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

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AG09

Prevailing Rate Systems; Aroostook, ME, NAF Wage Area

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final rule to abolish the Aroostook, Maine, nonappropriated fund (NAF) Federal Wage System wage area and to redefine Aroostook and Washington Counties, Maine, as areas of application to the Cumberland, Maine, NAF wage area for pay-setting purposes. With the scheduled closing of Loring Air Force Base (AFB) on September 30, 1994, and the current downsizing of the Army and Air Force Exchange Service and Loring AFB Morale, Welfare and Recreation Department, there was not a sufficient number of employees to conduct the wage change survey scheduled in July 1994. Further, there was not a sufficient number of employees to meet regulatory requirements for establishing a survey area.

EFFECTIVE DATE: December 30, 1994.

FOR FURTHER INFORMATION CONTACT: Angela Graham Humes, (202) 606–2848.

SUPPLEMENTARY INFORMATION: On July 18, 1994, OPM published an interim rule (59 FR 36351) to abolish the Aroostook, Maine, NAF wage area for pay-setting purposes and reassign its constituent counties to the Cumberland, Maine, NAF wage area. The interim rule provided a 30-day period for public comment. OPM received no comments during the comment period. Therefore, the interim rule is being adopted as a final rule.

Regulatory Flexibility Act

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

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Accordingly, under the authority of 5 U.S.C. 5343, the interim rule amending 5 CFR part 532 published on July 18, 1994 (59 FR 36351), is adopted as final without any changes.

U.S. Office of Personnel Management.

James B. King,

Director.

[FR Doc. 94–29469 Filed 11–29–94; 8:45 am]

BILLING CODE 6325–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 303 and 333

RIN 3064–AB34

Mutual-to-Stock Conversions of State Nonmember Savings Banks

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule and confirmation of interim rule.

SUMMARY: The final rule requires FDIC-insured mutual state-chartered savings banks that are not members of the Federal Reserve System (State Savings Banks) that propose to convert to stock ownership to file with the FDIC a notice of intent to convert to stock form and to comply with new substantive provisions of the FDIC's regulations when proposing to convert to the stock form of ownership. The intended effect of the final rule is to assure that mutual-to-stock conversions of FDIC-regulated institutions do not raise safety-and-soundness concerns, breaches of fiduciary duty or other violations of law. The final rule confirms, with modifications, an interim rule that has been in effect since February 15, 1994.

EFFECTIVE DATE: January 1, 1995.

FOR FURTHER INFORMATION CONTACT: Robert F. Miailovich, Associate Director, Division of Supervision (202/898–6918), Joseph A. DiNuzzo, Counsel, Legal Division (202/898–7349) or Garfield Gimber III, Examination Specialist, Planning and Program Development Section, Division of Supervision (202/898–6913), Federal Deposit Insurance Corporation, Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

The collection of information contained in the final rule has been reviewed and approved by the Office of Management and Budget (OMB) under control number 3064–0117 pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). The collection of information in this final rule is found in §§ 303.15 and 333.4(d) and takes the form of materials related to a State Savings Bank's proposed conversion from the mutual to stock form of ownership. The information will be used to enable the FDIC to identify and address issues involved in the proposed conversion relating to the safety and soundness of the bank, any abusive management practices and potential violations of applicable law.

The estimated annual reporting burden for the collection of information requirement in this final rule is summarized as follows:

Number of Respondents: 50
Number of Responses per Respondent: 1
Total Annual Responses: 50
Hours per Response: 20
Total Annual Burden Hours: 1,000

II. Regulatory Flexibility Act

The Board hereby certifies that the final rule will not 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.*). Therefore, the provisions of that Act regarding an initial and final regulatory flexibility analysis (*Id.* at 603 & 604) do not apply here.

III. The Proposed Rule and Other Recent FDIC Regulatory Initiatives on Mutual-to-Stock Conversions

1. The Proposed Rule

In June 1994 the FDIC issued a proposed rule to add specific substantive requirements to its mutual-to-stock conversion regulations (Proposed Rule) (59 FR 30316 (June 13, 1994)). The requirements were similar to

the interim final regulations issued by the Office of Thrift Supervision (OTS) the prior month (59 FR 22725 (May 3, 1994)) (OTS Interim Final Rule). The OTS, with whom the FDIC has coordinated on the substantive provisions of the final rule, has informed the FDIC that it intends to finalize the OTS Interim Final Rule (OTS Final Rule) at or about the same time as the FDIC publishes this final rule. The OTS Interim Final Rule and OTS Final Rule are referred to herein collectively as the "OTS Revisions".

The Proposed Rule would have: Required the submission of a full appraisal report, including a complete and detailed description of the elements that make up an appraisal report, justification for the methodology employed and sufficient support for the conclusions reached therein; required a depositor vote on all mutual-to-stock conversions of State Savings Banks and prohibited management's use of previously executed (or "running") proxies to satisfy depositor voting requirements; for one year following the date of the conversion, among other things, required that any management recognition plans (MRPs) or stock option plans be implemented only after shareholder approval is received, required that stock options (if any) be granted at no lower than the market price at which the stock is trading at the time of grant and prohibited MRPs funded by conversion proceeds; required that the record date for determining depositors eligible to receive rights to participate in the subscription offering of the conversion stock not be less than one year prior to the date of adoption of the plan of conversions by the converting bank's board of trustees; required that the subscription offering provide a preference to eligible depositors and others in the bank's "local community" (as defined in the proposed rule) or within 100 miles of the bank's home office or branch(es); required that employee stock ownership plans (ESOPs) not have a priority over subscription rights of "eligible depositors" (as defined in the proposed rule); required the submission of a business plan, including, among other things, a detailed discussion of how management intends to deploy the capital raised through the sale of stock in the conversion; prohibited stock repurchases within one year following the conversion.

2. The Proposed Policy Statement and Interim Final Rule

The FDIC had taken other regulatory actions in this area prior to the issuance of the Proposed Rule. Because of concerns about prior and potential abuses in the conversion process, in February 1994, the FDIC issued a proposed policy statement on the conversions of State Savings Banks from mutual to stock ownership (Proposed Policy Statement). 59 FR 4712 (Feb. 1, 1994). The general purpose of the Proposed Policy Statement was to solicit public comment on the issues involved in mutual-to-stock conversions and whether and how the FDIC should regulate this activity.

Subsequent to the issuance of the Proposed Policy Statement the Board of Directors of the FDIC (Board) determined that, during the pendency of the Proposed Policy Statement, it was necessary for the FDIC to review applications filed by State Savings Banks with their respective state banking regulator and any other applicable state and federal banking and/or securities regulators to determine whether the proposed conversions contain any safety and soundness issues and/or issues of insider abuse that reflect negatively on the integrity and competence of the management of the converting institution. The Board's concerns had been caused by several mutual-to-stock conversions of State Savings Banks that gave rise to questions related to management abuse and excessive enrichment of insiders, fairness to depositors and general safety and soundness concerns. Those conversions had been the subject of Congressional hearings and numerous news articles and reports. The FDIC also had received direct complaints from depositors of State Savings Banks about unfair treatment and insider abuse in mutual-to-stock conversions.

Thus, on February 15, 1994, the FDIC issued an interim final rule adding a new section to Part 303 of the FDIC's regulations prohibiting State Savings Banks from converting to stock form without complying with the requirements of the interim rule (Interim Rule). 59 FR 7194. The Interim Rule, which remains in effect until the effective date of the final rule, requires State Savings Banks that propose to convert to stock ownership to file with the FDIC a notice of intent to convert to stock form consisting of a description of the proposed conversion accompanied by a copy of all documents and application materials filed with the applicable state and federal regulators. Pursuant to the Interim Rule, the FDIC currently reviews all conversion materials regarding State Savings Banks with a special interest in: the use of the proceeds from the sale of stock, as prescribed in the business plan; the adequacy of the disclosure materials; the participation of depositors in approving the transaction; the form of the proxy statement required for the vote of the depositors/members on the conversion; any increased compensation and other remuneration (including stock grants, stock option rights and other similar benefits) to be obtained by officers and trustees of the bank in connection with the conversion; the adequacy and independence of the appraisal of the value of the mutual savings bank for purposes of determining the price of the shares of stock to be sold; the process by which the bank's trustees approved the appraisal, the pricing of the stock and the compensation arrangements for insiders; the nature and apportionment of stock subscription rights; and the extent of any existing and planned contributions to or investments in the community.

3. The Notice and Request for Comments

On the same date as the FDIC issued the Proposed Rule it also issued a notice and request for comments (Notice) on the possible need for fundamental changes to the mutual-to-stock conversion process. 59 FR 30357 (June 13, 1994). The comment period on the Notice ended on August 12, 1994. The Notice indicated that—despite recently initiated remedial actions taken, or proposed to be taken, by the FDIC, the OTS, or state bank supervisory agencies—in the view of some, the current design of the mutual-to-stock conversion process encouraged management abuses and windfalls, flawed and sometimes disingenuous appraisal methodology, and under-deployment of capital. The general purpose of the Notice was to elicit an open and free discussion on a range of issues involving mutual-to-stock conversions.

In particular, the Notice included a suggestion to provide "rightholders" of converting mutual institutions with certain stock subscription rights (or "value") which would only be provided after a legitimate decision to convert had been made by the trustees or directors of a converting institution. The Notice acknowledged that such a proposed approach likely would require specific legislative authorization from the Congress and the FDIC was thus assessing whether it would be in the public interest for it to pioneer such a proposed approach by recommending legislative action.

In an effort to obtain information about whether the public concurred in both the assessment of these fundamental problems and the

suggested solution, the Notice requested comments on 9 specific issues. In response to the Notice, over 1,000 comments were submitted by mutual institutions, financial industry groups, state banking or thrift supervisory agencies, municipalities, state legislators, members of Congress, industry attorneys and individuals. Commenters generally opposed the "creation" of the suggested "rightholders' " interests as a matter of public policy. It was also argued that mutuality would be threatened because depositors, armed with the prospect of new rights, would pressure and force management of a mutual to convert to stock form—a situation leading to the eventual extinction of "mutuality" for insured depository institutions. Several commenters also specifically noted that complex tax and accounting issues would be raised by the creation of such rights.

Only a relatively small percentage of the comments received, however, focused on the 9 specific issues targeted for comment, though an overwhelming majority of the comments remarked that recent regulatory initiatives taken by the FDIC, OTS, and state bank supervisory agencies were more than adequate to prospectively curb potential management abuses and windfalls and appraisal deficiencies.

The comments received by the FDIC on the Notice were helpful and informative. In all, the FDIC believes that the Notice was a useful means for the FDIC to obtain views from industry members and others on the issues surrounding mutual-to-stock conversions. The FDIC will continue to monitor the conversion process and will continue to be mindful of potential abuses; however, in light of comments received on the Notice, the Board has decided not to further pursue the suggestions in the Notice or any other avenues to address the issues discussed in the Notice. The Board believes that:

(1) Any fundamental re-design of the conversion process should involve the appropriate legislative bodies, Congress or State legislatures; and

(2) The industry and associated interests should offer their own solutions to any flaws in the current conversion process.

IV. Summary of Comments and Discussion of Issues

The FDIC requested public comment on each of the specific requirements in the Proposed Rule and on other issues individually identified in the Proposed Rule. In the Proposed Policy Statement and the Interim Rule the FDIC requested comment on more general issues, including: What abuses are prevalent in mutual-to-stock conversions and why the FDIC should take action against such abuses; whether federal oversight in conversions of State Savings Banks is necessary; whether the FDIC should issue a regulation closely following the OTS conversion regulations or the FDIC should take a less formal approach; whether the FDIC should seek Congressional action in this area; and the mechanics and substantive provisions of the Interim Rule.

The FDIC received 65 comments on the Proposed Rule: 29 from banks, savings banks, cooperative banks and savings associations; 11 from consultants, law firms and conversion agents; 9 from banking and thrift industry trade groups; 7 from state banking and thrift regulators; 6 from consumer groups and individuals; 2 from United States Senators; and 1 from a delegation of 10 United States Congressmen. In addition, the FDIC had received 85 written comments on the Proposed Policy Statement and Interim Final Rule: 60 from banks, savings banks, cooperative bank and saving associations; 7 from bank and thrift industry trade groups; 6 from state banking and thrift regulators; 5 from individuals; 5 from law firms; 1 from a bank holding company; and 1 from a regulatory "shadow" group.

The following is a combined summary of the comments received on the Proposed Rule, Interim Final Rule and Proposed Policy Statement [1] and a discussion of the related issues.

1. The FDIC's Oversight Role

In general, the comments acknowledged that there had been notable examples of insider abuse in mutual-to-stock conversions of State Savings Banks in the recent past and suggested how future potential abuses could be avoided. Many of those who commented recommended that the FDIC continue to play an oversight role in the mutual-to-stock conversions of State Savings Banks, noting that federal oversight will continue to safeguard the integrity of the process. One noted that "present abuses in several recent and proposed conversions have demonstrated the need for the FDIC to maintain oversight of the conversion process, to ensure that issues of both safety and soundness and of fiduciary care are identified and adequately addressed". A trade group commented that "with recent publicity over some apparent abuses in the [conversion] process and resulting Congressional concerns, * * * it is most appropriate and important for the FDIC to assert regulatory jurisdiction over conversions by state nonmember banks". One state regulator noted that the Interim Final Rule was an "excellent set of rules" with a "very conservative, realistic approach to a situation which could have gotten out of hand if left to go unchecked". One savings bank said simply that "past abuses [in mutual-to-stock conversions] support the need for FDIC oversight".

Several commenters suggested that the FDIC have oversight authority of State Savings Bank mutual-to-stock conversions, but with prescribed limitations. For example, a trade group noted that it "deplores instances in which it can be demonstrated that insiders involved in mutual-to-stock conversions received benefits so large that they bear no reasonable relationship to the institution's performance * * *. Unjustifiable windfall profits, depletion of capital without concern for safety and soundness and manipulation of the value of the institution to benefit limited interests are practices that deserve close scrutiny and action by the appropriate authorities * * *. In responding to these issues, the FDIC should act quickly and decisively in concert with the state authorities". The trade group further commented that the "cornerstone" for the FDIC's response to issues arising from the mutual-to-stock conversion issue is the state regulatory authorities. One state thrift regulator expressed support for FDIC oversight of conversions if such involvement assures "reasonableness and relative uniformity of benefits for both state- and OTS-regulated institutions * * * and allows state variation from OTS requirements if such variations benefit the institution and the depositors".

One mutual savings bank noted that the FDIC should focus on broad safety-and-soundness issues and that detailed regulations, like the OTS's, are not necessary. Another state mutual savings bank said that the FDIC should be involved in conversion oversight, but only in terms of setting minimum standards rather than superseding state regulation. Many savings banks in Massachusetts and a banking trade association in that state commented that the FDIC should issue conversion regulations similar to the OTS and Massachusetts mutual-to-stock conversion regulations, noting that the FDIC has broad statutory authority to regulate issues that affect safety and soundness. They commented that the FDIC's focus should be to eliminate

[1] This discussion does not include comments received on the Notice (and the theories discussed therein).

abuses in stock evaluation, depositor disclosures, depositors' ability to purchase stock at conversion and insider compensation programs. They also asserted that state statutory and regulatory conversion rules should not be superseded by federal law. Some who commented in this vein said that exemptions from FDIC regulation should be granted on a state-wide (not bank-by-bank) basis for conversions subject to regulation by states that have adequate conversion laws and rules. One mutual savings bank noted that promulgating federal laws or regulations "should not be allowed when it is determined that state requirements are generally consistent or more stringent than existing federal rules".

Some commenters contended that state regulation was sufficient in the area of mutual-to-stock conversions and that the requirements in the Interim Rule and Proposed Rule are not necessary. One mutual savings bank asserted that the "averments made by the FDIC in support of the Interim Rule that it is needed for safety and soundness reasons and to protect the interest of depositors are without merit and are being offered only to support continued federal intrusion into issues which are primarily the concern of state law and regulation." One state mutual savings bank stated that the "proposed policy statement is overkill" and that "state regulation can handle insider abuse issues." One state banking and thrift regulator asserted that state regulators are not to blame for insider abuses in conversions and that "states' rights should not be tramped on". The regulator suggested that a committee of state and federal regulators work together to address issues and concerns.

All those who commented on the issue expressed objection to Congressional legislation to address current issues in mutual-to-stock conversions. One mutual savings bank commented that "if the FDIC does not act, Congress will—in an uninformed manner". Another mutual savings bank noted that "regulation is far preferable than legislation". A national banking industry trade group noted that the "FDIC has full statutory authority in the conversion area to ensure the integrity of the conversion process and no new legislation is necessary to address these issues".

The Board has determined that each of the requirements in the final rule is necessary to satisfy specific FDIC concerns about safety and soundness, breaches of fiduciary duty and other violations of law in connection with mutual-to-stock conversions. At the same time, the FDIC believes that it is essential to consider the existence of state regulation and supervision in determining the proper role in the conversion process for the FDIC as the primary federal regulator of State Savings Banks. As discussed above, many of the comments that the FDIC received on the Proposed Policy Statement, the Interim Rule and the Proposed Rule expressed agreement with the FDIC's federal oversight role in mutual-to-stock conversions of State Savings Banks, but several also suggested the FDIC have a limited role in conversions of State Savings Banks and that deference be paid to states' rights on issues outside the FDIC's areas of concern.

With the issuance of the final rule, the Board is attempting to strike the proper balance in this regard. In particular, the final rule includes a provision stating that, in the event that a State Savings Bank proposing to convert determines that compliance with any provision of the final rule would be inconsistent or in conflict with applicable state law, the bank may file with the FDIC a written request for waiver of compliance with the provision. The request must demonstrate that the requested waiver would not be detrimental to the safety and soundness of the bank, entail a breach of fiduciary duty by the bank's management, or otherwise be detrimental or inequitable to the bank, its depositors, any other insured depository institution(s), the federal deposit insurance funds or the public interest. In this connection, the Board does not believe that state-wide exemptions from the requirements of the final rule are appropriate or practical. Establishing exemption criteria and applying those criteria equitably and consistently would prove very difficult, if not unrealistic. The Board prefers the case-by-case approach contained in the final rule.

The OTS's concerns about avoiding insider abuses in mutual-to-stock conversions of federal and state savings associations are the same as the FDIC's concerns about insider abuses in conversions of State Savings Banks. Thus, as noted above, to the extent necessary and appropriate, the FDIC's final rule and the OTS Revisions include most of the same requirements.

As indicated in the Proposed Rule, many of the requirements of the final rule are prompted by the Board's concerns about bank management's proper exercise of its fiduciary duties. As discussed in the preambles to the Interim Rule and the Proposed Rule, the duties and obligations of directors/trustees and officers of mutual savings banks are identical to the responsibilities the FDIC has historically enunciated and enforced concerning directors and officers of commercial banks.[2] The two principal duties of care and loyalty that directors and officers of commercial banks must exercise on behalf of the institution and its constituencies (*i.e.*, depositors, creditors and shareholders) also apply to directors/trustees of mutual savings banks. Both duties have long antecedents in the common law of corporations and financial institutions.[3]

Directors/trustees (as well as officers) of mutual savings institutions are held to the same standard of care and loyalty as directors and officers of stock banks. Thus, the directors/trustees and officers of mutual State Savings Banks must fulfill their duty of loyalty to the institution by administering its affairs with the utmost candor, personal honesty and integrity. They are prohibited from advancing their own personal or business interests or those of others at the expense of the bank. This general fiduciary duty has been frequently interpreted to include an element of fairness and good faith which, in the context of mutual-to-stock conversions, affords protection to the various stakeholders (particularly depositors) of mutual savings banks.

The FDIC, through the final rule, also requires the directors/trustees and officers of mutual savings banks to adhere to the same standards of loyalty and care that are required of directors and officers of stock institutions in order to prevent insider abuse.

As indicated throughout, the requirements in the final rule are rooted in concerns about safety and soundness, breaches of fiduciary duty and/or other violations of law.

2. Appraisals

The Proposed Rule included a requirement that State Savings Banks intending to convert to stock ownership submit to the FDIC, along with the other required materials, a full appraisal report on the value of the converting bank and the pricing of the conversion stock. As discussed in the Proposed Rule, many states require that a converting mutual savings bank sell its capital stock at a total price equal to its estimated *pro forma* market value, based on an independent valuation. Despite this requirement, many converted

[2] *See e.g., Statement Concerning the Responsibilities of Bank Directors and Officers* (FDIC Legal Division, December 3, 1992); *Pocket Guide for Directors* (FDIC 1988).

[3] *Greenfield Savings Bank v. Abercrombie*, 211 Mass. 252, 97 N.E. 897, 39 L.R.A.n.s. 173 (1912) provides a detailed discussion of liability of trustees of a savings bank.

institutions have exhibited significant increases in the immediate post-conversion trading market price for the stock.

As explained in detail in the Proposed Rule, the FDIC is concerned that the history of increases in market prices resulted from appraisal reports (submitted in connection with these conversions) that significantly undervalued the stock—the effect of which has several ramifications. If an appraisal is too low and the shares of stock are underpriced, the institution receives less of an increase in capital than it should from the sale of conversion stock and the deposit insurance fund is provided with less of a capital cushion than would have resulted if the stock sales price was based on a proper and adequate appraisal. Also, an underpriced appraisal enriches the insiders who purchase or are granted a significant interest in the converting institution by enticing them to undertake a conversion (in order to acquire shares below their fair value) that may not be in the best interest of the institution. Sophisticated investors also are able to benefit, undeservedly, from the sale of underpriced conversion stock.

As also noted in the Proposed Rule, appraisers historically have set the *pro forma* market value of the converting institution at a significant discount to a defined peer group. This gives rise to problems involving selection of an inappropriate peer-group, inconsistencies between the assumptions in the appraisal report and the business plan and unfounded justification for substantial new-issue discounts in stock offerings that have been well oversubscribed.

For these reasons, the FDIC proposed requiring that a full appraisal be provided to the FDIC in a proposed mutual-to-stock conversion of a State Savings Bank, and that the appraisal report be prepared by an independent appraiser and include a complete and detailed description of the elements that make up the report, justification for the methodology employed and sufficient support for the conclusions reached therein.

The FDIC received several comments on the proposed appraisal requirements. Most who commented on this issue favored the required submission of a full appraisal report. Some expressed concern, however, that an over-emphasis on immediate post-conversion share price increases might force appraisers to overvalue the stock of converting institutions, resulting in a detriment to the institution and its stockholders. They also suggested that there must be some expectation of an early increase in stock price to entice investors to purchase stock of a converting mutual. A few of those commenting said the FDIC should publish the standards it will use in judging appraisals. One suggested that the OTS and the FDIC should issue joint appraisal standards.

A state savings association noted that one of the basic problems with conversions is the appraisal of the institution. It stated that "the FDIC needs to be satisfied that the various states are as well equipped [as the OTS staff] to perform a definitive analysis of the appraisals as well as know with certainty that the appraiser is qualified to assess a financial institution's value". The commenter also noted that fairness and moderation are the keys to governing stock conversions.

Based on the comments received and the FDIC's view that the proper valuation of a converting mutual savings bank is a crucial factor in assuring an equitable mutual-to-stock conversion, the Board has decided to adopt the appraisal requirements in the Proposed Rule. Thus, the FDIC will continue to review appraisal reports to ensure that converting institutions are properly valued and will continue to object to proposed conversions supported by unacceptable appraisal reports. In reviewing appraisal reports, the FDIC also will continue to consider the appraisal standards and guidelines, if any, of the applicable state and/or the appraisal guidelines issued by the OTS. The FDIC believes that it is unnecessary to develop and implement a separate set of appraisal guidelines inasmuch as the various state and the OTS guidelines are sufficient to provide the depository institutions' and the appraisal industry with parameters necessary to prepare and furnish an acceptable appraisal report. In addition, the FDIC is aware of the Uniform Standards of Professional Appraisal Practice (USPAP), especially Standards 9 and 10 which relate to business appraisals. The Business Valuation Committee of the American Society of Appraisers commented that the USPAP standards are an appropriate frame of reference for mutual-to-stock-conversion appraisals especially when such transactions directly impact safety and soundness or involve issues of fundamental fairness to depositors and other stakeholders in insured institutions. Adherence to those standards is expected in the appraisal process.

One specific issue that the FDIC received comments on is whether the appraiser employed to value a State Savings Bank also should be permitted to serve as underwriter or selling agent in the bank's mutual-to-stock conversion. The main concern is the possibility of a conflict of interest if the appraiser, or its affiliate, also is involved in the sale of conversion stock. In reviewing the comments the Board has determined that the appraisal process and the independence of the appraiser should not be tainted by an actual or even an appearance of a conflict of interest. Thus, under its appraisal review the FDIC will object to appraisals prepared by an appraiser, or its affiliate, who also will serve as an underwriter or selling agent in the same mutual-to-stock conversion. The FDIC will not raise this objection, however, where procedures have been implemented and representations are made to ensure that an appraisal subsidiary is truly separate from the selling agent subsidiary and the selling agent does not make recommendations on, or in any other way have an impact upon, the appraisal.

3. Voting Requirement/Prohibition Against Running Proxies

The Proposed Rule included a requirement that depositors and other stakeholders of a State Savings Bank vote in favor of a mutual-to-stock conversion in order for the FDIC not to object to the proposed conversion. It also proposed a prohibition on the use of running proxies in mutual-to-stock conversions of State Savings banks.

As discussed in detail in the Proposed Rule, the Board believes that, in order for a board of directors or trustees of a mutual savings bank to properly exercise its fiduciary responsibilities to the bank and its depositors, the board should obtain a vote of depositors in favor of the proposed conversion before the proposed conversion is completed. Most states, but not all, require a depositor vote for mutual-to-stock conversions. The OTS also requires both federal and state savings associations to obtain a majority vote of association members as one of the pre-conditions to converting. Some states, however, require only that the board of directors or trustees (or similar group) approve the plan of conversion and do not require a vote of members.

As also discussed in the Proposed Rule, in the same vein, the Board also believes that a proxy specifically designed for the proposed conversion should be used to obtain a depositor vote on the conversion. In some states the management of converting banks and savings associations, subject to certain conditions, may use so-called "running proxies" (proxies obtained when a depositor opened his or her

account with the institution) to vote in favor of the proposed conversion. The former OTS mutual-to-stock conversion regulations also permitted the use of running proxies, under certain circumstances. Running proxies are prohibited by the OTS Revisions.

