) *Error resolution.* A notice that is substantially similar to the notice concerning error resolution contained in appendix A of this part.

§ 205.8 Change in terms notice; error resolution notice.

(a) *Change in terms notice*—(1) *Prior notice required.* A financial institution shall mail or deliver a written notice to the consumer at least 30 days before the effective date of any change in a term or condition required to be disclosed under § 205.7(b) of this part if the change would result in:

(i) Increased fees;

(ii) Increased liability for the consumer;

(iii) Fewer types of available electronic fund transfers; or

(iv) Stricter limitations on the frequency or dollar amount of transfers.

(2) *Prior notice exception.* A financial institution need not give prior notice if an immediate change in terms or conditions is necessary to maintain or restore the security of an electronic fund transfer system or an account. If such a change is made permanent and disclosure would not jeopardize the security of the system or account, the financial institution shall notify the consumer in writing within 45 days of the change.

(b) *Error resolution notice.* For accounts to or from which electronic fund transfers can be made, a financial institution shall mail or deliver to the consumer, at least once each calendar year, the error resolution notice set forth in appendix A of this part. Alternatively, an institution may include an abbreviated notice substantially similar to the error resolution notice set forth in appendix A on or with each periodic statement required by § 205.9(b) of this part.

§ 205.9 Receipts at electronic terminals; periodic statements.

(a) *Receipts at electronic terminals.* A financial institution shall make a receipt available to a consumer at the time the consumer initiates an electronic fund transfer at an electronic terminal. The receipt shall set forth the following information, as applicable:

(1) *Amount.* The amount of the transfer. A transaction fee may be included in this amount, provided the amount of the fee is disclosed on the receipt and displayed on or at the terminal.

(2) *Date.* The date the consumer initiates the transfer.

(3) *Type.* The type of transfer and the type of the consumer's account or accounts to or from which funds are transferred. The type of account may be omitted if the access device used may access only one account at that terminal.

(4) *Identification.* A number or code that uniquely identifies the consumer's account or the access device used to initiate the transfer.

(5) *Terminal location.* The location or an identification of the terminal where the transfer is initiated (such as a code or terminal number). The location shall include the city and state (the state may be omitted for terminals that are within 50 miles of the account-holding institution's main office) or foreign country and one of the following:

(i) The street address;

(ii) A generally accepted name for the specific location; or

(iii) The name of the owner or operator of the terminal if other than the account-holding institution.

(6) *Third party transfer.* The name of any third party to or from whom funds are transferred.

(b) *Periodic statements.* For accounts to or from which electronic fund transfers can be made, a financial institution shall send a periodic statement for each monthly cycle in which an electronic fund transfer has occurred; and shall send a periodic statement at least quarterly if no transfer has occurred. The statement shall set forth the following information, as applicable:

(1) *Transaction information.* For each electronic fund transfer occurring during the cycle:

(i) The amount of the transfer;

(ii) The date the transfer was credited or debited to the consumer's account;

(iii) The type of transfer and type of account or accounts to or from which funds were transferred;

(iv) For a transfer initiated by the consumer at an electronic terminal (except for a deposit of cash or a check, draft, or similar paper instrument), the terminal location in a form set forth in paragraph (a)(5) of this section; and

(v) The name of any third party to or from whom funds were transferred.

(2) *Account number.* The number of the account to which the statement pertains.

(3) *Fees.* The amount of any fees assessed against the account during the statement period for electronic fund transfers, for the right to make transfers, or for account maintenance.

(4) *Account balances.* The balance in the account at the beginning and at the close of the statement period.

(5) *Address and telephone number for inquiries.* The address and telephone number to be used for inquiries or notice of errors, preceded by "Direct inquiries to" or similar language. The address and telephone number provided on an error resolution notice given on or with the statement satisfies this requirement.

(6) *Telephone number for preauthorized transfers.* A telephone number the consumer may call to ascertain whether preauthorized transfers to the consumer's account have occurred, if the financial institution uses the telephone-notice option under § 205.10(a)(1)(iii) of this part.

(c) *Exceptions to the periodic statement requirements for certain accounts*—(1) *Preauthorized transfers to accounts.* A financial institution need not send a monthly periodic statement for accounts that may only be accessed by preauthorized transfers to the account if:

(i) *Passbook accounts.* The financial institution updates the passbook upon presentation or enters on a separate document the amount and date of each electronic fund transfer since the passbook was last presented.

(ii) *Other accounts.* For accounts other than passbook accounts, the institution sends the periodic statement quarterly.

(2) *Intra-institutional transfers.* If an electronic fund transfer is initiated by the consumer between two accounts of the consumer in the same institution, documenting the transfer on a periodic statement for one of the two accounts satisfies the statement requirement.

(3) *Relationship between paragraphs (c)(1) and (c)(2) of this section.* An account that is accessed by preauthorized transfers to the account and by intra-institutional transfers described in paragraph (c)(2), but by no other type of electronic fund transfers, qualifies for the exceptions provided by paragraph (c)(1).

(d) *Documentation for foreign-initiated transfers.* The failure by a financial institution to provide a terminal receipt for an electronic fund transfer or to document the transfer on a periodic statement does not violate this regulation if:

(1) The transfer is not initiated within a state; and

(2) The financial institution treats an inquiry for clarification or documentation as a notice of error in accordance with § 205.11 of this part.

§ 205.10 Preauthorized transfers.

(a) *Preauthorized transfers to consumer's account*—(1) *Notice by financial institution.* When a person initiates preauthorized electronic fund transfers to a consumer's account at least once every 60 days, the account-holding institution shall provide notice to the consumer by:

(i) *Positive notice.* Providing oral or written notice of the transfer within two business days after it occurs;

(ii) *Negative notice.* Providing oral or written notice, within two business days after the date on which the transfer was scheduled to occur, that the transfer did not occur; or

(iii) *Telephone.* Providing a readily available telephone line that the consumer may call to determine whether the transfer occurred and disclosing the telephone number on the initial disclosure of account terms and on each periodic statement.

(2) *Notice by payor.* A financial institution need not provide notice if the payor gives the consumer positive notice that the transfer has been initiated.

(b) *Written authorization for preauthorized transfers from consumer's account.* Preauthorized electronic fund transfers from a consumer's account may be authorized only by a writing signed or similarly authenticated by the consumer. The person that obtains the authorization shall provide a copy to the consumer.

(c) *Consumer's right to stop payment*—(1) *Notice.* A consumer may stop payment of a preauthorized electronic fund transfer from the consumer's account by notifying the financial institution orally or in writing at least three business days before the scheduled date of the transfer.

(2) *Written confirmation.* The financial institution may require the consumer to give written confirmation of a stop-payment order within 14 days of an oral notification. An institution that requires written confirmation shall inform the consumer of the requirement and provide the address where confirmation must be sent when the consumer gives the oral notification. An oral stop-payment order ceases to be binding after 14 days if the consumer fails to provide the required written confirmation.

(d) *Notice of transfers varying in amount*—(1) *Notice.* When a preauthorized electronic fund transfer from the consumer's account will vary in amount from the previous transfer under the same authorization or from the preauthorized amount, the designated payee or the financial institution shall send written notice of the amount and date of the transfer to the consumer at least 10 days before the scheduled date of transfer.

(2) *Range.* The designated payee or the institution shall inform the consumer of the right to receive notice of all varying transfers, but may give the consumer the option of receiving notice only when a transfer falls outside a specified range of amounts or only when a transfer differs from the most recent transfer by more than an agreed-upon amount.

(e) *Compulsory use*—(1) *Credit.* No financial institution or other person may condition the extension of credit to a consumer on the consumer's repayment by preauthorized electronic fund transfers, except for credit that is extended under an overdraft credit plan or that is extended to maintain a specified minimum balance in the consumer's account.

(2) *Employment or government benefit.* No financial institution or other person may require a consumer to establish an account for receipt of electronic fund transfers with a particular institution as a condition of employment or receipt of a government benefit.

§ 205.11 Procedures for resolving errors.

(a) *Definition of error*—(1) *Types included.* The term "error" means:

(i) An unauthorized electronic fund transfer;

(ii) An incorrect electronic fund transfer to or from the consumer's account;

(iii) The omission of an electronic fund transfer from a periodic statement;

(iv) A computational or bookkeeping error made by the financial institution relating to an electronic fund transfer;

(v) The consumer's receipt of an incorrect amount of money from an electronic terminal;

(vi) An electronic fund transfer not identified in accordance with § 205.9 or § 205.10(a) of this part; or

(vii) The consumer's request for documentation required by § 205.9 or § 205.10(a) of this part or for additional information or clarification concerning an electronic fund transfer, including a request the consumer makes to determine whether an error exists under paragraphs (a)(1) (i) through (vi) of this section.

(2) *Exclusions.* The term "error" does not include:

(i) A routine inquiry about the consumer's account balance;

(ii) A request for information for tax or other recordkeeping purposes; or

(iii) A request for duplicate copies of documentation.

(b) *Notice of error from consumer*—(1) *Timing; contents.* A financial institution shall comply with the requirements of this section with respect to any oral or written notice of error from the consumer that:

(i) Is received by the institution no later than 60 days after the institution sends the periodic statement or provides the passbook documentation on which the alleged error is first reflected;

(ii) Enables the institution to identify the consumer's name and account number; and

(iii) Indicates why the consumer believes an error exists and includes to the extent possible the type, date, and amount of the error, except for requests described in paragraph(a)(1)(vii) of this section.

(2) *Written confirmation.* A financial institution may require the consumer to give written confirmation of an error within 10 business days of an oral notice. An institution that requires written confirmation shall inform the consumer of the requirement and provide the address where confirmation must be sent when the consumer gives the oral notification.

(3) *Request for documentation or clarifications.* When a notice of error is based on documentation or clarification that was requested under paragraph (a)(1)(vii) of this section, the notice is timely if received by the financial institution within 60 days of transmitting the requested information.

(c) *Time limits and extent of investigation*—(1) *Ten-day period.* A financial institution shall promptly investigate and determine whether an error occurred within 10 business days of receiving a notice of error. The institution shall report the results to the consumer within three business days after completing its investigation. The institution shall correct the error within one business day after determining that an error occurred.

(2) *Forty-five day period.* If the financial institution is unable to complete its investigation within 10 business days, the institution may take up to 45 days after receiving a notice of error, provided the institution:

(i) Provisionally credits the consumer's account in the amount of the alleged error (including interest where applicable) within 10 business days after receiving the error notice. If the financial institution has a reasonable basis for believing that an unauthorized electronic fund transfer has occurred and it has satisfied the requirements of § 205.6(a) of this part, the institution may withhold a maximum of $50 from the amount credited. An institution need not provisionally credit the consumer's account if:

(A) It requires but does not receive written confirmation within 10 business days of an oral notice of error; or

(B) The alleged error involves an account that is subject to Regulation T (credit by brokers and dealers, 12 CFR part 220);

(ii) Informs the consumer, within two business days after the provisional crediting, of the amount and date of crediting and gives the consumer full use of the funds during the investigation;

(iii) Corrects the error, if any, within one business day after determining that an error occurred; and

(iv) Reports the results to the consumer within three business days of completing its investigation (including, if applicable, notice that a provisional credit has been made final).

(3) *Extension of time periods.* The applicable time periods in this subsection shall be 20 business days in place of 10 business days, and 90 days in place of 45 days, if a notice of error involves an electronic fund transfer that:

(i) Was not initiated within a state; or

(ii) Resulted from a point-of-sale debit card transaction.

(4) *Investigation.* With the exception of transfers covered by § 205.14 of this part, a financial institution's review of its own records regarding an alleged error satisfies the requirements of this section if:

(i) The alleged error concerns a transfer to or from a third party; and

(ii) There is no agreement between the institution and the third party for the type of electronic fund transfer involved.

(d) *Procedures if financial institution determines no error or different error occurred.* In addition to the procedures specified in paragraph (c) of this section, the financial institution shall follow the procedures set forth in this paragraph if it determines that no error occurred or that an error occurred in a different manner or amount from that described by the consumer:

(1) *Written explanation.* The institution's report of the results of the investigation shall include a written explanation of the institution's findings and shall note the consumer's right to request the documents that the institution relied on in making its determination. The institution shall, upon request, promptly provide copies of the documents.

(2) *Debiting provisional credit.* Upon debiting a provisionally credited amount, the financial institution shall:

(i) Notify the consumer of the date and amount of the debiting;

(ii) Notify the consumer that the institution will honor checks, drafts, or similar instruments payable to third parties and preauthorized transfers from the consumer's account (without charge to the consumer as a result of an overdraft) for five business days after the notice; and honor items as specified in the notice. The institution need only honor items that it would have paid if the provisionally credited funds had not been debited.

(e) *Reassertion of error.* A financial institution that has fully complied with the error resolution requirements has no further responsibilities under this section should the consumer later reassert the same error, except that the institution shall investigate an error asserted by the consumer following receipt of information requested under paragraph (a)(1)(vii) of this section.

§ 205.12 Relation to other laws.

(a) *Relation to Truth in Lending.* (1) The Electronic Fund Transfer Act and this part govern:

(i) The addition to an accepted credit card, as defined under Regulation Z (12 CFR 226.12(a)(2), footnote 21), of the capability to initiate electronic fund transfers;

(ii) The issuance of an access device that permits credit extensions only under a preexisting agreement between a consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account; and

(iii) A consumer's liability for an unauthorized electronic fund transfer and the investigation of an alleged error that involves an extension of credit, if the extension of credit occurs under an agreement between the consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account.

(2) The Truth in Lending Act and Regulation Z, which prohibit the unsolicited issuance of credit cards, govern:

(i) The addition of a credit feature to an accepted access device; and

(ii) The issuance of a credit card that is also an access device, except as provided in paragraph (a)(1)(ii) of this section.

(b) *Preemption of inconsistent state laws*—(1) *Inconsistent requirements.* The Board shall determine, upon its own motion or upon the request of any state, financial institution, or other interested party, whether the act and this regulation preempt state law relating to electronic fund transfers. Only those state laws that are inconsistent with the act and this regulation shall be preempted and then only to the extent of the inconsistency. A state law is not inconsistent with the act and this regulation if it is more protective of consumers.

(2) *Standards for determination.* State law is inconsistent with the requirements of the act and the regulation if it:

(i) Requires or permits a practice or act prohibited by the federal law;

(ii) Provides for consumer liability for unauthorized electronic fund transfers that exceed the limits imposed by the federal law;

(iii) Allows longer time periods than the federal law for the investigation and correction of errors alleged by a consumer, or fails to require the crediting of the consumer's account during the investigation of errors as set forth in § 205.11(c)(2)(i) of this part; or

(iv) Requires initial disclosures, periodic statements, or receipts that are different in content from those required by the federal law except to the extent that the disclosures relate to rights granted to consumers by the state law and not by the federal law.

(c) *State exemptions*—(1) *General rule.* Any state may apply to the Board for an exemption from the requirements of the federal law for any class of electronic fund transfers within the state. The Board shall grant an exemption if the Board determines that:

(i) Under state law that class of electronic fund transfers is subject to requirements substantially similar to those imposed by the federal law; and

(ii) There is adequate provision for state enforcement.

(2) *Exception.* To assure that the federal and state courts will continue to have concurrent jurisdiction, and to aid in implementing the act:

(i) No exemption shall extend to the civil liability provisions of section 915 of the act; and

(ii) When an exemption has been granted, the requirements of the applicable state law shall constitute the requirements of the federal law, for the purposes of section 915 of the act, except for state law requirements not imposed by the federal law.

§ 205.13 Administrative enforcement; record retention.

(a) *Enforcement by federal agencies.* Compliance with this part is enforced by the agencies listed in appendix B of this part.

(b) *Record retention*—(1) A financial institution shall retain evidence of compliance with the requirements imposed by the act and this regulation for a period of not less than two years. Records may be stored by use of

microfiche, microfilm, magnetic tape, or any other method capable of accurately retaining and reproducing information.

(2) A financial institution having actual notice that it is the subject of an investigation or an enforcement proceeding by an agency charged with monitoring compliance with the act and this regulation, or having been served with notice of an action filed under sections 910, 915, or 916(a) of the act, shall retain the records that pertain to the action or proceeding until final disposition of the matter, unless an earlier time is allowed by court or agency order.

§ 205.14 Electronic fund transfer service provider not holding consumer's account.

(a) *Electronic fund transfer service providers subject to regulation.* An electronic fund transfer service provider that does not hold the consumer's account qualifies as a financial institution subject to this regulation if it:

(1) Issues an access device to a consumer;

(2) Provides electronic fund transfer service to the consumer by allowing the access device to be used to access the consumer's account held by another financial institution; and

(3) Has no agreement with the account-holding institution regarding service involving that access device.

(b) *Compliance by electronic fund transfer service provider.* In addition to the requirements generally applicable under this part, the service provider shall comply with the following special rules:

(1) *Disclosures and documentation.* The electronic fund transfer service provider shall provide the disclosures and documentation required by §§ 205.7, 205.8, and 205.9 of this part that are within the purview of its relationship with the consumer, but need not furnish a periodic statement to the consumer under § 205.9(b) of this part if the service provider:

(i) Issues a debit card (to be used by the consumer to initiate electronic fund transfers) bearing the service provider's name and an address or telephone number for consumer inquiries or for consumers to give notice of error;

(ii) Provides the consumer a notice concerning transactions made with the debit card that is substantially similar to the notice contained in appendix A of this part;

(iii) Provides, on or with the receipts required by § 205.9(a) of this part, the address and telephone number to be used for an inquiry, or to give notice of an error, to report the loss or theft of the debit card;

(iv) Transmits to the account-holding institution the information specified in § 205.9(b)(1) of this part in the format prescribed by the automated clearinghouse system used to clear the fund transfers;

(v) Extends the time period set forth in § 205.6(b) (1) and (2) of this part for notice of loss or theft of a debit card, from two business days to four business days after the consumer learns of the loss or theft; and

(vi) Extends the time periods set forth in §§ 205.6(b)(3) and 205.11(b)(1)(i) of this part for reporting unauthorized transfers or errors, from 60 days to 90 days following the transmittal of a periodic statement by the account-holding institution.

(2) *Error resolution*—(i) *Extension of error notification period.* The electronic fund transfer service provider shall extend by a reasonable time the period specified in § 205.11(b)(1)(i) of this part in which notice of an error must be received if a delay resulted from the initial attempt by the consumer to notify the account-holding institution.

(ii) *Disclosure of provisional credit.* The service provider shall disclose to the consumer the date on which it initiates a transfer to effect a provisional credit in accordance with § 205.11(c)(2)(ii) of this part.

(iii) *Error occurred.* If the service provider determines an error occurred, it shall transfer funds to or from the consumer's account, in the appropriate amount and within the applicable time period, in accordance with § 205.11(c)(2)(i) of this part.