The FDIC received numerous comments on these related issues. Several of the comments voiced opposition to "voting rights" for depositors in states that do not provide such rights. One state bank asserted that "voting rights should be left to state law. To impose some sort of depositor approval requirement in a state that does not have depositor voting could lead to expanded ownership claims by depositors that could operate to the detriment of mutuals". One state regulator asserted that "any FDIC requirement of a depositor vote in a mutual-to-stock conversion * * * [would be] wholly unsupported by any expressly preemptive federal statute". Many banks in Massachusetts commented that any depositor voting right requirements imposed by the FDIC would put undue pressure on mutuals in that state to convert to stock ownership.

An individual noted that general proxies should be prohibited and that all conversions should be subject to a special proxy, or proxies should be entirely eliminated in favor of a majority-rules scheme. Others commented that the proposed voting requirement and prohibition against running proxies would increase the cost of mutual-to-stock conversions.

In response to these comments, the Board continues to believe that it is necessary and appropriate for the FDIC to require a depositor vote on proposed conversions. Such a requirement will not necessarily contradict state laws (that do not require a depositor vote), but will supplement the state law by requiring the member vote. The FDIC's concern is with the board of directors'/trustees' proper exercise of its fiduciary duties of loyalty and care to the bank and its depositors. The Board believes that the proper exercise of such duties requires that depositors, as stakeholders of the bank, have the opportunity to approve or disapprove the proposed conversion. This requirement is, in part, rooted in the concern that bank insiders often benefit personally from bank conversions. This almost inherent conflict of interest (between self interest and the interests of the bank) may be mitigated by the existence of a depositor vote on the proposed conversion. The Board also believes that any additional expense caused by the voting requirement and prohibition against running proxies is outweighed by the need to ensure the proper participation of depositors and other stakeholders in the proposed conversion. The final rule, therefore, adopts the requirement in the Proposed Rule for a depositor vote in favor of the proposed conversion of a State Savings Bank to stock form.

The Board notes, however, that under the final rule the Board may grant exceptions, for good cause shown, from the requirements of the final rule. In response to comments on this issue, on a case-by-case basis the Board will consider waiving the depositor voting requirement if it is demonstrated, to the Board's satisfaction, that the alternative voting mechanism established under the applicable state law satisfies the concerns expressed above about the need for a vote on the conversion by parties that are not insiders and do not have a potential conflict of interest in reviewing the proposed conversion.

The Board also continues to believe that, given the material change in structure represented by the bank's conversion to stock form, it is imperative that any vote on the proposed conversion be made on the basis of full and current information on the proposed transaction. For that reason, the final rule prohibits the use of running proxies in such transactions. This is in keeping with the FDIC's interest in assuring full disclosure of all information on the proposed conversion in order to assure that approval of the proposed conversion is fully informed. Thus, the final rule adopts the prohibition in the Proposed Rule on the use of running proxies in the mutual-to-stock conversion process.

4. Restrictions on Management Stock Benefit and MRPs

The Proposed Rule included certain restrictions on insider benefits in mutual-to-stock conversions of State Savings Banks. In particular, no converted savings bank would be permitted, for one year from the date of the conversion, to implement a stock option plan or management or employee stock benefit plan, other than a tax-qualified employee stock ownership plan, unless: Each of the plans is fully disclosed in the proxy solicitation and conversion stock offering materials; all such plans are approved by a majority of the bank's stockholders, or in the case of a recently formed holding company, its stockholders, prior to implementation and no sooner than the first annual meeting following the conversion; in the case of a savings bank subsidiary of a mutual holding company, all such plans are approved by a majority of stockholders other than its parent mutual holding company prior to implementation and no sooner than the first annual meeting following the stock issuance; for stock option plans, stock options are granted at no lower than the market price at which the stock is trading at the time of grant; and for management or employee stock benefit plans, no conversion stock is used to fund the plans.

These proposed restrictions were prompted by the FDIC's concerns about abuses in many past mutual-to-stock conversions. As indicated in the Proposed Rule, based on a review of numerous proposed conversions, the Board believes that some bank insiders may sacrifice the interests of their institutions and depositors in order to acquire significant amounts of conversion stock and other benefits more advantageously than depositors. Also, in some instances, the issuance of conversion stock to an MRP decreases the opportunity for depositors to obtain conversion stock. Moreover, the issuance of stock options at the conversion price, rather than at the aftermarket trading price, which in many cases has been substantially higher than the conversion price, creates the impression that insider enrichment may be the main reason for the conversion.

These factors can reflect negatively on management's fulfillment of its fiduciary obligations. In fact, it may be an inherent conflict of interest for management to decide to convert the bank to stock form when, as part of the proposed conversion, management will reap significant benefits. Independent business judgment is essential to the proper carrying out of a manager's obligations. This judgment may be severely clouded when MRPs are provided as part of the conversion transaction.

The FDIC received many comments on the issue of management benefits in conversions and on the proposed FDIC restrictions. Several of them stated that insiders should share in the benefits of conversions because the insiders managed the institution in a safe-and-sound manner. One state thrift regulator (and other commenters) suggested that MRPs be based on the size of the institution and not on "straight across-the-board percentages". One national industry trade group noted that "avoiding the use of across-the-board percentages for MRPs and tailoring their availability more to the size of the institution and their specific business plan objectives and needs would be a reasonable approach". One mutual savings bank noted that MRPs, stock option plans and employee stock

ownership plans "all encourage more stock ownership and cement an identity among outside shareholders and those who run and work for the company". It also noted that OTS rules are workable in this regard and should be adopted by the FDIC. Another savings association commented that conversions should not be permitted where there is excessive compensation for insiders, but "without benefits to insiders there will be no conversions".

An individual commented that the FDIC should not regulate director remuneration in conversions of healthy mutuals because those conversions do not place the insurance fund at risk and shareholders' votes are dispositive under the "corporate waste" doctrine. A law firm, commenting on behalf of a state thrift industry trade group, also noted that compensation benefits are not a safety-and-soundness concern if the institution meets the applicable capital requirements. In addition, it stated that a "uniformity of benefits between state- and OTS-regulated conversions" is necessary to assure the end of "regulatory arbitrage". A state regulator (and several other commenters) suggested that the FDIC and OTS publish joint MRP guidelines permitting or prohibiting MRPs, along with specific rules therefore. It noted that "proper resolution of the MRP issue will have a substantial impact on fairness to depositors in conversions". One savings bank commented that "when an institution contemplates going public for the right reasons (expansion, market share, competitive advantage) the benefits should go to those willing to risk their careers (board and management team) or their capital (shareholders) not to the faceless non-entity group known as the existing depositors". A consumer group stated that the FDIC should impose specific limits on MRPs and stock options.

Upon consideration of the comments, the Board has decided to include in the final rule the requirements in the Proposed Rule on insider benefits. The Board does not disagree that management of converting institutions should receive reasonable benefit from the conversion because such insiders are responsible for the bank's success and will undertake additional and perhaps more difficult challenges upon the bank's conversion to stock form. While the Board believes that management and directors/trustees would have increased responsibilities as a public company, the Board believes that, in most cases, market-based management compensation should be determined by the stockholders after the conversion is completed. Such a determination is required by the final rule.

As noted above, the Proposed Rule would have required that all MRPs be approved by a majority of the bank's stockholders, or in the case of a recently formed holding company, its stockholders, prior to implementation and no sooner than the first annual meeting following the conversion. The FDIC received several comments questioning whether stockholder approval could be obtained at a special meeting, instead of an annual meeting.

They noted that, with the existence of securities and corporate law requirements, there is no need for the FDIC to regulate either the timing or type of the shareholder meeting at which shareholders vote on proposed insider benefits. In response to these comments, the Board has determined that such approval may be obtained at any duly called meeting of shareholders, either annual or special, to be held no sooner than six months after the completion of the conversion. The FDIC believes that the six-month period will give the marketplace sufficient time to obtain and consider the financial data and the shareholders sufficient time to become familiar with the finances and operations of the converted bank in order to make an informed decision in voting to adopt such plans.

The restrictions in the final rule on MRPs do not include specific percentage limitations. The FDIC believes that the restrictions in the final rule will help safeguard against potential management self-interest in mutual-to-stock conversions. The FDIC also will continue to look to MRP percentage limitations in the OTS regulations, as well as in the applicable state law and regulations, as a frame of reference for reviewing proposed conversions of State Savings Banks. The FDIC will presume that MRPs that do not conform with the applicable OTS MRP limitations constitute excessive insider benefits and thereby evidence a breach of the board of directors' or trustees' fiduciary responsibility. Bank management would have the burden of convincing the FDIC otherwise.

5. Eligibility Record Date, Priority to Depositors Residing in the Bank's Local Community (Local Depositor Preference), Priority of ESOPs

A. Eligibility Record Date

The Proposed Rule included a requirement that the eligibility record date for determining the stock subscription purchase priority for depositors of a State Savings Bank be set at no less than one year prior to the date of the board of directors'/trustees' adoption of the plan of conversion (from mutual to stock form). As indicated in the Proposed Rule, the Board believes that, in order for a board of directors/trustees of a State Savings Bank to carry out its fiduciary responsibilities to the bank and its depositors, the board must assure an equitable and lawful conversion process. From the numerous comments received and from a review of proposed and completed conversions, it is apparent that so-called "professional depositors", who place funds in mutual banks and savings associations in order to gain a purchase priority if the institution converts to stock form, have reaped substantial profits on conversions of mutual institutions. A proper exercise of fiduciary responsibilities toward the bank and its longer-term depositors dictates that "professional depositors" not be allowed to experience windfall gains in conversions. Requiring that the eligibility record date be no less than one year prior to the board's adoption of the plan of conversion will help assure that longer-term depositors are more likely than professional depositors to benefit from the stock purchase priority

Many of those who commented on this issue expressed support for it. A state banking commissioner and a consumer group each commented that a one-year eligibility record date would help curb insider abuses. One person said the FDIC should not set an eligibility record date. Another person expressed support for the one-year eligibility requirement but suggested that it might not weed out professional depositors because many of them have deposits with savings banks for over a year. Another state regulator said a 90-day eligibility requirement might be sufficient. One bank said 180 days might be sufficient.

The Proposed Rule requested specific comment on whether the one-year period would be sufficient and on whether the date chosen should be based on the board of directors'/trustees' first consideration of whether the bank should be converted to the stock form of ownership. In general, those who commented on these issues were against extending the record date beyond one year and relating it to a board of directors'/trustees' first consideration of whether the bank should convert to stock form.

Based on the comments received on this issue, the Board has determined that the one-year period is sufficient and that, given the factual nature of the requirement, attempting to establish a starting period based on when a bank's board of directors/trustees first

considered whether to convert to stock ownership would be very difficult to implement and regulate. Thus, the Board has decided to adopt the eligibility record date requirement of the Proposed Rule because, as stated in the comments, it properly protects the legitimate interests of core depositors and provides sufficient assurance that long-term supporters of an institution are given priority. Also, as stated in the Proposed Rule, the one-year period is a minimum time period. Converting State Savings Banks are encouraged to designate longer time periods if appropriate to encompass longer-term depositors in the local communities served by the bank.

B. Local Depositor Preference

The Proposed Rule also included a required stock purchase preference for eligible depositors in the bank's "local community" or within 100 miles of a home or branch office of the converting bank. The FDIC proposed the Local Depositor Preference requirement to promote local community participation by long-term depositors in the conversion process and to ensure that the opportunity for local depositors to fully participate in the subscription offering in a mutual-to-stock conversion is not diminished by large purchases made by "professional depositors".

The FDIC received numerous comments on this proposed requirement. Thirteen expressed support for the rule, contending that the preference would rightfully promote local control of the bank and limit the participation of "professional depositors" in conversions. They also noted that the Local Depositor Preference would give depositors in the local community a more meaningful opportunity to participate in the conversion and reduce the problem of outside investors tending to put undue pressure on management to achieve a higher stock value more rapidly than may be feasible through safe and sound operations.

Eight of those who commented on the proposed requirement opposed it, asserting that the rule constituted an unlawful geographic discrimination. They contended that all depositors have ownership, voting and liquidation rights and, thus, a subscription purchase priority should not be related to where a depositor lives. Several of those who commented said that the rule should at least be modified to provide for long-term depositors who moved away from the bank; they and others criticized the 100-mile rule as unworkable.

After a review of the comments and an internal review of the issue, the Board has decided to defer to the judgment of the converting bank's board or directors or trustees and the applicable state law on whether a stock purchase priority is provided to local depositors. The FDIC continues to believe, generally, that local depositors, collectively, should be granted a preference because they typically have made significant long-term contributions to the financial success of the converting State Savings Bank, in contrast to certain non-local depositors who have made deposits solely in anticipation of a conversion. The FDIC also believes, however, any potential abuse by professional depositors can and should be handled on a case-by-case basis by the converting bank's management, under the applicable state law. Thus, the final rule does not require the local depositor preference contained in the Proposed Rule. The FDIC will consider, on a case-by-case basis, the reasonableness of any local depositor preference included in a proposed conversion. In that connection, the Board notes that it will not object to a local depositor preference based on the definition of "local community" contained in the OTS Revisions.

C. Priority for ESOPs

The proposed rule included a provision requiring that ESOPs not be accorded a higher subscription right priority than "eligible depositors". As noted above, the term "eligible depositors" was defined as depositors holding qualifying deposits at the bank as of a date designated in the bank's plan of conversion that is not less than one year prior to the date of adoption of the plan of conversion by the converting bank's board of directors/trustees. This proposed requirement was prompted by the Board's belief that ESOPs (tax-qualified or otherwise) should not be accorded higher purchase priority rights than long-term depositors. This is in keeping with the principle of fiduciary duty requiring that the board of directors/trustees of a State Savings Bank put the interest of long-term depositors ahead of the interests of management and employees.

The FDIC received several comments on this proposed requirement. In essence, they were evenly divided between those for and against the proposal. Those in favor of the requirement argued that eligible depositors of a converting State Savings Bank should be accorded the first priority in purchasing stock in the conversion. Those opposed asserted that the employees make the bank successful and, thus, should be accorded the first subscription priority. One group commented that ESOP participants and eligible depositors should share priority on a *pro rata* basis.

The Board does not disagree that ESOPs promote greater employee productivity and motivation and that the employees of a State Savings Bank should be permitted to benefit, through the purchase of subscription stock by an ESOP, in the bank's mutual-to-stock conversion. The Board continues to believe, however, that, under general principles of fiduciary duty, ESOPs should not be accorded higher purchase priority rights than long-term depositors. Thus, the Board has decided to include in the final rule the requirement that "eligible depositors" be accorded a higher subscription priority than ESOPs.

6. Business Plans

The Proposed Rule included a requirement that State Savings Banks that propose to undergo a mutual-to-stock conversion submit a business plan including, among other things, a detailed discussion of how management intends to deploy the capital raised through the sale of stock in the conversion, expected earnings resulting from the plan, and the justification for any intended stock repurchases. The FDIC received five comments on this proposed requirement. All agreed that a business plan should be required in connection with a proposed mutual-to-stock conversion of a State Savings Bank.

As indicated in the Proposed Rule, for safety and soundness purposes the FDIC must know the institution's business plan for post-conversion operation, growth and investment of any newly injected capital. The reason is that institutions converting from mutual form undertake a major restructuring that possibly could lead to significant changes in the nature or volume of business conducted. Converted institutions become answerable to shareholders for the first time, and the shareholders are concerned with obtaining reasonable earnings on their investment.

For these reasons and upon consideration of the comments, the Board has adopted in the final rule the business plan requirements of the Proposed Rule.

7. Stock Repurchases

The Proposed Rule included a provision to prohibit State Savings Banks from repurchasing stock for one year following the bank's conversion to stock form. After that period the FDIC would consider such proposed

repurchases on a case-by-case basis under section 18(i)(1) of the FDI Act (12 U.S.C. 1828(i)(1)) (Section 18(i)). Section 18(i) prohibits state nonmember banks from reducing or retiring capital without the prior consent of the FDIC.

The FDIC received several comments on this issue, the majority of which opposed stock repurchase restrictions. Those against it asserted that the inability to repurchase stock for one year would constitute an unnecessary and inappropriate restriction on the ability of officers and trustees to carry out their duty to maximize the value of the shares of the bank. Those for the restriction stated that it would help prevent insider abuse. One state regulator said any such restriction should be determined by the bank's primary regulator.

As indicated in the Proposed Rule, the Board is concerned that a substantial stock buyback program begun immediately after the bank's conversion to stock form may not have a legitimate business purpose and would raise issues about whether the conversion stock was appropriately valued. The Board is also concerned that a recently converted institution have a capital base adequate to safeguard against possible unexpected losses that may occur under the new organizational structure. Thus, upon consideration of the comments, the Board has decided to implement the one-year restriction. To allow for some flexibility in this respect, however, the final rule modifies the restriction to allow limited stock repurchases up to 5 percent during the first year where compelling and valid business reasons are established. This would give the FDIC the explicit ability to permit repurchases during the first year after the conversion where it is in the best interests of the bank and its shareholders. All proposed stock repurchases by State Savings Banks are considered by the FDIC on a case-by-case basis under section 18(i).

8. Merger/Conversions

In some cases mutual institutions convert to stock ownership simultaneously with a merger or acquisition transaction with another depository institution or holding company. This is generally known as a merger/conversion. In merger/conversions depositors of the converting institutions obtain the right to purchase stock in the acquiring institution and not the converting savings bank. In exercising its fiduciary responsibilities the board of directors/trustees of a mutual State Savings Bank must assure that:

(1) The value of the converting institution is fairly determined; and

(2) That value is distributed to the proper constituents of the bank.

As indicated in the Proposed Rule, based on the proposed conversions the FDIC has reviewed in the recent past and other merger conversions it has studied, the Board has observed that, in virtually every merger conversion, the acquiring institution has captured a large portion of the value of the converting institution. It has not been uncommon in merger/conversions for the management of the converting mutual institution to receive extremely generous compensation and benefit packages. Thus, an apparent conflict of interest exists: whether the management of a mutual institution is opting for a merger/conversion, instead of a standard conversion or no conversion at all, based on the best interests of the institution and its depositors or in response to the level of benefits offered to management by the acquiring entity. As noted in the preamble to the Interim Rule and in the Proposed Rule, there have been numerous complaints by depositors and others that permitting healthy mutual savings banks to be acquired by means of a merger/conversion has resulted in some savings bank insiders putting their interests ahead of the interests of the converting bank and its constituents.

In the Proposed Rule, the FDIC requested specific comment on this topic and specifically whether a moratorium should be placed on merger/conversions involving sufficiently capitalized State Savings Banks. Most of those who commented on the issue said the FDIC should not prohibit merger/conversions and that the FDIC should review such proposed transactions on a case-by-case basis. A bank holding company commented that merger/conversions are desirable because they increase competition in the industry and support safety and soundness. It noted that state law is the "proper authority" to regulate management compensation issues in merger/conversions. A state banking and thrift regulator suggested that the FDIC and OTS collaborate in a joint determination on whether merger/conversions will be approved in the future and, if so, adopt specific requirements to provide parity among savings associations and savings banks. A state banking and thrift industry trade group recommended that merger/conversions be permitted only in the case of undercapitalized institutions or at the discretion of the regulators on a case-by-case basis. A law firm commented that the FDIC should publish the criteria that it intends to use in evaluating proposals. Another suggested that the OTS and the FDIC take the same approach to merger/conversions.

Others expressed general opposition to merger/conversions. A national consumer group said merger/conversions should be prohibited. An individual commented that merger/conversions should not be allowed because they "only serve management's interests and not the depositors". He suggested that any merger take place only after an initial "free-standing" standard conversion. A national banking and thrift industry trade group said it would not oppose a "regulatory pause by the FDIC to evaluate its rules governing merger/conversions".

Upon consideration of the comments and based on the factors discussed above, the Board continues to believe that merger/conversions should, in most cases, be permitted only in situations where a State Savings Bank is "undercapitalized" "significantly undercapitalized" or "critically undercapitalized", as defined in the FDIC's capital maintenance regulations. The Board still believes, however, that it is unnecessary at this time to impose a blanket prohibition on non-supervisory merger/conversions. Such merger/conversions may be considered in situations where the value of a State Savings Bank is determined in a fair manner and that value is delivered to the rightful recipients, as determined by the directors/trustees of the bank in the proper exercise of their fiduciary responsibilities under the applicable state law. In no instance will an acquiring institution be considered a rightful recipient.

In response to comments requesting that the FDIC specify, in its mutual-to-stock conversion regulations, the terms and conditions of a merger/conversion that would be acceptable to the FDIC, the FDIC notes only the general criteria that: (1) The value of the converting institution be fairly determined, and (2) the value be proposed to be distributed to the proper constituents of the bank. Industry innovation is encouraged in this regard. State law factors also are an important consideration. As noted above, because historically merger/conversions have been a source of considerable insider abuse, the FDIC will continue to closely scrutinize such proposed transactions, particularly for potential breaches of fiduciary duty.

Owing to the same historical concerns in this area, the OTS Revisions continue to prohibit non-supervisory merger/conversions. In response to the comment that the FDIC and the OTS

adopt similar regulations on merger/conversions, the FDIC notes that, in its conversion regulations, the OTS retains its general waiver authority to permit a merger/conversion under the appropriate circumstances. Thus, the OTS approach (that it would not prohibit a non-supervisory merger/conversion in certain circumstances) is consistent with the FDIC's approach of considering merger/conversions on a case-by-case basis.

9. Convenience and Needs

As specified in the Interim Final Rule, one of the factors the FDIC currently considers in reviewing proposed conversions of State Savings Banks is "the extent of any existing and planned contributions to or investments in the community". In the Proposed Rule, the Board requested specific comment on whether the FDIC could and should consider imposing a convenience-and-needs requirement in connection with the mutual-to-stock conversions of State Savings Banks.

The FDIC received eight comments on this issue. Generally, they were evenly divided. Some argued that a convenience-and-needs requirement should not be imposed because a conversion involves only a financial recapitalization and not a change in services. Others said they favored such a requirement. Two comments that opposed the proposal questioned the FDIC's legal authority to impose such a requirement. They also noted that the FDIC has ample opportunity to review a savings bank's CRA performance in the context of a post-conversion CRA evaluation. One commenter suggested that it was a legislative, not a regulatory, matter.

Based on the comments received and an internal review of this issue, the Board has decided to consider, as part of its review of proposed mutual-to-stock conversions of State Savings Banks, how the bank intends to serve, or continue to serve, the convenience and needs of its community. This provision adds a convenience-and-needs component to the factors the FDIC considers in reviewing proposed conversions of State Savings Banks, but does not impose a convenience-and-needs or CRA requirement upon banks proposing to convert. In that regard, the FDIC will review the bank's business plan to determine how the bank intends to serve, or continue to serve, the needs of its community. The final rule amends the applicable provision in the Interim Final Rule to state that the FDIC will "consider the bank's plans to fulfill its commitment to serving the convenience and needs of its community". To avoid confusion about whether a converting bank is required to use conversion proceeds for community purposes, the reference in the Interim Final Rule to "planned contributions or investments in the community" is deleted.

Also, as indicated in the Proposed Rule, the "convenience and needs of the community to be served" by the applicant is one of the statutory factors required to be considered by the Board in acting on applications for deposit insurance (12 U.S.C. 1816). Thus, in connection with the review of mutual holding company reorganizations of insured depository institutions—in which a deposit insurance application is required to be filed with the FDIC—the FDIC already does, and will continue to, apply a convenience-and-needs test.

10. Comparison With OTS Regulations

The requirements imposed by the final rule essentially parallel the OTS Revisions. As indicated in the Proposed Rule, there are numerous other provisions in the OTS' mutual-to-stock conversion regulations (12 CFR 563b) that are not included in either the FDIC Interim Rule or the Proposed Rule. Those OTS regulations include specific and detailed requirements on, among other things: Items to be included in the plan of conversion, stock purchase priorities, percentage limitations on stock purchases and MRPs, proxy solicitation and the form and content of proxy statements, the form and content of offering circulars, accounting rules, liquidation accounts, notices of filing, availability of conversion documents and pricing and sale of securities. In the Proposed Rule the FDIC requested specific comment on whether, in order to achieve greater uniformity with the OTS's conversion regulations, the FDIC's conversion regulations should be expanded to match the scope and depth of the OTS rules.

The FDIC received very few comments on this issue. One argued that, because conversions overall are a matter of state law, the FDIC should not issue detailed, OTS-type regulations. A national consumer group argued that the FDIC regulations should be as encompassing as the OTS'. A law firm commented that the FDIC regulations should include the anti-takeover provisions in the OTS rules.

The Board continues to believe that the requirements imposed by the final rule will enable the FDIC, in accordance with its governing statutes, to monitor the conversions of State Savings Banks for issues involving safety and soundness, fiduciary duty and violations of law. Under the final rule, the FDIC will continue to use the OTS regulations as a frame of reference in reviewing proposed mutual-to-stock conversions of State Savings Banks. The FDIC also will continue to look to the applicable state law and regulations in reviewing proposed conversions. The FDIC has a different statutory basis for exercising its authority in this area than does the OTS and has not identified a need to adopt a more comprehensive set of regulations addressing all aspects of the mutual-to-stock conversion process.

11. Mutual Holding Companies

The Proposed Rule provided that the FDIC's mutual-to-stock conversion regulations also would apply, to the extent appropriate, to reorganizations of State Savings Banks into the mutual holding company form of ownership. The FDIC received few comments on the applicability of the Proposed Rule to mutual holding company reorganizations and corresponding issuances of stock. One said that the final rule should either provide special rules for mutual holding companies or defer to state laws on such reorganizations/conversions. Another person noted that the Proposed Rule was unclear to what extent, if any, the FDIC would rely on OTS regulations regarding mutual holding company reorganizations. The FDIC also received three comments that mutual holding companies should not be prohibited from waiving rights to dividends paid by the subsidiary State Savings Bank.

The final rule retains the statement included in the Proposed Rule that the FDIC's mutual-to-stock conversion rules apply, where appropriate, to mutual holding company reorganizations of State Savings Banks. The Board continues to believe that the FDIC's rules on mutual-to-stock conversions of State Savings Banks should apply, where applicable, when a State Savings Bank reorganizes into the mutual holding company form of ownership. The valuation and insider benefits issues in mutual holding company reorganizations are essentially the same issues present in standard mutual-to-stock conversions. Thus, the FDIC has the same concerns about safety and soundness, breaches of fiduciary duty and other violations of law in the context of mutual holding company reorganizations as it does regarding traditional mutual-to-stock conversions. In this connection, the FDIC will use the applicable state law and the regulations issued by the OTS (12 CFR 575) as a frame of reference for reviewing proposed State Savings Bank mutual holding company reorganizations and (contemporaneous and post-reorganization) stock issuances.