(iv) *No error occurred.* If funds were provisionally credited and the service provider determines no error occurred, it may reverse the credit. The service provider shall then notify the account-holding institution of the period during which the account-holding institution must honor debits to the account in accordance with § 205.11(d)(2)(ii) of this part. If an overdraft results, the service provider shall promptly reimburse the account-holding institution in the amount of the overdraft.

(c) *Compliance by account-holding institution.* The account-holding institution need not comply with the requirements of the act and this regulation with respect to electronic fund transfers made by the electronic fund transfer service provider except as follows:

(1) The account-holding institution shall provide a periodic statement describing each electronic fund transfer involving transactions initiated by the consumer with the access device issued by the service provider. The account-holding institution has no liability for failure to comply with this requirement if the service provider did not provide the necessary information; and

(2) The account-holding institution shall provide, upon request, information or copies of documents needed by the service provider to investigate errors or to furnish copies of documents to the consumer. The account-holding institution shall also honor debits to the account in accordance with § 205.11(d)(2)(ii) of this part.

3. Appendices A and B are revised, and Appendix C is added to part 205 to read as follows:

Appendix A to Part 205—Model Disclosure Clauses and Forms

A–1—Model Clauses for Unsolicited Issuance (§ 205.5(b)(2))

(a) *Accounts using cards.* You cannot use the enclosed card to transfer money into or out of your account until we have validated it. If you do not want to use the card, please (destroy it at once by cutting it in half).

Financial institution may add validation instructions here

(b) *Accounts using codes.* You cannot use the enclosed code to transfer money into or out of your account until we have validated it. If you do not want to use the code, please (destroy this notice at once).

Financial institution may add validation instructions here

A–2—Model Clauses for Initial Disclosures (§ 205.7(b))

(a) *Consumer Liability (§ 205.7(b)(1)).* (Tell us AT ONCE if you believe your [card] [code] has been lost or stolen. Telephoning is the best way of keeping your possible losses down. You could lose all the money in your account (plus your maximum overdraft line of credit). If you tell us within 2 business days, you can lose no more the $50 if someone used your [card][code] without your permission. (If you believe your [card] [code] has been lost or stolen, and you tell us within 2 business days after you learn of the loss or theft, you can lose no more than $50 if someone used your [card] [code] without your permission.)

If you do NOT tell us within 2 business days after you learn of the loss or theft of your [card] [code], and we can prove we could have stopped someone from using your [card] [code] without your permission if you had told us, you could lose as much as $500.

Also, if your statement shows transfers that you did not make, tell us at once. If you do not tell us within 60 days after the statement was mailed to you, you may not get back any money you lost after the 60 days if we can

prove that we could have stopped someone from taking the money if you had told us in time.

If a good reason (such as a long trip or a hospital stay) kept you from telling us, we will extend the time periods.

(b) *Contact in event of unauthorized transfer (§ 205.7(b)(2)).* If you believe your [card] [code] has been lost or stolen or that someone has transferred or may transfer money from your account without your permission, call:

[Telephone number]

or write:

[Name of person or office to be notified]

[Address]

(c) *Business days (§ 205.7(b)(3)).* For purposes of these disclosures, our business days include every day other than Saturday, Sunday or one of the federal holidays.

(d) *Transfer types and limitations (§ 205.7(b)(4))*—(1) *Account access.* You may use your [card][code] to:

(i) Withdraw cash from your [checking] [or] [savings] account.

(ii) Make deposits to your [checking] [or] [savings] account.

(iii) Transfer funds between your checking and savings accounts whenever you request.

(iv) Pay for purchases at places that have agreed to accept the [card] [code].

(v) Pay bills directly [by telephone] from your [checking] [or] [savings] account in the amounts and on the days you request.

Some of these services may not be available at all terminals.

(2) *Limitations on frequency of transfers.*—(i) You may make only [insert number, e.g., 3] cash withdrawals from our terminals each [insert time period, e.g., week].

(ii) You can use your telephone bill-payment service to pay [insert number] bills each [insert time period] [telephone call].

(iii) You can use our point-of-sale transfer service for [insert number] transactions each [insert time period].

(iv) For security reasons, there are limits on the number of transfers you can make using our [terminals] [telephone bill-payment service] [point-of-sale transfer service].

(3) *Limitations on dollar amounts of transfers*—(i) You may withdraw up to [insert dollar amount] from our terminals each [insert time period] time you use the [card] [code].

(ii) You may buy up to [insert dollar amount] worth of goods or services each [insert time period] time you use the [card] [code] in our point-of-sale transfer service.

(e) *Fees (§ 205.7(b)(5))*—(1) *Per transfer charge.* We will charge you [insert dollar amount] for each transfer you make using our [automated teller machines] [telephone bill-payment service] [point-of-sale transfer service].

(2) *Fixed charge.* We will charge you [insert dollar amount] each [insert time period] for our [automated teller machine service] [telephone bill-payment service] [point-of-sale transfer service].

(3) *Average or minimum balance charge.* We will only charge you for using our [automated teller machines] [telephone bill-payment service] [point-of-sale transfer service] if the [average] [minimum] balance in your [checking account] [savings account] [accounts] falls below [insert dollar amount]. If it does, we will charge you [insert dollar amount] each [transfer] [insert time period].

(f) *Confidentiality (§ 205.7(b)(9)).* We will disclose information to third parties about your account or the transfers you make:

(1) Where it is necessary for completing transfers, or

(2) In order to verify the existence and condition of your account for a third party, such as a credit bureau or merchant, or

(3) In order to comply with government agency or court orders, or

(4) If you give us your written permission.

(g) *Documentation (§ 205.7(b)(6))*—(1) *Terminal transfers.* You can get a receipt at the time you make any transfer to or from your account using one of our [automated teller machines] [or] [point-of-sale terminals].

(2) *Preauthorized credits.* If you have arranged to have direct deposits made to your account at least once every 60 days from the same person or company, [we will let you know if the deposit is [not] made.] [the person or company making the deposit will tell you every time they send us the money] [you can call us at [insert telephone number] to find out whether or not the deposit has been made].

(3) *Periodic statements.* You will get a [monthly] [quarterly] account statement (unless there are no transfers in a particular month. In any case you will get the statement at least quarterly).

(4) *Passbook account where the only possible electronic fund transfers are preauthorized credits.* If you bring your passbook to us, we will record any electronic deposits that were made to your account since the last time you brought in your passbook.

(h) *Preauthorized payments (§ 205.7(b)(6), (7) and (8))*—(1) *Right to stop payment and procedure for doing so.* If you have told us in advance to make regular payments out of your account, you can stop any of these payments. Here's how:

Call us at [insert telephone number], or write us at [insert address], in time for us to receive your request 3 business days or more before the payment is scheduled to be made. If you call, we may also require you to put your request in writing and get it to us within 14 days after you call. (We will charge you [insert amount] for each stop-payment order you give.)

(2) *Notice of varying amounts.* If these regular payments may vary in amount, [we] [the person you are going to pay] will tell you, 10 days before each payment, when it will be made and how much it will be. (You may choose instead to get this notice only when the payment would differ by more than a certain amount from the previous payment, or when the amount would fall outside certain limits that you set.)

(3) *Liability for failure to stop payment of preauthorized transfer.* If you order us to stop one of these payments 3 business days or more before the transfer is scheduled, and we do not do so, we will be liable for your losses or damages.

(i) *Financial institution's liability (§ 205.7(b)(8)).* If we do not complete a transfer to or from your account on time or in the correct amount according to our agreement with you, we will be liable for your losses or damages. However, there are some exceptions. We will not be liable, for instance:

- If, through no fault of ours, you do not have enough money in your account to make the transfer.
- If the transfer would go over the credit limit on your overdraft line.
- If the automated teller machine where you are making the transfer does not have enough cash.
- If the [terminal] [system] was not working properly and you knew about the breakdown when you started the transfer.
- If circumstances beyond our control (such as fire or flood) prevent the transfer, despite reasonable precautions that we have taken.
- There may be other exceptions stated in our agreement with you.

A–3—Model Forms for Error Resolution Notice

1. Initial and annual error resolution notice §§ 205.7(b)(10) and 205.8(b))

In Case of Errors or Questions About Your Electronic Transfers, Telephone us at [insert telephone number] or Write us at [insert address] as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer listed on the statement or receipt. We must hear from you no later than 60 days after we sent the FIRST statement on which the problem or error appeared.

(1) Tell us your name and account number (if any).

(2) Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.

(3) Tell us the dollar amount of the suspected error.

If you tell us orally, we may require that you send us your complaint or question in writing within 10 business days.

We will tell you the results of our investigation within 10 business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question. If we decide to do this, we will credit your account within 10 business days for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account.

If we decide that there was no error, we will send you a written explanation within three business days after we finish our investigation. You may ask for copies of the documents that we used in our investigation.

2. Error resolution notice on periodic statements § 205.8(b)

In Case of Errors or Questions About Your Electronic Transfers, Telephone us at [insert telephone number] or Write us at [insert address] as soon as you can, if you think your statement or receipt is wrong or if you need

more information about a transfer on the statement or receipt. We must hear from you no later than 60 days after we sent you the FIRST statement on which the error or problem appeared.

(1) Tell us your name and account number (if any).

(2) Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.

(3) Tell us the dollar amount of the suspected error.

We will investigate your complaint and will correct any error promptly. If we take more than 10 business days to do this, we will credit your account for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation.

A–4—Model Form for Service-Providing Institutions § 205.14(b)(1)(ii)

ALL QUESTIONS ABOUT TRANSACTIONS MADE WITH YOUR (NAME OF CARD) CARD MUST BE DIRECTED TO US (NAME OF SERVICE PROVIDER), AND NOT TO THE BANK OR OTHER FINANCIAL INSTITUTION WHERE YOU HAVE YOUR ACCOUNT. We are responsible for the [name of service] service and for resolving any errors in transactions made with your [name of card] card.

We will not send you a periodic statement listing transactions that you make using your [name of card] card. The transactions will appear only on the statement issued by your bank or other financial institution. SAVE THE RECEIPTS YOU ARE GIVEN WHEN YOU USE YOUR [NAME OF CARD] CARD, AND CHECK THEM AGAINST THE ACCOUNT STATEMENT YOU RECEIVE FROM YOUR BANK OR OTHER FINANCIAL INSTITUTION. If you have any questions about one of these transactions, call or write us at [telephone number and address] [the telephone number and address indicated below].

IF YOUR [NAME OF CARD] CARD IS LOST OR STOLEN, NOTIFY US AT ONCE by calling or writing to us at [telephone number and address].

Appendix B to Part 205—Federal Enforcement Agencies

The following list indicates which Federal agency enforces Regulation E for particular classes of institutions. Any questions concerning compliance by a particular institution should be directed to the appropriate enforcing agency. Terms that are not defined in the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in the International Banking Act of 1978 (12 U.S.C. 3101).

National banks, and Federal branches and Federal agencies of foreign banks

District office of the Office of the Comptroller of the Currency where the institution is located.

State member banks, branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25(a) of the Federal Reserve Act

Federal Reserve Bank serving the District in which the institution is located.

Nonmember insured banks and insured state branches of foreign banks

Federal Deposit Insurance Corporation regional director for the region in which the institution is located.

Savings institutions insured under the Savings Association Insurance Fund of the FDIC and federally-chartered savings banks insured under the Bank Insurance Fund of the FDIC (but not including state-chartered savings banks insured under the Bank Insurance Fund)

Office of Thrift Supervision Regional Director for the region in which the institution is located.

Federal Credit Unions

Division of Consumer Affairs, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428

Air Carriers

Assistant General Counsel for Aviation Enforcement and Proceedings, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

Brokers and Dealers

Division of Market Regulation, Securities and Exchange Commission, Washington, DC 20549.

Retailers, Consumer Finance Companies, Certain Other Financial Institutions, and all others not covered above

Federal Trade Commission, Electronic Fund Transfers, Washington, DC 20580.

Appendix C to Part 205—Issuance of Staff Interpretations

Official Staff Interpretations

Pursuant to section 915(d) of the act, the Board has designated the director and other officials of the Division of Consumer and Community Affairs as officials "duly authorized" to issue, at their discretion, official staff interpretations of this regulation. Except in unusual circumstances, such interpretations will not be issued separately but will be incorporated in an official commentary to the regulation, which will be amended periodically.

Requests for Issuance of Official Staff Interpretations

A request for an official staff interpretation shall be in writing and addressed to the Director, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551. The request shall contain a complete statement of all relevant facts concerning the issue, including copies of all pertinent documents.

Scope of Interpretations

No staff interpretations will be issued approving financial institutions' forms or statements. This restriction does not apply to forms or statements whose use is required or sanctioned by a government agency.

By order of the Board of Governors of the Federal Reserve System, February 24, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–4680 Filed 3–2–94; 12:38 pm]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Regulation E; Docket No. R–0831]

Electronic Fund Transfers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed Official Staff Interpretation.

SUMMARY: The Board is publishing for comment a proposal to revise the official staff commentary to Regulation E (Electronic Fund Transfers). This proposal is part of the Board's current review of Regulation E. The commentary interprets the requirements of Regulation E in order to facilitate compliance by financial institutions that offer electronic fund transfer services to consumers. The proposed revisions change the question and answer format to a narrative one in order to make the commentary easier to use and to conform it with the format of the Board's other staff commentaries. It also includes interpretative provisions previously contained in the regulation that were more explanatory in nature. The proposal includes additional interpretations on matters not previously addressed.

DATES: Comments must be received on or before May 31, 1994.

ADDRESSES: Comments should refer to Docket No. R–0831 and be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551. They may also be delivered to the guard station in the Eccles Building Courtyard on 20th Street NW. (between Constitution Avenue and C Street) between 8:45 a.m. and 5:15 p.m. weekdays. Except as provided in the Board's rules regarding the availability of information (12 CFR 261.8), comments received will be available for inspection and copying by any member of the public in the Freedom of Information Office, Room MP–500 of the Martin Building between 9 a.m. and 5 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Jane Jensen Gell or Mary Jane Seebach, Staff Attorneys, or John Wood, Senior Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–2412 or (202) 452–3667. For the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD), at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

(1) Background

The Electronic Fund Transfer Act (EFTA) (15 U.S.C. 1693), enacted in 1978, provides a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer (EFT) systems. The EFTA is implemented by the Board's Regulation E (12 CFR part 205). In 1981, the Board published an official staff commentary to Regulation E. The commentary substitutes for individual official staff interpretations and is designed to facilitate compliance and provide protection from civil liability, under section 915(d)(1) of the act, for financial institutions that act in conformity with it.

The question and answer format of the present commentary was designed to make compliance easier by providing specific answers, in nontechnical language, to commonly asked questions. The Board proposes to replace the current approach with a narrative format, similar to other commentaries issued by the Board. The proposed change is intended to provide more general applicability, as the current format usually relies on specific factual situations and often restricts the scope of an interpretation.

The order of comments in the proposal corresponds with the new sections in the regulatory proposal. Throughout the commentary, reference to "this section" or "this paragraph" means the section or paragraph in the regulation that is the subject of the comment. Each comment in the commentary is identified by a number and the regulatory section or paragraph that it interprets.

The proposed commentary incorporates text that was moved from the regulation because it is more explanatory in nature than regulatory. In addition, a number of comments would be deleted as obsolete. The Board solicits comment on whether deleting any of these comments creates confusion as to the Board's current interpretation of a particular matter.

The section-by-section description that follows points out those provisions that differ in some significant way from the current commentary. Similarly, those portions of the current regulation that would be moved to the commentary are also discussed. Comments in the existing commentary will be referred to as "questions" and will be cited by the section number and the number of the question. For example, Q2–11 would be the citation for question number 11 in the commentary to § 205.2. As the substance of many questions does not change in the new format, those comments are not specifically discussed. At the beginning of each section of the proposed commentary is a listing that matches existing comments with the proposed new commentary provisions. It also provides a listing of comments that would be deleted from the commentary, comments that are new, and comments that would be moved to other sections.

(2) Form of Comment Letters

Comment letters should refer to Docket No. R–0831. The Board requests that, when possible, comments be prepared using a standard typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text into machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Comments may also be submitted on 3½ inch or 5¼ inch computer diskettes in any IBM-compatible DOS-based format.

(3) Explanation of Proposed Revisions

Section 205.2—Definitions

New	Old
(a)–1	Q2–1.
(b)–1	Q2–2, Q2–3, Q2–4, Q2–5, Q2–5.5.
(b)–2	Q3–20, Q3–21.
(d)–1	Q2–8.
(f)–1	Q2–25.5, Q2–23.
(f)–2	Q2–24.
(f)–3	Q2–25.
(k)–1	Q2–26.
(k)–2	Q2–27.
(k)–3	Q2–27.
(k)–4	Q2–28.

Comments Deleted

Q2–6: Business day—substantially all business functions
Q2–7: Business day—duration
Q2–9: Business day—short hours
Q2–22: Electronic terminal—telephone bill payment

Paragraph 2(b)(2)

In the regulatory proposal, the exemption for trust accounts has been incorporated into the definition of account. Accordingly, Q3–20 (custodial agreements) and Q3–21 (trust accounts) would be included in this section. The change mirrors the statutory definition of account.

(d) Business Day

The regulatory proposal includes a new definition of business day. Currently, the term is defined as any day on which the offices of the consumer's financial institution are open to the public for carrying on substantially all business functions. The proposal defines a business day as a calendar day other than a Saturday, Sunday, or any legal public holiday specified in 5 U.S.C. 6103(a). Q2–6, Q2–7 and Q2–9 provide guidance on interpreting "substantially all business functions" and would be deleted as obsolete.

(k) Unauthorized Electronic Fund Transfer

Proposed comment (k)–2 incorporates Q2–27, which provides that when the consumer furnishes an access device and grants actual authority to make transfers to another person (a family member or co-worker, for example) who then exceeds that authority, the consumer is liable for the transfers unless the consumer notifies the financial institution that transfers by that person are no longer authorized. The Board solicits comment on whether financial institutions should be required to disclose a consumer's liability in this instance as part of the initial disclosures of § 205.7. While institutions are required to provide a summary of the consumer's liability under § 205.6 in the initial disclosures, the current model clauses do not refer to this type of situation.

Section 205.3—Coverage

New	Old
(a)–1	New (revised Q9–15).
(a)–2	New (foreign applicability).
(b)–1	Q2–11, reverses Q2–16, Q2–18, Q2–19, Q2–21.5.
(b)–2	Q2–10, Q2–12, Q2–21.
(c)(2)–1	Q3–1.
(c)(3)–1	Q3–3.
(c)(3)–2	New (UCC Article 4A/wire transfer).
(c)(3)–3	New (similar fund transfer systems).
(c)(4)–1	New (securities exemption).
(c)(4)–2	Q3–3.5, Q3–3.6, new (margin call).
(c)(5)–1	Q3–8, Q3–9, Q3–10, Q3–11, Q3–12.
(c)(5)–2	Q3–13.
(c)(6)–1	Q3–14, Q3–15, Q3–16, Q3–19.5.

New	Old
(c)(6)–2	Q3–17, Q3–18, Q3–19, new (facsimile machine).
(c)(7)–1	New (UCC Article 4A/small institutions).

Comments Deleted

Q2–12.5: Fund transfer—withholding of income tax on interest
Q2–12.6: Fund transfer—EBT
Q2–13: Fund transfer—withdrawal at another institution
Q2–14: Fund transfer—check truncation
Q2–15: Fund transfer—payee information, nonelectronic form
Q2–17: Fund transfer—ACH
Q2–20: Fund transfer—preauthorized debits by paper drafts, ACH
Q3–2: Wire transfer—instructions on magnetic tape
Q3–4: Telephone transfer plans—applicability of intrainstitutional exemption
Q3–5: Compulsory use—preauthorized loan payments
Q3–22: Small institutions exemption—grace period

Comments Moved

Q3–6, Q3–7, and Q3–7.5 (see proposed commentary to § 205.10(e))
Q3–20 and Q3–21 (see proposed commentary to § 205.2)

Section 205.3 of the proposed regulation is a new section on the regulation's coverage. It includes the existing language on the scope of Regulation E, as well as the definition of EFT and the exemptions from the regulation.

3(a) General

To correspond with the regulatory proposal, the commentary proposal consolidates existing and new comments on the regulation's coverage. Q9–15, which specifies when periodic statements are required, also details the types of accounts subject to the requirements of the regulation and has been incorporated into comment (a)–1.

Proposed comment (a)–2 is new. It explains the application of Regulation E in situations involving foreign-based financial institutions, consumers who are not U.S. citizens, or both. Language for this proposed comment was modeled upon the commentary to Regulation Z on foreign applicability (12 CFR part 226, supp. I, comment 1(c)–1). The Board requests comment on whether the scope of the proposed comment offers sufficient coverage of foreign-related EFTs.

(b) Electronic Fund Transfer

In the regulatory proposal, the definition of "electronic fund transfer" (currently § 205.2(g)) has been incorporated into the coverage section as the definition is central to determining coverage under the regulation. The proposed commentary reflects this change and consolidates in this section the majority of questions pertaining to EFTs. A number of comments have been deleted due to a change in Board position. For example, Q2–12.6 deals with the electronic payment of government benefits and states that such transfers are not subject to Regulation E. As the Board has adopted amendments to Regulation E extending coverage to electronic benefit transfer programs established by federal, state, or local government agencies, Q2–12.6 has been deleted (see Docket No. R–0829 in today's **Federal Register**).

Proposed comment (b)–1 provides examples of EFTs subject to Regulation E. The comment incorporates Q2–19, and reverses Q2–16 to achieve consistency. Q2–16 states that credits to consumers' accounts made by a composite check accompanied by a magnetic tape containing payee information are not EFTs for purposes of Regulation E. Q2–19, on the other hand, states that debits made to consumer accounts by use of a magnetic tape containing consumers' billing information will be considered EFTs covered by the regulation even if all the debits are combined on one composite check sent to the payee. The proposed comment treats both credits and debits to consumer accounts by use of composite checks as EFTs.

Proposed comment (b)–2 provides examples of EFTs that are not covered by the regulation. The comment generally states that any payment that does not debit or credit a consumer asset account is not an EFT. It also incorporates Q2–10 and Q2–12. Q2–10 provides that a EFT excludes not only payments made by check, draft, or similar paper instrument at an electronic terminal, but also payments in currency since they do not debit or credit a consumer's account. Q2–12 provides that payroll allotments are transfers not covered by Regulation E; an example is a sum designated by the consumer to be deducted from payroll to repay a debt of the consumer. This amount is deducted before a deposit is made to the consumer's account and so the payroll allotment is not a debit to a consumer asset account.

(c) Exclusions From Coverage

The regulatory proposal incorporates the exemptions from current § 205.3 into the expanded section on coverage. The Board believes having coverage and exemption provisions in one section simplifies the analysis of whether or not compliance with the regulation is required.

Two new comments address the relationship of Regulation E to Article 4A of the Uniform Commercial Code (UCC). Article 4A provides comprehensive rules governing the rights and responsibilities arising from wire transfers. It applies primarily to large-dollar, commercial wire transfers made via Fedwire, Clearing House Interbank Payments Systems (CHIPS), Society for Worldwide Interbank Payments Systems (SWIFT) and Telex.

(c)(3) Wire Transfers

UCC § 4A–108 provides that Article 4A does not cover a fund transfer any part of which is governed by the EFTA. In drafting Article 4A, the National Conference of Commissioners on Uniform State Laws stated that if a fund transfer is made in part by Fedwire and in part via automated clearinghouse (ACH), because the EFTA applies to the ACH part of the transfer, Article 4A does not apply to any part of the transfer. Institutions that offer Fedwire services have been concerned that these transfers would lose the legal certainty offered by complying with the requirements of Article 4A if some part of the transfer was subject to the EFTA. This concern must be balanced with the potential of subjecting consumers to full liability for unauthorized transfers merely because some part of the transfer, which would ordinarily be covered by Regulation E, was made via Fedwire.

In 1990, the Board adopted a comprehensive revision of subpart B to Regulation J (55 FR 40791, October 5, 1990). Regulation J (12 CFR part 210) specifies the rules applicable to funds transfers handled by Federal Reserve Banks. To ensure that the rules for all funds transfers through Fedwire are consistent, the Board used its preemptive authority under UCC section 4A–107 to determine that subpart B, including the provisions of Article 4A, applies to all funds transfers through Fedwire, even if a portion of the fund transfer is governed by the EFTA. The portion of the fund transfer that is governed by the EFTA is not governed by subpart B.

Even with this relief, the Board has received questions about the effect of dual coverage. For example, if an institution offers consumers the ability to initiate Fedwire transfers pursuant to a telephone transfer agreement, the transfer would be covered by both Regulation E and Article 4A. UCC section 4A–202 encourages verification of the authenticity of a Fedwire

payment order pursuant to a "security procedure" established by agreement between the customer and a receiving bank. Putting such an agreement in writing could be deemed to constitute a telephone transfer plan for purposes of Regulation E. The Board believes that if an institution offers Fedwire payments as a service to consumers and does not make the service available in conjunction with a telephone plan subject to Regulation E, then the protections of Article 4A are applicable to the transfer. Proposed comment (c)(3)–2 explains that if the service is offered as a product separate from the more typical telephone bill-payment or other prearranged plan, then any security procedure followed to establish an agreement will not be deemed to create a telephone plan subject to Regulation E.

The wire transfer exemption extends to any transfer of funds through Fedwire or through a similar fund transfer system. Comment (c)(3)–3 provides examples of such systems.

(c)(4) Securities and Commodities Transfers

The Board has proposed to revise the current exemption for certain securities and commodities transfers contained in § 205.3(c). The exemption would apply to a transfer for the purchase or sale of securities or commodities, even if the security or commodity is not regulated by the Securities and Exchange Commission or the Commodity Futures Trading Commission so long as it is sold by a registered broker-dealer or futures commission merchant (for example, municipal securities). Proposed comment (c)(4)–1 provides additional clarification on this point.

Proposed comment (c)(4)–2 provides examples from the current commentary of covered and exempt securities transfers (Q3–3.5 and Q3–3.6). The comment also contains a new example of an exempt transfer, that of a telephone order to exercise a margin call. The Board believes that the exercise of a margin call is so closely linked to the purchase or sale of securities as to come within the purview of the exemption. The Board solicits comment on what additional examples may be needed to illustrate the extent of this exemption.

(c)(6) Telephone-Initiated Transfers

Proposed comment (c)(6)–2 incorporates examples contained in the current commentary of covered transfers under a written plan (Q3–17, Q3–18 and Q3–19). The proposal also contains a new example, use of a facsimile machine to initiate a transfer. The Board has received questions about plans in which the consumer uses facsimile paper designed to look like a paper "draft" to initiate a transfer sent via facsimile machine. The EFTA's definition of EFT includes any transfer through a "telephonic instrument." The Board considers a facsimile machine to be the functional equivalent of a telephone. Since it is a telephone, it is inconsequential whether information about the transfer is transmitted orally or by facsimile. The Board requests comment on this interpretation and solicits additional examples of both covered and exempt transfers.

(c)(7) Small Institutions

Proposed comment (c)(7)–1 clarifies that Article 4A is not applicable to transfers exempt from Regulation E under the small institution exemption. As noted above, the drafters of Article 4A considered the EFTA and Regulation E to be mutually exclusive. The Board has been asked whether preauthorized transfers by small institutions (currently, institutions with assets under $25 million) which are largely exempt from Regulations E are thus subject to the requirements of Article 4A by virtue of the exemption (for example, a direct deposit to a consumer's account at a small bank). As noted in the proposed comment, the Board regards the transfers as generally subject to the EFTA, and therefore not covered by Article 4A.

Section 205.4—General Disclosure Requirements; Jointly Offered Services

New	Old
(a)–1	Q7–3, Q9–4.
(a)–2	New (revises Q7–4).

Comments Deleted

Q4–1: Shared system—scope of disclosures
Q4–2: Shared system—disclosures on behalf of another institution
Q4–3: Multiple accounts and account holders (clarified in § 205.4(c)(1) of proposed regulation)

The Board's regulatory proposal includes both general disclosure requirements and special requirements for providing the various disclosures in a revised § 205.4.

(a) Form of Disclosures

The Board has consistently interpreted the format requirements currently contained in §§ 205.7(a) and 205.9 as generally applicable to all of the disclosures required by the regulation. Comments incorporating Q7–3 and Q9–4 have been moved to this section of the commentary to provide additional guidance on disclosure requirements.

Currently, Q7–4 provides that Spanish language disclosures satisfy the requirement that disclosures be readily understandable so long as disclosures in English are given to consumers who request them. Proposed comment (a)–2 provides that disclosures may be made in languages other than English, if the disclosures are available in English upon request. This is consistent with the new disclosure requirements in Regulation DD (see 12 CFR 230.3(b)).

Section 205.5—Issuance of Access Devices

New	Old
1	Q5–1.5.
(a)(1)–1	New (footnote 1b to current § 205.5(a)(1)).
(a)(2)–1	Q5–1, Q5–2.
(a)(2)–2	Q5–3.
(b)–1	Q5–6, Q5–7.
(b)–2	Q5–4.5.
(b)–3	Q5–5.
(b)–4	Q5–8.

Comment Deleted

Q5–4: Renewal or substitution—pre-February 8, 1979 device

Comments Moved

Q5–9, Q5–10 (see proposed commentary to § 205.12)

Section 205.5 provides the rules for issuance of access devices. The substance of existing commentary provisions have been incorporated into the proposal, with one addition.

(a) Solicited Issuance

(a)(1)

Footnote 1b to current § 205.5(a)(1) provides that financial institutions may issue an access device to each joint account holder for whom the requesting account holder specifically requests an access device. The footnote would be deleted from the regulation and moved to comment (a)(1)–1.

Section 205.6—Liability of Consumer for Unauthorized Transfers

New	Old
(a)–1	Q6–4, new (current § 205.6(a)(2)).
(a)–2	Q6–3.
(b)–1	Q6–5 (revised).
(b)–2	Q6–6.5.
(b)(1)–1	Q6–5 (revised).
(b)(1)–2	Q6–6 (revised).
(b)(2)–1	Q6–5 (revised).
(b)(3)–1	Q6–5 (revised).
(b)(3)–2	Q6–5 (revised).
(b)(4)–1	New (current § 205.6(b)(4)).
(b)(5)–1	Q6–7.

New	Old
(b)(5)–2	New (notice from third party).
(b)(5)–3	Q6–8.

Comment Deleted

Q6–1: Unauthorized transfers—access device not involved

Q6–2: Failure to disclose business days

Comments Moved

Q6–9, Q6–10, and Q6–11 (see proposed commentary to § 205.12)

(a) Conditions for Liability

The current regulation conditions consumer liability solely on the issuance of an accepted access device (§ 205.6(a)). Q6–1, on the other hand, states that if the consumer fails to report an unauthorized EFT within 60 days of transmittal of the periodic statement reflecting the transfer, the consumer could be subject to liability for subsequent transfers. The Board has incorporated the current commentary into the regulatory text. Accordingly, Q6–1 has been deleted.

Current § 205.6(a)(2) of the regulation requires that the institution provide a means of identifying the consumer to whom the access device is issued. The regulation currently provides example of such permissible means; this explanatory language has been moved to proposed comment (a)–1.

Current § 205.6(a)(3) of the regulation requires institutions to disclose certain information to the consumer before imposing liability for unauthorized EFTs involving the consumer's account. The information required to be disclosed is already part of the initial disclosures under § 205.7. The regulatory proposal to this section requires that an institution have complied with § 205.7(b) before imposing liability. Accordingly, Q6–2, which pertains to these disclosures, has been deleted.

(b) Limitations on Amount of Liability

Q6–5 provides examples of when the liability rules apply. Material from Q6–5, in revised form, has been incorporated into the commentary to paragraph (b).

(b)(4) Extension of Time Limits

Current § 205.6(b)(4) provides examples of what constitutes extenuating circumstances for purposes of delaying notification to the institution that an access device has been lost or stolen. The examples have been deleted from the proposed regulation and moved to comment (b)(4)–1.

(b)(5) Notice to Financial Institution

The Board has received questions about whether notice from a third party is sufficient under § 205.6. Proposed comment (b)(5)–2 indicates that such notice is considered adequate if it is communicated by a third party on the consumer's behalf.

Section 205.7—Initial Disclosures

New	Old
(a)–1	Q7–1.
(a)–2	Q7–2.
(a)–3	Q7–5.5.
(a)–4	Q7–6, new (timing of disclosures).
(a)–5	Q7–6.5.
(a)–6	Q7–5.
(b)(1)–1	Q7–8.
(b)(1)–2	Q7–7.
(b)(1)–3	New (current § 205.7(a)(1)).
(b)(2)–1	Q7–19, Q7–20.
(b)(4)–1	Q7–11.
(b)(4)–2	Q7–11.5.
(b)(4)–3	Q7–10.
(b)(5)–1	Q7–12, 7–13.
(b)(5)–2	Q7–14, 7–15.
(b)(5)–3	Q7–15.5.
(b)(9)–1	Q7–16, 7–17.
(b)(10)–1	Q7–18.
(b)(10)–2	Q7–18.5.

Comments Deleted

Q7–9: Summary disclosure of rights

Comments Moved

Q7–3, Q7–4 (see proposed commentary to § 205.4)

(a) Timing of Disclosures

Proposed comment (a)–4 expands on Q7–6, which discusses the addition of new EFT services. The current commentary requires financial institutions to provide disclosures for the additional service if it is subject to terms and conditions different from those previously described in the initial disclosures; the commentary is silent, however, as to when such disclosures should be provided. The proposed comment requires that such disclosures be given either when the consumer contracts for the new service or before the first EFT is made using the new service.

(b) Content of Disclosures

Current § 205.7(a)(1) gives financial institutions the option of including advice about promptly reporting the loss or theft of the access device or other unauthorized transfers in the summary of the consumer's liability. This language has been deleted from the proposed regulation and moved to comment (b)(1)–3.

Section 205.8—Change in Terms Notice; Error Resolution Notice

New	Old
(a)–1	Q8–6.
(a)–2	Q8–3, Q8–5.
(a)–3	Q8–4.
(a)–4	Q8–2.
(a)(2)–1	New (45 calendar days to send notice).
(b)–1	Q8–8.

Comments Deleted

Q8–1: Terms requiring change in terms notice

Q8–7: Error resolution notice—no periodic statements sent

(a) Change in Terms Notice

(a)(2) Prior Notice Exception

Proposed comment (a)(2)–1 addresses circumstances when financial institutions are required to send a subsequent notice upon making a permanent change in terms related to security. The Board proposes to extend the time period in which financial institutions must send such notice to 45 days (from the current 30 days) to allow institutions to more easily use the periodic statement as a vehicle of the consumer notice.

Section 205.9—Receipts at Electric Terminals; Periodic Statements

New	Old
(a)–1	Q9–1.
(a)–2	New (footnote 2 to current § 205.9(a)), Q9–2.
(a)–3	Q9–3.5.
(a)–4	Q9–5.
(a)–5	Q9–6.
(a)–6	Q9–4.
(a)(1)–1	New (displaying amount of fee on ATM screen).
(a)(2)–1	Q9–7.
(a)(3)–1	New (current § 205.9(a)(3)).
(a)(3)–2	New (footnote 3 to current § 205.9(a)(3)), Q–9, 9–10.
(a)(3)–3	Q9–8.
(a)(3)–4	New (current § 205.9(a)(3)), Q9–37.
(a)(3)–5	Q9–36, Q9–27.
(a)(4)–1	New (identification among accounts held by, or access devices issued by an institution).
(a)(5)–1	Q9–38.
(a)(5)–2	Q9–40.
(a)(5)(i)–1	New (current § 205.9(b)(1)(iv)(A)).
(a)(5)(ii)–1	New (current § 205.9(b)(1)(iv)(B)).
(a)(5)(iii)–1 ...	New (current § 205.9(b)(1)(iv)(C)).
(a)(6)–1	Q9–13, new (current § 205.9(a)(6)).
(a)(6)–2	Q9–14.
(b)–1	Q9–19, 9–20.
(b)–2	New (defining periodic cycle).

New	Old
(b)–3	Q9–17.
(b)–4	Q9–18.
(b)–5	Q9–21.
(b)–6	Q9–23, new (footnote 4 to § 205.9(b)(1)).
(b)(1)–1	Q9–25.
(b)(1)(i)–1	Q9–35.
(b)(1)(iii)–1	Q9–36.
(b)(1)(iv)–1	Q9–40.5.
(b)(1)(v)–1	Q9–28.
(b)(1)(v)–2	Q9–30.
(b)(1)(v)–3	Q9–41.
(b)(1)(v)–4	Q9–43.
(b)(1)(v)–5	Q9–44.
(b)(1)(v)–6	New (footnote 9 to current § 205.9(b)(1)(v)).
(b)(3)–1	Q9–31.
(b)(3)–2	Q9–31.5.
(b)(3)–3	New (current § 205.9(b)(3)).
(b)(4)–1	Q9–32.
(b)(5)&(6)–1	Q9–33.
(c)–1	Q9–50.
(d)–1	Q9–51.