The FDIC also is directly involved in the mutual holding company reorganizations of federal and state savings associations. That involvement entails FDIC action on the application for deposit insurance required to be filed with the FDIC in such transactions for the *de novo* stock depository institution organized to facilitate the reorganization. In acting on applications for deposit insurance the FDIC must consider the factors listed in section 6 of the Federal Deposit Insurance Act (12 U.S.C. 1816), one of which is the "general character and fitness of the management of the depository institution". In the course of that review the FDIC considers, among other things, the same issues of fiduciary duty that it considers in reviewing proposed mutual-to-stock conversions of State Savings Banks.

Because of the typical interrelationship between the management of a mutual holding company and its subsidiary bank, the FDIC will closely scrutinize for potential conflicts of interest mutual holding company reorganizations of State Savings Banks and stock issuances simultaneous with or subsequent to a mutual holding company reorganization.

In that connection, as noted above, the FDIC received 3 comments that a mutual holding company should not be prohibited from waiving rights to dividends paid by its subsidiary insured depository institution. Retaining at the insured institution level dividends that otherwise would go to the mutual holding company increases the ownership interests of the minority owners of the depository institution. Conversely, the owners of the mutual holding company lose an interest in dividends that otherwise would be paid to them. This raises a conflict-of-interest issue where the directors/trustees of the mutual holding company, who request the dividend waiver, also are the minority shareholders of the subsidiary depository institution inasmuch as they will personally benefit from the waiver.

The Board believes that an effective way to address this apparent conflict of interest is to condition the FDIC's decision not to object to a proposed mutual holding company reorganization (of a State Savings Bank) or deny a deposit insurance application (in proposed mutual holding company reorganizations of savings associations) on such waived dividends not being available for any distribution to minority shareholders. The FDIC intends to consider, on a case-by-case basis, imposing such a condition in all mutual holding company reorganizations of State Savings Banks, as well as in all deposit insurance applications filed in connection with mutual holding company reorganizations.

12. Securities Disclosure and Proxy Statement Issues

The FDIC received a few comments suggesting that the FDIC indicate the standards it uses in reviewing the securities disclosure documents and proxy materials involved in conversions of State Savings Banks. The Board believes that full and meaningful disclosure to all parties is a critical element underlying the fairness of a proposed conversion. Existing depositors and potential investors should be provided with readily understandable disclosures of material facts and information as a basis for reaching an informed decision to vote or participate in the conversion.

It is the responsibility of the State Savings Bank proposing to convert to stock form to prepare offering and proxy materials in accordance with acceptable disclosure standards for the industry. At a minimum, the notice of proposed conversion filed with the FDIC should include offering and proxy materials that disclose the facts and considerations sufficient to allow an interested recipient to make informed decisions on voting on the plan of conversion and/or purchasing stock in the conversion. The State Savings Bank may choose whether to provide to the FDIC the minimum disclosures in separate documents or in a "wrap around" form with the proxy statement attached.

The disclosure materials provided to the FDIC generally should consist of: (1) A proxy statement to solicit proxies for a depositors' or members' special meeting to vote on the plan of conversion, and (2) an offering circular to be used in a subscription and community offering of the newly created stock institution's common stock. In addition, the FDIC staff reviews financial disclosures to check conformance with generally accepted accounting principles.

Also, the FDIC reviews disclosure materials for several different types of mutual-to-stock conversions and mutual holding company reorganizations. These include:

(1) The formation of a new stock financial institution which is the successor to the mutual financial institution, and which conducts a subscription and community offering of its common stock;

(2) The formation of a stock holding company which is the owner of a newly created successor stock financial institution and which conducts a subscription and community offering of the holding company's common stock; and

(3) The formation of a mutual holding company which owns a majority interest in a newly created successor stock financial institution and which generally conducts a subscription and community offering of a minority interest in such subsidiary's common stock.

13. Other Comments

Two law firms suggested that the FDIC's review time on conversion notices be reduced from 60 days to 45 days because of the potential that financial information might become "stale" under rules issued by the Securities and Exchange Commission and the converting institution would have to go through the expense of producing updated financial statements.

Since the issuance of the Interim Final Rule in February 1994 the FDIC has considered numerous proposed conversions. Its experience to date indicates, generally, that the time periods of § 303.15 do not conflict with the conversion-review time periods of other applicable state and federal regulators. The FDIC will continue to process notices of proposed mutual-to-stock conversions as expeditiously as possible, but will retain the current 60-day time periods in § 303.15. As discussed below, the final rule also includes an alternative time limit of up to 20 days after the last applicable state or other federal regulator has acted on the proposed transaction.

V. Explanation of the Final Rule

1. Overview

The final rule adopts, with certain modifications, the provisions of the Interim Final Rule and the Proposed Rule. Thus, it imposes certain substantive and procedural requirements upon State Savings Banks that propose to undergo mutual-to-stock conversions. The Board has decided that it is necessary to issue the final rule to safeguard against potential safety-and-soundness problems, breaches of fiduciary duty and other violations of law in mutual-to-stock conversions of State Savings Banks. As part of the issuance of the final rule, the Board is withdrawing the Proposed Policy Statement. That issuance served as a vehicle for the FDIC to obtain public comment on issues involved in mutual-to-stock conversions and the appropriate role for the FDIC in the process.

The final rule will apply to all notices of proposed conversions (and mutual holding company reorganizations) filed with the FDIC on and after January 1, 1995. Until that time, the FDIC intends to continue to use the case-by-case methodology explained in the Interim Rule in reviewing notices of proposed conversions of State Savings Banks. Under the final rule the FDIC intends to continue to use a case-by-case approach in reviewing aspects of proposed conversions that are outside the scope of the specific requirements in the final rule. As part of that review the FDIC will consider the applicable state laws and regulations and relevant OTS regulations. The overall determinant in the FDIC's consideration of proposed conversions of State Savings Banks will be whether the proposal raises concerns about safety and soundness, breaches of fiduciary duty and violations of law.

2. Notice Requirements

As required by the Interim Final Rule, the final rule requires State Savings Banks that propose to convert to stock ownership to file with the FDIC a notice of intent to convert to stock form consisting of a description of the proposed conversion accompanied by a copy of all documents and application materials filed with the applicable state and federal regulators. The notice may be in letter form and must be provided to the FDIC (along with copies of the application materials) at the same time the application materials are filed with the institution's primary state regulator. State Savings Banks are prohibited from converting to stock form without complying with the substantive and procedural requirements of the final rule.

The FDIC will continue to review all conversion materials regarding State Savings Banks with a special interest in: the use of the proceeds from the sale of stock, as prescribed in the business plan; the adequacy of the disclosure materials; the participation of depositors in approving the transaction; the form of the proxy statement required for the vote of the depositors/members on the conversion; any increased compensation and other remuneration (including stock grants, stock option rights and other similar benefits) to be obtained by officers and directors/trustees of the bank in connection with the conversion; the adequacy and independence of the appraisal of the value of the mutual savings bank for purposes of determining the price of the shares of stock to be sold; the process by which the bank's directors/trustees approved the appraisal, the pricing of the stock and the compensation arrangements for insiders; the nature and apportionment of stock subscription rights; and the bank's plans to fulfill its commitment to serving the convenience and needs of its community.

The FDIC generally expects proposed conversions to substantially satisfy the standards found in the mutual-to-stock conversions regulations of the OTS (12 CFR Part 563b). Any variance from those regulations will be closely scrutinized. Compliance with OTS requirements will not, however, necessarily be sufficient for FDIC regulatory purposes.

A bank's notice to the FDIC will not be deemed complete until the State Savings Bank provides the materials required by the final rule, including any materials specifically requested by the FDIC after the bank's initial submission. The FDIC will notify the institution when the notice is complete. The FDIC will issue to the converting bank a notice of intent not to object to the proposed conversion, if the FDIC determines that the proposed conversion would not pose a risk to the safety and soundness of the bank, violate any law or regulation or present a breach of fiduciary duty.

The Interim Final Rule currently provides that when the FDIC intends to object to a proposed mutual-to-stock conversion of a State Savings Bank it must do so within 60 days of receiving a complete notice of the proposed conversion. The FDIC, in its discretion, may extend the initial 60-day period by another 60 days. The Interim Final Rule also provides that, if the FDIC fails to object to a proposed conversion within those prescribed periods, an institution may consummate the proposed conversion.

Upon consideration of numerous proposed conversions since the issuance of the Interim Final Rule, the Board has found that, in some cases, the maximum 120-day period prescribed in the Interim Final Rule is about to expire before the applicable state or other federal regulator(s) (who also must act on the proposed transaction) has or have acted on the proposed conversion. In order to provide the FDIC with sufficient time to act on a proposed conversion, the Board has included in the final rule an alternative time limit of up to 20 days after the last applicable state or other federal regulator has acted on the proposed transaction.

3. Appraisals

The final rule requires that a full appraisal be provided to the FDIC in a proposed mutual-to-stock conversion of a State Savings Bank, and that the appraisal report be prepared by an independent appraiser and include a complete and detailed description of the elements that make up the report, the justification for the methodology employed and sufficient support for the conclusions reached therein. This includes a full discussion of the applicability of each peer group member and documented analytical evidence supporting any variance (above or below) the converting institution may have from the peer group statistics.

The FDIC requires a complete analysis of the institution's *pro forma* earnings which should include the bank's full potential once it fully deploys the new capital pursuant to its business plan. In reviewing appraisal reports the FDIC will continue to consider the appraisal standards and guidelines, if any, of the applicable state and/or the appraisal guidelines issued by the OTS and the USPAP.

4. Voting Requirement and Prohibition on the Use of Running Proxies

The final rule requires that a proposed conversion be approved by a vote of at least a majority of the bank's depositors and, as reasonably determined by the bank's directors or trustees, other stakeholders of the bank who are entitled to vote on the conversion, unless the applicable state law requires a higher percentage, in which case the higher percentage must be used. The final rule also prohibits the use of running proxies in mutual-to-stock conversions of State Savings Banks.

5. Restrictions on Management Stock Benefit and MRPs

The final rule provides that no converted savings bank shall, for one year from the date of the conversion, implement a stock option plan or management or employee stock benefit plan, other than a tax-qualified employee stock ownership plan, unless: each of the plans is fully disclosed in the proxy solicitation and conversion stock offering materials; all such plans are approved by a majority of the bank's stockholders, or in the case of a recently formed holding company, its stockholders, prior to implementation at a duly called meeting of shareholders, either annual or special, to be held no sooner than six months after the completion of the conversion; in the case of a savings bank subsidiary of a mutual holding company, all such plans are approved by a majority of stockholders other than its parent mutual holding company prior to implementation at any duly called meeting of shareholders, either annual or special, to be held no sooner than six months after the stock issuance; for

stock option plans, stock options are granted at no lower than the market price at which the stock is trading at the time of grant; and for management or employee stock benefit plans, no conversion stock is used to fund the plans.

The MRP restrictions do not include specific percentage limitations. The FDIC will continue to look to MRP percentage limitations in the applicable state law and regulations, as well as in the OTS regulations, as a frame of reference for reviewing proposed conversions of State Savings Banks. The FDIC will presume that MRPs that do not conform with the applicable OTS MRP limitations constitute excessive insider benefits and thereby evidence a breach of the board of directors' or trustees' fiduciary responsibility. Bank management would have the burden of convincing the FDIC otherwise.

6. Eligibility Record Date and Priority of Employee Stock Ownership Plans (ESOPs)

A. Eligibility Record Date

The final rule requires that the eligibility record date for determining stock subscription rights be no less than one year prior to the date the board of directors/trustees approves the plan of conversion to convert from the mutual to stock form of ownership.

B. Priority for ESOPs

The final rule requires that "eligible depositors" be accorded a higher subscription priority than ESOPs. "Eligible depositors" are defined as depositors holding qualifying deposits at the bank as of a date designated in the bank's plan of conversion that is not less than one year prior to the date of adoption of the plan of conversion by the converting bank's board of directors/trustees.

7. Submission of Business Plans

The final rule requires that State Savings Banks that propose to undergo a mutual-to-stock conversion submit a business plan which must include, in part, a detailed discussion of how the capital acquired in the conversion will be used, expected earnings resulting from the plan and a justification for any proposed stock repurchases.

8. Post-Conversion Stock Repurchases

The final rule provides that an insured mutual state savings bank that has converted from the mutual to stock form of ownership may not repurchase its capital stock within one year following the date of its conversion to stock form, except that stock repurchases of no greater than 5% of the bank's outstanding capital stock may be repurchased during this one-year period where compelling and valid business reasons are established, to the satisfaction of the FDIC. Any stock repurchases are subject to the requirements of Section 18(i).

9. Mutual Holding Companies

The final rule retains the statement included in the Proposed Rule that the FDIC's mutual-to-stock conversion rules apply, where appropriate, to mutual holding company reorganizations of State Savings Banks. The FDIC will use the applicable state law and the regulations issued by the OTS (12 CFR 575) as a frame of reference for reviewing proposed State Savings Bank mutual holding company reorganizations and (contemporaneous and post-reorganization) stock issuances.

List of Subjects

12 CFR Part 303

Administrative practice and procedure, Authority delegations (Government agencies), Bank deposit insurance, Banks, Banking, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 333

Banks, Banking, Corporate powers.

Accordingly, the interim rule amending 12 CFR Part 303 which was published at 59 FR 7194 on February 15, 1994, is adopted as a final rule with changes and 12 CFR Part 333 is amended as follows:

PART 303—APPLICATIONS, REQUESTS, SUBMITTALS, DELEGATIONS OF AUTHORITY, AND NOTICES REQUIRED TO BE FILED BY STATUTE OR REGULATION

1. The authority citation for Part 303 continues to read as follows:

Authority: 12 U.S.C. 378, 1813, 1815, 1816, 1817(a)(2)(b), 1817(j), 1818, 1819 ("Seventh", "Eighth" and "Tenth"), 1828, 1831e, 1831o, 1831p–1(a); 15 U.S.C. 1607.

2. Section 303.15 is revised to read as follows:

§ 303.15 Mutual-to-stock conversions of mutually owned state-chartered savings banks.

(a) *Prior notice requirement.* In addition to complying with the substantive requirements in § 333.4 of this chapter, an insured state-chartered mutually owned savings bank that proposes to convert from mutual to stock form shall file with the FDIC a notice of intent to convert to stock form and copies of all documents filed with state and federal banking and/or securities regulators in connection with the proposed conversion. An institution that is in the process of converting to stock form that has filed a proposed stock conversion application with the applicable state and federal regulators (or otherwise has initiated a stock conversion) prior to the effective date of this section shall file the required materials with the FDIC as soon as practicable. An insured mutual savings bank chartered by a state that does not require the filing of application materials to convert from mutual to stock form that proposes to convert to the stock form shall notify the FDIC of the proposed conversion and provide the materials requested by the FDIC.

(b) *Content and filing of notice*—(1) *Content of notice.* The notice required to be filed under paragraph (a) of this section shall provide a description of the proposed conversion and include a copy of all notices or applications concerning the proposed conversion, including all attachments or appendices thereto, that have been filed with any state and federal banking and/or securities regulators. Copies of all agreements entered into as part of the mutual-to-stock conversion between the institution, its officers, directors/trustees and any other institution and/or its successors also must be provided.

(2) *Filing of notice.* Notices shall be filed with the regional director (DOS) in the region in which the institution seeking to convert is headquartered at the same time as the conversion application materials are filed with the institution's primary state regulator.

(c) *Review by FDIC.* (1) The FDIC shall review the materials submitted by the institution seeking to convert from mutual to stock form. The FDIC, in its discretion, may request any additional information it deems necessary to evaluate the proposed conversion and the institution shall provide such information to the FDIC expeditiously. Among the factors to be reviewed by the FDIC are:

(i) The use of the proceeds from the sale of stock, as prescribed in the business plan;

(ii) The adequacy of the disclosure materials;

(iii) The participation of depositors in approving the transaction;

(iv) The form of the proxy statement required for the vote of the depositors/members on the conversion;

(v) Any increased compensation and other remuneration (including stock grants, stock option rights and other similar benefits) to be obtained by officers and directors/trustees of the bank in connection with the conversion;

(vi) The adequacy and independence of the appraisal of the value of the mutual savings bank for purposes of determining the price of the shares of stock to be sold;

(vii) The process by which the bank's trustees approved the appraisal, the pricing of the stock and the compensation arrangements for insiders;

(viii) The nature and apportionment of stock subscription rights; and

(ix) The bank's plans to fulfill its commitment to serving the convenience and needs of its community.

(2) In reviewing the materials required to be submitted under this section, the FDIC will take into account the extent to which the proposed conversion conforms with the various provisions of the mutual-to-stock conversion regulations of the Office of Thrift Supervision (12 CFR Part 563b), as currently in effect at the time the FDIC reviews the required materials related to the proposed conversion. Any non-conformity with those provisions will be closely scrutinized. Conformity with the OTS requirements, however, will not be sufficient for FDIC regulatory purposes if the FDIC determines that the proposed conversion would pose a risk to the institution's safety and soundness, violate any law or regulation or present a breach of fiduciary duty.

(d) *Notification of completed filing of materials.* The FDIC shall notify the institution when all the required materials related to the proposed conversion have been filed with the FDIC and the notice is thereby complete for purposes of computing the time periods designated in paragraphs (e) and (g) of this section.

(e) *Notice of intent not to object.* If the FDIC determines, in its discretion, that the proposed conversion would not pose a risk to the institution's safety and soundness, violate any law or regulation or present a breach of fiduciary duty, then the FDIC shall issue to the bank seeking to convert, within 60 days of receipt of a complete notice of proposed conversion or within 20 days after the last applicable state or other federal regulator has acted on the proposed conversion, whichever is later, a notice of intent not to object to the proposed conversion. The FDIC may, in its discretion, extend by written notice to the institution the initial 60-day period by an additional 60 days.

(f) *Letter of objection.* If the FDIC determines, in its discretion, that the proposed conversion poses a risk to the institution's safety and soundness, violates any law or regulation or presents a breach of fiduciary duty, then the FDIC shall issue a letter to the institution stating its objection(s) to the proposed conversion and advising the institution that the conversion shall not be consummated until such letter is rescinded. A copy of the letter of objection shall be furnished to the institution's primary state regulator and any other state or federal banking and/or securities regulator involved in the conversion. The letter of objection shall advise the institution of its right to petition the FDIC for reconsideration under § 303.6(e). Such action shall not, in any way, prohibit the FDIC from taking any other action(s) that it may deem necessary.

(g) *Consummation of the conversion.* An institution may consummate the proposed conversion upon either:

(1) The receipt of a notice of intent not to object; or

(2) The expiration of the 60-day period following acceptance of a complete notice by the FDIC or the 20-day period after the last applicable state or other federal regulator has acted on the proposed conversion, whichever is later, unless the FDIC issues a notice of objection before the end of that period and, in which case, the conversion shall not be consummated until such letter is rescinded. The FDIC may, in its discretion, extend by written notice to the institution the initial 60-day period by an additional 60 days.

PART 333—EXTENSION OF CORPORATE POWERS

3. The authority citation for Part 333 is revised to read as follows:

Authority: 12 U.S.C. 1816, 1818, 1819 ("Seventh", "Eighth" and "Tenth"), 1828, 1828(m), 1831p–1(c).

4. Section 333.4 is added to read as follows:

§ 333.4 Conversions from mutual to stock form.

(a) *Scope.* This section applies to the conversion of insured mutual state savings banks to the stock form of ownership. It supplements the procedural and other requirements for such conversions in § 303.15 of this chapter. This section also applies, to the extent appropriate, to the reorganization of insured mutual state savings banks to the mutual holding company form of ownership. As determined by the Board of Directors of the FDIC on a case-by-case basis, the requirements of paragraphs (d), (e), and (f) of this section do not apply to mutual-to-stock conversions of insured mutual state savings banks whose capital category under § 325.103 of this chapter is "undercapitalized", "significantly undercapitalized" or "critically undercapitalized". The Board of Directors of the FDIC may grant a waiver in writing from any requirement of this section for good cause shown.

(b) *Conflicts with state law.* In the event that an insured mutual state savings bank that proposes to convert to the stock form of ownership finds that compliance with any provision of this section would be inconsistent or in conflict with applicable state law, the bank may file a written request for waiver of compliance with such provision by the FDIC. In making such request, the bank shall demonstrate that the requested waiver, if granted, would not result in any effects that would be detrimental to the safety and soundness of the bank, entail a breach of fiduciary duty on part of the bank's management or otherwise be detrimental or inequitable to the bank, its depositors, any other insured depository institution(s), the federal deposit insurance funds or to the public interest.

(c) *Definition of Eligible Depositor.* For purposes of this section, *eligible depositors* are depositors holding qualifying deposits at the bank as of a date designated in the bank's plan of conversion that is not less than one year prior to the date of adoption of the plan of conversion by the converting bank's board of directors/trustees.

(d) *Requirements.* In addition to other requirements that may be imposed by the applicable state statutes and regulations and other federal statutes and regulations, including § 303.15 of this chapter, an insured mutual state savings bank shall not convert to the stock form of ownership unless the following requirements are satisfied:

(1) Eligible depositors shall have higher subscription rights than employee stock ownership plans;

(2) The proposed conversion shall be approved by a vote of at least a majority of the bank's depositors and, as reasonably determined by the bank's directors or trustees, other stakeholders of the bank who are entitled to vote on the conversion, unless the applicable state law requires a higher percentage, in which case the higher percentage shall be used. Voting may be in person or by proxy;

(3) Management shall not use proxies executed outside the context of the proposed conversion to satisfy the voting requirement imposed in the previous paragraph; and

(4) In addition to the materials to be submitted to the FDIC pursuant to § 303.15(c) of this chapter, the bank must submit to the FDIC:

(i) A full appraisal report on the value of the converting bank and the pricing of the stock to be sold in the conversion.

The report must be prepared by an independent appraiser and must include a complete and detailed description of the elements that make up an appraisal report, justification for the methodology employed and sufficient support for the conclusions reached therein, including a full discussion of the applicability of each peer group member and documented analytical evidence supporting any variance (above or below) the institution proposing to convert may have from the peer group statistics and a complete analysis of the institution's *pro forma* earnings which should include its full potential once the institution fully deploys its new capital pursuant to its business plan; and

(ii) A business plan which must include, in part, a detailed discussion of how the capital acquired in the conversion will be used, expected earnings resulting from the plan and a justification for any proposed stock repurchases.

(e) *Restriction on repurchase of stock.* An insured mutual state savings bank that has converted from the mutual to stock form of ownership may not repurchase its capital stock within one year following the date of its conversion to stock form, except that stock repurchases of no greater than 5% of the bank's outstanding capital stock may be repurchased during this one-year period where compelling and valid business reasons are established, to the satisfaction of the FDIC. Any stock repurchases shall be subject to the requirements of section 18(i)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1828(i)(1)).

(f) *Stock benefit plan limitations.* The FDIC will presume that a stock option plan or management or employee stock benefit plan that does not conform with the applicable percentage limitations of the regulations issued by the Office of Thrift Supervision constitutes excessive insider benefits and thereby evidences a breach of the board of directors' or trustees' fiduciary responsibility. In addition, no converted insured mutual state savings bank shall, for one year from the date of the conversion, implement a stock option plan or management or employee stock benefit plan, other than a tax-qualified employee stock ownership plan, unless each of the following requirements is met:

(1) Each of the plans was fully disclosed in the proxy solicitation and conversion stock offering materials;

(2) All such plans are approved by a majority of the bank's stockholders, or in the case of a recently formed holding company, its stockholders, prior to implementation at a duly called meeting of shareholders, either annual or special, to be held no sooner than six months after the completion of the conversion;

(3) In the case of a savings bank subsidiary of a mutual holding company, all such plans are approved by a majority of stockholders other than its parent mutual holding company prior to implementation at a duly called meeting of shareholders, either annual or special, to be held no sooner than six months following the stock issuance;

(4) For stock option plans, stock options are granted at no lower than the market price at which the stock is trading at the time of grant; and

(5) For management or employee stock benefit plans, no conversion stock is used to fund the plans.

By the order of the Board of Directors.

Dated at Washington, D.C., this 22nd day of November, 1994.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 94–29240 Filed 11–29–94; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 563b and 575

[No. 94–253]

RIN 1550–AA73

Conversions From Mutual to Stock Form; Mutual Savings and Loan Holding Companies

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS or Agency), is issuing a final rule to revise its regulations governing conversions from mutual-to-stock form and mutual savings and loan holding companies. On May 3, 1994, the OTS issued an interim final rule with request for comment and a proposed rule with request for comment. The interim final rule contained amendments to the OTS's mutual-to-stock conversion regulations (conversion regulations) designed to strengthen the standards governing conversions and to ensure the integrity of the conversion process. The proposed rule contained a new "convenience and needs" test to be added to the approval standards for conversion transactions.

This final rule includes revisions made to the interim final rule that reflect OTS's consideration of the comments it received during the 45-day comment period following publication of the interim final rule. In addition, this final rule also addresses the comments received by the OTS during the 75-day comment period following publication of the proposed rule and adopts the proposed rule without modification. Finally, this final rule incorporates certain technical changes to the regulations governing mutual-to-stock conversions and mutual savings and loan holding companies.

EFFECTIVE DATE: January 1, 1995.

FOR FURTHER INFORMATION CONTACT: Teri M. Valocchi, Counsel (Banking and Finance) (202/906–7299), Michael P. Vallely, Counsel (Banking and Finance) (202/906–6241), J. Larry Fleck, Assistant Chief Counsel (202/906–6413), Business Transactions Division, Chief Counsel's Office; Diana L. Garmus, Deputy Assistant Director (202/906–5683), Corporate Activities Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION:

I. Summary of Interim Final and Proposed Rules

On May 3, 1994, the OTS published an interim final rule with request for public comment.[1] The interim final rule amended the OTS regulations governing mutual-to-stock conversions of savings associations to strengthen the conversion standards and ensure the integrity of the conversion process. Specifically, the amendments:

(A) revised and clarified the appraisal standards;

(B) prohibited the use of "running" proxies by management of converting associations;

(C) placed the current tax-qualified employee stock ownership plan (ESOP) stock purchase priority after those of eligible depositors;

(D) provided stock purchase priority to core depositors;

(E) required that a stock purchase preference be given to account holders and voting members residing in the association's local community;

(F) prohibited management stock benefit plans in a conversion;

(G) limited merger conversions to institutions that qualify for a conversion, i.e., financially-weak institutions;

(H) lengthened the conversion public comment period;

(I) required converting associations to submit business plans in support of the conversion; and

[1] *See* 59 FR 22725 (May 3, 1994).