Comments Deleted

Q9–3: Receipts—information displayed on screen
Q9–10.5: Receipts—type of account, interchange system
Q9–11: Receipts—unique identifier
Q9–12: Receipts—terminal location
Q9–16: Periodic statements—frequency
Q9–24: Periodic statements—accompanying documents
Q9–29: Periodic statements—multiple transferees
Q9–34: Periodic statements—telephone numbers
Q9–39: Receipts/periodic statements—location code
Q9–42: Receipts/periodic statements—intermediate party
Q9–45: Passbook updates—when required
Q9–46: Passbook accounts—telephone notice alternative
Q9–47: Passbook updates—discarding of data
Q9–48: Passbook updates—periodic transmittals
Q9–49: Quarterly statements—compliance with regular requirements

Comments Moved

Q9–4 (see proposed commentary to § 205.4)
Q9–15 (see proposed commentary to § 205.2)
Q9–26 (see proposed commentary to § 205.11)

The Board has proposed a number of editorial revisions to § 205.9 such as adding new paragraphs and headings to better organize the text concerning timing and content of disclosures. A number of comments have been deleted from the proposed commentary to this section. Many of the current questions are very fact specific, and believed to be unnecessary in the revised commentary. No substantive changes are intended.

(a) Receipts at Electronic Terminals

Footnote 2 to current § 205.9(a) allows an account-holding institution to make terminal receipts available through third parties. The footnote would be deleted from the regulation and moved to comment (a)–2.

(a)(1) Amount

Current § 205.9(a)(1) provides that financial institutions other than the account-holding institution may include a fee for a transfer in the amount of the transfer if the fee is disclosed on the receipt and on a sign posted on or at the terminal. The regulatory proposal would modify these requirements and allow the account-holding institution to take advantage of the exception. In addition, proposed comment (a)(1)–1 provides that the requirement to display the amount of a transaction fee "on or at the terminal" could be met by displaying the fee on the terminal screen before the consumer has initiated the transfer if displayed for a reasonable duration. The Board requests comment on whether the proposed changes provide adequate notice to the consumer.

(a)(3) Type

Current § 205.9(a)(3) requires disclosure of the type of transfer and the type of consumer's account to or from which funds are transferred. It also provides examples of descriptions for such accounts. The examples would be deleted from the regulation and moved to comment (a)(3)–1. In addition, § 205.9(a)(3) provides generic descriptions for accounts that are similar in function. These examples would also be deleted from the regulation and incorporated with the substance of Q9–37 in proposed comment (a)(3)–4.

Footnote 3 to current § 205.9(a)(3) provides an exception to the requirement to disclose the type of transfer and account if the consumer can access only one account at a particular time or terminal. The exception would be deleted from the regulation and the substance moved to comment (a)(3)–2.

(a)(4) Identification

Proposed comment (a)(4)–1 clarifies that an identifying number or code that uniquely identifies the consumer's account or access device—among all accounts held by an institution or access devices issued by an institution—is sufficient to meet the requirements of the regulation.

(a)(5) Terminal Location

The current regulation includes detailed guidance for specifying the terminal location on both the receipt and periodic statement (see current § 205.9(b)(1)(iv)). While the substantive requirement to disclose the location remains unchanged, the illustrative language would be moved to comments (a)(5)(i)–1, (a)(5)(ii)–1, and (a)(5)(iii)–1.

(a)(6) Third Party Transfer

Current § 205.9(a)(6) requires that the name of any third party to or from whom funds are transferred be disclosed on the receipt. It also provides guidance on the use of codes and an exception to the disclosure requirement when the name of the payee cannot be duplicated by the terminal. This secondary information would be deleted from the regulation and moved to comment (a)(6)–1.

(b) Periodic Statements

Current § 205.9(b) provides that periodic statements must be sent for each monthly or shorter cycle in which an EFT has occurred, but at least quarterly if no transfer has occurred. As the Board believes that few institutions send a statement (for Regulation E purposes) for a cycle shorter than one month, the regulatory proposal has deleted reference to a "shorter cycle." The reference would be moved to comment (b)–1.

Proposed comment (b)–2 provides additional guidance on what is considered a cycle for purposes of Regulation E. The comment requires that financial institutions provide relevant information for the cycle or period since the last statement was issued. The Board has adopted a similar approach in the proposed commentary to Regulation DD (see 59 FR 5536, February 7, 1994). For example, if an institution may issue quarterly statements in March, June, September, and December and the consumer initiates an EFT in February, an interim statement would be provided. The comment indicates that the statement should provide information for the months of January and February. The regularly scheduled March statement would provide information only about the month of March. The proposed Regulation DD commentary provides that disclosures given on the interim statement cannot be repeated on the regularly scheduled statement. In the example above, the March statement could not repeat information disclosed on the February statement. The Board solicits comment on whether the same

approach should be adopted in Regulation E.

Footnote 4 to current § 205.9(b)(1) permits financial institutions to provide certain periodic statement disclosures on documents that accompany the statement; it also permits institutions to use codes for the disclosures if they are explained either on the statement or accompanying documents. The footnote would be deleted from the regulation and the substance moved to comment (b)–6.

Paragraph 9(b)(1)(v)

Footnote 9 to current § 205.9(b)(1)(v) provides that a financial institution need not identify on the periodic statement third parties whose names appear on checks, drafts, or similar paper instruments deposited to the consumer's account at an electronic terminal. The footnote would be deleted from the regulation and the substance moved to comment (b)(1)(v)–6.

(b)(3) Fees

Section 205.9(b)(3) provides that financial institutions must disclose the amount of any fees other than a finance charge imposed under Regulation Z, 12 CFR 226.7(f) that were assessed against the account during the statement period for EFTs. The reference to finance charges would be deleted from the regulation and moved to comment (b)(3)–3

Section 205.10—Preauthorized Transfers

New	Old
(a)(1)–1	Q10–5, Q10–6.
(a)(1)–2	Q10–1.
(a)(1)–3	Q10–7.
(a)(1)–4	Q10–8, Q10–9, New (reverses part of Q10–7).
(a)(1)–5	Q10–10.
(a)(1)–6	Q10–12.
(a)(1)–7	Q10–11.
(b)–1	Q10–17, New (example of preexisting authorization).
(b)–2	Q10–18.
(b)–3	Q10–18.6.
(b)–4	Q10–18.5.
(b)–5	New (similarly authorized).
(c)–1	Q10–19.
(c)–2	Q10–19.5.
(d)(1)–1	Q10–21.
(d)(2)–1	new (range).
(e)(1)–1	Q3–7, Q3–7.5.
(e)(1)–2	New (repayment of overdrafts).
(e)(2)–1	Q3–6.

Comments Deleted

Q10–2: Notice of credit—when receipt guaranteed
Q10–3: Notice provided by payor
Q10–4: Notice provided by payor—form
Q10–13: Preauthorized credits—availability of funds
Q10–14: Preauthorized credits—posting schedule
Q10–15: Preauthorized credits—funds received prior to agreed crediting date
Q10–16: Preauthorized debits—preexisting authorizations
Q10–20: Ten–day notice of varying debits—preexisting authorizations
Q3–5: Compulsory use—preauthorized loan payments

Section 205.10 sets forth the substantive and disclosure requirements for authorizing preauthorized transfers to and from a consumer's account. The Board has proposed to expand this section to include guidance on the prohibitions against compulsory use, and corresponding commentary has been added. The section contains several new interpretations, as discussed below.

(a) Preauthorized Transfers to Consumer's Account

Regulation E currently requires financial institutions that receive preauthorized transfers to credit the funds to the consumers account as of the day the funds are received. The regulatory proposal would delete this requirement as obsolete. Accordingly, Q10–13,10–14, and Q10–15 also have been deleted.

(a)(1) Notice by Financial Institution

Section 906(b) of the EFTA and current § 205.10(a)(1) of the regulation provide that when a payor credits a consumer's account by preauthorized EFT at least once every 60 days, the account–holding institution must inform the consumer either that the transfer has or has not occurred or provide a phone number for the consumer to use to verify the transfer. Q10–7 provides that the absence of a deposit entry on a periodic statement can serve as notice that a preauthorized transfer has not occurred. Proposed comment (a)(1)–4 reverses the current position and states that the absence of a deposit entry is not negative notice. The Board believes the requirement is an affirmative duty to provide notice either positively or negatively.

(b) Written Authorization for Preauthorized Transfers From Consumer's Account

Proposed comment (b)–1 incorporates Q10–17, which provides that a financial institution or designated payee does not need to obtain new authorizations before shifting from a paper-based to an electronic debiting system. The proposed comment also provides that a successor payee or institution may rely on a preexisting authorization to debit payments from the consumer's account, for example when an institution purchases the mortgage servicing rights from a party that previously obtained the consumer's authorization. The Board solicits comment on other instances in which a new authorization may not be necessary.

The requirement in current § 205.10(b) that preauthorized EFTs from a consumer's account be authorized by the consumer only in writing has been revised. The requirement for the authorization to be a signed writing has been expanded to include authorizations which are "similarly authenticated" by the consumer. This enhancement addresses developments in electronic services, such as home banking. Proposed comment (b)–5 provides an example of a consumer's authorization that is "similarly authenticated." The comment provides that for a home banking system to satisfy the requirement, there must be some means to identify the consumer (such as a security code), and the consumer must have the ability to obtain a printed copy of the authorization (either from the consumer's printer or from the payee). The Board solicits comment on whether additional safeguards are necessary to protect consumers in this situation. For example, should the commentary require that the authorization remain in the institution's computer memory and be available to the consumer through the home banking device until it is modified or terminated? Should the commentary explicitly require that the authorization may only be provided by the consumer (by using a personal identification code) and not by a payee on the consumer's behalf? How would this change affect the stop payment rules under § 205.10(c)? The Board solicits comment on these and other issues related to the requirements of a written authorization under this section.

The Board solicits comment on two issues that have not been discussed previously in the commentary. The Board has received inquiries about telephone-initiated transfers when the consumer provides an account number to the caller and authorizes a draft or an ACH debit to be submitted against the consumer's account. The Board believes such transfers are EFTs since they are initiated by telephone and authorize the debiting of the consumer's account. The transfers are not "preauthorized transfers," however, and the rules regarding written authorization by the consumer thus are not applicable. The Board solicits comment on whether this type of transfer poses sufficient

consumer risk as to warrant special provision in the regulation or commentary.

The Board has also received questions on what are appropriate means for obtaining a consumer's authorization for preauthorized transfers. For example, the Board has been asked whether sending the consumer a check which incorporates in the endorsement an authorization for the financial institution to automatically debit the consumer's account on a monthly basis is a legitimate method for obtaining the consumer's authorization. The Board solicits comment on whether the commentary or regulation should address such format issues.

(d) Notice of Transfers Varying in Amount

(d)(2) Range

Proposed comment (d)(2)–1 provides guidance on what is an acceptable range for purposes of this section. The comment provides that an acceptable range is one that could plausibly be anticipated by the consumer. For example, if the consumer's monthly payment is approximately $50, providing a range between zero and $10,000 does not seem reasonable. The Board solicits comment on how financial institutions currently determine such a range, as well as reaction to the proposed analysis.

(e) Compulsory Use

(e)(1) Credit

The regulatory proposal incorporates the statutory restrictions against compulsory use of EFTs as a condition of credit, employment, or receipt of government benefits into § 205.10(e). The questions pertaining to compulsory use in the current commentary (under § 205.3) have, for the most part, been incorporated into the commentary proposal. The regulatory proposal also incorporates the substance of footnote 1a to § 205.3 into proposed § 205.10(e)(1), which provides that a financial institution may require the automatic repayment of credit that is extended under an overdraft credit plan or that is extended to maintain a specified minimum balance in the consumer's account. The commentary proposal includes a new comment (e)(1)–2 which allows an institution to use the exception even if the overdraft extension is charged to an open-end account that may be accessed by the consumer in ways other than by overdrafts. For example, in addition to overdraft protection, a consumer may be able to obtain cash advances directly from the credit line without going through a checking account. The Board believes that the exemption applies to such plans and that it is not practicable to distinguish between extensions of credit triggered under such plans because of the overdraft mechanism versus those advanced to the consumer by some other means.

Section 205.11—Procedures for Resolving Errors

New	Old
(a)–1	Q9–26.
(a)–2	Q11–2.
(a)–3	Q11–3.
(a)–4	Q11–4.
(b)(1)–1	Q11–8, new (example added).
(b)(1)–2	New (required submission of an affidavit).
(b)(1)–3	Q11–5.
(b)(1)–4	Q11–6.
(b)(1)–5	Q11–7.
(b)(1)–6	New (footnote 10 to current § 205.11(b)(1)(i)).
(b)(2)–1	Q11–9, new (provisional crediting).
(c)–1	New (provide notices either orally or in writing).
(c)–2	Q11–10.
(c)–3	New (strengthens Q11–31).
(c)–4	New (current § 205.11(d)(3)).
(c)–5	Q11–20, new (footnote 12 to current § 205.11(e)(2)).
(c)–6	New (current § 205.11(e)(1)), Q11–19.
(c)–7	New current § 205.11(d)(1).
(c)(2)(i)–1	New (current § 205.11(c)(3)).
(c)(3)–1	Q11–11.5.
(c)(4)–1	Q11–13.
(c)(4)–2	Q11–14.
(c)(4)–3	Q11–16.
(c)(4)–4	New (footnote 11 to current § 205.11(d)(1)).
(d)–1	Q11–17.
(d)(1)–1	Q11–25.
(d)(2)–1	Q11–23.
(d)(2)–1	Q11–24.
(e)–1	Q11–30.

Comments Deleted

Q11–1: Transfers—initiated by institution
Q11–11: Deadlines for investigation of error
Q11–12: Request for documentation—facsimile or photocopy
Q11–15: Scope of investigation—preauthorized credits
Q11–18: Crediting of interest
Q11–21: Written explanation—timing
Q11–22: Debiting of recredited funds—items to be honored
Q11–26: Documents relied on—privacy issue
Q11–27: Documents relied on—no information on relevant tapes
Q11–28: Withdrawal of error notice
Q11–29: Withdrawal of error notice

Comments Moved

Q11–32, Q11–33 (see proposed commentary to § 205.12)

Section 205.11 sets forth the regulation's procedures for error resolution. The regulatory proposal reformatted the section to facilitate compliance and the commentary provisions have accordingly been assigned. The proposed commentary contains several new comments, most of which have been removed from the regulation.

(b) Notice of Error From Consumer

(b)(1) Timing; Contents

Section 908 of the EFTA and § 205.11 of the regulation require institutions to investigate and make a final determination as to a consumer's allegation of an error within either 10 business days or 45 calendar days. Financial institutions have asked whether they can delay initiating or completing an investigation pending receipt of an affidavit related to the alleged error. Proposed comment (b)(1)–2 prohibits institutions from delaying their investigation until a consumer has produced the affidavit. The Board believes that permitting delay would allow institutions to circumvent the investigation procedures currently mandated by the act and regulation.

Footnote 10 to current § 205.11(b)(1)(i), which permits a financial institution to prescribe procedures for giving notice of an error, would be deleted from the regulation and the substance moved to comment (b)(1)–6.

(b)(2) Written Confirmation

Q11–9 provides that a financial institution does not have to have referral procedures for forwarding a written confirmation of error that is sent to the wrong address. Proposed comment (b)(2)–1 further provides that institutions operating under the 45-calendar-day rule need not provisionally credit the consumer's account when the written confirmation is delayed beyond 10 business days because it was sent to the wrong address.

(c) Time Limits and Extent of Investigation

As noted in § 205.4, most disclosures required by Regulation E must be in writing and in a form the consumer may keep. Proposed comment (c)–1 provides that financial institutions may give the notices required by § 205.11 either orally or in writing, unless otherwise indicated in the section. This exception would not apply to a consumer's request for documentation pursuant to proposed § 205.11(a)(1)(vii).

Q11–31 articulates the Board's concern that charging consumers for the

financial institution's compliance with the regulation's error resolution procedures might have a chilling effect on the good faith assertion of errors. The Board believes that as the EFTA specifically grants the consumer error-resolution rights, institutions must avoid any deterrent to exercising such rights. To clarify its position, the Board proposes to add comment (c)–3 to explicitly prohibit institutions from charging consumers for error resolution. The Board solicits comment on the impact of such a prohibition on institutions and consumers.

Current § 205.11(d)(3) provides that a financial institution may correct an error in the amount or manner alleged by the consumer without complying with the investigation requirements of this section if it complies with all other requirements of § 205.11. The provision would be deleted from the regulation and moved to comment (c)–4.

Footnote 12 to current § 205.11(e)(2) allows financial institutions to provide the notice of correction on the periodic statement that is mailed or delivered within the time limits specified in the section. The footnote would be deleted from the regulation and moved to comment (c)–5.

Current § 205.11(e)(1) provides that if a financial institution determines an error occurred, it must correct the error including, where applicable, the crediting of interest and the refunding of any fees or charges imposed. This language would be deleted from the regulation and combined with the substance of Q11–19 in comment (c)–6. The comment would also clarify that the requirement only applies to fees imposed by the institution versus those imposed by third parties.

Paragraph (c)(2)(i)

Current § 205.11(c)(3) provides examples of when a financial institution must comply with all requirements of § 205.11 except the provisional crediting requirements. While the examples have been retained in the regulatory proposal, the language requiring compliance with other requirements of the section would be deleted and moved to comment (c)(2)(i)–1.

(c)(4) Investigation

Footnote 11 to current § 205.11(d)(1) provides examples of what does and does not constitute an agreement for purposes of this section. The explanatory language would be deleted from the regulation and moved to comment (c)(4)–4.

Section 205.12—Relation to Other Laws

New	Old
(a)–1	Q6–9, Q6–10, Q6–11, Q11–32, Q11–33.
(a)–2	Q5–9, Q5–10.
(b)–1	Q12–1, new (compliance without Board determination).
(b)–2	New (current preemption of Michigan law).

The regulatory proposal has consolidated the references to the Truth in Lending Act and Regulation Z in § 205.12. The section would also contain the rules the Board applies in determining the preemption of inconsistent state laws or in granting a state exemption. The commentary provisions have been consolidated in this section as well.

(b) Preemption of Inconsistent State Laws

Proposed comment (b)–1 incorporates Q12–1, which provides that state law may be preempted even if the Board has not issued a determination. The comment also notes that financial institutions are not protected from liability for failing to comply with state law in the absence of a preemption determination by the Board.

Proposed comment (b)–2 incorporates into the commentary an official staff interpretation preempting certain provisions of Michigan's EFT statute. Future preemption determinations would also be included in the commentary.

Section 205.13—Administrative Enforcement; Record Retention

New	Old
(b)–1	Q13–2.

Comments Moved

Q13–1 (see proposed commentary to appendix A)

Current § 205.13 contains information about administrative enforcement, issuance of staff interpretations and record retention. The regulatory proposal moved much of the detail pertaining to these topics to the appendices. With one exception, no substantive change was intended. As noted above, the information describing issuance of staff interpretations would be deleted from the regulation, including any reference to unofficial staff interpretations (which the Board no longer issues in writing). Information about procedures for the official commentary is set forth in a new appendix C.

Section 205.14—Electronic Fund Transfer Service Provider Not Holding Consumer's Account

New	Old
(a)–1	Q14–1, Q14–2.
(a)–2	Q14–3.
(b)–1	New (formerly § 205.14(a)(1).
(b)(1)–1	Q14–4.
(b)(2)–1	Q14–6.
(c)(1)–1	Q14–7.

Comment Deleted

Q14–5: Periodic statement—issuance of card

Section 205.14 details the requirements for financial institutions that issue access devices and provide EFT services to consumers even though the consumers' accounts are held by a second institution.

(b) Compliance by Electronic Fund Transfer Service Provider

Current § 205.14(a)(1) provides that the service-providing institution shall reimburse the consumer for unauthorized EFTs in excess of the limits set by § 205.6. This provision would be deleted from the regulation and moved to comment (b)–1.

Section 205.15—Electronic Fund Transfer of Government Benefits

Proposed comments interpreting the requirements of this section will be published at a later date.

Appendix A—Model Disclosure Clauses and Forms

Old	New
Q13–1	Appendix A–1.

Text of Proposed Revisions

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 205 as follows:

PART 205—ELECTRONIC FUND TRANSFERS (REGULATION E)

1. The authority citation for part 205 would be revised to read as follows:

Authority: 15 U.S.C. 1693.

2. In part 205, Supplement I would be revised to read as follows:

Supplement I to Part 205—Official Staff Interpretations

Section 205.2—Definitions

(a) Access device

1. *Examples.* The term access device includes debit cards, personal identification numbers (PINs), telephone transfer and telephone bill payment codes, and other means that may be used by a consumer to initiate an electronic fund transfer to or from

a consumer account. The term does not include magnetic tapes or other devices used internally by a financial institution to initiate electronic transfers.

(b)(1) Account

1. *Consumer asset accounts.* The term consumer asset account includes:

- Club accounts, such as Christmas or vacation clubs. In many cases, however, these accounts are exempt from the regulation under § 205.3(c)(5) because all electronic transfers to or from the account have been preauthorized by the consumer and involve another account of the consumer at the same institution.
- A retail repurchase agreement (repo) which is a loan made to a financial institution by a consumer that is collateralized by government or government-insured securities.

The term "consumer asset account" does not include:

- Profit-sharing and pension accounts established under a trust agreement, which are exempt under § 205.2(b)(2).
- Escrow accounts, such as those established to ensure payment of items such as real estate taxes, insurance premiums, or completion of repairs or improvements.
- Accounts for accumulating funds to purchase U.S. savings bonds.

Paragraph (b)(2)

1. *Bona fide trust agreements.* The term bona fide trust agreement is not defined by the act or regulation. Therefore, financial institutions must look to state or other applicable law for interpretation.

2. *Custodial agreements.* An account held under a custodial agreement that qualifies as a trust under the Internal Revenue Code, such as an individual retirement account, is considered to be held under a trust agreement for purposes of this part.

(d) Business Day

1. *Duration.* A business day includes the entire 24-hour period ending at midnight and notice is effective even if given outside normal business hours. The regulation does not require, however, that telephone lines be available on a 24-hour basis.

(f) Electronic Terminal

1. *Point-of-sale (POS) payments initiated by telephone.* Because the term electronic terminal excludes a telephone operated by a consumer, a financial institution need not provide a terminal receipt when:

- A consumer uses a debit card at a public telephone to pay for the call.
- A consumer initiates a transfer by the equivalent to a telephone, such as by home banking equipment or a facsimile machine.

2. *POS terminals.* A POS terminal that captures data electronically, for debiting or crediting to a consumer's asset account, is an electronic terminal for purposes of Regulation E if a debit card is used to initiate the transaction.

3. *Teller-operated terminals.* A terminal or other computer equipment operated by an employee of a financial institution is not an electronic terminal for purposes of the regulation. However, transfers initiated at such terminals by means of the consumer's access device (using the consumer's personal identification number, for example) are electronic fund transfers and are subject to other requirements of the regulation. If the access device is used only for identification purposes or for determining the account balance, the transfers are not electronic fund transfers for purposes of the regulation.

(k) Unauthorized Electronic Fund Transfer

1. *Transfer by institution's employee.* A consumer has no liability for erroneous or fraudulent transfers initiated by an employee of a financial institution.

2. *Authority.* If a consumer furnishes the access device and grants authority to make transfers to a person (such as a family member or co-worker) who exceeds the authority given, the consumer is fully liable for the transfers unless the consumer has notified the financial institution that transfers by that person are no longer authorized.

3. *Access device obtained through robbery, fraud.* An unauthorized electronic fund transfer includes a transfer initiated by a person who obtained the access device from the consumer through fraud or robbery.

4. *Forced initiation.* An electronic fund transfer at an automated teller machine (ATM) is an unauthorized transfer if the consumer is induced by force to initiate the transfer.

Section 205.3—Coverage

(a) General

1. *Accounts covered.* The requirements of the regulation apply only to accounts for which an agreement for electronic fund transfer services to or from the account has been entered into between:

- The consumer and the financial institution (including accounts for which an access device has been issued to the consumer, for example);
- The consumer and a third party (for preauthorized debits or credits, for example), when the account-holding institution has received notice of the agreement and the fund transfers have begun.

The fact that membership in an automated clearing house requires a participating financial institution to accept electronic fund transfers to accounts at the institution does not make every account of that institution subject to the regulation.

2. *Foreign applicability.* Regulation E applies to all persons (including branches and other offices of foreign banks located in the United States) that offer electronic fund transfer services to residents of any state (including resident aliens). It covers any account located in the United States through which electronic fund transfer services are offered to a U.S. resident. This is the case whether or not a particular transfer takes place in the United States and whether or not the financial institution is chartered or based in the United States or a foreign country. The regulation does not apply to a foreign branch of a U.S. bank unless the electronic fund transfer services are offered in connection with an account held by the consumer in a state as defined in § 205.(j).

(b) Electronic Fund Transfer

1. *Fund transfers covered.* The term electronic fund transfer includes:

- A deposit made at an ATM or other electronic terminal (including a deposit in cash or by check) provided a specific agreement exists between the financial institution and the consumer for electronic fund transfers to or from the account to which the deposit is made.
- Any transfer sent via an automated clearing house. For example, social security benefits under the U.S. Treasury's direct-deposit program are covered, even if the listing of payees and payment amounts reaches the account-holding institution by means of a computer printout from a correspondent bank.
- A preauthorized transfer credited or debited to an account in accordance with instructions contained on magnetic tape, even if the financial institution holding the account sends or receives a composite check.
- A transfer resulting from a debit-card transaction, even if no electronic terminal is involved at the time of the transaction, if the consumer's asset account is subsequently debited for the amount of the transfer.

2. *Fund transfers not covered.* The term electronic fund transfer does not include:

- A payment that does not debit or credit a consumer asset account, such as payroll allotments to a creditor to repay a credit extension that are deducted from salary payments and not from consumer accounts, or any payment made in currency by a consumer to another person at an electronic terminal.
- A preauthorized check drawn by the financial institution on the consumer's account (such as an interest or other recurring payment to the consumer or another party), even if the check is computer-generated.

(c) Exclusions From Coverage

(c)(2) Check Guarantee or Authorization Services

1. *Memo posting.* Under a check guarantee or check authorization service, debiting of the consumer's account occurs when the check or draft is presented for payment. These services are exempt from coverage, even when a temporary hold on the account is memo-posted electronically at the time of authorization.

(c)(3) Wire Transfers

1. *Fedwire and ACH.* If a financial institution makes a fund transfer via an automated clearing house (ACH) after receiving funds via Fedwire or a similar network, the transfer by the ACH is covered by the regulation even though the Fedwire or network transfer is exempt.

2. *Article 4A.* Financial institutions that offer telephone-initiated Fedwire payments are subject to the requirements of the UCC section 4A–202, which encourages that Fedwire payment orders be verified pursuant to a security procedure established by agreement between the consumer and the receiving bank. These transfers are not subject to Regulation E and the agreement is not considered a telephone plan if the service is offered separately and apart from any

telephone bill-payment or other prearranged plan normally subject to Regulation E.

3. *Similar fund transfer systems.* Examples of fund transfer systems similar to Fedwire include the Clearing House Interbank Payments System (CHIPS), Society for Worldwide Interbank Financial Telecommunication (SWIFT), and Telex.

(c)(4) Securities and Commodities Transfers

1. *Coverage.* The securities exemption applies to securities and commodities that may be sold by a registered broker-dealer or futures commission merchant, even when the security or commodity itself is not regulated by the Securities and Exchange Commission or the Commodity Futures Trading Commission.

2. *Examples of exempt and nonexempt transfers.* The exemption applies to a transfer involving:

- A transfer initiated by a telephone order to a stockbroker to buy or sell securities or to exercise a margin call.

The exemption does not apply to a transfer involving:

- A debit card that accesses a money market mutual fund and that the consumer uses for purchasing goods or services or obtaining cash.
- A payment of interest or dividends into the consumer's account, for example, from a brokerage firm or from a Federal Reserve Bank (for government securities).

(c)(5) Automatic Transfers by Account-Holding Institution

1. *Automatic transfers exempted. The exemption applies to:*

- Electronic debits or credits to consumer accounts for check charges, stop-payment charges, NSF charges, overdraft charges, provisional credits, error adjustments, and similar items that are initiated automatically on the occurrence of certain events.
- Debits to consumer accounts for group insurance available only through the financial institution and payable only by means of an aggregate payment from the institution to the insurer.
- Electronic fund transfers between a thrift institution and its paired commercial bank in the state of Rhode Island, which are deemed under state law to be intra-institutional.
- Automatic transfers between a consumer's accounts within the same financial institution, even if the account holders on the two accounts are not identical.

2. *Automatic transfers not exempted.* Transfers between accounts of the consumer at affiliated institutions (such as between a bank and its subsidiary or within a holding company) are not intra-institutional transfers, and thus do not qualify for the exemption.

(c)(6) Telephone-Initiated Transfers

1. *Written plan or agreement.* A transfer that the consumer initiates by telephone is covered only if the transfer is made under a written plan or agreement between the consumer and the financial institution making the transfer. The following do not, by themselves, constitute a written plan or agreement:

- A hold-harmless agreement on a signature card that protects the institution if the consumer requests a transfer.
- A legend on a signature card, periodic statement, or passbook that limits the number of telephone-initiated transfers the consumer can make from a savings account because of Regulation D (12 CFR part 204) reserve requirements.
- An agreement permitting the consumer to approve by telephone the rollover of funds at the maturity of an instrument.

2. *Examples of covered transfers.* When a written plan or agreement has been entered into, a transfer initiated by a telephone call from a consumer is covered even though:

- An employee of the financial institution completes the transfer manually, for example, by means of a debit memo or deposit slip.
- The consumer is required to make a separate request for each transfer.
- The consumer uses the plan infrequently.
- The consumer initiates the transfer via a facsimile machine.

(c)(7) Small Institutions

1. *Coverage.* This exemption is limited to preauthorized transfers; institutions that offer electronic fund transfer services other than preauthorized transfers must comply with the applicable sections of the regulation as to such services. The preauthorized transfers remain subject, however, to sections 913, 915, and 916 of the act and § 205.10(e) and are therefore exempt from UCC Article 4A.

Section 205.4—General Disclosure Requirements; Jointly Offered Services

(a) Form of Disclosures

1. *General.* Although no particular rules govern such matters as type size, number of pages, or the relative conspicuousness of various terms, the disclosures must be in a clear and readily understandable written form that the consumer may retain. Numbers or codes are considered readily understandable if explained elsewhere on the disclosure.

2. *Foreign language disclosures.* Disclosures may be made in languages other than English, provided they are available in English upon request.

Section 205.5—Issuance of Access Devices

1. *Coverage.* The provisions of this section limit the circumstances under which a financial institution may issue an access device to a consumer. Making an additional account accessible through an existing access device is equivalent to issuing an access device and is subject to the limitations in this section.

(a) Solicited Issuance

Paragraph (a)(1)

1. *Joint account.* For joint accounts, a financial institution may issue an access device to each account holder if the requesting holder specifically authorizes the issuance.

Paragraph (a)(2)

1. *One-for-one rule.* In issuing a renewal or substitute access device, a financial institution may not provide additional devices. For example, only one new card and PIN may replace a card and PIN previously issued. If the replacement device permits either additional or fewer types of electronic fund transfer services, new disclosures or a change-in-terms notice are required.

2. *Renewal or substitution by a successor institution.* A successor institution is an entity that replaced the original financial institution (for example, through a corporate merger or acquisition) or that has acquired accounts or assumed the operation of an electronic fund transfer system.

(b) Unsolicited Issuance

1. *Compliance.* A financial institution may issue an unsolicited access device (such as a combination of a debit card and PIN) if the institution's ATM system has been programmed not to accept the access device until after the consumer requests and the institution validates the device. Merely instructing a consumer not to use an unsolicited debit card and PIN until after the institution has satisfactorily verified the consumer's identity does not comply with the regulation.

2. *PINS.* A financial institution may impose no liability on the consumer for unauthorized transfers involving an unsolicited access device until the device becomes an "accepted access device" under the regulation. A card-PIN combination can be treated as an accepted access device once the card and PIN have been used by the consumer.

3. *Functions of PIN.* If an institution issues a personal identification number at the consumer's request, the issuance may constitute both a way of validating the debit card and the means to identify the consumer (required as a condition of imposing liability for unauthorized transfers).

4. *Verification of identity.* A financial institution may use other means, not just those listed in the regulation, to verify the consumer's identity. However, if an institution fails to correctly verify the consumer's identity, even if reasonable means were used, and an imposter succeeds in having the device validated, the consumer is not liable for any unauthorized transfers from the account.

Section 205.6—Liability of Consumer for Unauthorized Transfers

(a) Conditions for Liability

1. *Means of identification.* A financial institution may use various means for identifying the consumer to whom the access device is issued including but not limited to:

- Electronic or mechanical confirmation (such as a PIN).
- Comparison of the consumer's signature, fingerprint, or photograph.

2. *Multiple users.* When more than one access device is issued for an account, the financial institution may, but need not, provide a separate means to identify each user of the account.

(b) Limitations on Amount of Liability

1. *Application of liability provisions.* There are three possible tiers of consumer liability for unauthorized electronic fund transfers depending on the situation. A consumer may be liable for (1) up to $50; (2) up to $500; or (3) an unlimited amount. More than one tier

may apply to a given situation because each corresponds to a different (sometimes overlapping) time period.

2. *Consumer negligence.* Negligence by the consumer cannot be used as the basis for imposing greater liability than is permissible under Regulation E. Thus, consumer behavior that may constitute negligence under state law, such as writing the PIN on the ATM card or on a piece of paper kept with the card, does not affect the consumer's liability for unauthorized transfers. The extent of the consumer's liability is determined solely by the consumer's promptness in reporting the loss or theft of an access device. Similarly, no agreement between the consumer and an institution may impose greater liability on the consumer for an unauthorized transfer than the limits provided in Regulation E.

(b)(1) Timely Notice Given

1. *$50 limit applies.* The basic liability limit is $50. For example, the consumer's card is lost or stolen on Monday and the consumer learns of the loss or theft on Wednesday. If the consumer notifies the financial institution within two business days of learning of the loss or theft (by midnight Friday), the consumer's liability is limited to $50 or the amount of the unauthorized transfers that occurred before notification, whichever is less.

2. *Knowledge of loss or theft of access device.* The fact that a consumer has received a periodic statement that reflects unauthorized transfers may be a factor in determining whether the consumer had knowledge of the loss or theft, but cannot be deemed to represent conclusive evidence that the consumer had such knowledge.

(b)(2) Timely Notice Not Given

1. *$500 limit applies.* The second tier of liability is $500. For example, the consumer's card is stolen on Monday and the consumer learns of the theft that same day. The consumer reports the theft on Friday. The $500 limit applies because the consumer failed to notify the financial institution within two business days of learning of the theft (which would have been by midnight Wednesday). How much the consumer is actually liable for, however, depends on when the unauthorized transfers take place. In the example above, assume an unauthorized transfer for $100 was made on Tuesday, and another unauthorized transfer for $600 occurred on Thursday. As the consumer is liable for the amount of the loss that occurred within the first two business days (but no more than $50), plus the amount of the unauthorized transfers that occurred after the first two business days and before the consumer gives notice, the consumer's total liability is $500 ($50 of the $100 transfer plus $450 of the $600 transfer in this example). But if $600 was taken on Tuesday and $100 was taken on Thursday, the consumer's maximum liability would be $150.

(b)(3) Periodic Statement; Timely Notice Not Given

1. *Unlimited liability applies.* The standard of unlimited liability applies if unauthorized transfers appear on a periodic statement, and may apply in conjunction with the first two tiers of liability. If a periodic statement shows an unauthorized transfer, the consumer must notify the financial institution within 60 calendar days after the periodic statement was sent; otherwise, the consumer faces unlimited liability for all unauthorized transfers made after the 60-day period. The consumer's liability for unauthorized transfers before the statement is sent and up to 60 days following is determined based on the first two tiers of liability: up to $50 if the consumer notifies the financial institution within two business days of learning of the loss or theft of the card and up to $500 if the consumer notifies the institution after two business days of learning of the loss or theft.

2. *Transfers not involving access device.* The first two tiers of liability do not apply to unauthorized transfers from a consumer's account that were made without an access device. If, however, the consumer fails to report such unauthorized transfers within 60 calendar days of the financial institution's transmittal of the periodic statement, the consumer may be held liable for any transfers occurring after the close of the 60 days and before notice is given to the institution. For example, assume a consumer's account has been electronically debited for $200 without the consumer's authorization and by means other than the consumer's access device. If the consumer notifies the institution within 60 days of transmittal of the periodic statement that shows the unauthorized transfer, the consumer has no liability. If, however, in addition to the $200 transaction, the consumer's account is debited without authorization for $400 on the 61st day after transmittal of the statement and the consumer fails to notify the institution of the unauthorized transfers until the 62nd day, the consumer is liable for the full $400.

(b)(4) Extension of Time Limits

1. *Extenuating circumstances.* Examples of circumstances that require extension of the notification periods under this section include the consumer's extended travel or hospitalization.

(b)(5) Notice to Financial Institution

1. *Receipt of notice.* A financial institution is considered to have received notice for purposes of limiting the consumer's liability if notice is given in a reasonable manner, even if the consumer uses an address or telephone number other than the one specified by the institution.

2. *Notice by third party.* Notice to a financial institution by a person acting on the consumer's behalf is considered valid under this section. For example, if a consumer is hospitalized and unable to report the loss or theft of an access device, notice is considered given when someone acting on the consumer's behalf notifies the bank of the loss or theft.

3. *Content of notice.* Notice to a financial institution is considered given when a consumer takes reasonable steps to provide the institution with the pertinent account information. Even when the consumer is unable to provide an account number or card number in reporting a lost or stolen access device or an unauthorized transfer, the notice effectively limits the consumer's liability if the consumer otherwise identifies sufficiently the account in question. For example, the consumer may identify the account by the name on the account and the type of account in question.