(J) prohibited the repurchase of a converted association's stock within one year of conversion.

The interim final rule did not propose any changes to the prohibition in the OTS conversion regulations on the transfer or sale of subscription rights or similar "free distribution" schemes, but did request comment on whether subscription rights should continue to be nontransferable, or if transferability is recommended, the reasons for, and the manner in which to allow for, such transfer. Finally, the interim final rule made preliminary conversion proxy materials available to the public and incorporated certain technical changes to the OTS's regulations governing mutual savings and loan holding companies.

Separately, the OTS published a proposal to amend the conversion regulations and the regulations governing stock offerings by savings association subsidiaries of mutual holding companies (MHC stock offerings) by adding a new "convenience and needs" standard to existing approval standards for such transactions.[2] Under the proposed standard, the OTS would consider the extent to which the transaction would affect the convenience and needs of the communities served by the applicant.

In evaluating transactions under this standard, the OTS would review the applicant's performance under the Community Reinvestment Act (CRA),[3] the contents of the business plan submitted in support of the conversion, and other factors relating to the applicant's performance in meeting the convenience and needs of its delineated community. Under the proposal, the OTS could deny an application or approve it on the condition that the applicant improve certain aspects of its CRA performance record or address particular credit or lending needs of the communities that it serves.

The OTS worked with the Federal Deposit Insurance Corporation (FDIC) on the interim final rule and this final rule to ensure greater consistency in the regulatory standards and policies in this area.

II. Summary of Comments and Analysis of Issues

The public comment period for the interim final rule closed on June 17, 1994. The OTS received 75 comment letters. Twenty-seven comment letters were submitted by financial institutions or their holding companies, including 20 letters from federally-chartered savings associations and seven letters from other financial institutions and holding companies. Of the remaining 48 comment letters, persons in their individual capacity submitted 15, law firms submitted 13, state trade associations submitted six, a national trade association submitted one, city and state banking commissioners submitted three, various groups representing financial institutions submitted seven, a financial regulatory "shadow" group submitted one and certified public accountants submitted two.

The comment period on the proposed convenience and needs rule closed on July 18, 1994. The OTS received 12 comment letters, including five from trade associations and similar groups representing financial institutions, two from law firms representing thrifts, two from persons in their individual capacity, one from a state thrift regulatory authority, one from an association of state thrift regulatory authorities and one from a federally-chartered savings bank.

The following is a discussion of the major issues raised by the commenters and a brief analysis and resolution of the issues.

A. Revisions to the Appraisal Standards

As noted in the preamble to the interim final rule, the integrity of the OTS' current conversion program rests, in large part, on the existence of independent and accurate appraisals of converting associations.[4] When the initial conversion regulations were adopted in 1974, the Federal Home Loan Bank Board, the predecessor agency to the OTS, expressed concerns about underpricing conversion stock and stated that no method of conversion could be considered equitable unless the conversion stock was accurately appraised and sold at its *pro forma* market value.[5]

The OTS believes that the appraisal process has adequately addressed conversion valuation issues during most of the period since 1974. As also noted in the preamble to the interim final rule, however, the OTS has been concerned that some recent appraisals were setting *pro forma* market values that were significantly below the market value of the converting association. In response to these concerns, the OTS, in the interim final rule, revised the conversion regulations to formalize the current practice of requiring a full appraisal report and justification for the methodology employed. The OTS also clarified the provision in the conversion regulations that requires that the conversion applicant submit information demonstrating, to the satisfaction of the OTS, the independence and expertise of the appraiser. The revised regulations allow the OTS to censure, suspend or bar an appraiser from practicing before the OTS in egregious cases of consistent undervaluation on the part of an appraiser.

OTS further revised the appraisal rules to provide that in those instances where the initial appraisal report is deemed to be materially deficient and/or substantially incomplete, the OTS may deem the entire conversion application materially deficient and/or substantially incomplete, and require the filing of a new application.[6]

Finally, the OTS requested public comment on whether it should amend its regulations to prohibit an appraiser or its affiliates from also serving as an underwriter or selling agent.

Approximately 25% of the comments addressing appraisal standards affirmatively supported the requirement that a full appraisal report and justification for methodology employed be required to insure a "fair value" assessment of an institution. One commenter cautioned against an attempt to eliminate any "pop" or "post conversion windfall," and suggested management of such price increases instead, by limiting them to a reasonable percentage. Eleven commenters expressed concern that market forces cannot be regulated, that appraisals and pricing of stock are not exact sciences, and that the revisions may force the stock to be overvalued. One of the eleven stated that the stock market is not predictable enough to institutionalize an expectation that the stock of every institution will trade within a fixed parameter following conversion.

One commenter requested that the terms "materially deficient" and "consistently undervalued" be defined and another commenter requested that the term "independence" be defined and that the OTS provide guidance as to the appropriate degree of participation by management in the appraisal process.

One commenter stated that the OTS should deal with the appraiser directly when an initial appraisal report is

[2] *See* 59 FR 22764 (May 3, 1994).

[3] *See* 12 U.S.C. 2901–2907.

[4] *See* 59 FR 22725, 22726 (May 3, 1994).

[5] *See* 39 FR 9142 (March 7, 1974).

[6] The OTS has recently issued updated staff guidance for conversion appraisers that provides specific details on appraisal methodology as well as report content, and also incorporates provisions 9 and 10 of the Uniform Standards of Professional Appraisal Practice. In adopting the guidelines, the OTS consulted with the FDIC to ensure uniform appraisal standards.

materially deficient or substantially incomplete and should not penalize the thrift; another commenter stated that the OTS should give institutions time to correct inappropriate appraisals without the need to file costly new conversion applications.

Eleven commenters addressed the issue of whether to prohibit appraisers or their affiliates from also serving as underwriters or selling agents. Six stated that appraisal firms should be separate from firms that market conversion stock so as to avoid all potential conflicts of interest. One of the six further stated that underwriters or selling agents in one situation may not be able to be objective as appraisers in another situation and that if an attorney continually uses the same appraiser, that appraiser becomes a quasi-affiliate of the attorney, with questionable independence. Five expressed the view that there was no evidence of abuse where the appraiser and selling agent are the same parties, that the two functions can be impartially carried out and that to require different parties is costly and detrimental to small thrifts.

In implementing revisions to the appraisal regulations, the OTS was not attempting to create an appraisal system that would result in precise conformity between appraisal values and post-conversion stock prices. The OTS, however, remains concerned about significant discrepancies between appraisal values and immediate post-conversion trading prices. The OTS also recognizes that there will be circumstances that could not reasonably have been foreseen by an appraiser that may result in pricing discrepancies in a particular transaction. As noted in the preamble to the interim final rule, however, when there is a consistent pattern of discrepancies by a particular appraisal firm, the independence and competence of the appraiser is called into question.

The terms "materially deficient" and "consistently undervalued" as used in the regulation are heavily dependent upon the facts and circumstances of each transaction or group of transactions. Because there is no "bright-line" test that can be applied to these terms, the OTS does not believe that it would be useful to further define these terms.

With respect to the comment that the converting association should not be penalized for a materially deficient or substantially incomplete appraisal and the comment that the converting association should be given the opportunity to correct the faulty appraisal, the OTS does not believe that any change to the interim final rule is warranted. While management of a converting association may properly rely on the opinion of an independent appraiser in valuing conversion stock, it is ultimately the fiduciary responsibility of management to ensure that the converting association is properly priced for sale. The converting association also is ultimately responsible for the quality of the work of all of its agents, including its attorneys, accountants and selling agent, as well as its appraiser, and thus, should exercise due care in the hiring of such parties to ensure that qualified advisors and experts have been retained on behalf of the association. In any instance where a materially deficient conversion application is submitted, whether as a result of significant legal, accounting, appraisal or other deficiencies, the OTS retains the right to deem the application materially deficient and reject it.

As to the issue of permitting "corrections" to inadequate appraisals submitted to the OTS, the purpose of rejecting conversion applications containing faulty appraisals is to encourage applicants to file applications that are substantially complete and that comply with regulatory requirements. If there are no consequences of filing an application that is substantially incomplete, there is less incentive to submit an adequate appraisal. In addition, given limited OTS staff resources, it is unfair to delay review of complete conversion applications with adequate appraisals by devoting inordinate amounts of OTS staff time to multiple reviews of applications with inadequate appraisals.

The OTS believes that there is an appropriate role for officers of a converting association in the preparation of an appraisal. The OTS expects that the appraiser will consult with officers of the association in preparing the appraisal because the officers will often be the sole source of information about certain aspects of the current and future business operations of the association. It is not appropriate, however, for the officers to attempt to influence or to interfere with the independence of the appraiser. Similarly, appraisers seeking engagement with a converting institution should not in any manner suggest that they can provide a "lower" valuation than other appraisers.

The board of directors has a primary responsibility to hire the appraiser and to review the appraisal report. The board of directors is entitled to rely on the appraiser's expertise. As with officers, it would be inappropriate for the board of directors to influence or interfere with the independence of the appraiser.

The board of directors also retains the authority to reject an appraisal or to dismiss an appraiser. In such a case, the OTS would conduct the same type of review that it does when a savings association dismisses its accounting firm or rejects an accounting firm's opinion.[7]

The interim final rule requested comment on whether appraisers or their affiliates should be prohibited from also serving as underwriters or selling agents in a conversion. A majority, albeit a narrow one, of those who commented on this aspect of the interim final rule were in favor of a prohibition on firms serving in both roles. Upon review of the comments, the OTS has determined that, as discussed in the interim final rule, the appraisal process and the independence of the appraiser should not be tainted by even the appearance of a conflict of interest. Although the same firm infrequently performs both these services and the OTS is not aware of any serious problems when it has, the final rule generally prohibits a firm from this dual service, except where procedures are followed and representations made to ensure that an appraiser is separate from the underwriter or selling agent affiliate and the underwriter or selling agent affiliate does not make recommendations or in any way impact the appraisal. Additionally, the final rule prohibits the appraiser from receiving any fees other than the fees for services rendered in connection with the appraisal.

B. Prohibition on Use of "Running" Proxies

The conversion regulations have been revised to prohibit the use of "running" proxies and to require the use of a proxy specifically designated for the conversion.

The majority of commenters addressing the revision supported the prohibition of "running" proxies because it better ensures that members understand the proposed change in the association's organization. A few commenters expressed concern for the high costs of using professional proxy solicitation firms but none thought the costs were overly burdensome. Those commenters who opposed the prohibition asserted that there were already sufficient safeguards, that the old rule worked well since "running" proxies were only used if a member did not send a proxy or vote in person, that detailed disclosure was included in the proxy statements, and that the

[7] 17 CFR 229.304 (March 8, 1989).

prohibition is an added expense for converting institutions.

One commenter recommended adoption of a requirement that 50% of those voting approve the conversion, rather than the existing requirement that the conversion be approved by a 50% vote of all depositors.

The OTS agrees with the majority of commenters and continues to believe that the prohibition of "running" proxies is the most effective manner in which to assure an increased role for an association's membership in the conversion process. Accordingly, no change has been made to the interim final rule. Thus, 12 CFR 563b.6(e) will continue to require approval of the plan of conversion by at least a majority of the total outstanding votes of the association's members, unless state law requires a higher percentage for a state-chartered converting savings association, in which case the higher percentage will be used. Finally, the final rule revises section 575.13(a)(4) of the mutual savings and loan holding companies regulation to clarify the prohibition on the use of "running" proxies and the requirement for the use of a specifically designated proxy for a mutual holding company reorganization, mutual-to-stock conversion undertaken either by a mutual savings association or a mutual holding company, or any other material transactions.

C. Re-Prioritize Stock Purchase by Tax-Qualified Employee Stock Ownership Plans

In its interim final rule, the OTS revised the stock purchase priorities so as to give eligible account holders first priority and tax-qualified employee stock benefit plans second priority. The conversion regulations continue to give supplemental eligible account holders third priority and all other voting members who have subscription rights fourth priority.

A majority of the commenters recommended that the ESOP be given first priority; a few commenters affirmatively supported giving the ESOP second priority. The commenters that recommended giving the ESOP first priority asserted that employees make the organization successful and should have the first stake in the company's performance, that the plans do not favor higher paid officers, but promote greater productivity and motivation, that the plans do not prevent long-term depositors from purchasing conversion stock, and that they protect institutions from hostile takeover situations. These commenters further asserted that if the ESOP is not established in the conversion, it will be established later and will dilute shareholders' ownership interest.

A few commenters requested that the methodology for distribution of shares in the event of oversubscription be clarified. The commenters requested that the regulation be written to make clear the intent that the ESOP would be able to purchase stock through open market purchases or through authorized but unissued shares in the event of an oversubscription. If this was not the intent of the regulation, one commenter requested that the OTS clarify that it will grant a waiver or no-action letter to permit the ESOP or any other tax-qualified plan to purchase shares in the open market immediately following conversion.

As stated in the preamble to the interim final rule, although the OTS believes that it is still appropriate to provide management incentives and to encourage employee stock ownership in the converted association, these interests have been overshadowed by other factors. The former provision which granted a first priority to tax-qualified employee benefit plans was a means to afford undercapitalized mutual savings associations a measure of anti-takeover protection through the opportunity to place a significant block of conversion stock in friendly hands, and thus, encourage capital raising through conversion. Because most mutual savings associations are now healthy, there is a need to balance the interests of management and employees against those of account holders by providing core depositors at mutual savings associations the first opportunity to buy conversion stock. The final rule will continue to give eligible account holders first priority. The wording of 12 CFR 563b.3(c)(23) has been revised to clarify that eligible account holders have first priority to purchase conversion stock, tax-qualified employee stock benefit plans have second priority, supplemental eligible account holders have third priority, and other voting members who have subscription rights have fourth priority.

Also, as prescribed by 12 CFR 563b.3(c)(23), and further clarified in the final rule, if the final conversion stock valuation exceeds the maximum conversion stock offering range, up to ten percent of the total offering of shares may be sold to the tax-qualified employee stock benefit plans. This provision generally will allow ESOPs to be allocated stock during periods of an active and strong thrift securities market; however, such allocation generally will not be available when the final pro forma market value as approved by the OTS and disclosed in the stock offering materials does not exceed the maximum conversion stock offering range.[8] If the ESOP is not able to purchase conversion stock, the ESOP or any other tax-qualified plan may purchase shares in the open market or utilize authorized but unissued shares only with prior OTS approval. Disclosure must be made in the conversion stock offering materials of the potential open market purchases or use of authorized but unissued shares to fund the ESOP and its effect on the association and its shareholders. The final rule reflects these clarifications.

D. Revision to Eligibility Record Date

The OTS currently requires that the eligibility record date (ERD) be set at a date no less than one year prior to board of director approval of the plan of conversion. In the interim final rule, the OTS also requested public comment as to whether a longer minimum time period would be appropriate.

The majority of commenters supported the revision to the ERD based on the reasoning that it properly protects the legitimate interests of core depositors and provides sufficient assurance that long-term supporters of an institution are given priority. A couple of commenters recommended setting a maximum time limit of two years and one recommended not extending beyond one year; one requested that "depositor" be defined as one who has "savings in any type of a deposit account of at least $100 continuously during the eligibility period."

Two commenters disagreed with the revision because it eliminates legitimate local depositors and is impractical since accurate records about depositors are not readily available. One commenter noted that directors and executive officers will have to plan further ahead, maintaining records for longer periods of time. Two commenters stated that the revision has no effect since professional investors are in place for a considerable period. One commenter recommended waivers for institutions of $100 million or less that can demonstrate that information is not available.

A few commenters suggested eliminating the supplemental eligible account holder category, because the date for determining such account holders is close to the record date, and therefore duplicative, or in the alternative, setting a supplemental

[8] In the nearly 1,000 conversions completed since 1983, a majority were sold for a conversion price that did not exceed the maximum conversion stock offering range.

eligibility record date (SERD) only if the ERD is more than 18 months prior to the date of the latest application amendment filed before OTS approval. One commenter suggested moving the SERD from the current 15 month period to a 24 month period; and also noted that the ERD revision and the local community depositor preference create three additional categories, making for extraordinary processing difficulties.

One commenter suggested: (1) giving purchase preference to both depositors and borrowers as of the ERD; (2) giving preference to the eligible and supplemental eligible account holders whose accounts remain open at the voting record date over those who terminated their account relationship; and (3) amending the regulation to replace the 100 share initial allocation [9] with a provision that the initial allocation may be tailored to the circumstances of the thrift's offering.

The interim final rule will continue in effect without change for the reason stated by most commenters and supported by OTS: it properly protects the legitimate interests of core depositors and provides sufficient assurance that these depositors are given priority. "Eligible account holders" are defined as those holders with savings accounts in place for a minimum of one year prior to board of director adoption of the plan of conversion. The OTS also believes there is no compelling reason to set a maximum time limit for an ERD. As stated in the interim final rule, the one year period is a minimum time period. Converting associations may designate such longer time periods as they may deem appropriate to encompass longer term depositors in the local communities served by the institution.

The definition of qualifying deposit will continue as stated in 12 CFR 563b.3(e). Also, the OTS believes that there is no compelling reason to eliminate or revise the current supplemental eligibility record date. Thus, supplemental eligible account holders, as currently defined in the regulation, will continue to be a category with a priority immediately following that of tax-qualified employee benefit plans. In addition, the OTS believes that there is no compelling reason to revise the current regulation that: 1) gives a purchase preference to all depositors (but not borrowers); 2) does not differentiate between eligible and supplemental eligible account holders whose accounts remain open at the voting record date over those who terminated their account relationship after board of director approval of the plan of conversion; and 3) requires the 100 share initial allocation.

E. Preference for Depositors in Local Community

Prior to promulgation of the interim final rule, the OTS conversion regulations required a converting association to conduct a community offering of conversion stock in the local community, prior to a general public offering,[10] but did not permit converting associations to give account holders and voting members in those local communities a priority to purchase stock in the initial subscription offering.[11] However, to minimize conversion expenses, the OTS permitted converting associations to not register under state blue sky laws in those states where there was a relatively small number of depositors compared to the overall depositor base, even though this resulted in some depositors being precluded from purchasing stock in the conversion offering. In addition, the OTS has, on a case by case basis, permitted thrift subsidiaries of mutual holding companies to prioritize stock purchases by account holders and voting members in the local communities.[12]

The interim final rule *required* that a stock purchase preference be given to eligible account holders, supplemental eligible account holders and voting members residing in the association's local community. Those having preference in *each* priority group (*i.e.*, eligible account holder, supplemental eligible account holder and voting member) are persons who reside in the association's "local community" or within 100 miles of a home or branch office of the converting association. The interim final rule defined "local community" to include all counties in which the converting association has a home or branch office, each county's standard metropolitan statistical area or the general metropolitan area of each of these counties and such other similar area(s) as provided for in the converting association's plan of conversion, as approved by the OTS.

Over one-half of the commenters on the interim final rule expressed views on the local depositor preference (LDP) provision. Approximately one-half of those commenters supported the LDP provision for various reasons such as: it promotes local control and involvement and is more sensitive to the community's needs; it serves the community first and gives depositors in the local community a more meaningful opportunity to participate; it is a good way to maintain local control of community-oriented associations; and it deals with the problem of outside investors who tend to put undue pressure on management to achieve a higher stock value more rapidly than may be feasible through safe and sound operations.

A majority of the supporters of the LDP provision also suggested various changes to the interim final rule. Three suggested eliminating the 100 mile rule; one suggested using 50 instead of 100 miles; and three requested that the OTS clarify the parameters of 100 miles, *i.e.*, from headquarters or branch, to residence or town of residence, within certain counties, etc. One commenter noted that the standard metropolitan statistical area (SMSA) is no longer in general use in delineating communities and markets and has been replaced by "metropolitan statistical area" and "consolidated metropolitan statistical area." The same commenter also noted that the term "general metropolitan area" is not a term of general usage nor is it explained in the interim final rule. This commenter suggested eliminating the 100 mile priority and restricting priority to persons living within the local community defined by reference to counties.

Two commenters suggested using zip codes corresponding to delineated CRA service areas, and three commenters suggested allowing each institution voluntarily to establish a local priority and identify local depositors. Four commenters requested that the rule be clarified to include, as local depositors, long-term account holders who lived in the area and kept accounts open but have retired and moved from the area, and long-term account holders who work or regularly vacation in the local community but do not reside there.

One selling agent had concerns with the definition of "local community" and concerns with the word "reside," including the problem with multiple residences. This commenter suggested that the test for the geographic area for the domicile of an account include the whole of any zip code that is partially within the geographic area. The commenter also suggested developing an affidavit to accompany the stock order form and requested that OTS not require any independent verification by the selling agents.

Commenters that opposed the LDP provision asserted that all association members, regardless of location, should be treated the same and be allowed to participate in the conversion process on

[9] See 12 CFR 563b.3(c) (2)(ii) and (4)(iv).

[10] *See* 12 CFR 563b.3(c)(6)(iv).

[11] *See* 12 CFR 563b.3(c)(2), (4), (5).

[12] *See* 12 CFR 575.7(d)(6)(ii).

an equal basis. The objections raised by commenters opposing the LDP provision included the following: all depositors have ownership, voting and liquidation rights, deposits are used indiscriminately, and the definition of customer should not be related to location; the LDP provision is an artificial distinction between depositors based upon geography; non-local persons with long-term accounts and/or more money in accounts would have a lower priority than local persons with shorter-term accounts and/or less money; the LDP is arbitrary, capricious, unfairly discriminatory, ill-suited to advancing any legitimate public policy objective, and in violation of the Administrative Procedure Act;[13] the LDP deprives non-locals, who have had long-term accounts with significant amounts of money and who maintain banking relationships, of rightful opportunity to participate in attractive conversions; it is unconscionable for a federal agency to require U.S. citizens to be treated differently based on their residence; and the LDP provision conflicts with the takings, due process and equal protection clause of the United States Constitution.

Several of the commenters objected to the LDP provision because they believe that it violates federal and state policies and laws that prohibit discrimination. The OTS acknowledges that the effect of the rule is to authorize a preference to a certain type of depositor. The LDP rule, however, does not discriminate against any person based on age, race, sex, ethnic background, religion or any other impermissible category. Its purpose is to reward those who have and will maintain a banking relationship with the institution. While using residency as the basis for determining this category of depositors is inexact, it is valid to assume that generally local depositors fall into that category and non-local depositors do not. The OTS believes that providing for a LDP provision will assist in achieving the goals of (1) recognizing those depositors who have maintained long-term banking relationships with the converting institution and thereby contributed to its financial success, and who are likely to continue to do so in the future,[14] and (2) promoting ownership by persons who have close ties to the community. Thus, in the OTS's view, the rule does not violate federal or state policies against discrimination.

The OTS also believes that the constitutional arguments raised by certain commenters are without merit. As has been recognized by a number of courts, the property rights of mutual account holders are extremely limited.[15] In the OTS conversion regulations, the limited rights that depositors have to share *pro rata* in the surplus of a liquidated mutual savings association is recognized by the establishment of a liquidation account in the converted association. No distinction is made between local and non-local depositors in the establishment of these accounts and nothing in the interim rule or this final rule would diminish a depositor's interest in his or her liquidation account. Similarly, the OTS does not believe that authorizing the LDP provision violates the Equal Protection Clause of the Constitution. Although the LDP provision does make a distinction between depositors, the OTS believes, for the reasons discussed above, that there is a rational basis for authorizing an institution to make the distinction and that the provision reasonably relates to legitimate policy objectives.

The OTS instituted the LDP rule in the interim final rule to promote local community ownership of converting institutions, and to reward a group that, collectively, typically has made significant contributions to the financial success of the institution. The LDP rule sought to provide the opportunity for local depositors to participate more fully in the subscription offering without competition from large purchases by out-of-area depositors. The OTS has become aware in recent years of the evolution of a class of depositors, sometimes referred to as "professional depositors" or "flippers," who have opened accounts in a large number of mutual associations.[16] These "professional depositors," who often reside outside the local community of the mutual savings association, make deposits in anticipation of the mutual savings association converting to stock form. Often, these depositors subscribe for a significant number of shares in the subscription offering phase with the intent of selling all or a significant number of the shares in a short period of time following the conversion to take advantage of a lucrative after-market. Once a conversion is complete, these depositors often withdraw their deposits and have no further relationship with the converted savings association.

As discussed below, OTS continues to believe that local depositors should be given preference over out-of-area depositors in purchasing stock of a converting mutual savings association. Upon further consideration of the issues presented in this area and review of the comment letters, however, OTS has determined in the final rule to authorize, but not require, a savings association to give a conversion stock purchase preference to account holders residing in the local community.

The OTS has taken this position, *i.e.*, making the LDP provision optional, for a number of reasons. First, the OTS does not oppose the full participation of those other than local depositors in the conversion process. The nationwide interest in thrift stock has enabled many thrifts to recapitalize, thereby preventing thrift failures and a burden on the taxpayers. In addition, the OTS notes that the conversion eligibility record date, the primary determinant for prioritized eligibility to purchase conversion stock, has always been keyed to the length of time a depositor has had an account with a converting institution, not to geographic location. Also, as noted below, many mutual associations have exercised their authority to accept deposit accounts only from persons residing in the association's local community.

In light of the foregoing, and in response to the comments noted above, the OTS believes that the LDP provision need not be a requirement of conversion; rather it should be at the option of each converting savings association which will decide whether its particular situation warrants its use. A savings association may conclude that an LDP for stock purchases is important to ensure ownership by local depositors

[13] One of the most detailed comment letters came from counsel representing Thrift Depositors of America, Inc. (TDA), a trade association of mutual savings association depositors. A lawsuit by TDA (TDA vs. OTS, Civil Action No. 94–1008, U.S. District Court for the District of Columbia) alleged that the OTS's implementation of the LDP in the interim final rule without a notice and comment period violated the APA. On September 29, 1994, the Court ruled that because the OTS had failed to adequately justify waiving notice and comment for the LDP, it would enjoin the OTS from proceeding with mutual-to-stock conversions containing the LDP provision until a new rule was finalized in accordance with the notice and comment procedures of the APA

[14] OTS cannot, in a regulation, identify with exactitude every single instance in which a depositor has maintained a long-term banking relationship with a converting institution and thereby contributed to its financial success. However, it is both rational and convenient, for reasons discussed elsewhere in this preamble, to identify this group as the local depositors. Moreover, as discussed more fully below, the OTS has provided a mechanism to enable converting institutions, in applying the LDP, to take account of unique and compelling circumstances posed by persons who are not local depositors.