Section 205.7—Initial Disclosures

(a) Timing of Disclosures

1. *Early disclosures.* Disclosures given earlier than the regulation requires (for example, when the consumer opens a checking account) need not be repeated when the consumer later signs up for an electronic fund transfer service if the electronic fund transfer agreement is between the consumer and a third party who will initiate preauthorized transfers to or from the consumer's account, unless the terms and conditions required to be disclosed differ from those previously given. If, on the other hand, the electronic fund transfer agreement is directly between the consumer and the account-holding institution, the disclosures must be given in close proximity to the event requiring disclosure, for example, signing up for a service.

2. *Lack of prenotification of direct deposit.* In some instances, before direct deposit of government payments such as Social Security takes place, the consumer and the financial institution both must complete a Form 1199A (or comparable form providing notice to the institution) and the institution can make disclosures at that time. If an institution has not received advance notice that direct deposits are to be made to a consumer's account, the institution must provide the required disclosures as soon as reasonably possible after the first direct deposit is made, unless the institution has previously given disclosures.

3. *Addition of new accounts.* If a consumer opens a new account permitting electronic fund transfers in a financial institution where the consumer already maintains an account that provides for electronic fund transfer services, the institution need only disclose terms and conditions that differ from those previously given.

4. *Addition of new electronic fund transfer services.* If an electronic fund transfer service is added to a consumer's account and is subject to terms and conditions different from those described in the initial disclosures, disclosures pertaining to the additional service must be given. The disclosures must be provided either when the consumer contracts for the new service or before the first electronic fund transfer is made using the new service.

5. *Addition of service in interchange systems.* If a financial institution joins an interchange or shared network system (providing access to terminals operated by other institutions in the system), new disclosures are required for any additional services not previously available to consumers if the terms and conditions for the additional services differ from those previously disclosed.

6. *Disclosures covering all electronic fund transfer services offered.* An institution may provide disclosures covering all electronic fund transfer services that it offers, even if

some consumers have not arranged to use all services.

(b) Content of Disclosures

(b)(1) Liability of Consumer

1. *No liability imposed by financial institution.* If a financial institution chooses to impose zero liability for unauthorized electronic fund transfers, it need not provide liability disclosures. If the institution later decides to impose liability, however, it must first provide the disclosures.

2. *Preauthorized transfers.* If the only electronic fund transfers from an account are preauthorized transfers, an institution must disclose that liability could arise if the consumer fails to report unauthorized transfers reflected on a periodic statement in order to impose liability on the consumer. The institution must also disclose the telephone number and address for reporting unauthorized transfers.

3. *Additional information.* At the institution's option, the summary of the consumer's liability may include advice on promptly reporting unauthorized transfers or the loss or theft of the access device.

(b)(2) Telephone Number and Address

1. *Disclosure of telephone numbers.* An institution may use the same or different telephone numbers in the disclosures for the purpose of:

- Reporting the loss or theft of an access device or possible unauthorized transfers;
- Inquiring about the receipt of a preauthorized credit;
- Stopping payment of a preauthorized debit; and
- Giving notice of an error.

The telephone number need not be incorporated into the text of the disclosure; for example, the institution may instead insert a reference to a telephone number that is readily available to the consumer, such as "Call your branch office. The number is shown on your periodic statement." However, an institution must provide a specific telephone number and address on or with the disclosure statement for reporting a lost or stolen access device or a possible unauthorized transfer.

(b)(4) Types of Transfers; Limitations

1. *Security limitations.* Information about limitations on the frequency and dollar amount of transfers generally must be disclosed in detail, even if related to security aspects of the system. If the confidentiality of certain details is essential to the security of an account or system, however, these details may be withheld (but the fact that limitations exist must still be disclosed). For example, an institution limits cash ATM withdrawals to $100 per day. The institution may disclose that certain daily withdrawal limitations apply and need not disclose that the limitations may not always be enforced (such as during periods when its ATMs are "off-line").

2. *Restrictions on certain deposit accounts.* A limitation on account activity that restricts the consumer's ability to make electronic fund transfers must be disclosed even if the restriction also applies to transfers made by nonelectronic means. For example, Regulation D restricts the number of payments to third parties that may be made from a money market deposit account; an institution that does not execute EFTs in excess of those limits must disclose the restriction as a limitation on the frequency of electronic fund transfers.

3. *Preauthorized transfers.* Financial institutions are not required to list preauthorized transfers among the types of transfers that a consumer can make.

(b)(5) Fees

1. *Disclosure of fees.* A per-item fee for electronic fund transfers must be disclosed even if the same fee is imposed on nonelectronic transfers. If a per-item fee is imposed only under certain conditions, such as when the transactions in the cycle exceed a certain number, those conditions must be disclosed. Itemization of the various fees may be provided on the disclosure statement or on an accompanying document. In the latter case, the statement must refer to the accompanying document.

2. *Fees also applicable to non-electronic fund transfer.* An institution is required to disclose all fees that are attributable to electronic fund transfers or the right to make them. Fees that are relevant to both electronic and nonelectronic transfers (for example, minimum balance fees, stop-payment fees or account overdrafts) may, but need not, be disclosed. An institution is not required to disclose fees for inquiries at an ATM since no transfer of funds is involved.

3. *Interchange system fees.* Fees paid by the account-holding institution to the operator of a shared or interchange ATM system need not be disclosed, unless imposed on the consumer by the account-holding institution. Fees for use of an ATM that are debited directly to the consumer's account by an institution other than the account-holding institution (for example, fees included in the transfer amount) need not be separately disclosed.

(b)(9) Confidentiality

1. *Information provided to third parties.* The institution must describe the circumstances under which any information relating to an account to or from which electronic fund transfers are permitted, not just information concerning those electronic transfers, will be made available to third parties. The term "third parties" includes affiliates such as other subsidiaries of the same holding company.

(b)(10) Error Resolution

1. *Substantially similar.* The error resolution notice must be substantially similar to the model form in appendix A. An institution may delete inapplicable provisions (for example, the requirement for written confirmation of an oral notification), substitute substantive state law requirements affording greater consumer protection than Regulation E, or use different wording so long as the substance of the notice remains the same.

2. *Exception from provisional crediting.* If a financial institution takes advantage of the longer time periods for resolving errors under § 205.11(c)(3) (for transfers initiated outside the United States, or resulting from POS debit-card transactions), it must disclose these longer time periods. Similarly, an institution that relies on the exception from provisional crediting in § 205.11(c)(2) for accounts subject to Regulation T must disclose accordingly.

Section 205.8—Change in Terms Notice; Error Resolution Notice

(a) Change in Terms Notice

1. *Form of notice.* No specific form or wording is required for a change in terms notice. The notice may appear on a periodic statement, or may be given by sending a copy of a revised disclosure statement, provided attention is directed to the change (for example, in a cover letter referencing the changed term).

2. *Changes not requiring notice.* The following changes do not require disclosure:

- Closing some of an institution's ATMs
- Cancellation of an access device

3. *Limitations on transfers.* When the initial disclosures omit details essential to the security of the account or system, a subsequent increase in those limitations need not be disclosed if secrecy is still essential. If, however, an institution had no limits when the initial disclosures were given and it now wishes to impose limits for the first time, it must disclose at least the fact that limits have been adopted. (See also § 205.7(b)(4) and the related commentary.)

4. *Change in telephone number or address.* A change in terms notice is not required when a financial institution changes the telephone number or address used for reporting possible unauthorized transfers, but the change must be disclosed under § 205.6 as a condition of imposing liability on the consumer for unauthorized transfers. (See also § 205.6(a) and the related commentary.)

(a)(2) Prior Notice Exception

1. *Notice of permanent change included in periodic statement.* If a change under this paragraph is made permanent, the financial institution may include the written notice to the consumer on or with a periodic statement sent within 45 calendar days of the permanent change.

(b) Error Resolution Notice

1. *Change between annual and periodic notice.* If an institution switches from an annual to a periodic notice, or vice versa, the first notice under the new method must be sent no later than 12 months after the last notice under the old method.

Section 205.9—Receipts at Electronic Terminals; Periodic Statements

(a) Receipts at Electronic Terminals

1. *Receipts furnished only on request.* The regulation requires that a receipt be "made available." A financial institution may program its electronic terminals to provide a receipt only to consumers who elect to receive one.

2. *Third party providing receipt.* An account-holding institution may make terminal receipts available through third parties such as merchants or other financial institutions.

3. *Inclusion of promotional material.* A financial institution may include

promotional material on receipts if the required information is set forth clearly (for example, by separating it from the promotional material). In addition, a consumer must not be required to surrender the receipt or that portion containing the required disclosures in order to take advantage of a promotion.

4. *Transfer not completed.* The receipt requirement does not apply to a transfer that is initiated but not completed, for example, if the ATM is out of currency or the consumer decides not to complete the transfer.

5. *Receipts not furnished due to inadvertent error.* If a receipt is not provided to the consumer because of a bona fide unintentional error, such as the terminal running out of paper or the mechanism jamming, no violation results if the financial institution maintains procedures reasonably adapted to avoid such an error.

6. *Individual transfers.* If the consumer makes multiple transfers at the same time, the financial institution may document them on a single or on separate receipts.

(a)(1) Amount

1. *Disclosure of transaction fee.* The required display of a fee amount on or at the terminal may be accomplished by displaying the fee on the terminal screen before the consumer has initiated the transfer if displayed for a reasonable duration.

(a)(2) Date

1. *Calendar date.* The receipt must disclose the calendar date on which the consumer uses the electronic terminal. An accounting or business date may be disclosed in addition if the dates are clearly distinguished.

(a)(3) Type

1. *Identifying transfer and account.* Examples identifying the type of transfer and the type of the consumer's account to or from which funds are transferred include "withdrawal from checking," "transfer from savings to checking," or "payment from savings."

2. *Exception.* Identification of an account is not required when the consumer can access only one asset account at a particular time or terminal, even if the access device can normally be used to access more than one account. For example, the consumer may be able to access only one account at terminals operated by institutions other than the account-holding institution, or to access only one account when the terminal is off-line. If a consumer can use an access device at a terminal to debit an asset account and also to access a credit line, the exception is still available.

3. *Access to multiple accounts.* If the consumer can use an access device to make transfers to or from different accounts of the same type, the terminal receipt must specify which account was accessed, such as "withdrawal from checking I" or "withdrawal from checking II." If only one account besides the primary checking account can be debited, the receipt can identify the account as "withdrawal from other account."

4. *Generic descriptions.* Generic descriptions may be used for accounts that are similar in function such as share draft or NOW accounts and checking accounts. In a shared system, for example, when a credit union member initiates transfers to or from a share draft account at a terminal owned or operated by a bank, the receipt may identify a withdrawal from the account as a "withdrawal from checking."

5. *Point-of-sale transactions.* There is no prescribed terminology for identifying a transfer at a merchant's POS terminal. A transfer may be identified, for example, as a purchase, a sale of goods or services, or a payment to a third party. When a consumer obtains cash from a POS terminal in addition to purchasing goods, or obtains cash only, the documentation need not differentiate the transaction from one involving the purchase of goods.

(a)(4) Identification

1. *Unique identification.* A number or code used by a financial institution to identify the consumer's account or the access device used to initiate the transfer need be unique only within that financial institution.

(a)(5) Terminal Location

1. *Location code.* A code or terminal number identifying the terminal where the transfer is initiated may be given as part of a transaction code.

2. *Omission of city name.* The city may be omitted if the generally accepted name (such as a branch name) contains the city name.

Paragraph (a)(5)(i)

1. *Street address.* The address should include number and street (or intersection); the number (or intersecting street) may be omitted if the street alone uniquely identifies the terminal location.

Paragraph (a)(5)(ii)

1. *Generally accepted name.* Examples of a generally accepted name for a specific location include a branch of the financial institution, a shopping center, or an airport.

Paragraph (a)(5)(iii)

1. *Name of owner or operator of terminal.* Examples of an owner or operator of a terminal are a financial institution or a retail merchant.

(a)(6) Third Party Transfer

1. *Omission of third-party name.* The receipt need not disclose the third-party name if the name is provided by the consumer in a form that is not machine readable (for example, if the consumer indicates the payee by depositing a payment stub into the ATM). If, on the other hand, the consumer keys in the identity of the payee, the receipt must identify the payee by name or by using a code that is explained elsewhere on the receipt.

2. *Receipt as proof of payment.* Documentation required under this regulation constitutes prima facie proof of a payment to another person, except in the case of a terminal receipt documenting a deposit.

(b) Periodic Statements

1. *Periodic cycles.* Periodic statements may be sent on a cycle that is shorter than monthly. The statements must correspond to periodic cycles that are reasonably equal, that is, do not vary by more than four days from the regular period. The requirement of reasonably equal cycles does not apply when an institution changes cycles for operational or other reasons, such as to establish a new statement day or date.

2. *Defining a cycle.* Financial institutions must provide relevant information for the cycle or period since the last statement was issued. For example, an institution regularly issues quarterly periodic statements at the end of March, June, September and December. If the consumer initiates an electronic fund transfer in February, an interim statement would be provided. The interim statement should provide relevant information for the period since the last statement was issued, (the months of January and February in this example). The regularly scheduled statement would provide information from the date of the interim statement.

3. *Inactive accounts.* A financial institution need not send statements to consumers whose accounts are inactive as defined by the institution.

4. *Customer pickup.* A financial institution may permit, but may not require, consumers to call for their periodic statements.

5. *Periodic statements limited to electronic fund transfer activity.* A financial institution that uses a passbook as the primary means for displaying account activity, but also allows the account to be debited electronically, may comply with the periodic statement requirement by providing a statement that reflects only the electronic fund transfers and other required disclosures (such as charges, account balances, and address and telephone number for inquiries). (See § 205.9(c)(1)(i) for the exception applicable to preauthorized transfers for passbook accounts.)

6. *Codes and accompanying documents.* To meet the documentation requirements for periodic statements, a financial institution may:

- Include copies of terminal receipts to reflect transfers initiated by the consumer at electronic terminals;
- Enclose posting memos, deposit slips, and other documents that, together with the statement, disclose all the required information;
- Use codes for names of third parties or terminal locations and explain the information to which the codes relate on an accompanying document.

(b)(1) Transaction Information

1. *Information obtained from others.* While financial institutions must maintain reasonable procedures to insure the integrity of data obtained from another institution, a merchant, or other third parties, independent verification of the data for each transfer is not required for purposes of the periodic statement disclosures.

Paragraph (b)(1)(i)

1. *Incorrect deposit amount.* If the financial institution determines that the amount actually deposited at an ATM is different from the amount entered by the consumer, the institution need not immediately notify

the consumer about the discrepancy. The periodic statement reflecting the deposit may either show the correct amount of the deposit, or the amount entered by the consumer along with the institution's adjustment.

Paragraph (b)(1)(iii)

1. *Type of transfer.* There is no prescribed terminology for describing the type of transfer. It is sufficient to show the amount of the transfer in the debit or the credit column if other information on the statement, such as a terminal location or third-party name, enables the consumer to identify the type of transfer.

Paragraph (b)(1)(iv)

1. *Nonproprietary terminal in network.* An institution need not reflect on the periodic statement the street addresses, identification codes, or terminal numbers for transfers initiated in a shared or interchange system at a terminal operated by an institution other than the account-holding institution. The statement must, however, specify the entity which owns or operates the terminal, plus the city and state.

Paragraph (b)(1)(v)

1. *Recurring payments by government agency.* The third-party name for recurring payments from federal, state or local governments need not list the particular agency. For example, "U.S. gov't" or "N.Y. sal" will suffice.

2. *Consumer as third-party payee.* If a consumer makes an electronic fund transfer to another consumer, the financial institution must identify the recipient by name (not just by an account number, for example).

3. *Terminal location/third party.* A single entry may be used to identify both the terminal location and the name of the third party to or from whom funds are transferred. For example, if a consumer purchases goods from a merchant, the name of the party to whom funds are transferred (the merchant) and the location of the terminal where the transfer is initiated will be satisfied by a disclosure such as "XYZ Store, Anytown, Ohio."

4. *Account-holding institution as third party.* Transfers to the account-holding institution, by ATM for example, must show the institution as the recipient, unless other information on the statement, for example, "loan payment from checking," clearly indicates that the payment was to the account-holding institution.

5. *Consistency in third-party identity.* The periodic statement must disclose a third-party name as it appeared on the receipt, whether it was, for example, the "dba" (doing business as) name of the third party or the parent corporation's name.

6. *Third-party identity on deposits at electronic terminal.* A financial institution need not identify third parties whose names appear on checks, drafts, or similar paper instruments deposited to the consumer's account at an electronic terminal.

(b)(3) Fees

1. *Disclosure of fees.* The fees disclosed may include fees for electronic fund transfers and for other non-electronic services and both fixed fees and per-item fees; they may be given as a total or may be itemized in part or in full.

2. *Fees in interchange system.* An account-holding institution must disclose any fees it imposes on the consumer for electronic fund transfer services, including fees for ATM transactions in an interchange or shared ATM system. Fees for use of an ATM imposed on the consumer by an institution other than the account-holding institution and included in the amount of the transfer by the terminal-operating institution need not be separately disclosed on the periodic statement.

3. *Finance charges.* The requirement to disclose any fees assessed against the account does not include a finance charge imposed on the account during the statement period.

(b)(4) Account Balances

1. *Opening and closing balances.* The opening and closing balances in the consumer's account must reflect both electronic fund transfers and other account activity.

(b)(5) Address and Telephone Number for Inquiries

(b)(6) Telephone Number for Preauthorized Transfers

1. *Telephone number.* A single telephone number, preceded by the "direct inquiries to" language, will satisfy the requirements of § 205.9(b)(5) and (6).

(c) Exceptions to the Periodic Statement Requirements for Certain Accounts

1. *Transfers between accounts.* The regulation provides an exception from the periodic statement requirement for certain intra-institutional transfers between a consumer's accounts. The financial institution must still comply with the applicable periodic statement requirements for any other electronic transfers to or from the account. For example, a Regulation E statement must be provided quarterly for an account that also receives payroll deposits electronically, or for any month in which an account is also accessed by a withdrawal at an ATM.

(d) Documentation for Foreign-Initiated Transfers

1. *Foreign-initiated transfers.* An institution must make a good faith effort to provide all required information for foreign initiated transfers. For example, even though the institution may not be able to provide a specific terminal location, it should identify the country and city in which the transfer was initiated.

Section 205.10—Preauthorized Transfers

(a) Preauthorized Transfers to Consumer's Account

(a)(1) Notice by Financial Institution

1. *Content.* No specific language is required in the notice regarding receipt of a preauthorized transfer. Identifying the deposit is sufficient; however, simply providing the current account balance is not.

2. *Notice of credit.* The financial institution may use separate methods of notice for different types or series of preauthorized transfers. The institution need not offer consumers a choice of notice methods.

3. *Positive notice.* A periodic statement sent within two business days of the scheduled transfer, showing the transfer, can serve as notice of receipt.

4. *Negative notice.* With a negative-notice system, a financial institution must provide notice if payment is not received by the close of the second business day. If preauthorized transfers cease, the institution should send negative notices following at least three separate missed payments; or it may notify the consumer earlier that it believes the transfers have stopped and that it will no longer send negative notices. The absence of a deposit entry will not serve as negative notice for purposes of a negative-notice system.

5. *Telephone notice.* If a financial institution uses the telephone notice option, it should be able in most instances to verify during a consumer's initial telephone inquiry whether a transfer was received. The institution must respond within two business days to any inquiry not answered immediately.

6. *Phone number for passbook accounts.* The financial institution may use any reasonable means necessary to provide the telephone number to consumers with passbook accounts that can only be accessed by preauthorized credits and that do not receive periodic statements. For example, it may print the telephone number in the passbook, or include the number with the annual error resolution notice.

7. *Telephone line availability.* To satisfy the readily-available standard, the financial institution must provide enough telephone lines so that consumers get a reasonably prompt answer. The institution need only provide telephone service during normal business hours. Within its primary service area, an institution must provide a local or toll-free telephone number. It need not provide a toll-free number or accept collect long-distance calls from outside the area where it normally conducts business.

(b) Written Authorization for Preauthorized Transfers From Consumer's Account

1. *Preexisting authorizations.* The financial institution need not require a new authorization before changing from paper-based to electronic debiting merely because the existing authorization does not specify that debiting is to occur electronically or specifies that the debiting is to occur by paper means. A new authorization also need not be obtained when a successor institution begins collecting payments. For example, when an institution acquires the servicing rights for a mortgage loan, it may rely on the original preauthorized transfer authorization.

2. *Authorization obtained by third party.* The account-holding financial institution does not violate this regulation when a third-party payee fails to obtain the authorization in writing or to give a copy to the consumer; rather, it is the third-party payee who is in violation of the regulation.

3. *Written authorization for preauthorized transfers.* The requirement that preauthorized electronic fund transfers be authorized by the

consumer "only in writing" cannot be met by a payee's signing a written authorization on the consumer's behalf with only an oral authorization from the consumer. A tape recording of a telephone conversation with a consumer who agrees to preauthorized debits also does not constitute written authorization for purposes of this provision.

4. *Use of a confirmation form.* A financial institution or designated payee may comply with the requirements of this section in various ways. For example, a payee may provide the consumer with two copies of a form to permit preauthorized transfers from the consumer's account and require the consumer to sign and return one, while retaining the second copy.

5. *Similarly authenticated.* An example of a consumer's authorization that is not in the form of a signed writing but is instead "similarly authenticated" is a consumer's authorization via a home computer. For a home banking system to satisfy the requirements of this section, there must be some means to identify the consumer (such as a security code), and the consumer must have the ability to obtain a printed copy of the authorization (such as by printing it on the consumer's printer or by the payee's making a copy for the consumer).

(c) Consumer's Right To Stop Payment

1. *Stop-payment order.* The financial institution must honor an oral stop-payment order made at least three business days before a scheduled debit. If the debit item is resubmitted, the institution must continue to honor the stop-payment order, for example, by suspending all subsequent payments to the payee-originator until the consumer notifies the institution that payments should resume.

2. *Revocation of authorization.* Once the financial institution has been notified that the consumer's authorization is no longer valid, it must block all future payments for the particular debit transmitted by the designated payee-originator. The institution may not wait for the payee-originator to terminate the automatic debits. The institution may confirm that the consumer has informed the payee-originator of the revocation by requiring, for example, a copy of the consumer's revocation as written confirmation to be provided within fourteen days of an oral notification. If the institution does not receive the required written confirmation within the fourteen-day period, it may pay subsequent debits to the account.

(d) Notice of Transfers Varying in Amount

(d)(1) Notice

1. *Preexisting authorizations.* A financial institution holding the consumer's account does not violate this regulation if the designated payee fails to provide notice of varying amounts.

(d)(2) Range

1. *Range.* Financial institutions that elect to provide the consumer with a specified range of amounts for debiting (in lieu of providing the notice of transfers varying in amount) must provide a range that could plausibly be anticipated by the consumer. For example, if the transfer is for payment of a gas bill, an appropriate range might be based on the highest bill in winter and the lowest bill in summer.

(e) Compulsory Use

(e)(1) Credit

1. *Loan payments.* Creditors may not require repayment of loans by electronic means. A creditor may offer a program with a reduced annual percentage rate or other cost-related incentive for an automatic repayment feature, provided the program with the automatic payment feature is not the only loan program offered by the creditor for the type of credit involved. Examples include:

- Mortgages with graduated payments in which a pledged savings account is automatically debited during an initial period to supplement the monthly payments made by the borrower.
- Mortgage plans calling for preauthorized biweekly payments that are debited electronically to the consumer's account and produce a lower total finance charge.

2. *Overdraft.* The provision allowing institutions to require the automatic repayment of an overdraft credit plan applies even if the overdraft extension is charged to an open-end account that may be accessed by the consumer in ways other than by overdrafts.

(e)(2) Employment or Government Benefit

1. *Payroll.* Employers are subject to the act's prohibition against compulsory use of electronic fund transfers as a condition of employment. For example, a financial institution (as an employer) may not require its employees to receive their salary by direct deposit to that same institution. An employer may, however, require direct deposit of salary by electronic means if employees are given a choice of institutions that would receive the direct deposit. Alternatively, an employer may give employees the choice of having their salary deposited at a particular institution, or receiving their salary by check or cash.

Section 205.11—Procedures for Resolving Errors

(a) Definition of Error

1. *Terminal location.* With regard to deposits at an ATM, the consumer's request for the terminal location or other information triggers the error resolution procedures. The financial institution need only provide the consumer with the ATM location if it has captured that information with regard to deposits. If the consumer merely calls to ascertain whether a deposit made via ATM, preauthorized transfer, or any other type of electronic fund transfer was credited to the account, without asserting an error, the error resolution procedures do not apply.

2. *Loss or theft of access device.* A financial institution is required to comply with the error resolution procedures of this section when a consumer reports the loss or theft of an access device if the consumer also alleges possible unauthorized use as a consequence of the loss or theft.

3. *Error asserted after account closed.* The financial institution must comply with the error resolution procedures when a consumer properly asserts an error, even if the account has been closed.

4. *Request for documentation or information.* Requests for documentation or other information must be treated as errors unless it is clear that the request by the consumer is only for duplicate copies for tax or other record-keeping purposes.

(b) Notice of Error From Consumer

(b)(1) Timing; Contents

1. *Content of error notice.* The notice of error is effective even if it does not contain the consumer's account number, so long as the financial institution is able to identify the account in question. For example, the consumer could provide a social security number or other unique means of identification.

2. *Requirement of an affidavit.* While a financial institution may require the consumer to sign an affidavit relating to a notice of error, it may not delay initiating or completing an investigation pending receipt of the affidavit.

3. *Statement held for consumer.* When a consumer has arranged for periodic statements to be held until picked up, the statement for a particular cycle is deemed to have been transmitted on the date the financial institution first makes the statement available to the consumer.

4. *Failure to provide statement.* When a financial institution fails to provide the consumer with a periodic statement, a request for a copy is governed by this section if the consumer gives notice within 60 days from the date on which the statement should have been transmitted.

5. *Discovery of error by institution.* The error resolution procedures of this section apply only when a notice of error is received from the consumer. If the financial institution itself discovers and corrects an error, it need not comply with the procedures.

6. *Notice at particular phone number or address.* A financial institution may require the consumer to give notice only at the telephone number or address disclosed by the institution, provided the institution maintains reasonable procedures to refer the consumer to the specified telephone number or address if the consumer attempts to give notice to the institution in a different manner.

(b)(2) Written Confirmation

1. *Written confirmation-of-error notice.* If the consumer sends a written confirmation of error to the wrong address, the institution must process the confirmation through normal procedures. But the institution need not provisionally credit the consumer's account if the written confirmation is delayed beyond 10 business days because it was sent to the wrong address.

(c) Time Limits and Extent of Investigation

1. *Notice to consumer.* Unless otherwise indicated in this section, the financial institution may provide the required notices to the consumer either orally or in writing.

2. *Written confirmation of oral notice.* A financial institution must begin its

investigation promptly upon receipt of an oral notice. It may not delay until it has received a written confirmation.

3. *No charge for error resolution.* The financial institution may not impose charges for any aspect of the error-resolution process, including charges for documentation or investigation.

4. *Correction without investigation.* A financial institution may make, without investigation, a final correction to a consumer's account in the amount or manner alleged by the consumer to be in error, but must comply with all other applicable requirements of § 205.11.

5. *Correction notice.* A financial institution may include the notice of correction on a periodic statement that is mailed or delivered within the 10-business-day or 45-calendar-day time limits and that clearly identifies the correction to the consumer's account. Whether such a mailing will be prompt enough to satisfy the requirements of this section must be determined by the institution, taking into account the specific facts involved.

6. *Correction of an error.* If the financial institution determines an error occurred, within either the 10-day or 45-day period, it shall correct the error (subject to the liability provisions of § 205.6 (a) and (b)) including, where applicable, the crediting of interest and the refunding of any fees imposed by the institution. In a combined credit/electronic fund transfer transaction, for example, the institution must refund any finance charges incurred as a result of the error. The institution need not refund fees that would have been imposed whether or not the error occurred.

7. *Extent of required investigation.* A financial institution complies with its duty to investigate, correct, and report its determination regarding an error described in § 205.11(a)(1)(vii) by transmitting the requested information, clarification, or documentation within the time limits set forth in paragraph (c) of this section. If the institution has provisionally credited the consumer's account in accordance with paragraph (c)(2) of this section, it may debit the amount upon transmitting the requested information, clarification, or documentation.

Paragraph (c)(2)(i)

1. *Compliance with all requirements.* Financial institutions exempted from provisionally crediting a consumer's account under § 205.11(c)(2)(i) (A) and (B) must still comply with all other requirements of the section.

(c)(3) Extension of Time Periods

1. *POS debit card transactions.* The extended deadlines for investigating errors resulting from POS debit card transactions include all debit card transactions, including those for cash only, at merchants' point-of-sale terminals. The deadlines do not apply to transactions at an ATM, however, even though the ATM may be in a merchant location. POS debit card transactions also include mail and telephone orders.

(c)(4) Investigation

1. *Third parties.* When information or documentation requested by the consumer is in the possession of a third party with whom the financial institution does not have an agreement, the institution satisfies the error resolution requirement by so advising the consumer within the specified time frame.

2. *Scope of investigation.* When an alleged error involves a payment to a third party under the financial institution's telephone bill-payment plan, a review of the institution's own records is sufficient, assuming no agreement exists between the institution and the third party concerning the bill-payment service.

3. *POS transfers.* When a consumer alleges an error involving a transfer to a merchant via a POS terminal, the institution must verify the information previously transmitted in executing the transfer. For example, the financial institution may request a copy of the sales receipt to verify that the amount of the transfer correctly corresponds to the amount of the consumer's purchase.

4. *Agreement.* A financial institution does not have an agreement for purposes of § 205.11(c)(4)(ii) solely because it participates in transactions occurring under the federal recurring payments programs, or that are cleared through an ACH or similar arrangement for the clearing and settlement of fund transfers generally, or because it agrees to be bound by the rules of such an arrangement. But an agreement that a third party will honor an access device is an agreement for purposes of this paragraph.

(d) Procedures if Financial Institution Determines No Error or Different Error Occurred

1. *Error different from that alleged.* When a financial institution determines that an error occurred in a manner or amount different from that described by the consumer, it must comply with the requirements of both paragraphs (c) and (d) of this section, as relevant. The institution may give the notice of correction and the explanation separately or in a combined form.

(d)(1) Written Explanation

1. *Request for documentation.* When a consumer requests copies of documents, the financial institution must provide the copies in an understandable form. If an institution relied on magnetic tape it must translate the applicable data into readable form, for example, by printing it and explaining any codes.

(d)(2) Debiting Provisional Credit

1. *Alternative procedure for debiting of credited funds.* The financial institution may comply with the requirements of this section by notifying the consumer that the consumer's account will be debited five business days from the transmittal of the notification, specifying the calendar date on which the debiting will occur.

2. *Fees for overdrafts.* The financial institution may not impose fees for items it is required to honor under this section. It may, however, impose any normal transaction or item fee that is unrelated to an overdraft resulting from the debiting. If the account is still overdrawn after five business days, the institution may impose the fees or finance charges to which it is entitled, if any, under an overdraft credit plan.

(e) Reassertion of Error

1. *Withdrawal of error; right to reassert.* The financial institution has no further error resolution responsibilities if the consumer voluntarily withdraws the notice. A consumer who has withdrawn an allegation of error has the right to reassert the allegation unless the financial institution had already complied with all of the error resolution requirements before the allegation was withdrawn. The consumer must do so, however, within the original 60-day period.

Section 205.12—Relation to Other Laws

(a) Relation to Truth in Lending

1. *Determining applicable regulation.* For transactions involving access devices that also constitute credit cards, the applicability of Regulation E versus Regulation Z depends on the nature of the transaction. For example, if the transaction is purely an extension of credit, and does not include a debit to a checking account (or other consumer asset account), the liability limitations and error resolution requirements of Regulation Z apply. If the transaction only debits a checking account (with no credit extended), the comparable provisions of Regulation E apply. Finally, if the transaction debits a checking account but also draws on an overdraft line of credit, the Regulation E provisions apply, as well as 12 CFR 226.13(d) and (g) of Regulation Z. As a result, a consumer might be liable for up to $50 under Regulation Z and, in addition, for $50, $500, or an unlimited amount under Regulation E.

2. *Issuance rules.* For access devices that also constitute credit cards, the issuance rules of Regulation E apply if the only credit feature is a preexisting credit line attached to the asset account to cover overdrafts (or to maintain a specified minimum balance). Regulation Z rules apply if there is another type of credit feature, for example, one permitting direct extensions of credit that do not involve the asset account.

(b) Preemption of Inconsistent State Laws

1. *Specific determinations.* The regulation prescribes standards for determining whether state laws that govern electronic fund transfers are preempted by the act and the regulation. A state law that is inconsistent may be preempted even if the Board has not issued a determination. However, nothing in § 205.12(b) provides a financial institution with immunity for violations of state law if the institution chooses not to make state disclosures and the Board later determines that the state law is not preempted.

2. *Preemption determination.* Effective March 30, 1981, the Board has determined that certain provisions in the state law of Michigan are preempted by the federal law:

- Section 5(4)—Definition of unauthorized use. This provision is preempted to the extent that it relates to the section of state law governing consumer liability for unauthorized use of an access device.
- Section 14—Consumer liability for unauthorized use of an account. This provision is inconsistent with § 205.6 and is less protective of the consumer than the

federal law. The state law places liability on the consumer for the unauthorized use of an account in cases involving the consumer's negligence. Under the federal law, a consumer's liability for unauthorized use is not related to the consumer's negligence and depends instead on the consumer's promptness in reporting the loss or theft of the access device.

• Section 15—Error resolution. This provision is preempted because it is inconsistent with § 205.11 and is less protective of the consumer than the federal law. The state law allows financial institutions up to 70 days to resolve errors, whereas the federal law generally requires errors to be resolved in 45 days.

• Sections 17 and 18—Receipts and periodic statements. These provisions are preempted because they are inconsistent with § 205.9. The provisions require a different disclosure of information than does the federal law. The receipt provision is also preempted because it allows the consumer to be charged for receiving a receipt if a machine cannot furnish one at the time of a transfer.

Section 205.13—Administrative Enforcement; Record Retention

(b) Record Retention

1. *Requirements.* To evidence compliance, a financial institution should be able to establish that its procedures reasonably ensure the consumer's receipt of required disclosures and documentation.

Section 205.14—Electronic Fund Transfer Service Provider Not Holding Consumer's Account

(a) Electronic Fund Transfer Service Providers Subject to Regulation

1. *Applicability.* This section applies only when a service provider issues an access device (a debit card or a code, for example) to a consumer with which the consumer can initiate transfers to or from the consumer's account at a financial institution and the two entities have no agreement regarding this electronic fund transfer service. If the service provider does not issue an access device to the consumer, it does not qualify for the treatment accorded by this section. For example, this section does not apply to an institution that initiates preauthorized payroll deposits on behalf of an employer to the consumer's account at another institution. By contrast, this section does apply to an institution that issues a code for initiating telephone transfers from a consumer's account at another institution (provided the account-holding institution does not have an agreement with the other institution regarding the service). This is the case even if the consumer has accounts at both institutions.

2. *ACH agreements.* An ACH agreement under which members agree to honor each other's electronic fund transfer cards constitutes an "agreement" for purposes of this section.

(b) Compliance by Electronic Fund Transfer Service Provider

1. *Liability.* The service provider is liable for unauthorized electronic fund transfers that exceed the consumer's liability limits in § 205.6.

(b)(1) Disclosures and Documentation

1. *Periodic statements from electronic fund transfer service provider.* A service provider that meets the conditions set forth in the regulation does not have to issue periodic statements. A service provider that does not meet the condition need only include information on periodic statements sent to the consumer about transfers initiated with the access device it has issued.

(b)(2) Error Resolution

1. *Error resolution.* When a consumer notifies the service provider of an error, the electronic fund transfer service provider must investigate and resolve the error as set forth in the regulation. If an error occurred, any fees or charges imposed as a result of the error, either by the service provider or by the account-holding institution (for example, overdraft or dishonor fees) must be reimbursed to the consumer by the service provider.

(c) Compliance by Account-Holding Institution

Paragraph (c)(1)

1. *Periodic statements from account-holding institution.* The periodic statement provided by the account-holding institution need only contain the information required by § 205.9(c)(1).

Appendix A—Model Disclosure Clauses and Forms

1. *Review of forms.* Neither the Board nor its staff will review or approve disclosure forms or statements for financial institutions. However, the Board has issued model clauses for institutions to use in designing their disclosures. If an institution uses these clauses accurately to reflect its service, the institution is protected from liability for failure to make disclosures in proper form.

2. *Use of the forms.* The appendix contains model disclosure clauses for optional use by financial institutions to facilitate compliance with the disclosure requirements of §§ 205.5(b)(2), and (b)(3), 205.6(a), 205.7, and 205.14(b)(1)(ii). Section 915(d)(2) of the statute provides that use of these clauses in conjunction with other requirements of the regulation will protect a financial institution from liability under sections 915 and 916 of the act to the extent that the clauses accurately reflect the institution's electronic fund transfer services.