[15] *See, e.g., Paulsen* v. *C.I.R.*, 469 U.S. 131 (1985); *Ordower* v. *Bell Fed. Sav. & Loan Ass'n*, 999 F.2d 1183 (7th Cir. 1993); *York* v. *Federal Home Loan Bank Board*, 624 F.2d 495 (4th Cir.), *cert. denied*, 449 U.S. 1043 (1980); *Lovell* v. *The One Bancorp*, 614 A.2d 56 (Me. 1992).

[16] *See, e.g.*, Peter Lynch, *Beating the Street* (1993), p. 220.

who made significant long-term contributions to the financial success of the institution by virtue of their deposit and borrowing relationships, and who, it expects, will continue to maintain financial relationships with the institution after the conversion. The final rule includes the LDP provision as an optional provision in the subscription phase of the conversion.

To assist converting institutions who elect to include the LDP provision, the final rule continues to provide a definition of the "local community." In response to comments, however, the final rule substantially revises the definition. First, the 100-mile standard is eliminated. In addition, the definition of local community has been revised to delete the reference to the "standard metropolitan statistical area" and the "general metropolitan area." Finally, the definition also has been revised to include "metropolitan statistical area" (which replaced the SMSA), all zip code areas corresponding to the converting institution's delineated CRA service area, and such other area(s) or category as designated by the institution and provided for in the plan of conversion.[17] In this regard, the OTS will review, on a case by case basis, the proposals by converting associations to define local community other than as defined in the final rule.

OTS also specifically solicited comments as to whether a savings association, in anticipation of conversion, should be permitted to: (1) refuse to open accounts for potential depositors residing outside the local community, or (2) close accounts of depositors residing outside the local community.

Of 18 commenters addressing this issue, 13 stated that a savings association should be able to refuse to open accounts for non-local depositors, with three of the 13 requesting that OTS confirm the association's right to refuse to accept deposits. Five commenters believed that associations should not be allowed to refuse to open accounts, with two of the five stating that OTS should prohibit associations from refusing to open or maintain accounts of non-local depositors.

Of 18 commenters, 10 stated that savings associations should be allowed to close accounts of non-local depositors, with one commenter stating that an account should be required to be closed at least 6 months prior to the adoption of a plan of conversion. Two of the 10 stated that OTS should confirm an association's right, as a general matter, to close accounts of, and return monies to, depositors who do not reside in the community served by the association. Eight commenters opposed the closing of accounts in contemplation of conversion, with one stating that the closing would violate fundamental fairness and deprive valid property rights without due process.

In the interim final rule, the OTS noted that federal associations generally have the authority to open and maintain savings accounts within their discretion.[18] State chartered savings associations are subject to state laws governing the opening and closing of deposit accounts. Based upon its review of the comments, the OTS has determined not to make any changes to the conversion rules in this area. It is the opinion of the OTS that federal associations have the authority to open and close deposit accounts, including those accounts of non-local depositors, provided they do not violate applicable laws that prohibit discrimination on the basis of age, race, sex, ethnic background, religion or any other impermissible category.

The OTS, however, would not consider it to be a legitimate exercise of that authority if a savings association, in anticipation of conversion, closed an account for the purpose of preventing a depositor from participating in a conversion as an account holder. The OTS believes that this could result in the perception that insiders were acting out of self-interest and not in the interests of the savings association.

F. Revision to Policy Regarding Management Stock Benefit Plans

In the interim final rule, the OTS substantially revised and codified its policies regarding the establishment of management recognition plans (MRPs) and stock option plans (SOPs) during the conversion process. The new provisions require that any decision to implement MRPs and SOPs after conversion be voted on and approved by a majority of the shareholders no earlier than the first annual meeting following the conversion, and that prior to implementation, all such plans be reviewed and approved by the Regional Director. The provisions also prohibit the use of conversion stock to fund MRPs, require that MRPs be awarded and stock options be granted only after shareholder approval is received and require that stock options be granted at the market price at which the stock is trading at the time of grant. The regulation also codifies the OTS's policies regarding permissible amounts that may be included in SOPs and MRPs formed within one year of conversion.

Approximately 17 commenters recommended allowance of a reasonable amount of stock benefits at the time of conversion, rather than a flat prohibition. A majority of the 17 commenters stated that the level of stock benefit plans should be tailored to the size, health and performance of the association, the business plan objectives and needs, the size of the offering, and the specific contribution and tenure of management. One commenter suggested 1% for MRPs and 5% for stock options, subject to the normal five-year vesting period. Another commenter suggested allowing a small MRP amount at the time of conversion with the remainder reserved for future performance-based awards and a SOP that is structured so that the exercise price is based on an averaging formula or an indexed price.

Four commenters supported the prohibition of stock benefit plans at conversion.

Of eight commenters addressing the issue, six supported the requirement for shareholder approval of management plans. One of the six supported the delaying of implementation until approval is received and two commenters stated that shares should be allocated at the time of conversion but contingent on shareholder approval. One commenter requested a revision in the wording of the regulation to clarify that plans must be approved by an affirmative vote of the holders of a majority of the securities of the issuer present, or represented and entitled to vote, at the meeting.

Of ten commenters addressing the issue, two supported the provision that shareholder approval be at the first annual meeting, and eight requested that the timing aspect be revised to allow approval at any duly called meeting of shareholders, either annual or special. One commenter suggested that the regulation require that a meeting be at least two months after completion of the conversion. One commenter expressed concern for differences in flexibility with annual meeting dates for state holding companies and federal savings associations. One of the eight commenters stated that by waiting for the first annual meeting, awards are expensed based upon the fair market value of common stock on the date of the meeting which increases the financial accounting expenses for the

[17] For example, a number of commenters suggested other categories of depositors, such as retirees, who may be equivalent to local depositors in terms of their long-term relationship with the institution.

[18] *See* 12 U.S.C. 1464(b) and 12 CFR 545.11(b); *see also* Appendix to 12 CFR Part 544 (model bylaws for federal associations provide that the board of directors has the explicit power to reject any application for a savings account).

institution. This same commenter also noted that the date the MRPs are implemented is inconsequential to officers and directors, because the financial benefit of the MRPs is in the full value of the shares, not in their appreciation as in stock options.

Three commenters stated that associations should be given flexibility to obtain a reasonable and appropriate number of shares to fund stock plans through open market purchases or through authorized but unissued shares. Another commenter requested that the regional office review and act upon stock plans at the time of conversion, that no conditional approval be allowed, and that plans not acted upon within a certain time be deemed approved automatically.

Consistent with the discussion in the preamble to the interim final rule, the OTS believes that while there are valid business reasons for thrifts to adopt stock benefit plans in order to attract and retain qualified management, these plans are now more appropriately implemented subsequent to the conversion and with shareholder approval. A waiting period allows shareholders to decide whether to permit dilution of their interests after reviewing management's performance. Moreover, the stock price stabilizes once the marketplace has sufficiently digested the financial data of the association.

The interim final rule required that stock options be granted at the market price at which the stock is trading at the time of grant. The OTS has revised the interim final rule so as to require that stock options be granted at no less than the market price at which the stock is trading at the time of grant. This revision is consistent with the current practices and rules relating to the granting of stock options.

The shareholder vote required by the final rule will be uniform for both savings associations and holding companies, *i.e.*, the affirmative votes of the holders of a majority of the total votes eligible to be cast at a legal meeting.[19]

Shareholder approval is required prior to implementation of MRPs or stock option plans within the first year of conversion. In response to the comments and mindful that a uniform meeting time may be justifiable for the reasons cited by the commenters, the timing aspect in the interim final rule is being revised to allow approval at any duly called meeting of shareholders, either annual or special, to be held no earlier than six months after completion of the conversion. The OTS believes a six-month "cooling off" period will give the marketplace sufficient time to digest the financial data and the shareholders sufficient time to become familiar with the finances and operations of the converted association in order to make an informed investment decision in considering whether to vote to adopt such plans.

The interim final rule did not specify the vesting schedule of the management stock benefit and stock option plans. As a matter of policy under both the conversion regulations and the safety and soundness authority governing management compensation, the OTS has generally required such plans to vest beginning one year from the date the plans are approved by shareholders, and at a rate not in excess of 20% a year. A provision has been added to the final rule codifying these policies. Also, in furtherance of the foregoing policy, an additional provision in the final rule generally prohibits accelerated vesting except in the case of disability or death.

The OTS agrees with the commenters that savings associations should be given flexibility to obtain a reasonable and appropriate number of shares to fund stock plans through open market purchases or through authorized but unissued shares. In funding these plans, the board of directors and the compensation committees are reminded of their fiduciary duties to the association or holding company, its shareholders and the association's members.

Finally, the interim final rule required that management and stock option plans be subject to approval of the appropriate OTS Regional Director prior to plan implementation. The final rule removes the requirement for OTS Regional Director approval in advance of a stockholder vote and implementation. The final rule provides that management stock benefit plans and stock option plans comply with all of the regulatory requirements. Disclosure in all proxy and related material distributed to the shareholders shall indicate that the plans in no way have been approved or endorsed by the OTS, and no written or oral representation to the contrary shall be made by the association, its management, employees or professional advisors. The final rule also adds the requirement that subsequent to shareholder approval of the plans, the association will be required to file with the OTS a copy of the plans approved by shareholders and written certification that the plans approved by shareholders are the same plans submitted to the OTS in the proxy materials.

G. Merger Conversions

In the interim final rule, the OTS amended its conversion regulations to limit merger conversions to institutions that qualify for a supervisory conversion, *i.e.*, financially-weak institutions. OTS also solicited comment as to whether merger conversions involving healthy savings associations should be permitted in the future, and if so, under what circumstances. The OTS was particularly interested in how merger conversions should be structured to avoid the safety and soundness concerns raised by such transactions that were discussed in the preamble to the interim final rule.

Of approximately 43 commenters addressing merger conversions, approximately 33 expressed the view that merger conversions should be permitted for healthy thrifts. Of these 33 commenters, 13 proposed a small savings association exception, with "small" being defined as anywhere from $5 million to $300 million in assets. The bases for the exception were the cost of doing two transactions (a standard mutual-to-stock conversion followed by a merger transaction) in order to accomplish a merger; the business reasons (access to capital markets, choice of partner, long-term survival, technological advancement, access to a strong management team and enhancement of service to communities); and the economic necessity for market-driven consolidations to occur.

Those commenters who favored authorization of merger conversions involving healthy thrifts believed that the OTS should regulate and supervise these transactions and address concerns over insider abuse, excessive management compensation and stock incentive packages. They argued that OTS could set narrow approval guidelines but should not ban or eliminate merger conversions. One commenter stated that merger conversions should be allowed on a case-by-case basis taking into account the size and strategic needs of the institution. Another commenter stated that OTS should allow submission on a test case basis so as to develop a structure that would address the issues.

A few commenters thought that depositors should be able to vote on whether a stand-alone or merger conversion would be in the best interest

[19] This voting requirement coincides with the voting requirement of Section 5 of 12 CFR 552.3, the Federal Stock Charter provision. As noted, it will apply to savings and loan holding companies formed in the conversion process that implement management stock benefit plans within one year following conversion.

of the association. Several commenters stated that the board of directors should decide whether to undertake a merger conversion based on their business judgment. Two commenters thought that for a merger conversion to be approved, an institution would have to document specific business, economic and fiscal reasons and be required to demonstrate that the transaction would provide opportunities for customers and depositors to participate in the institution's value. Another commenter stated that the prohibition punishes forward-thinking thrift managers and further endangers the health of the industry by closing off avenues for generating capital.

Another commenter stated that the institution should be free to negotiate the terms of a merger conversion, including reasonable compensation arrangements and purchase discount percentages.

Some suggestions regarding the windfall gains and other problems and the valuation issue included: allow subscribers to subscribe to the stock of the acquiring association at a 15% to 20% discount, based on the stock price either at the time of acquisition or at the time the transaction is announced; require the acquiring entity to pay a control premium; assure that value is made available to appropriate constituencies through community foundations, special interest payments on deposits, and/or a special class of preferred stock made available to depositors without cost; make bonus interest payments equal to a certain percentage of principal on all eligible account holder deposits maintained at resulting institution for a specific time period after the acquisition is consummated [20]; require the acquiror to hold the thrift as a separate subsidiary or be an OTS-regulated institution itself; require all net conversion proceeds to go to the association; allow compensation only to the extent allowed in stand alone conversions; or require a CRA rating of outstanding or satisfactory.

One commenter recommended using a two-step approach, allowing the mutual to enter into a definitive merger conversion agreement prior to doing a stand-alone conversion, disclosing the intended transaction in the stand-alone conversion, and then requiring a 90-day period between completion of the stand-alone conversion and consummation of the merger.

[20] The OTS notes that a fundamental premise of the conversion regulations prohibits free distribution schemes in connection with a conversion. *See* 39 FR 9142 (March 7, 1974).

Of the approximately ten commenters that supported the prohibition against merger conversions, two did so only until guidelines can be drawn to protect the rights of members of the disappearing association and to prevent insider abuse. One of the ten stated that merger conversions should be prohibited except in cases of undercapitalized institutions or at the discretion of the regulators on a case by case basis. A fourth supporter noted that what is beneficial to the board of directors and insiders may not always be in the best interest of the institution or the community it serves. A fifth supporter stated that depositors are best served by forcing acquiring entities to bid for a converted institution's stock in the open market. A sixth commenter supported the prohibition because of the windfall and valuation problems.

Upon review of the comments, the OTS has determined to continue to generally limit merger conversions to cases involving financially weak institutions. Although several commenters made suggestions that attempted to address the concerns raised in the interim final rule, including the valuation problem and accrual of "windfall gains" by the acquiror, the OTS remains concerned with the problems raised by merger conversions of healthy institutions.

In line with the commenter who suggested that the OTS allow test case submissions in order to develop a structure that would address the issues, the OTS emphasizes that it retains its general waiver authority under part 563b to permit a merger conversion transaction under appropriate circumstances.[21] An institution seeking a waiver of the merger conversion limitation will bear the burden of demonstrating how a proposed transaction specifically addresses the concerns set forth above and in the interim final rule, and will also be required to document specific business, economic and corporate reasons for a merger conversion. As discussed in the interim final rule, however, the OTS has identified a number of significant structural abuses and regulatory problems inherent in merger conversions.[22] Thus, while the OTS continues to remain open to the development of a transaction structure that addresses these problems, a healthy institution faces significant hurdles in demonstrating its transaction will resolve these problems.

In the interim final rule, the OTS stated that merger conversions could be done as a two-step process in which the mutual account holders are initially granted an opportunity to purchase stock of a converting savings association or its holding company and then following the conversion, vote to merge with or be acquired by another institution, subject to certain limitations. One of the limitations is 12 CFR 563b.3(i)(2), under which no person is permitted to make an offer for any security of a converting savings association issued in connection with the conversion. The other limitation is 12 CFR 563b.3(i)(3), under which no person is permitted for a period of three years following the conversion, to make an offer to acquire or acquire more than 10% of any class of equity security of a converted savings association without the prior written approval of the OTS.[23]

In addition, the OTS has generally imposed a condition in connection with approval of a conversion transaction that prohibits, without prior OTS approval, the converting association or its holding company from taking any action within the first year following conversion that could lead to a transaction that would require stockholder approval if such transaction were subject to 12 CFR 552.13. These provisions are intended to preserve the integrity of the independent appraisal process, deter manipulation of the conversion process by insiders or other sophisticated third parties to the detriment of the account holders, and permit the OTS to monitor post-conversion acquisition activities of recently converted associations. By this regulatory oversight of merger and acquisition activities following the conversion, a converting institution is provided with a reasonable period of time to implement its post-conversion business plan and to invest the conversion proceeds. With respect to the appraisal issue, the *pro forma* valuation of converting institutions assumes that no acquisition of the converting association will take place for a reasonable period of time following the conversion. If there are ongoing

[21] One situation suggested by some commenters and to which the OTS would give serious consideration is where a converting association could demonstrate by clear and convincing evidence that a standard conversion would not be economically feasible, based on the ratio of expenses to gross proceeds, because of the asset size of an institution. Very small institutions, *i.e.* those with assets under $25 million are more likely to be able to establish such a justification.

[22] *See* 59 FR 22725, 22729 (May 3, 1994); *see also* testimony of a House Financial Institutions Subcommittee Hearing on Mutual-to-Stock Conversions dated January 26, 1994.

[23] Clearly, with respect to the latter limitation, the opportunity is present for converted institutions contemplating a merger to seek approval from the OTS to undertake such a transaction even within the first year following conversion.

discussions about a takeover of a converting thrift during the conversion process, the ability of an appraiser to prepare an appraisal that satisfies the requirements of 12 CFR 563b.7 is severely diminished because of the uncertainty that such takeover speculation would generate.

H. Extension of the Conversion Public Comment Period

OTS revised the conversion regulations to conform the public comment period with the longer twenty calendar day public comment period provided under the acquisition of control regulations.[24]

Eight of ten commenters endorsed the new requirement, with one of the eight suggesting that OTS include a requirement for wider distribution, in a timely manner, of the conversion notices contemporaneously with the filing of the conversion application. One of the eight noted that too long a comment period may cause significant delays and related inappropriate costs to the converting associations.

One commenter stated that the ten day comment period provided ample time for any person desiring to comment on an application, and if the 20-day period is used, suggested that an association be permitted to publish the 4(b) notice immediately upon filing the application with OTS, without waiting for OTS authorization. Another commenter stated that the revision served no useful purpose, but if kept, also suggested that the 4(b) notice should be able to be given immediately after the filing to ensure no delay due to the longer public comment period.

The OTS continues to believe that the longer public comment period will give sufficient time for interested parties to review and comment on a detailed conversion application. In order to accommodate the concern noted by some commenters, the final rule requires that the 4(b) notice be given immediately after the filing of the application with the OTS. However, the final rule also clarifies that if a conversion application is later deemed not properly executed or is materially deficient or substantially incomplete, the applicant may be required to refile the application, republish the accompanying 4(b) notice, and provide for another 20-day public comment period.

I. Submission of Business Plans for All Conversion Transactions

OTS now requires that all conversion transactions, with or without holding company formations, include a business plan, and that the business plan address in detail how the capital acquired in the conversion will be utilized.

All commenters addressing this issue affirmatively supported the provision. Two wanted assurance of confidentiality of the business plan to protect associations from unfair competition. One of the commenters stated that the business plans should not be used to deny a conversion application, unless the plan raises significant safety and soundness concerns, and two urged OTS not to put itself in the position of deciding how much capital a business may need in future years, nor to require a converting institution to justify the need for capital in order to be able to convert.

The interim final rule will continue in effect without change. As noted in the preamble to the interim final rule, in order to ensure that a business plan is given confidential treatment, the applicant should follow the procedures set forth at 12 CFR 563b.4(c).

Applicants for conversions must submit their business plans to the Regional Director prior to the filing of the conversion application. OTS may deny a conversion application where the business plan does not sufficiently address the deployment of conversion proceeds, raises significant safety and soundness concerns, or does not otherwise address convenience and needs standards as required in the final regulation.

J. Revision to Post-Conversion Stock Repurchase Rules

In its interim final rule, the OTS revised the conversion regulations to prohibit stock repurchases by the converting association for one year following conversion. After one year, a converted association may file with the appropriate Regional Director an open market repurchase program in which it may propose stock repurchases of no more than 5% of the outstanding capital stock during any twelve month period in the second and third years after the conversion. The Regional Director also may disapprove repurchases if the association does not demonstrate a valid business purpose for the stock repurchase; and also may approve amounts greater than 5% in the second and third years if there are circumstances that would justify such repurchases.

A majority of the commenters addressing this issue disagreed with the revisions, six commenters proposed alternative revisions, and one commenter supported the prohibition of stock repurchases for one year following conversion. The majority felt the blanket prohibition was not sound public policy, was not justified or necessary, was detrimental to thrift stock prices, and reduced the ability of thrifts to compete in capital markets. Most stated that the repurchase of stock is standard corporate practice that should be left to the decision of the board of directors (consistent with fiduciary responsibilities), subject to safety and soundness concerns. Most also felt that thrifts need to retain flexibility in using repurchase programs because markets are fluid and subject to change due to various forces. Most viewed the prohibition on stock repurchases as taking away the institution's and the OTS's ability to follow market dictates and react to stock price fluctuations and other market conditions. A few commenters stated that by limiting repurchases, the regulation may cause institutions to use excess capital unwisely, to engage in unsound and risky ventures in an attempt to provide better returns for shareholders, and could unintentionally increase pressure on thrift management to produce better returns on equity by taking greater risks in daily operations. A few commenters found no valid justification for distinguishing newly converted thrifts and stated that, in deciding whether a repurchase is for valid business reasons, the OTS should look at whether the association has excess capital, whether the stock is trading below book value, and whether the repurchase is an attractive investment given the association's business prospects.

One commenter requested that the rule specify in greater detail the circumstances that would warrant repurchase amounts greater than the 5% repurchase limit in the second and third years following conversion. Another commenter requested that the rule require all regions to be uniform in permitting repurchases greater than 5% during that time.

Eight commenters stated that recently converted thrifts should be allowed to operate under the regulations in place at the time they converted, and that the OTS should grandfather all associations that converted prior to the effective date of the interim final rule.

While the OTS continues to believe that stock repurchase programs may serve valid business purposes, *e.g.*, maintaining the value of a converting association's stock in an active trading market, the OTS also continues to have concerns with substantial buyback programs that commence immediately after conversion and are not based on a valid business purpose. In addition, and as noted in the preamble to the interim

[24] 12 CFR 574.6(e).

final rule, repurchases commenced immediately after conversion raise substantial issues regarding whether conversion stock has been appropriately valued.

To address these concerns, but also to allow for some flexibility for repurchase programs, the final rule continues to discourage stock repurchases for one year after conversion, but gives the OTS discretion to allow limited stock repurchases in the first year where exceptional circumstances are established.[25] This would give the OTS the ability to permit repurchases where it may be in the best interests of the association and its shareholders; however, such repurchases will be allowed in the first year only when deemed necessary by the OTS.

The interim final rule stated that repurchases within two years after the conversion must be part of an open-market stock repurchase program that does not allow for a repurchase of more than 5% of the association's outstanding capital stock during a twelve month period. The final rule has been revised to clarify that repurchases in years two and three after conversion must be part of an open-market stock repurchase program and generally will be limited to no more than 5% of the association's outstanding capital stock. However, the final rule allows the OTS to approve repurchase programs in amounts greater than 5% in the second and third years, if exceptional circumstances are established. As stated above, this would give the OTS the ability to permit additional repurchases where it may be in the best interests of the association and its shareholders; however, such repurchases will be allowed only when deemed necessary by the OTS.

The OTS continues to believe that ensuring an equitable conversion process and consistency in that process require that the final rule apply to all associations that converted in the three years preceding the May 3, 1994 effective date of the interim final rule. Any previous repurchases that occurred prior to May 3, 1994 will be grandfathered, however, grandfathered repurchases will count toward compliance with the current requirements.

K. Convenience and Needs Considerations

The proposed rule would add a new "convenience and needs" standard to existing approval standards applicable to conversions and MHC stock offerings. Under the proposal, the OTS would review the applicant's performance under the CRA,[26] the contents of the business plan submitted in support of the application, and other factors relating to the applicant's performance in meeting the convenience and needs of its delineated community.

Three commenters favored adoption of the new standard and nine opposed the new standard. Favorable comments expressed the view that the proposal would serve a valid public purpose and adequately respond to community and Congressional concerns regarding allocation of conversion proceeds. Comments opposed to the proposal focused primarily on the OTS' authority to adopt the proposal and on questions relating to implementation, such as whether the proposal is necessary or appropriate given existing laws and regulations; whether the OTS will consider CRA-related protests during application processing; and whether the OTS would mandate allocation of transaction proceeds to specific community credit or lending programs.

1. OTS Authority to Adopt the Proposal

As noted in the preamble to the convenience and needs proposal, a convenience and needs standard has not, to date, been applied to mutual-to-stock conversions of savings associations. Similarly, a convenience and needs standard generally has not been applied to MHC stock offerings.[27] Upon review of this area, however, the OTS proposed amendments to its regulations to impose a convenience and needs standard on these transactions. The proposal was issued, among other reasons, to enhance the OTS' ability to ensure that savings associations undertaking these transactions recognize their responsibility to consider their community's credit needs.

In the notice of the proposed amendments, the OTS explained its authority to adopt and implement the proposal.[28] Some commenters argued that the proposal goes beyond OTS authority under the Home Owners' Loan Act (HOLA)[29] and the CRA. These commenters stated that the CRA limits the types of applications that may be subject to review under the CRA; that Congress intended the CRA to cover only those transactions resulting in new charters or expanded facilities, not conversions and MHC stock offerings. On this point, these commenters asserted that a convenience and needs standard is not appropriate in conversions because conversions are fundamentally a capital-raising technique, not an expansion of operations. One commenter believed that section 5(c) is the only provision of the HOLA[30] that enumerates thrift powers and authorities, and that no affirmative housing credit obligation exists in section 5(c) that would permit the OTS to direct the allocation of conversion proceeds to community lending programs.

The OTS has concluded that it has ample statutory authority for the amendments. As noted in the proposal, the OTS has broad authority under sections 5(i)(1) and 5(i)(2) of the HOLA to regulate mutual-to-stock conversions, and under section 10(o)(7) of the HOLA to regulate mutual holding companies.[31] Inherent in this broad grant of authority is the ability to assess the impact of a proposed transaction on the convenience and needs of the communities to be served by a savings association.

In addition, section 4(a)(3) of the HOLA provides that the Director "shall exercise all powers granted to the Director under this chapter so as to encourage savings associations to provide credit for housing safely and soundly."[32] For federal associations, in particular, the OTS is directed to exercise its regulatory powers in order to provide thrift institutions "* * * for the extension of credit for homes and other goods and services."[33] The powers granted to the Director include the general regulatory authority under sections 5(i)(1), 5(i)(2), and 10(o)(7) of the HOLA mentioned above. The admonitions in the HOLA that the Director use his or her statutory powers to encourage savings associations to provide credit provides a substantial additional basis for the Director to assess community needs when reviewing applications.

Thus, the OTS' authority to address convenience and needs concerns in the

[25] We note, for example, that typically public companies may repurchase stock in the open market where there is a prolonged period of a downward trend in the stock price.

[26] The OTS recently reproposed revisions to its regulations implementing the CRA. *See* 59 FR 51232 (October 7, 1994).

[27] A convenience and needs standard has been applied to mutual holding company reorganizations because these transactions require the OTS' approval under the Bank Merger Act (BMA). *See* 58 FR 44105 (August 19, 1993) (adopting part 575 governing mutual holding company reorganizations and related stock issuances). The BMA requires that the responsible agency consider the convenience and needs of the community to be served in acting on any BMA application. *See* 12 U.S.C. 1828(c)(5).

[28] *See* 59 FR 22764, 22765 (May 3, 1994).

[29] 12 U.S.C. 1461.

[30] 12 U.S.C. 1464(c).

[31] 12 U.S.C. 1464(i)(1), 1464(i)(2) and 1467a(o)(7). *See also Charter Federal S.&L. Ass'n. v. Office of Thrift Supervision*, 912 F.2d 1569 (11th Cir. 1990).

[32] 12 U.S.C. 1463(a)(3).

[33] *See* section 5(a) of the HOLA, 12 U.S.C. 1464(a)

context of applications is not limited to the applications specifically mentioned in the CRA. While the application review sections of the CRA arguably focus primarily on transactions that involve some type of expansion of operations in a geographical market, *e.g.*, new charters or branch facilities,[34] the CRA does not limit agency authority under other statutes or regulations to consider convenience and needs factors during the review of applications that do not necessarily involve an expansion of operations.

Finally, the amendments are consistent with section 5(c) of the HOLA. Section 5(c) of the HOLA generally sets forth permissible investments and investment limitations for federal savings associations, but in no way limits the OTS' authority to ensure that these investment powers are exercised in a manner that is consistent with the convenience and needs of the community.

2. Appropriateness of a Convenience and Needs Standard

As stated in the proposal, the amendments are intended to enhance the OTS' ability to ensure that savings associations undertaking conversions and MHC stock offerings recognize their responsibility to consider their community's credit needs.

A number of commenters questioned the wisdom of a convenience and needs standard, suggesting the OTS has sufficient regulations and policies to implement the CRA and ensure that the convenience and needs of the community are met by all thrifts.

For the reasons stated above in support of the OTS' authority to adopt the amendments, the OTS believes it is appropriate to impose a convenience and needs standard on applications for conversions and MHC stock offerings. In addition, the OTS believes the amendments will enhance current regulations and policies designed to ensure that thrifts meet their community's credit needs.

3. Consideration of CRA-Related Protests During Application Review

The proposal did not address whether the OTS would consider CRA-related protests during agency review of conversion and MHC stock offering applications.

Some commenters objected to OTS consideration of CRA protests during the public comment period. These commenters emphasized that the timing of a conversion, in particular, is critical to stock pricing and appraisal considerations. The mere prospect of a delay due to a CRA protest may unfairly subject an institution to pressure to make concessions to protestants, according to these commenters. They suggested limiting public comments on applications subject to the rule to issues relating to eligibility of purchasers and fairness of the appraisal.

The OTS realizes that conversions and MHC stock offerings are time-sensitive transactions and that protests may affect their success. Nevertheless, the OTS does not believe it is appropriate to preclude the public from commenting on a savings association's performance in meeting a community's convenience and needs. Accordingly, the OTS will consider these types of comments filed as part of a public comment period on conversion and MHC stock offering applications. The OTS emphasizes that it will address these comments as promptly as possible. The CRA protest and oral argument procedures at 12 CFR 543.2 will not apply, however.[35] The OTS believes the public comment period will provide a full and fair opportunity for interested persons to express their views regarding an applicant's performance in meeting the convenience and needs of the community.

4. Allocation of Transaction Proceeds to Specific Lending Programs or Services

The preamble to the proposal specifically solicited comment on whether the proceeds from conversions or MHC stock offerings should be directed to specific types of activities, and, if so, what portion should be used for what types of activities.[36]

A few commenters objected to any regulation or policy that would impose an allocation scheme on transaction proceeds. They argued that the OTS has no statutory authority for such action; that a regulatory allocation scheme would place artificial limits on capital planning and business strategy; and that specific allocations should be within the discretion of the management of the applicant, consistent with safety and soundness.

The OTS agrees with many of the comments on this issue. In proposing the amendments, the OTS did not intend to impose any specific allocation scheme on proceeds from conversions or MHC stock offerings. The OTS agrees that the allocation of transaction proceeds is largely a matter within the discretion of the converting association, consistent with the safety and soundness of the savings association. Nevertheless, as suggested in the proposal, the OTS will require applicants to submit business plans that demonstrate how transaction proceeds will be used to further the convenience and needs of the community. Business plans should describe specifically the lending and credit programs to which transaction proceeds will be directed. OTS policies encourage savings associations to consider traditional lending programs as well as more innovative methods to meet the credit needs of the communities they serve.[37]

Where an applicant's business plan does not adequately address how transaction proceeds will help meet the credit and lending needs of its community, the OTS may deny the application or impose appropriate conditions of approval designed to ensure that the applicant will address these concerns. The OTS generally will not view commitments included in a savings association's business plan as remedying pre-existing CRA-related deficiencies. However, commitments may be appropriate in addressing CRA performance in the context of the conversion of a troubled savings associations. The OTS intends to give substantial weight to an applicant's previous CRA record, consistent with long-standing policy of the OTS.[38]

As stated above, applicants must submit business plans to OTS staff for their review prior to filing a formal application.

L. Other Issues

1. Subscription Rights

The conversion regulations require that prior to the completion of a conversion, no person may transfer, or enter into any agreement or understanding to transfer, the legal or beneficial ownership of conversion subscription rights, or the underlying securities to the account of another.[39] The OTS did not propose any change to the prohibition in the OTS conversion regulations on the transfer or sale of subscription rights or similar "free distribution" schemes, but did request comment on whether subscription rights should continue to be nontransferable, or if transferability is recommended, the

[34] *See* 12 U.S.C. 2902(3), 2903.

[35] As a matter of policy the OTS has applied these procedures to certain conversion transactions and other applications, although neither the HOLA nor the CRA require the OTS to follow any specific procedures.

[36] *See* 59 FR 22764, 22766 (May 3, 1994).

[37] *See, e.g.*, "Community Development Investment Authority" (OTS guide to the federal laws and regulations governing community development activities of savings associations).

[38] *See* 54 FR 13742 (April 5, 1989) (joint CRA policy statement of the federal financial supervisory agencies).

[39] 12 CFR 563b.3(i)(1).

reasons for, and the manner in which to allow for, such transfer.

Almost all of the commenters who commented on this issue stated that subscription rights should continue to be nontransferable. The commenters that opposed transferability asserted that transferability would place undue pressure on mutuals to convert; would place emphasis on ownership by depositors, a concept that is theoretical; would make the conversion process overly complex; would be dangerous to the long-term health of the industry; would be unworkable and not in the public interest; would increase the chances of fraud and abuse; would be difficult and costly in allocation of rights; would enable sophisticated and professional investors to take advantage of members; and would create a destabilizing effect on mutuals. One commenter suggested an alternative that would allow members to cause associations to redeem rights for a certain period of time, for payment of a special dividend, provided there is adequate capital.

Three commenters endorsed transferability of subscription rights, although one of the three stated that account holders should be allowed to transfer rights to another individual, but not a group of investors or another institution.

The OTS notes that the FDIC and others have suggested that it may be appropriate for depositors to be able to receive a gift of cash or stock or to transfer and sell their subscription rights so that any "windfall" value can be distributed directly to the depositors. The current OTS regulatory regimen specifically rejects any type of free distribution schemes as unsafe and unsound practice.[40] The OTS continues to believe that this type of change to the current conversion regulations would raise a number of complex legal and policy issues, many of which were taken into account previously by the FHLBB in determining to prohibit transferability.[41] These issues, as noted in the preamble to the interim final rule, include the possibility of adverse federal tax consequences to depositors receiving such rights, undue pressure on mutual associations to convert that may evolve from significant shifts of savings funds by depositors into such associations, difficulties in equitably allocating such subscription rights among depositors, potential manipulation of the process by sophisticated third parties to the detriment of the depositors, incentives for manipulation by insiders, the continued need for establishment and maintenance of a liquidation account and significantly increased conversion costs due to compliance with securities law requirements for registering subscription rights for public distribution. For these reasons, the OTS conversion regulations continue in effect without any change relative to free distribution of stock or transfer of subscription rights.

2. Availability of Conversion Documents

OTS rules now permit the public to have ready access to all relevant non-confidential materials regarding proposed conversion transactions.

Of five commenters addressing the issue of whether OTS should permit access to non-confidential preliminary conversion materials, three supported the revision allowing access, one opposed, claiming access to such materials would confuse members whose focus should be on the accuracy and adequacy of the final information disclosed to the public, and one stated that the prospectus and plan of conversion, as approved by the board of directors, provide adequate disclosure.

The OTS continues to believe that even though this information is preliminary in nature, it may be useful for account holders and the public to access it earlier in the conversion process, and therefore, the provision in the interim final rule will continue in effect without change. As noted above, business plans filed with, or in contemplation of, a conversion will continue to be treated confidentially so long as the applicant follows the procedures set forth in 12 CFR 563b.4(c).

3. Conforming Changes to Mutual Holding Company Regulations

The mutual holding company regulations, 12 CFR part 575, generally incorporate the substantive and procedural standards for conversion contained in the conversion regulation. To the extent the final rule addresses conversion standards, those same standards apply to mutual holding company reorganizations and minority stock issuances. The OTS is also revising 12 CFR part 575 to make clarifying and conforming changes to the mutual-to-stock conversion regulations.

III. Summary of Revisions to the Conversion Regulations

For the reasons set forth in the previous section, the following revisions have been made to the interim final rule. All other provisions of the interim final rule, and the proposed rule on convenience and needs, are adopted without change.

—The definition of "Local Community" in 12 CFR 563b.2(a)(19) is revised to include the generally used term "metropolitan statistical area," all zip code areas corresponding to an association's delineated CRA service area, and any area(s) or category designated by the savings association and approved by the OTS.

—12 CFR 563b.3(c)(2)(i), (4)(i), (5)(i), which required the LDP in the subscription phase of the conversion, are deleted in the final rule and sections (2) (ii) and (iii), (4) (ii)–(v), and (5) (ii) and (iii) are redesignated as sections (2) (i) and (ii), (4) (i)–(iv), and (5) (i) and (ii).

—12 CFR 563b.3(c)(6)(iv) is revised to delete the phrase "or within 100 miles of the association's home or branch office(s)."

—12 CFR 563b.3(c)(23) is revised to clarify that eligible account holders have first priority to purchase conversion stock, tax-qualified employee stock benefit plans have second priority, supplemental eligible account holders have third priority, and other voting members who have subscription rights have fourth priority. Also the final rule clarifies that if the actual offering exceeds the proposed maximum offering price, up to ten percent of the total offering of shares may be sold to the tax-qualified employee stock benefit plans; if the ESOP is not able to purchase conversion stock, the ESOP or any other tax-qualified plan may purchase shares in the open market or utilize authorized by unissued shares only with prior OTS approval; and disclosure must be made in the conversion application and related documents as to the effects on the association and subscribers of shares of either open market purchases or use of authorized but unissued shares.

—12 CFR 563b.3(d)(12) is redesignated as 12 CFR 563b.3(d)(13) and a new 12 CFR 563b.3(d)(12) is added to give converting associations the authority to include a preference for eligible account holders, supplemental eligible account holders and other voting members residing in the association's local community.

—12 CFR 563b.3(g)(3)(i)(B) is revised to clarify that repurchases within year two and year three after conversion must be part of a repurchase program that does not allow for a repurchase of more than 5% of the association's outstanding capital stock during a twelve month period.

—12 CFR 563b.3(g)(3)(i)(D) revises the reference from Corporate and Securities

[40] *See* 39 FR 9142 (March 7, 1974).

[41] *See* footnote 17 above.

Division to Business Transactions Division.

—12 CFR 563b.3(g)(3)(ii) is revised to give the OTS discretion to allow limited stock repurchases during the first three years in amounts exceeding those specified in (g)(3)(i), where exceptional circumstances are established.

—12 CFR 563b.3(g)(4) (vii) and (viii) are revised to require the affirmative vote of the holders of a majority of the total votes eligible to be cast at a shareholder meeting for the establishment and implementation of management stock benefit plans and stock option plans within one year of conversion.

—12 CFR 563b.3(g)(4) (vii) and (viii) also are revised to allow approval of stock option plans and management stock benefit plans at any duly called meeting of shareholders, either annual or special, to be held no earlier than six months after completion of the conversion.

—12 CFR 563b.3(g)(4)(ix) is revised to require stock options to be granted at not less than the market price at which the stock is trading at the time of grant.

—12 CFR 563b.3(g)(4)(xi) is revised to require strict compliance with the terms and provisions of (g)(4).

—12 CFR 563b.3(g)(4)(xii) is added to codify current OTS policy requiring that management benefit plans and stock option plans shall vest beginning one year from the date the plans are approved by shareholders, shall vest at a rate not in excess of 20% a year, and shall provide for accelerated vesting solely in the case of disability or death.

—12 CFR 563b.3(g)(4)(xiii) is added to require disclosure in all proxy and related material distributed to the shareholders, in connection with the meeting at which the stock option and benefit plans will be voted, to state that the plans comply with OTS regulations, have in no way been endorsed or approved by OTS; and no written and oral representation to the contrary shall be made.

—12 CFR 563b.3(g)(4)(xiv) is added to require that no later than five calendar days from the date of shareholder approval, an association shall file with the OTS a copy of the approved plans and written certification that the plans approved by the shareholders are the same plans filed with the proxy materials.

—Newly-designated 12 CFR 563b.4(b)(1)(i) is revised so as to require the publication of notice immediately upon filing of a conversion application with the OTS.

—12 CFR 563b.4(b)(1)(i) also is revised to clarify that in the case where an application is not properly executed or is materially deficient or substantially incomplete, and where a new application is required to be filed, the applicant may be required to publish new notice upon filing of the revised application and may be required to consider written comments for an additional 20-day period.

—12 CFR 563b.7(f)(2) is revised to prohibit appraisers from also serving as underwriters or selling agents under the same plan of conversion except where procedures are followed and representations made to ensure that an appraiser is separate from the underwriter or selling agent affiliate and the underwriter or selling agent affiliate does not make recommendations or in any way impact the appraisal; and to prohibit the appraiser from receiving any fees other than the fees for services rendered in connection with the appraisal.

—12 CFR 563b.11 is added to the final rule to include a convenience and needs test to the approval requirements for conversion transactions.

—12 CFR 575.1 is revised to include a provision giving the OTS the ability to grant waivers in writing from any requirement of the mutual holding company regulations for good cause shown.

—12 CFR 575.7(a)(7) is added to include a convenience and needs test to the approval requirements for stock issuances of savings association subsidiaries of mutual holding companies.

—12 CFR 575.7(d)(2) is revised to provide that the sale of minority shares of capital stock of the savings association to be made under the plan of minority stock issuance, including any sale in a public offering or direct community marketing, shall be completed as promptly as possible and within 45 calendar days after the last day of the subscription period, unless extended by the OTS.

—12 CFR 575.13(a)(4) is revised to clarify the prohibition on the use of "running" proxies and the requirement for the use of a specifically designated proxy for a mutual holding company reorganization, mutual-to-stock conversion undertaken either by a mutual savings association or a mutual holding company, or any other material transactions.

IV. Paperwork Reduction Act

The reporting requirements contained in this final rule have been submitted to and approved by the Office of Management and Budget (OMB) under OMB Control Nos. 1550–0014, 1550–0071 and 1550–0072 in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550–0014, 1550–0071, 1550–0072), Washington, DC 20503 with copies to the Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

The reporting requirements in this final rule are found in 12 CFR 563b.100 and 12 CFR Part 575. The information is needed by the OTS to further strengthen the standards governing the conversion process. The likely recordkeepers are savings associations.

V. Regulatory Flexibility Act

Pursuant to Section 605(b) of the Regulatory Flexibility Act, it is certified that this final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a final regulatory flexibility analysis is not required.

VI. Executive Order 12866

The OTS has determined that the final regulation does not constitute a "significant regulatory action" for purposes of E.O. 12866.

List of Subjects

12 CFR Part 563b

Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 575

Capital, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

For the reasons set out in the preamble, the interim rule amending 12 CFR 563b.2, 563.b.3, 563b.4, 563b.5, 563b.7, 563b.8, 563b.10, 563b.100, 563b.101, and 12 CFR 575.7 and 575.13 which was published on May 3, 1994 at 59 FR 22725 is adopted as final with the following changes and parts 563b and 575 of subchapter D, chapter V, title 12 of the code of Federal Regulations are amended as follows:

Subchapter D—Regulations Applicable to All Savings Associations

PART 563b—CONVERSIONS FROM MUTUAL TO STOCK FORM

1. The authority citation for 12 CFR part 563b is revised to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 2901; 15 U.S.C. 78c, 78l, 78m, 78n, 78w.

2. Section 563b.2 is amended by revising paragraph (a)(19) to read as follows:

§ 563b.2 Definitions.

(a) * * *

(19) *Local community.* The term *local community* includes all counties in which the converting association has its home office or a branch office, all zip code areas corresponding to the converting association's delineated Community Reinvestment Act service area, each county's metropolitan statistical area and/or such other area or category as delineated by the savings association and provided for in the plan of conversion, as approved by the OTS.

* * * * *

3. Section 563b.3 is amended by:

a. Removing paragraphs (c)(2)(i), (c)(4)(i) and (c)(5)(i);

b. Redesignating paragraphs (c)(2) (ii) and (iii), (c)(4) (ii) through (v) and (c)(5) (ii) and (iii) as paragraphs (c)(2) (i) and (ii), (c)(4) (i) through (iv) and (c)(5) (i) and (ii), respectively, and by redesignating paragraph (d)(12) as paragraph (d)(13);

c. Revising paragraphs (c)(6)(iv), (c)(23), (g)(3)(i)(B), (g)(3)(i)(D) introductory text, (g)(3)(ii), (g)(4)(vii), (g)(4)(viii), (g)(4)(ix), (g)(4)(x), and (g)(4)(xi); and

d. Adding paragraphs (d)(12), (g)(4)(xii), (g)(4)(xiii), and (g)(4)(xiv).

The revisions and additions read as follows:

§ 563b.3 General principles for conversions.

* * * * *

(c) * * *

(6) * * *

(iv) A condition that any direct community offering by the converting savings association shall give a preference to natural persons residing in the association's local community.

* * * * *

(23) Provide that eligible account holders with subscription rights have first priority to purchase conversion stock, tax-qualified employee stock benefit plans have second priority, supplemental eligible account holders have third priority, and other voting members who have subscription rights have fourth priority. If the final conversion stock valuation range exceeds the maximum conversion stock offering range, up to ten percent of the total offering of shares may be sold to the tax-qualified employee stock benefit plans. Furthermore, if the ESOP is not able to purchase conversion stock, the ESOP or any other tax-qualified plan may purchase shares in the open market or utilize authorized but unissued shares only with prior OTS approval; and disclosure must be made in the conversion stock offering materials of the potential open market purchases or use of authorized but unissued shares to fund the ESOP and its effects on the association and its shareholders.

* * * * *

(d) * * *

(12) That the offering of stock to be sold in the subscription offering may give a preference to eligible account holders, supplemental eligible account holders, and other voting members residing in the association's local community.

* * * * *

(g) * * *

(3) * * *

(i) * * *

(B) Repurchases within year two and year three after conversion are part of an open-market stock repurchase program that does not allow for a repurchase of more than 5% of the association's outstanding capital stock during a twelve month period;

* * * * *

(D) The association provides to the Regional Director, with a copy to the Chief Counsel's Office, Business Transactions Division, no later than ten days prior to the commencement of a repurchase program, written notice containing a full description of the repurchase program to be undertaken, the effect of such repurchases on its regulatory capital position, and a valid business purpose for the repurchase; and the Regional Director does not disapprove the repurchase program based upon a determination that:

* * * * *

(ii) During the first three years following conversion, the OTS, in accordance with the standards contained in this paragraph, may permit stock repurchases in excess of the amounts specified in paragraph (g)(3)(i) of this section, where exceptional circumstances are established.

(4) * * *

(vii) All such plans, prior to establishment and implementation, are approved by the holders of a majority of the total votes eligible to be cast at any duly called meeting of shareholders of the association or its holding company, either annual or special, to be held not earlier than six months after completion of the conversion;

(viii) In the case of a savings association subsidiary of a mutual holding company, all such plans, prior to establishment and implementation, are approved by the holders (other than its parent mutual holding company) of a majority of the total votes eligible to be cast, at any duly called meeting of shareholders, either annual or special, to be held no earlier than six months after completion of the conversion;

(ix) For stock option plans, stock options are granted at no less than the market price at which the stock is trading at the time of grant;

(x) For management or employee stock benefit plans, no conversion stock is used to fund the plans;

(xi) The plans subject to this section must comply with the terms and amounts specified in paragraph (g)(4) of this section;

(xii) The plans subject to this section shall begin vesting no earlier than one year from the date the plans are approved by shareholders, shall not vest at a rate in excess of 20% a year, and shall not provide for accelerated vesting except in the case of disability or death;

(xiii) Disclosure in all proxy and related material distributed to shareholders in connection with the meeting at which the stock option plans and management stock benefit plans will be voted shall state that the plans comply with OTS regulations, that the OTS in no way endorses or approves the plans; and no written or oral representation to the contrary shall be made; and

(xiv) No later than five calendar days from the date of shareholder approval of any stock option or management benefit plans, the institution shall file with the OTS a copy of the approved plans and written certification that the plans approved by the shareholders are the same plans filed with and disclosed in the proxy materials.

* * * * *

4. Section 563b.4 is amended by designating the text of paragraph (b)(1) preceding the notice of filing as paragraph (b)(1)(i) and revising it, and designating the concluding text of paragraph (b)(1) following the notice of filing as paragraph (b)(1)(ii) to read as follows:

§ 563b.4 Notice of filing; public statements; confidentiality.

* * * * *

(b) *Notice of filing.* (1)(i) Immediately upon filing an application for conversion with the Office, the applicant shall publish a notice of the filing. If an application for conversion is not properly executed or is materially deficient or substantially incomplete, the Office may require a new application to be filed, publication of a new notice and an additional 20-day comment period. The applicant shall prominently post the notice in each of its offices and publish the notice in at least one newspaper printed in the English language and having a substantial general circulation in each

community in which an office of the applicant is located, as follows:

* * * * *

5. Section 563b.7 is amended by removing the last sentence of paragraph (f)(2) and adding two new sentences in its place to read as follows:

§ 563b.7 Pricing and sale of securities.

* * * * *

(f) * * *

(2) * * * No appraiser shall serve as an underwriter or selling agent under the same plan of conversion. No affiliate of an appraiser may act as an underwriter or selling agent unless procedures are followed and representations made to ensure that an appraiser is separate from the underwriter or selling agent affiliate and the underwriter or selling agent affiliate does not make recommendations or in any way impact the appraisal. No appraiser shall receive any other fee except for the fee for services rendered in connection with such appraisal.

* * * * *

6. Section 563b.11 is added to subpart A of part 563b to read as follows:

§ 563b.11 Convenience and needs considerations.

In reviewing an application under this subpart, the Office will examine the extent to which the conversion will affect the convenience and needs of the communities to be served by the converted savings association. The Office will review the applicant's record under part 563e of this subchapter. In addition, the Office will scrutinize the business plan of the applicant. Each applicant must demonstrate that the proposed deployment of proceeds contained in its business plan will help meet the credit and lending needs of the communities served by the applicant. Also, the Office will consider other relevant factors relating to the association's performance in meeting the convenience and needs of the community. Based on an assessment of the applicant's record under part 563e of this subchapter, the applicant's business plan and other relevant factors, the Office may approve the application, deny the application, or approve the application on the condition that the applicant improve certain aspects of its CRA performance record or address particular credit or lending needs of the communities that it serves.

PART 575—MUTUAL SAVINGS AND LOAN HOLDING COMPANIES

7. The authority citation for 12 CFR part 575 is revised to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828, 2901.

8. Section 575.1 is amended by designating the existing text as paragraph (a), by adding a heading to newly-designated paragraph (a), and by adding a new paragraph (b) to read as follows:

§ 575.1 Scope.

(a) *Purpose.* * * *

(b) *General.* Except as the OTS may otherwise determine, the provisions of this part shall exclusively govern the reorganization of mutual savings associations and any related stock issuances, and no mutual savings association shall reorganize to a mutual holding company or issue minority stock without the prior written approval of the OTS. The OTS may grant a waiver in writing from any requirement of this part for good cause shown.

9. Section 575.7 is amended by redesignating paragraph (a)(7) as paragraph (a)(8), and by adding a new paragraph (a)(7), and by revising paragraph (d)(2) to read as follows:

§ 575.7 Issuances of stock by savings association subsidiaries of mutual holding companies.

(a) * * *

(7) The proposed stock issuance would fail to meet the convenience and needs standard of § 563b.11 of this subchapter.

* * * * *

(d) * * *

(2) The sale of minority stock of the reorganized stock savings association to be made under the minority stock issuance plan, including any sale in a public offering or direct community marketing, shall be completed as promptly as possible and within 45 calendar days after the last day of the subscription period, unless extended by the OTS.

* * * * *

10. Section 575.13 is amended by revising paragraph (a)(4) to read as follows:

§ 575.13 Procedural requirements.

(a) * * *

(4) *Use of "running" proxies.* A mutual savings association or mutual holding company may make use of any proxy conferring general authority to vote on any and all matters at any meeting of members, provided that the member granting such proxy has been furnished a proxy statement regarding the matters and the member does not grant a later-dated proxy to vote at the meeting at which the matter will be considered or attend such meeting and vote in person, and further provided that "running" proxies or similar proxies may not be used to vote for a mutual holding company reorganization, mutual-to-stock conversion undertaken either by a mutual savings association or a mutual holding company or any other material transaction. Subject to the limitations set forth in this paragraph, any proxy conferring on the board of directors or officers of a mutual savings association general authority to cast a member's votes on any and all matters presented to the members shall be deemed to cover the member's votes as a member of the mutual holding company and such authority shall be conferred on the board of directors or officers of a mutual holding company.