3. *Altering the clauses.* Financial institutions may use clauses of their own design in conjunction with the Board's model clauses. The inapplicable words or portions of phrases in parentheses should be deleted. The underscored catchlines are not part of the clauses and need not be used. Financial institutions may make alterations, substitutions, or additions in the clauses to reflect the services offered, such as technical changes (e.g., substitution of a trade name for the word "card," deletion of inapplicable services, or substitution of lesser liability limits. Model Clauses A–(2) include references to a telephone number and address. Where two or more of these clauses are used in a disclosure, the telephone number and address may be referenced and need not be repeated.

Supplement II to Part 205 [Removed]

3. Supplement II to Part 205 is removed.

By order of the Board of Governors of the Federal Reserve System, February 24, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–4682 Filed 3–2–94; 12:38 pm]

BILLING CODE 6210–01–P

federal register

Monday
March 7, 1994

Part III

Department of Justice

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Extension of Temporary Placement of Alpha-ethyltryptamine Into Schedule I; Proposed Rule and Final Rule

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Proposed Placement of Alpha-ethyltryptamine Into Schedule I

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking is issued by the Acting Administrator of the Drug Enforcement Administration (DEA) to place alpha-ethyltryptamine (α-ET) into Schedule I of the Controlled Substances Act (CSA). This proposed action by the DEA Acting Administrator is based on data gathered and reviewed by the DEA. If finalized, this proposed action would impose the regulatory control mechanisms and criminal sanctions of Schedule I on the manufacture, distribution, and possession of α-ET.

DATES: Comments must be submitted on or before April 6, 1994.

ADDRESSES: Comments and objections should be submitted to the Administrator, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: On March 12, 1993, the Administrator of the DEA published a final rule in the **Federal Register** (58 FR 13533) amending § 1308.11 of title 21 of the Code of Federal Regulations to temporarily place α-ET into Schedule I of the CSA pursuant to the temporary scheduling provisions of 21 U.S.C. 811(h). This final rule, which became effective on the date of publication, was based on findings by the Administrator that the temporary scheduling of α-ET was necessary to avoid an imminent hazard to the public safety. Section 201(h)(2) of the CSA (21 U.S.C. 811(h)(2)) requires that the temporary scheduling of a substance expires at the end of one year from the effective date of the order. However, if proceedings to schedule a substance pursuant to 21 U.S.C. 811(a)(1) have been initiated and are pending, the temporary scheduling of a substance may be extended for up to six months. Under this provision, the temporary scheduling of α-ET which would expire on March 12, 1994, may be extended to September 12, 1994. This extension is being ordered by the DEA Acting Administrator in a separate action.

The DEA has gathered and reviewed the available information regarding the trafficking, actual abuse and the relative potential for abuse for α-ET. The Acting Administrator has submitted this data to the Assistant Secretary for Health, Department of Health and Human Services. In accordance with 21 U.S.C. 811(b), the Acting Administrator also requested a scientific and medical evaluation and a scheduling recommendation for α-ET from the Assistant Secretary for Health.

Chemically α-ET is α-ethyl-1H-indole-3-ethanamine or 3-(2-aminobutyl) indole. It is also known as etryptamine or Monase (brand name, acetate salt). In the early 1960's, it was marketed by the Upjohn Company as an antidepressant in the United States. After less than one year of marketing, Upjohn withdrew its New Drug Application when it became apparent that α-ET administration was associated with agranulocytosis. The Food and Drug Administration (FDS) has notified the DEA that there are no exemptions or approvals in effect under section 505 of the Federal Food, Drug, and Cosmetic Act for α-ET. A search of the scientific and medical literature revealed no indications of current medical use of α-ET in the United States.

In animal studies, α-ET has a pharmacological profile similar to other Schedule I controlled substances. In drug discrimination paradigms, α-ET fully substituted for both 1-(2,5-dimethoxy-4-methylphenyl)-2-aminopropane (DOM) and 3,4-methylenedioxymethamphetamine (MDMA). In a behavioral paradigm that distinguishes between stimulants, classical hallucinogens and MDMA-like substances, α-ET closely resembles MDMA. Recent data indicate that α-ET, like MDMA, may be toxic to serotonergic neurons. In human studies, α-ET's most prominent effect was an immediate feeling of exhilaration and intoxication at an oral dose of 150 mg.

DEA first encountered α-ET in 1986 at a clandestine laboratory in Nevada. Several exhibits of α-ET have been analyzed by DEA and state forensic laboratories since 1989.

Individuals in Colorado and Arizona have purchased several kilograms of this substance from chemical supply companies. It has been distributed and sold primarily to high school and college students. Trafficked as "ET" or "TRIP", it has been touted as an MDMA-like substance. The death of a nineteen year old female in Arizona was attributed to α-ET toxicity. Illicit use has been documented in both Germany and Spain. In Germany, α-ET has been sold as "Love Pearls" or "Love Pills" and its abuse has been associated with a number of deaths. At least one death has been attributed to α-ET abuse in Spain.

The Acting Administrator, based on the information gathered and reviewed by his staff and after consideration of the factors in 21 U.S.C. 811(c), believes that sufficient data exist to propose and to support that α-ET be placed into Schedule I of the CSA pursuant to 21 U.S.C. 811(a). The specific findings required pursuant to 21 U.S.C. 811 and 812 for a substance to be placed into Schedule I are as follows:

(1) The drug or other substance has a high potential for abuse.

(2) The drug or other substance has no currently accepted medical use in treatment in the United States.

(3) There is a lack of accepted safety for use of the drug or other substance under medical supervision.

Before issuing a final rule in this matter, the DEA Administrator will take into consideration the scientific and medical evaluation and scheduling recommendation of the Secretary of the Department of Health and Human Services in accordance with 21 U.S.C. 811(b). The Administrator will also consider relevant comments from other concerned parties.

Interested persons are invited to submit their comments, objections, or requests for a hearing in writing with regard to this proposal. Requests for a hearing should state with particularity the issues concerning which the person desires to be heard. All correspondence regarding this matter should be submitted to the Administrator, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative. In the event that comments, objections, or requests for a hearing raise one or more issues which the Administrator finds warrants a hearing, the Administrator shall order a public hearing by notice in the **Federal Register**, summarizing the issues to be heard and setting the time for the hearing.

The Acting Administrator of the DEA hereby certifies that proposed placement of α-ET into Schedule I of the CSA will have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This action involves the control of a substance with no currently accepted medical use in the United States.

This proposed rulemaking is not a significant regulatory action for the purposes of Executive Order (E.O.)

12866 of September 30, 1993. Drug scheduling matters are not subject to review by the Office of Management and Budget (OMB) pursuant to provisions of E.O. 12866, § 3(d)(1).

This action has been analyzed in accordance with the principles and criteria in E.O. 12612, and it has been determined that this proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by Section 201(a) of the CSA (21 U.S.C. 811(a)), and delegated to the Administrator of the DEA by the Department of Justice regulations (28 CFR 0.100), the Acting Administrator hereby proposes that 21 CFR part 1308 be amended as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871b, unless otherwise noted.

2. Section 1308.11 is amended by redesignating the existing paragraphs (d)(12) through (d)(29) as (d)(13) through (d)(30) and adding a new paragraph (d)(12) to read as follows:

§ 1308.11 Schedule I.

* * * * *

(d) * * *

(12) Alpha-ethyltryptamine.....7249

Some trade or other names: etryptamine; Monase; α-ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl)indole; α-ET or AET

3. Section 1308.11 is further amended by removing paragraph (g)(4) and redesignating paragraph (g)(5) as (g)(4).

Dated: February 28, 1994.

Stephen H. Greene,

Acting Administrator of Drug Enforcement.

[FR Doc. 94–5202 Filed 3–4–94; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Extension of Temporary Placement of Alpha-ethyltryptamine into Schedule I

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final rule.

SUMMARY: This final rule is issued by the Acting Administrator of the Drug Enforcement Administration (DEA) to extend the temporary scheduling of alpha-ethyltryptamine (α-ET) in Schedule I of the Controlled Substances Act (CSA). The temporary scheduling of α-ET is due to expire on March 12, 1994. This notice will extend the temporary scheduling of α-ET for six months or until rule making proceedings are completed, whichever occurs first.

EFFECTIVE DATE: March 12, 1994.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: On March 12, 1993, the Administrator of the DEA published a final rule in the **Federal Register** (58 FR 13533) amending § 1308.11(g) of Title 21 of the Code of Federal Regulations to temporarily place α-ET into Schedule I of the CSA pursuant to the temporary scheduling provisions of 21 U.S.C. 811(h). This final rule, which became effective on the date of publication, was based on findings by the Administrator that the temporary scheduling of α-ET was necessary to avoid an imminent hazard to the public safety. Section 201(h)(2) of the CSA (21 U.S.C. 811(h)(2)) requires that the temporary scheduling of a substance expire at the end of one year from the effective date of the order. However, during the pendency of proceedings under 21 U.S.C. 811(a)(1) with respect to the substance, temporary scheduling of that substance may be extended for up to six months. Proceedings for the scheduling of a substance under 21 U.S.C. 811(a) may be initiated by the Attorney General (delegated to the Administrator of the DEA pursuant to 28 CFR 0.100) on his own motion, at the request of the Secretary of Health and Human Services, or on the petition of any interested party. Such proceedings regarding α-ET have been initiated by the Acting Administrator.

Therefore, the temporary scheduling of α-ET, which is due to expire on March 12, 1994, may be extended until September 12, 1994, or until proceedings initiated in accordance with 21 U.S.C. 811(a) are completed, whichever occurs first.

Pursuant to 21 U.S.C. 811(h)(2) the Acting Administrator hereby orders that the temporary scheduling of α-ET be extended until September 12, 1994, or until the conclusion of scheduling proceedings initiated in accordance with 21 U.S.C. 811(a), whichever occurs first.

The Acting Administrator of the DEA hereby certifies that extension of the temporary placement of α-ET into Schedule I of the CSA will have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This action involves the extension of temporary control of a substance with no currently approved medical use in the United States.

The six month extension of α-ET in Schedule I of the CSA is not a significant regulatory action for the purposes of Executive Order (E.O.) 12866 of September 30, 1993. Drug scheduling matters are not subject to review by the Office of Management and Budget (OMB) pursuant to the provisions of E.O. 12866, § 3(d)(1). This regulation responds to an emergency situation posing an imminent hazard to the public safety and is essential to criminal law enforcement function of the United States.

This action has been analyzed in accordance with the principles and criteria in Executive Order 12612, and it has been determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Dated: February 28, 1994.

Stephen H. Greene,

Acting Administrator of Drug Enforcement.

[FR Doc. 94–5203 Filed 3–4–94; 8:45 am]

BILLING CODE 4410–09–M

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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1, 2 (2 Reserved)	(869–019–00001–1)	$15.00	Jan. 1, 1993
3 (1992 Compilation and Parts 100 and 101)	(869–019–00002–0)	17.00	[1] Jan. 1, 1993
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29 Parts:			
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100-499	(869-019-00108-5)	9.50	July 1, 1993
500-899	(869-019-00109-3)	36.00	July 1, 1993
900-1899	(869-019-00110-7)	17.00	July 1, 1993
1900-1910 (§§ 1901.1 to 1910.999)	(869-019-00111-5)	31.00	July 1, 1993
1910 (§§ 1910.1000 to end)	(869-019-00112-3)	21.00	July 1, 1993
1911-1925	(869-019-00113-1)	22.00	July 1, 1993
1926	(869-019-00114-0)	33.00	July 1, 1993
1927-End	(869-019-00115-8)	36.00	July 1, 1993
30 Parts:			
1-199	(869-019-00116-6)	27.00	July 1, 1993
200-699	(869-019-00117-4)	20.00	July 1, 1993
700-End	(869-019-00118-2)	27.00	July 1, 1993
31 Parts:			
0-199	(869-019-00119-1)	18.00	July 1, 1993
200-End	(869-019-00120-4)	29.00	July 1, 1993
32 Parts:			
1-39, Vol. I		15.00	[2] July 1, 1984
1-39, Vol. II		19.00	[2] July 1, 1984
1-39, Vol. III		18.00	[2] July 1, 1984
1-190	(869-019-00121-2)	30.00	July 1, 1993
191-399	(869-019-00122-1)	36.00	July 1, 1993
400-629	(869-019-00123-9)	26.00	July 1, 1993
630-699	(869-019-00124-7)	14.00	[6] July 1, 1991
700-799	(869-019-00125-5)	21.00	July 1, 1993
800-End	(869-019-00126-3)	22.00	July 1, 1993
33 Parts:			
1-124	(869-019-00127-1)	20.00	July 1, 1993
125-199	(869-019-00128-0)	25.00	July 1, 1993
200-End	(869-019-00129-8)	24.00	July 1, 1993
34 Parts:			
1-299	(869-019-00130-1)	27.00	July 1, 1993
300-399	(869-019-00131-0)	20.00	July 1, 1993
400-End	(869-019-00132-8)	37.00	July 1, 1993
35	(869-019-00133-6)	12.00	July 1, 1993
36 Parts:			
1-199	(869-019-00134-4)	16.00	July 1, 1993
200-End	(869-019-00135-2)	35.00	July 1, 1993
37	(869-019-00136-1)	20.00	July 1, 1993
38 Parts:			
0-17	(869-019-00137-9)	31.00	July 1, 1993
18-End	(869-019-00138-7)	30.00	July 1, 1993
39	(869-019-00139-5)	17.00	July 1, 1993
40 Parts:			
1-51	(869-017-00138-4)	31.00	July 1, 1992
52	(869-019-00141-7)	37.00	July 1, 1993
53-59	(869-019-00142-5)	11.00	July 1, 1993
60	(869-019-00143-3)	35.00	July 1, 1993
61-80	(869-019-00144-1)	29.00	July 1, 1993
81-85	(869-019-00145-0)	21.00	July 1, 1993
86-99	(869-017-00143-1)	33.00	July 1, 1992
100-149	(869-019-00147-6)	36.00	July 1, 1993
150-189	(869-019-00148-4)	24.00	July 1, 1993
190-259	(869-019-00149-2)	17.00	July 1, 1993
260-299	(869-017-00147-3)	36.00	July 1, 1992
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41 Chapters:			
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1, 1-11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
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7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
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102-200	(869-019-00158-1)	11.00	[6] July 1, 1991
201-End	(869-019-00159-0)	12.00	July 1, 1993
42 Parts:			
1-399	(869-019-00160-3)	24.00	Oct. 1, 1993
400-429	(869-017-00158-9)	23.00	Oct. 1, 1992
430-End	(869-017-00159-7)	31.00	Oct. 1, 1992
43 Parts:			
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1000-3999	(869-019-00164-6)	32.00	Oct. 1, 1993
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45 Parts:			
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200-499	(869-017-00165-1)	14.00	Oct. 1, 1992
500-1199	(869-019-00169-7)	30.00	Oct. 1, 1993
1200-End	(869-017-00167-8)	20.00	Oct. 1, 1992
46 Parts:			
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41-69	(869-017-00169-4)	16.00	Oct. 1, 1992
70-89	(869-019-00173-5)	8.50	Oct. 1, 1993
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*156-165	(869-019-00176-0)	17.00	Oct. 1, 1993
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200-499	(869-017-00175-9)	22.00	Oct. 1, 1992
500-End	(869-019-00179-4)	15.00	Oct. 1, 1993
47 Parts:			
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20-39	(869-017-00178-3)	22.00	Oct. 1, 1992
40-69	(869-019-00182-4)	14.00	Oct. 1, 1993
70-79	(869-017-00180-5)	21.00	Oct. 1, 1992
80-End	(869-017-00181-3)	24.00	Oct. 1, 1992
48 Chapters:			
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1 (Parts 52-99)	(869-019-00186-7)	23.00	Oct. 1, 1993
2 (Parts 201-251)	(869-017-00184-8)	15.00	Oct. 1, 1992
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*29-End	(869-019-00192-1)	17.00	Oct. 1, 1993
49 Parts:			
1-99	(869-019-00193-0)	23.00	Oct. 1, 1993
100-177	(869-017-00191-1)	27.00	Oct. 1, 1992
178-199	(869-019-00195-6)	20.00	Oct. 1, 1993
200-399	(869-017-00193-7)	27.00	Oct. 1, 1992
400-999	(869-017-00194-5)	31.00	Oct. 1, 1992
1000-1199	(869-017-00195-3)	19.00	Oct. 1, 1992
1200-End	(869-019-00199-9)	22.00	Oct. 1, 1993
50 Parts:			
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

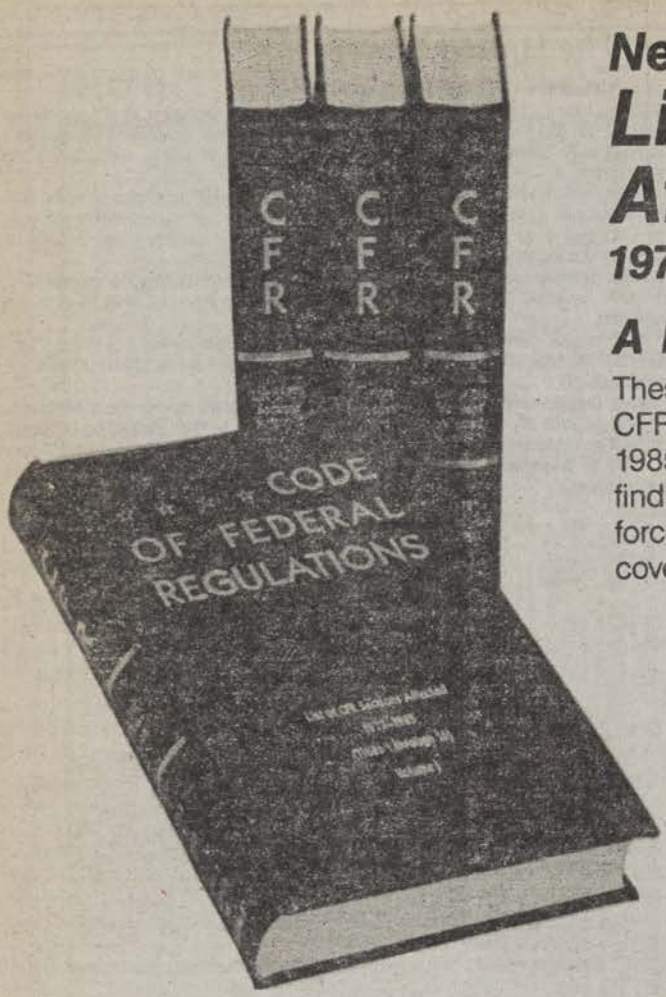
[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1993. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period Apr. 1, 1991 to Mar. 31, 1993. The CFR volume issued April 1, 1991, should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1993. The CFR volume issued July 1, 1991, should be retained.

[7] No amendments to this volume were promulgated during the period January 1, 1993 to December 31, 1993. The CFR volume issued January 1, 1993, should be retained.



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