* * * * *

Dated: November 22, 1994.

By the Office of Thrift Supervision.

Jonathan L. Fiechter,

Acting Director.

[FR Doc. 94–29264 Filed 11–29–94; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–53; Special Conditions No. 25–ANM–45A]

Special Conditions: Jetstream Aircraft Limited Model 4100 Series Airplanes, Main Cabin Aisle Arrangement

AGENCY: Federal Aviation Administration, DOT.

ACTION: Amended special conditions.

SUMMARY: These amended special conditions are issued to Jetstream Aircraft Limited for the Jetstream Model 4100 series airplanes. This airplane has a novel or unusual design feature associated with the main cabin aisle arrangement. Special Conditions No. 25–ANM–45 were issued on July 9, 1991 (to British Aerospace Public Limited Company (BAe)), addressing this unusual arrangement, and included a limitation on passenger capacity. The applicant has requested that Special Conditions No. 25–ANM–45 be amended to increase the passenger capacity limit from 29 to 30 passengers. Since Special Conditions No. 25–ANM–45 were issued, the applicant has changed the company name and revised the model number of the airplane. These amended special conditions reflect those changes. Since the applicable airworthiness regulations do not contain adequate or appropriate safety standards

for this particular design feature, these amended special conditions contain the additional safety standards which the Administrator finds necessary to establish a level of safety equivalent to that established by the airworthiness standards for transport category airplanes.

EFFECTIVE DATE: November 30, 1994.

SUPPLEMENTARY INFORMATION: On May 24, 1989, BAe (currently Jetstream Aircraft Ltd.) applied for a type certificate for the BAe Model 4100 (currently Jetstream Model 4101) airplane in the transport airplane category. The Model 4100 was to be a derivative of the Model 3100, which is a small airplane and is certificated under the provisions of part 23. Like the Model 3100, the Model 4100 was a low wing, twin engine turbo-prop design. The fuselage was stretched, however, to seat 29 passengers in a three-abreast arrangement. Since the Model 4100 airplane had the same fuselage cross section as the Model 3100, it did not have a traditional main cabin aisle arrangement.

Section 25.815 specifies the minimum aisle width dimensions for transport category airplanes based on the passenger seating capacity. For airplanes with 20 or more passenger seats, a minimum 15-inch width at heights 25 inches or less above the main aisle floor and a minimum 20-inch width at heights greater than 25 inches above the floor must be maintained. Aisle width is measured at any point along the aisle, normal to the centerline of the aisle. The main aisle envisioned by the regulations would run in a straight line from one end of the passenger cabin to the other and would satisfy these width criteria. Long-standing FAA policy has permitted slight deviation from a straight line where there is a transition from one cabin section to another, or where there are interior features which dictate that the aisle move laterally. For example, from tourist class to first class there may be a change from five-abreast seating to four-abreast seating which moves the aisle centerline laterally. This has been accepted provided the required widths are maintained at all heights normal to the path that an individual would take. This type of offset normally occurs at one or two points in a main cabin aisle. In addition, there is no offset permitted in the aisle vertically; that is, the required 15-inch dimension must lie completely below the projected 20-inch dimension at all points along the aisle.

The Jetstream main cabin aisle arrangement utilizes an offset at each seat row. The left and right seat assemblies are offset from one another longitudinally such that the seatbacks are not opposite each other across the aisle. This arrangement permits a 20-inch measurement between seatbacks (at an angle to the airplane centerline) and the required 15-inch dimension is maintained within the projected 20-inch dimension vertically. Thus the "required aisle" is not a straight line from one end of the cabin to the other, but a series of alternating angular segments from seatback to seatback. Nonetheless, there *is* a straight path along the cabin length, and the aisle floor does not deviate from side to side at all. The projected aisle width along this straight path reaches 20 inches at a height of 43 inches above the floor, which is the typical seatback height for transport airplanes. Another feature of the design includes the use of overwing exits which are offset longitudinally, corresponding to the seat positions on the left and right of the airplane.

In order to provide design standards for the novel and unusual aisle configuration in BAe Model 4100 airplanes the FAA issued Special Conditions No. 25–ANM–45 on July 9, 1991. The criteria used to develop Special Conditions No. 25–ANM–45 utilized existing regulations, and made certain favorable design features in the Model 4100 mandatory. Special Conditions No. 25–ANM–45 are summarized as follows:

a. There are no more than 29 passenger seats with no more than ten seat rows on either side of the aisle;

b. The interior arrangement includes one pair of Type II and one pair of Type III passenger emergency exits;

c. In addition to the requirements of § 25.815, the projected aisle width is at least 20 inches measured at a height of 43 inches above the aisle floor;

d. The Type III exits and adjacent seat rows are offset longitudinally such that persons approaching an exit from one end of the cabin may use the exit without interfering with those approaching the other exit from the other end of the cabin;

e. The location and part number of each passenger seat must be defined by a drawing approved by the FAA or foreign civil airworthiness authority. The seat arrangement may not be reconfigured without FAA approval; and

f. An evacuation demonstration must be conducted to demonstrate the efficacy of the aisle arrangement.

The content of Special Conditions No. 25–ANM–45 is based, in part, on the maximum passenger capacity proposed by BAe. The specific limitation of 29 passenger seats was the maximum capacity requested by BAe, but the FAA considered that the fact that this capacity was well below the maximum that could be allowed for the installed exit combination was a significant factor in acceptance of the aisle arrangement.

Subsequent to the issuance of Special Conditions No. 25–ANM–45 and prior to issuance of the Type Certificate for that project, British Aerospace Public Limited Company changed its name to Jetstream Aircraft Limited. Also, the specific model of the 4100 series in question was identified as the Jetstream Model 4101. Type Certificate A41NM was issued to Jetstream Aircraft Limited on April 9, 1993, for the Jetstream Model 4101 airplane. It is now anticipated that additional models of the 4100 series may be added to this Type Certificate in the future. In addition to the Model 4101, Special Conditions No. 25–ANM–45 would be applicable to any other Jetstream Model 4100 series airplanes that incorporate the same novel or unusual aisle configuration.

Type Certification Basis

Under the provisions of § 21.101, Jetstream must show that 30 passenger Model 4100 series airplanes comply with the regulations in the type certification basis established for the 29 passenger Jetstream Model 4101 airplane. The type certification basis for the Model 4101 is as follows:

The certification basis for the Model 4101 is established in accordance with § 21.29, using the Joint Aviation Regulations (JAR) as a reference point, with appropriate additional requirements incorporated to provide an equivalent certification basis to the FAR requirements for U.S. certification. British Aerospace and Civil Aviation Authorities (CAA)–UK elected to have the type certification basis be the following:

—JAR 25 as amended through Change 12 dated May 10, 1988;
—JAR 25 Orange Paper Amendment 88–1 effective October 18, 1988;
—JAR 1, definitions as amended through Change 4 dated June 1, 1987; and
—any additional part 25 paragraphs necessary to provide a composite type certification basis equal to the required part 25 type certification basis.

Based on §§ 21.29 and 21.17 and the type certification application date, the applicable U.S. type certification basis was established as follows:

—Part 25 dated February 1, 1965, as amended by Amendments 25–1 through 25–66;

—any applicable special conditions issued;
—any applicable exemptions granted;
—any equivalent safety findings made;
—the fuel venting requirements of Special Federal Aviation Regulation No. 27, including Amendments 27–1 through the latest amendment in effect on the date of Model 4100 is type certificated, and
—Part 36, including Amendments 36–1 through the latest amendment in effect on the date of TC.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25 as amended) do not contain adequate or appropriate safety standards for Jetstream Model 4100 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The 30 passenger seat version of Jetstream Model 4100 series airplanes incorporate the same novel or unusual aisle configuration as described above for the 29 seat version.

As in the case of the 29 seat version, the required main cabin aisle widths would be established using measurements taken between seatbacks, which form a path in angular segments. The aisle width measured normal to the fuselage centerline above 25 inches from the floor, would extend from the seat back to the opposite cabin sidewall. Thus, while the required 15-inch dimension at cabin heights below 25 inches from the floor would be completely within the projected 20-inch width vertically, the 20-inch portion would not be centered over the 15-inch portion. (See Figure 1.)

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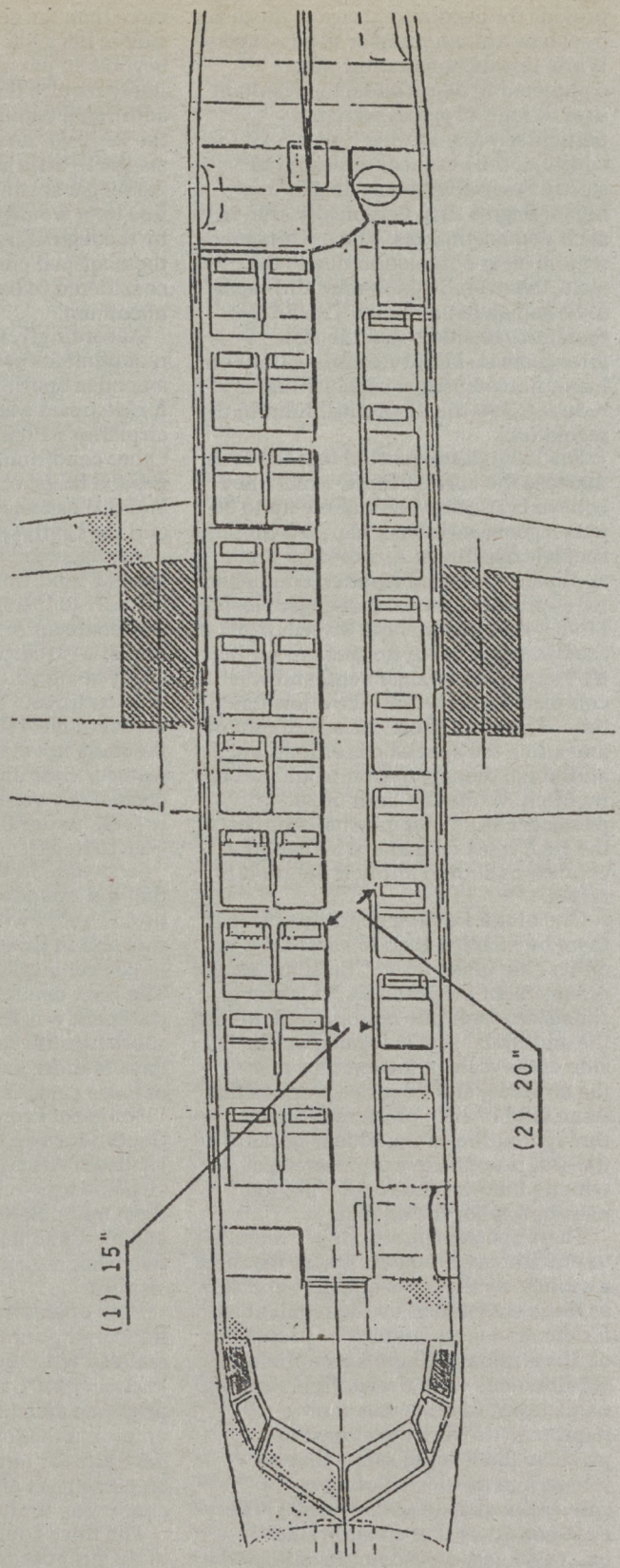


FIGURE 1

(1) AT HEIGHTS ABOVE THE FLOOR 25" AND BELOW

(2) AT HEIGHTS ABOVE THE FLOOR ABOVE 25"

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In establishing Special Conditions No. 25–ANM–45, the FAA carefully evaluated the relevant design parameters of the BAe Model 4100 and determined that the main aisle configuration is clearly not what was envisioned by the regulations. The regulations do not specifically prohibit the arrangement proposed; however, the policy in effect is predicated on a largely straight aisle which has only one or two lateral deviations; in other words, a traditional cabin arrangement. Therefore, special conditions were developed to establish design criteria which result in a level of safety equivalent to configurations on which the regulations were based.

Jetstream has requested that the FAA amend Special Conditions No. 25–ANM–45 to allow a maximum passenger seating capacity of 30, to account for a new customer demand, and be responsive to the market. In their request Jetstream contends that there is no technical basis for the limitation on passenger capacity, and that the Joint Aviation Authorities (JAA) have, in fact, already granted such approval. Jetstream has proposed that on the basis of harmonization with the JAA, the FAA should consider their request favorably.

Jetstream further contends that the evacuation demonstration conducted in accordance with the special conditions for the 29 passenger Model 4101 illustrated that there is no impediment due to the aisle arrangement for 30 passengers. Jetstream argues that the concern that prompted the requirement was therefore demonstrated not to exist.

In developing the special conditions, the FAA took account of the several favorable cabin safety features that the 29 passenger Model 4101 incorporates. One of the major features was the good exit-to-passenger ratio for the number of passengers requested. That is, one pair of Type II exists and one pair of Type III exists for 29 passenger seats, where the regulations allow up to 39. In this regard, 29 passenger seats was the largest arrangement proposed for a US customer. Consequently, the FAA did not consider a greater passenger seating capacity, and the issue of harmonization with JAA requirements did not come up.

With respect to the evacuation demonstration conducted in accordance with the special conditions, this demonstration was a modified version of the demonstration specified in part 25, Appendix J. The principal modification was the use of a single exit (in this case, the forward Type I exit) instead of one half of the total number of exits installed. The demonstration was conducted this way in order to provide for maximum usage of the aisle, by the maximum number of passengers. While this demonstration was completed in 54 seconds, the resultant overall rates of egress were not particularly fast for this type of exit. In addition, the evacuees appeared to steady themselves on seatbacks to a higher degree than is typically seen in such demonstrations. Thus, while there was no clear obstruction due to the aisle, the overall egress rates did seem to be somewhat reduced. The FAA therefore considers that the aisle arrangement should result in a limit on maximum passenger capacity that is reduced over the theoretical limit in the regulations.

Jetstream has requested that the FAA increase the current limit, which they believe is arbitrary, and allow up to 30 passenger seats in accordance with same special conditions. As noted by the applicant the demonstration conducted for approval of the 29 passenger version Model 4101 did include 30 occupants in the passenger cabin (to account for the JAA approved arrangement) and was completed well within the allowable time. Therefore, from the standpoint of amending the special conditions, an additional demonstration would not be required. While the limit of 29 passenger seats is somewhat arbitrary, the FAA must consider whether other conditions should apply if the limit is raised.

One of the existing conditions is that there be no more than ten seat rows on either side of the aisle. The 30 passenger arrangement proposed by Jetstream is consistent with this requirement. In fact, the additional seat is located on the left side of the aisle at the extreme rear of the airplane, and does not produce the same kind of aisle offset that occurs throughout the cabin. This is because the seat is opposite a windscreen at which point the aisle leads into the passageway for the aft exit.

These special conditions are intended to provide requirements which result in a cabin aisle that is as effective and safe as those envisioned by the regulations for the maximum number of passengers on the airplane. Where appropriate, requirements were drawn from existing regulations. In other cases, new requirements were developed to preserve the level of safety that is inherent in the design of more conventional aisle arrangements. The FAA considers that an additional passenger seat would not invalidate the basis for the original finding of equivalency. It is noted however, that any further increase in passenger capacity would violate one of the other conditions because it would result in more than ten seat rows on at least one side of the aisle. Therefore, any increase beyond 30 passenger seats would very likely require the development of additional conditions. As noted above, the FAA has determined that the staggered aisle should limit the passenger seating capacity to something less than would otherwise be allowed by the regulations. Under the terms of these special conditions, 30 is considered to be the reasonable maximum.

Accordingly, in addition to the requirements of § 25.815, these amended special conditions are issued for Jetstream Model 4100 series airplanes with a staggered main aisle. Other conditions may be developed as needed based on further FAA review and discussions with the manufacturer and the Civil Aviation Authority (CAA).

As discussed above, the amended special conditions would be applicable initially to the 30-passenger version of the Jetstream Aircraft Limited Jetstream Model 4101 airplane. Should Jetstream apply at a later date for a change to the type certificate to include another model of the 4100 series incorporating the same novel or unusual design feature, these amended special conditions would apply to that model, as well, under the provisions of § 21.101(a)(1).

Jetstream, in their petition, requested that the amended special conditions be promulgated without delay as a final rule and in time to permit delivery of 30 passenger airplanes during August 1994. The FAA determined that public comment was in the public interest, but shortened the comment period to 20 days in order to expedite the issuance of these amended special conditions.

Notice of Proposed Special Conditions No. SC–91–4–NM for the Jetstream Aircraft Ltd. Model 4101 airplane was published in the **Federal Register** on September 13, 1994 (59 FR 46939). Comments were received from two labor organizations and two airlines.

Both operators comment on the improved productivity that could be realized with the additional seat on the Jetstream 4101 and strongly support the proposed amendment. One operator notes that the Joint Aviation Authorities have already approved the airplane for 30 passengers and only the FAA special conditions limit its capacity.

The third commenter is not in favor of the proposed amendment to the special conditions. This commenter argues that the exit arrangement and flight attendant seat location on the airplane are confusing and awkward. The commenter specifically criticizes

the location of the flight attendant seat and the potential for the flight attendant to disrupt evacuation through the right rear exit. The FAA does not agree that the exit arrangement on this airplane in conjunction with the flight attendant seat location is in any way inadequate. The exit arrangement complies fully with all applicable regulations and provides good uniformity for the number of passengers on board. The FAA also participated in an evaluation of the flight attendant's ability to assist passengers through the right rear exit and found that this could be accomplished quite effectively.

This commenter also does not feel that the emergency evacuation conducted as part of the original special conditions was adequate, and should be repeated before an increase in passengers could be considered. The commenter notes that there has been a change to the regulations regarding evacuation demonstrations since the issuance of the special conditions and believes that the new provisions were not complied with in the original demonstration. This commenter also questions whether the demonstration met the FAA's stated objective of maximizing the number of passengers who must use the aisle, and feels that the aft right-hand door should have been used for the demonstration. Additionally, the commenter interprets FAA comments to mean that the passengers were "zig-zagging" around the seats backs. The commenter also suggests that Jetstream should relocate the flight attendant seat to the forward bulkhead. The commenter believes that this would enhance both passenger and flight attendant safety. This last comment is not germane to these amended special conditions.

With respect to the demonstration conditions, these were chosen by the FAA for the purpose of complying with the special conditions, and not to show compliance with the specific regulations regarding evacuation demonstrations. Therefore, changes to these regulations since the special conditions were issued are not relevant. In any case, the new provisions in the regulation were encompassed in the demonstration done for the special conditions.

In regard to the second concern, that the demonstration did not maximize usage of the aisle, the FAA does not agree. The evacuation demonstration was conducted with a full passenger and crew complement using only the forward entry door. This scheme was chosen for several reasons. First, the end of cabin location meant that passengers at the extreme end of the cabin would have to traverse the entire cabin in order to reach an exit, thus making maximum use of the aisle. Second, the forward exit, a Type I exit, was specifically selected because it was expected to provide for an increased evacuation rate capability over the aft exit, which is a Type II. Thus, the door rate would not mask any effect due to the aisle. Had the aft exit been used, it is not clear that the rate capability of the door is sufficiently higher than that of the aisle to identify effects due to the aisle only. In addition, the aft location of the flight attendant seat meant that passengers had to negotiate the aisle without crew assistance, which is the more critical case.

Finally, the FAA's observations of the evacuation demonstration, as expressed above, were not intended as an implication that passengers were required to "zig-zag" around the seat backs. The passengers proceeded in a straight line along the aisle, but did seem to use the seat backs as hand-holds to a higher degree than is usually seen.

In summary, the FAA will not require a new evacuation demonstration since the results of the previous demonstration are still valid.

The fourth commenter opposes the amendment to the special conditions, and reiterated opposition to the original special conditions. The commenter's principal objection is the projected width of the aisle at heights more than 25 inches above the floor. The commenter notes that the special conditions require a 20 inches projected width at 43 inches above the floor, but expresses frustration at not knowing the projected width below that height. The commenter assumes that 43 inches represents the tops of the seat backs. This commenter also interprets the FAA's observations of the evacuation demonstration as indicating that there is a safety problem with the airplane.

Regarding the projected aisle width, this varies essentially linearly from approximately 16 inches (at a height of 25 inches above the floor) to 20 inches (at a height of 43 inches above the floor). However, since the seat rows are longitudinally offset, there is never any point where the *transverse* measurement between seats is less than 20 inches. As noted in the original final special conditions, the actual seat back height is almost 50 inches. Forty-three inches represents a typical seat back height for airplanes where the seats are mounted at the same level as the main aisle.

As noted previously, an indication of some additional problems should not be inferred from the FAA's observations of the evacuation demonstration. They are simply the factual observations of the demonstrations.

Conclusion: This action affects only certain novel or unusual design features on one model of airplanes. It is not a rule of general applicability, and it affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Air transportation, Aircraft, Aviation safety, Safety.

The Amended Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following amended special conditions are issued as part of the type certification basis for the Jetstream Model 4100 series airplanes with an offset main cabin aisle.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2); 42 U.S.C. 1857f–10, 4321 et seq., E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

1. Jetstream Model 4100 series airplanes may be approved with an offset main aisle provided:

a. There are no more than 30 passenger seats with no more than ten seat rows on either side of the aisle;

b. The interior arrangement includes one pair of Type II and one pair of Type III passenger emergency exits;

c. In addition to the requirements of § 25.815, the aisle projected aisle width is at least 20 inches measured at a height of 43 inches above the aisle floor; and

d. The Type III exits and adjacent seat rows are offset longitudinally such that persons approaching an exit from one end of the cabin may use the exit without interfering with those approaching the other exit from the other end of the cabin.

2. The location and part number of each passenger seat must be defined by a drawing approved by the FAA or CAA–UK. The seat arrangement may not be reconfigured without FAA approval.

3. An evacuation demonstration must be conducted to demonstrate the efficacy of the aisle arrangement.

Issued in Renton, Washington, on November 8, 1994.

Stewart R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–28286 Filed 11–29–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 94–AEA–09]

Modification of Class D Airspace and Establishment of Class E Airspace; Various Locations, State of Pennsylvania

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: An error was discovered in the final rule that was published in the **Federal Register** on September 7, 1994, Airspace Docket No. 94–AEA–09. The legal description for the Harrisburg Capital City, PA, Class D airspace should contain additional language describing an internal boundary area. This action corrects that error.

EFFECTIVE DATE: 0901 U.T.C., December 8, 1994.

FOR FURTHER INFORMATION CONTACT: Michael J. Sammartino, Manager, System Management Branch, AEA–530, Docket No. 94–AEA–09, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

SUPPLEMENTARY INFORMATION:

History

Airspace Docket No. 94–AEA–09, published on September 7, 1994 (59 FR 46165), modified and established descriptions of Class D and Class E airspace in the State of Pennsylvania. An error was discovered in the legal description for the Harrisburg Capital City, PA, Class D airspace area. Additional language is required to properly describe an internal boundary of this area. This action corrects that error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the Harrisburg Capital City, PA, Class D airspace designation contained in Airspace Docket No. 94–AEA–09, as published in the **Federal Register** on September 7, 1994 (59 FR 46165), and the description in FAA order 7400.9B which is incorporated by reference in 14 CFR 71.1, are corrected to read as follows:

§ 71.1 [Corrected]

On page 46166, in the second column, the description for the Harrisburg Capital City, PA, Class D airspace is corrected to read as follows:

Paragraph 5000—Class D Airspace

* * * * *

AEA PA D Harrisburg Capital City Airport, PA [Corrected]

Capital City Airport, Harrisburg, PA
(Lat. 40°13'01" N., long. 76°51'05" W.)

That airspace extending upward from the surface to and including 2,800 feet MSL and within a 4-mile radius of Capital City Airport, excluding the portion that coincides with the Harrisburg International Airport, PA, Class D airspace east of the direct lines described as follows: a line bearing 028° from a point at lat. 40°12'23" N., long 76°48'37" W., extending from said point to the point of intersection with the Harrisburg Capital City, PA, 4-mile radius and a line bearing 191° from a point at lat. 40°12'23" N., long. 76°48'37" W., extending from said point to the point of intersection with the Harrisburg Capital City, PA, 4-mile radius. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Jamaica, New York, on November 7, 1994.

John S. Walker,

Manager, Air Traffic Division.

[FR Doc. 94–29470 Filed 11–29–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 27976; Amdt. No. 1636]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

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

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

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

For Purchase—Individual SIAP copies may be obtained from:

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

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

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

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

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

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

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

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can be flown by aircraft equipped with Global Positioning System (GPS) equipment. In consideration of the above, the applicable Standard Instrument Approach Procedures (SIAPs) will be altered to include "or GPS" in the title without otherwise reviewing or modifying the procedure. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (air).

Issued in Washington, DC on November 18, 1994.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

Authority: 49 U.S.C. app. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.27, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.27 NDB, NDB/DME; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective February 02, 1995*

Bettles, AK, Bettles, VOR or GPS RWY 1, Amdt 3
Bettles, AK, Bettles, NDB or GPS –A, Amdt 7
Gustavus, AK, Gustavus, VOR/DME or GPS–B, Amdt 3B
Gustavus, AK, Gustavus, NDB or GPS–A, Amdt 3A
Iliamna, AK, Iliamna, NDB or GPS RWY 35, Orig
Point Hope, AK, Point Hope, NDB or GPS RWY 1, Amdt 1A
Point Hope, AK, Point Hope, NDB or GPS RWY 19, Amdt 1A
Port Heiden, AK, Port Heiden, NDB/DME or GPS RWY 5, Amdt 1
Port Heiden, AK, Port Heiden, NDB/DME or GPS RWY 13, Amdt 1
Unalakleet, AK, Unalakleet, VOR/DME or GPS–D, Amdt 3
Unalakleet, AK, Unalakleet, NDB or GPS RWY 14, Amdt 1A
Unalaska, AK, Unalaska, NDB or GPS–A, Amdt 2A
Yakutat, AK, Yakutat, VOR or GPS RWY 11, Amdt 11A
Yakutat, AK, Yakutat, VOR or GPS RWY 29, Amdt 3A
Alabaster, AL, Shelby County, VOR or GPS–A, Amdt 6
Alabaster, AL, Shelby County, NDB or GPS RWY 33, Orig
Fairhope, AL, Fairhope Muni, VOR/DME or GPS–A, Amdt 4
Fayette, AL, Richard Arthur Field, NDB or GPS RWY 18, Orig
Foley, AL, Foley Muni, NDB or GPS RWY 18, Orig
Fort Payne, AL, Isbell Field, NDB or GPS–A, Orig
Batesville, AR, Batesville Regional, NDB or GPS RWY 7, Amdt 5A
Blytheville, AR, Blytheville Muni, NDB or GPS RWY 18, Orig
Blytheville, AR, Blytheville Muni, NDB or GPS RWY 36, Orig
Brinkley, AR, Frank Federer Memorial, NDB or GPS–A, Orig
Lake Village, AR, Lake Village Muni, VOR/DME or GPS–B 4A
Lake Village, AR, Lake Village Muni, VOR or GPS–A, Amdt 6B
Lake Havasu City, AZ, Lake Havasu City, VOR/DME or GPS–A, Orig
Mesa, AZ, Falcon Field, NDB or GPS–A, Orig
Page, AZ, Page Muni, VOR or GPS–A, Orig
Alturas, CA, Alturas Muni, NDB or GPS RWY 31, Amdt 1
Avalon, CA, Catalina, VOR/DME or GPS–B, Amdt 2
Bermuda Dunes, CA, Bermuda Dunes, VOR or GPS RWY 28, Orig
Carlsbad, CA, McClellan-Palomar, VOR or GPS–A, Amdt 6
La Verne, CA, Brackett Field, VOR or GPS–A, Amdt 5A
Lakeport, CA, Lampson Field, NDB or GPS–A, Orig
Lancaster, CA, General William J. Fox Airfield, VOR or GPS–B, Amdt 2
Lancaster, CA, General William J. Fox Airfield, NDB or GPS–C, Amdt 2
Lodi, CA, Lodi, VOR or GPS–A, Amdt 2A
Lompoc, CA, Lompoc, VOR/DME or GPS–A, Amdt 4
Lompoc, CA, Lompoc, NDB or GPS–B, Orig
Needles, CA, Needles, VOR or GPS–A, Amdt 2
Aspen, CO, Aspen-Pitkin County/Sardy Field, VOR/DME or GPS–C, Amdt 4A
Burlington, CO, Kit Carson County, NDB or GPS RWY 15, Orig
Denver, CO, Front Range, NDB or GPS RWY 26, Amdt 3
Fort Myers, FL, Page Field, VOR or GPS RWY 13, Orig
Kissimmee, FL, Kissimmee Muni, VOR/DME or GPS–A, Amdt 7
Lake City, FL, Lake City Muni, VOR/DME or GPS–A, Amdt 3
Lake City, FL, Lake City Muni, NDB or GPS RWY 28, Amdt 1
Lake Wales, FL, Lake Wales Muni, VOR/DME or GPS–B, Amdt 2
Marianna, FL, Marianna Muni, VOR or GPS–A, Amdt 10A
Marianna, FL, Marianna Muni, VOR or GPS–B, Amdt 3A
Marianna, FL, Marianna Muni, NDB or GPS–C, Amdt 2A
Miami, FL, Kendall-Tamiami Executive, NDB or GPS RWY 9R, Orig A
Palatka, FL, Kay Larkinm, NDB or GPS RWY 9, Amdt 1
Albany GA, Southwest Georgia Regional, NDB or GPS RWY 4, Amdt 11
Atlanta, GA, Fulton County Airport-Brown Field, NDB or GPS RWY 8, Amdt 2
Cairo, GA, Cairo-Grady County, NDB or GPS RWY 12, Amdt 3A
Canton, GA, Cherokee County, NDB or GPS RWY 4, Amdt 1
Columbus, GA, Columbus Metropolitan, VOR or GPS–A, Amdt 22
Columbus, GA, Columbus Metropolitan, NDB or GPS RWY 5, Amdt 27
Columbus, GA, Columbus Metropolitan, VOR/DMD RNAV or GPS RWY 23, Amdt 1
Douglas, GA, Douglas Muni, NDB or GPS RWY 4, Amdt 2
Macon, GA, Herbert Smart Downtown, VOR/DME or GPS–B, Amdt 2
Macon, GA, Herbert Smart Downtown, VOR or GPS–A, Amdt 5
Albia, IA, Albia Muni, VOR/DME or GPS–A, Amdt 3
Audubon, IA, Audubon County, NDB or GPS RWY 32, Amdt 4
Bloomfield, IA, Bloomfield Muni, NDB or GPS RWY 36, Amdt 2

Boone, IA, Boone Muni, COPTER NDB or GPS 225, Amdt 2
Burlington, IA, Burlington Muni, NDB or GPS RWY 36, Amdt 8A
Corning, IA, Corning Muni, NDB or GPS RWY 17, Orig
Council Bluffs, IA, Council Bluffs Muni, VOR or GPS–A, Amdt 4
Cresco, IA, Ellen Church Field, NDB or GPS RWY 33, Amdt 2
Emmetsburg, IA, Emmetsburg Muni, NDB or GPS RWY 13, Amdt 1A
Emmetsburg, IA, Emmetsburg Muni, NDB or GPS RWY 31, Amdt 1A
Coeur D'Alene, ID, Coeur D'Alene Air Terminal, VOR or GPS–A, Orig
Coeur D'Alene, ID, Coeur D'Alene Air Terminal, NDB or GPS RWY 5, Amdt 1
Canton, IL, Ingersoll, VOR or GPS–A, Amdt 7A
Canton, IL, Ingersoll, NDB or GPS RWY 36, Amdt 2A
Carbondale/Murphysboro, IL, Southern Illinois, NDB or GPS RWY 18L, Amdt 12A
Carmi, IL, Carmi Muni, NDB or GPS RWY 36, Amdt 5
Casey, IL, Casey Muni, NDB or GPS RWY 4, Amdt 6
Centralia, IL, Centralia Muni, VOR or GPS–A, Orig
Champaign/Urbana, IL, University of Illinois-Willard, NDB or GPS RWY 32L, Amdt 10
Greenwood/Wonder Lake, IL, Galt, VOR or GPS–A, Amdt 9
Manito, IL, Manito Mitchell, VOR or GPS–A, Amdt 3
Marion, IL, Williamson County Regional, NDB or GPS RWY 20, Amdt 9
Monmouth, IL, Monmouth Muni, VOR or GPS–A, Amdt 4
Monticello, IL, Piatt County, VOR or GPS–A, Amdt 1
Bloomington, IN, Monroe County, NDB or GPS RWY 35, Amdt 4
Columbus, IN, Columbus Muni, NDB or GPS RWY 23, Amdt 9
Evansville, IN, Evansville Regional, NDB or GPS RWY 22, Amdt 12
Fort Wayne, IN, Fort Wayne International, NDB or GPS RWY 32, Amdt 24
Indianapolis, IN, Greenwood Muni, VOR or GPS–A, Amdt 4
Indianapolis, IN, Greenwood Muni, NDB or GPS RWY 1, Amdt 2
Indianapolis, IN, Indianapolis Metropolitan, NDB or GPS RWY 15, Amdt 1
Kendallville, IN, Kendallville Muni, VOR or GPS–A, Amdt 6
Lafayette, IN, Purdue University, VOR/DME RNAV or GPS RWY 28, Amdt 5
Lafayette, IN, Purdue University, VOR or GPS–A, Amdt 25
Lafayette, IN, Purdue University, NDB or GPS RWY 10, Amdt 12
Lowell, IN, Lowell, VOR or GPS–A, Orig–A
Nappanee, IN, Nappanee Muni, VOR/DME or GPS–A, Amdt 3A
Nappanee, IN, Nappanee Muni, VOR or GPS–B, Amdt 1
Lawrence, KS, Lawrence Muni, VOR/DME or GPS–A, Amdt 9
Lawrence, KS, Lawrence Muni, NDB or GPS RWY 33, Orig
Marysville, KS, Marysville Muni, NDB or GPS RWY 33, Amdt 3
Oberlin, KS, Oberlin Muni, NDB or GPS RWY 35, Orig
Olathe, KS, Johnson County Executive, VOR or GPS RWY 35, Amdt 10
Olathe, KS, Johnson County Executive, NDB or GPS RWY 17, Amdt 3
Olathe, KS, Johnson County Executive, NDB or GPS–B, Amdt 2
Olathe, KS, Johnson County Industrial, VOR or GPS–A, Amdt 4
Olathe, KS, Johnson County Industrial, NDB or GPS RWY 35, Amdt 4
Bardstown, KY, Samuels Field, NDB or GPS–A, Amdt 5
Frankfort, KY, Capital City, VOR or GPS RWY 24, Amdt 1A
Greenville, KY, Muhlenberg County, VOR/DME or GPS–A, Amdt 4
Hawesville, KY, Hancock Airfield, NDB or GPS–A, Amdt 6
Henderson, KY, Henderson City-County, VOR or GPS–A, Amdt 9
Henderson, KY, Henderson City-County, NDB or GPS RWY 9, Amdt 3
Abbeville, LA, Abbeville Municipal, VOR/DME or GPS–A, Amdt 1
Jonesboro, LA, Jonesboro, NDB or GPS RWY 35, Amdt 1
Lafayette, LA, Lafayette Regional, VOR or GPS RWY 4R, Amdt 1A
Lafayette, LA, Lafayette Regional, NDB or GPS RWY 22L, Amdt 4
Lake Charles, LA, Lake Charles Regional, VOR or GPS–A, Amdt 13
Lake Charles, LA, Lake Charles Regional, NDB or GPS RWY 15, Amdt 18
Great Barrington, MA, Great Barrington, NDB or GPS–A, Amdt 4
Montague, MA, Turners Falls, VOR or GPS–A, Amdt 2
Newburyport, MA, Plum Island, VOR or GPS RWY 10, Amdt 4
Orange, MA, Orange Muni, VOR or GPS–A, Amdt 5
Orange, MA, Orange Muni, NDB or GPS–B, Amdt 3
Stevensville, MD, Bay Bridge, VOR/DME or GPS RWY 29, Orig
Auburn/Lewiston, ME, Auburn/Lewiston Muni, VOR/DME or GPS–A, Orig
Auburn/Lewiston, ME, Auburn/Lewiston Muni, NDB or GPS RWY 4, Amdt 10
Fryeburg, ME, Eastern Slopes Regional, NDB or GPS–B, Orig–A
Adrian, MI, Lenawee County, NDB or GPS RWY 5, Amdt 7
Bay City, MI, James Clements Muni, VOR or GPS–A, Amdt 11A
Benton Harbor, MI, Ross Field-Twin Cities, NDB or GPS RWY 27, Amdt 9A
Big Rapids, MI, Roben-Hood, VOR/DME or GPS–A, Amdt 6
Boyne Falls, MI, Boyne Mountain, VOR/DME RNAV or GPS–B, Amdt 2
Boyne Falls, MI, Boyne Mountain, NDB or GPS–A, Amdt 5
Caro, MI, Caro Muni, VOR/DME or GPS–A, Amdt 4
Clare, MI, Clare Muni, VOR or GPS–A, Orig
Detroit, MI, Berz-Macomb, VOR or GPS–A, Orig
Detroit, MI, Detroit City, NDB or GPS RWY 15, Amdt 22
Detroit, MI, Detroit Metropolitan Wayne County, NDB or GPS RWY 3L, Amdt 10
Detroit, MI, Detroit Metropolitan Wayne County, NDB or GPS RWY 27R, Amdt 10
Blue Earth, MN, Blue Earth Muni, NDB or GPS RWY 34, Orig
Brainerd, MN, Brainerd-Crow Wing CO Regional, NDB or GPS RWY 23, Amdt 4
Buffalo, MN, Buffalo Muni, VOR or GPS–B, Amdt 3
Caledonia, MN, Houston County, VOR/DME or GPS–A, Amdt 1
Cambridge, MN, Cambridge Muni, NDB or GPS RWY 34, Amdt 6
Dodge Center, MN, Dodge Center, VOR or GPS–A, Amdt 1
Fosston, MN, Fosston Muni, NDB or GPS RWY 34, Amdt 3A
Hallock, MN, Hallock Muni, VOR/DME or GPS RWY 31, Amdt 6
Hawley, MN, Hawley Muni, VOR/DME or GPS–A, Orig
Bowling Green, MO, Bowling Green Muni, VOR/DME or GPS–A, Amdt 1A
Brookfield, MO, General John J. Pershing Meml, NDB or GPS RWY 35, Amdt 3
Brookfield, MO, General John J. Pershing Meml, NDB or GPS–A, Amdt 3
Butler, MO, Butler Memorial, VOR or GPS–A, Amdt 3
Cameron, MO, Cameron Memorial, NDB or GPS RWY 35, Orig
Cassville, MO, Cassville Muni, VOR or GPS RWY 8, Amdt 1A
Charleston, MO, Mississippi County, NDB or GPS RWY 36, Amdt 3
Drew, MS, Ruleville-Drew, VOR or GPS–A, Amdt 4
Fulton, MS, Fulton-Itawamba County, VOR/DME or GPS–A, Orig
Kosciusko, MS, Kosciusko-Attala County, NDB or GPS RWY 14, Amdt 5
Kosciusko, MS, Kosciusko-Attala County, NDB or GPS RWY 32, Amdt 4
Lexington, MS, C.A. Moore, VOR/DME or GPS–A, Orig
Madison, MS, Bruce Campbell Field, VOR/DME or GPS–B, Amdt 4
Madison, MS, Bruce Campbell Field, VOR or GPS–A, Amdt 9
Anaconda, MT, Bowman Field, VOR/DME or GPS–A, Amdt 1
Bozeman, MT, Gallatin Field, VOR/DME or GPS RWY 12, Amdt 2
Choteau, MT, Choteau, NDB or GPS RWY 23, Orig
Concord, NC, Concord Regional, VOR/DME or GPS RWY 20, Amdt 1
Concord, NC, Concord Regional, VOR/DME or GPS–A, Amdt 1
Maxton, NC, Laurinburg-Maxton, NDB or GPS RWY 5, Orig
Mocksville, NC, Twin Lakes, NDB or GPS RWY 9, Amdt 5
Mt. Airy, NC, Mt. Airy-Surry County, NDB or GPS–A, Amdt 2A
North Wilkesboro, NC, Wilkes County, NDB or GPS RWY 1, Amdt 1A
Ocracoke, NC, Ocracoke Island, NDB or GPS–A, Amdt 1a
Plymouth, NC, Plymouth Muni, NDB or GPS RWY 2, Amdt 2
Raeford, NC, Radeford Muni, VOR/DME or GPS–A, Amdt 3
Rockingham, NC, Rockingham-Hamlet, NDB or GPS RWY 31, Amdt 2
Sanford, NC, Sanford-Lee County Brick Field, NDB or GPS RWY 3, Orig-A
Casselton, ND, Casselton Regional, VOR/DME or GPS RWY 31, Orig
Gwinner, ND, Gwinner-Roger Melroe Field, NDB or GPS RWY 34, Orig

Aurora, NE, Aurora Muni, VOR or GPS–A, Amdt 5
Beatrice, NE, Beatrice Muni, NDB or GPS–A, Amdt 3
Burwell, NE, Cram Field, NDB or GPS RWY 15, Amdt 3
Chappell, NE, Billy G Ray Field, NDB or GPS RWY 30, Amdt 2
Fairbury, NE, Fairbury Municipal, NDB or GPS–A, Amdt 2
Falls City, NE, Brenner Field, NDB or GPS–A, Amdt 3
Fremont, NE, Fremont Muni, NDB or GPS RWY 13, Amdt 1
Concord, NH, Concord Muni, VOR or GPS RWY 12, Amdt 1
Concord, NH, Concord Muni, NDB or GPS RWY 35, Amdt 5
Belmar/Farmingdale, NJ, Allaire, VOR or GPS–A, Amdt 1
Berlin, NJ, Camden County, VOR or GPS–B, Amdt 2
Hammonton, NJ, Hammonton Muni, VOR or GPS–A, Amdt 6
Hammonton, NJ, Hammonton Muni, VOR or GPS–B, Amdt 1
Lincoln Park, NJ, Lincoln Park, NDB or GPS RWY 1, Amdt 1
Manville, NJ, Kupper, VOR or GPS–A, Amdt 5A
Readington, NJ, Solberg-Hunterdon, VOR or GPS–A, Amdt 7
Robbinsville, NJ, Trenton-Robbinsville, VOR or GPS RWY 29, Amdt 10
Albuquerque, NM, Albuquerque Intl, VOR or TACAN or GPS RWY 8, Amdt 19
Albuquerque, NM, Albuquerque Intl, NDB or GPS RWY 35, Amdt 7
Belen, NM, Alexander Muni, VOR/DME or GPS–A, Amdt 1
Reno, NV, Reno/Stead, NDB or GPS–F, Orig
Albion, NY, Pine Hill, VOR/DME or GPS–A, Amdt 2
Batavia, NY, Genesee County, VOR/DME or GPS–A, Amdt 4
Endicott, NY, Tri-Cities, VOR or GPS–A, Amdt 3
Fulton, NY, Oswego County, VOR or GPS RWY 33, Amdt 3
Glens Falls, NY, Warren County, VOR/DME or GPS RWY 19, Amdt 6A
Hamilton, NY, Elisha Payne, VOR or GPS–A, Amdt 3
Hudson, NY, Columbia County, NDB or GPS–A, Amdt 2A
Johnstown, NY, Fulton County, NDB or GPS RWY 10, Orig
Johnstown, NY, Fulton County, NDB or GPS RWY 28, Orig
Alliance, OH, Miller, VOR or GPS–A, Amdt 8B
Columbus, OH, Ohio State University, VOR/DME RNAV or GPS RWY 27L, Amdt 6
Columbus, OH, Ohio State University, NDB or GPS RWY 9R, Amdt 2
Columbus, OH, Port Columbus Intl, NDB or GPS RWY 10L, Amdt 7
Columbus, OH, Port Columbus Intl, NDB or GPS RWY 10R, Amdt 7
Columbus, OH, Port Columbus Intl, NDB or GPS RWY 28L, Amdt 13
Columbus, OH, Rickenbacker Intl, NDB or GPS RWY 5R, Orig
Columbus, OH, Rickenbacker Intl, NDB or GPS RWY 23L, Orig
Coshocton, OH, Richard Downing, VOR or GPS–A, Amdt 9
Coshocton, OH, Richard Downing, VOR/DME RNAV or GPS RWY 22, Amdt 4
Dayton, OH, Dayton General Arpt South, NDB or GPS RWY 9, Amdt 7
Elyria, OH, Elyria, VOR or GPS–A, Amdt 7A
Fostoria, OH, Fostoria Metropolitan, VOR or GPS–A, Amdt 3A
Fostoria, OK, Fostoria Metropolitan, NDB or GPS RWY 27, Amdt 4B
Antlers, OK, Antlers Muni, NDB or GPS RWY 35, Amdt 2A
Boise City, OK, Boise City, NDB or GPS–A Amdt 1
Claremore, OK, Claremore Muni, VOR/DME or GPS–A, Orig
Claremore, OK, Claremore Muni, VOR/DME or GPS–B, Orig
El Reno, OK, El Reno Muni Air Park, VOR/DME or GPS RWY 35, Orig
Gage, OK, Gage, VOR or GPS–A Amdt 9A
Grove, OK, Grove Muni, VOR or GPS–A, Amdt 1
Grove, OK, Grove Muni, RNAV or GPS RWY 36, Amdt 2
Astoria, OR, Astoria Regional, Copter VOR/DME or GPS 066, Amdt 2
Aurora, OR, Aurora State, NDB or GPS RWY 17, Amdt 1
Eugene, OR, Mahlon Sweet Field, VOR or GPS–A, Amdt 6A
Eugene, OR, Mahlon Sweet Field, NDB or GPS RWY 16, Amdt 28
Bradford, PA, Bradford Regional, VOR/DME or GPS RWY 14, Amdt 8
Chambersburg, PA, Chambersburg Muni, VOR/DME or GPS–B, Orig
East Stroudsburg, PA, Stroudsburg-Pocono, VOR/DME or GPS–A, Amdt 5
Easton, PA, Easton, VOR/DME or GPS–D Orig-A
Myerstown, PA, Decks, VOR/DME or GPS–A, Amdt 1
New Castle, PA, New Castle Muni, NDB OR GPS RWY 23, Amdt 2
Quakertown, PA, Quakertown, NDB or GPS RWY 29, Amdt 9
Reading, PA, Reading Regional/Carl A Spaatz Field, NDB or GPS RWY 36, Amdt 23
Conway, SC, Conway-Horry County, NDB or GPS RWY 4, Amdt 1
Conway, SC, Conway-Horry County, NDB or GPS–A, Amdt 1
Dillon, SC, Dillon County, VOR/DME or GPS RWY 7, Amdt 5
Florence, SC, Florence Regional, VOR or TACAN or GPS–A, Amdt 4
Florence, SC, Florence Regional, NDB or GPS RWY 9, Amdt 10
Greenville, SC, Greenville Downtown, NDB or GPS RWY 36, Amdt 20
Mitchell, SD, Mitchell Muni, VOR or GPS RWY 12, Amdt 9
Philip, SD, Philip, VOR or GPS-A, Amdt 11
Clarksville, TN, Outlaw Field, NDB or GPS RWY 35, Amdt 5B
Cleveland, TN, Hardwick Field, NDB or GPS RWY 3, Amdt 1
Covington, TN, Covington Muni, NDB or GPS RWY 1, Amdt 3
Crossville, TN, Crossville Memorial, VOR/DME or GPS–A, Amdt 8
Humboldt, TN, Humboldt Muni, VOR/DME or GPS–A, Amdt 4A
Jackson, TN, McKellar-Sipes Regional, NDB or GPS RWY 2, Amdt 6
Jamestown, TN, Jamestown Muni, VOR/DME or GPS–A, Amdt 1
Atlanta, TX, Atlanta Muni, NDB or GPS RWY 5, Amdt 2
Breckenridge, TX, Stephens County, NDB or GPS–A, Amdt 1
Bridgeport, TX, Bridgeport Muni, VOR or GPS–A, Amdt 4
Brownsville, TX, Brownsville/South Padre Island Intl, VOR or Tacan or GPS–A, Amdt 1
Brownsville, TX, Brownsville/South Padre Island Intl, NDB or GPS RWY 13R, Amdt 13
Bryan, TX, Coulter Field, VOR/DME or GPS–A, Amdt 2
Cleveland, TX, Cleveland Muni, VOR or GPS–A, Amdt 4
Corpus Christi, TX, Corpus Christi Intl, NDB or GPS RWY 13, Amdt 24
Corsicana, TX, C. David Campbell Field-Corsicana Muni, VOR/DME or GPS–A, Amdt 4
Corsicana, TX, C. David Campbell Field-Corsicana Muni, VOR/DME or GPS–B, Amdt 1
Cotulla, TX, Cotulla-La Salle County, VOR or GPS–A, Amdt 11A
Edna, TX, Jackson County, NDB or GPS–A, Amdt 1
El Paso, TX, El Paso Intl, NDB or GPS RWY 22, Amdt 28A
El Paso, TX, West Texas, VOR/DME or GPS–A, Admt 4
Ennis, TX, Ennis Muni, VOR/DME or GPS–A, Amdt 1
Falfurrias, TX, Brooks County, NDB or GPS RWY 35, Orig
Follett, TX, Follett/Lipscomb County, VOR/DME or GPS–A Amdt 2
Fort Worth, TX, Bourland Field, VOR or GPS–A, Amdt 1
Fort Worth, TX, Fort Worth Meacham, NDB or GPS RWY 16L, Amdt 3
Fort Worth, TX, Fort Worth Meacham, NDB or GPS RWY 34R, Amdt 5
Fort Worth, TX, Luck Field, VOR/DME or GPS–A, Amdt 1
George West, TX, Live Oak County, VOR/DME or GPS–A, Orig
Giddings, TX, Giddings-Lee County, VOR/DME or GPS–A, Amdt 2
Giddings, TX, Giddings-Lee County, NDB or GPS RWY 17, Amdt 1
Giddings, TX, Giddings-Lee County, RNAV or GPS RWY 35, Orig
Graford, TX, Possum Kingdom, NDB or GPS–A, Orig
Huntington, UT, Huntington Muni, VOR/DME or GPS–B, Orig
Prairie Du Chien, WI, Prairie Du Chien Muni, VOR/DME or GPS RWY 29, Amdt 6
Pulaski, WI, Carter, VOR or GPS–A, Amdt 3
Rice Lake, WI, Rice Lake Muni, VOR or GPS RWY 18, Amdt 1
Rice Lake, WI, Rice Lake Muni, VOR or GPS RWY 36, Amdt 1
Richland Center, WI, Richland, VOR or GPS–A, Amdt 4
Siren, WI, Burnett County, VOR or GPS RWY 4, Admt 1
Stevens Point, WI, Stevens Point Muni, VOR or GPS RWY 30, Amdt 17
Wausau, WI, Wausau Muni, VOR/DME or GPS RWY 12, Amdt 3
Wausau, WI, Wausau Muni, VOR or GPS–A, Amdt 18
Wausau, WI, Wausau Muni, NDB or GPS–B, Orig

Cody, WY, Yellowstone Regional, VOR or GPS–A, Amdt 7

The following are *corrected* procedure titles adding "or GPS" published in Transmittal Letter 94–21 and 94–22.

Greensburg, IN, Greensburg-Decatur County, VOR or GPS–A, Amdt 1
South Bend, IN, Michiana Regional Transportation Center, NDB or GPS RWY 27L, Amdt 28A
Monroe, LA, Monroe Regional, NDB or GPS RWY 4, Amdt 14
Marshfield, MA, Marshfield, NDB or GPS RWY 6, Amdt 3
Holland, MI, Tulip City, VOR/DME RNAV or GPS RWY 8, Amdt 2
Holland, MI, Tulip City, VOR/DME RNAV or GPS RWY 26, Amdt 5
Maryville, MO, Maryville Meml, VOR/DME or GPS RWY 36, Amdt 4
Sidney, MT, Sidney-Richland Muni, NDB or GPS RWY 1, Amdt 2
Middletown, NY, Randall, NDB or GPS RWY 26, Orig, CANCELLED EFF 13 OCTOBER 1994
Indiana, PA, Indiana County/Jimmy Stewart Field, NDB or GPS–A, Amdt 5
Blackstone, VA, Blackstone AAF-Allen C. Perkinson Muni, NDB or GPS–A, Amdt 10
Staunton-Waynesboro-Harrisonburg, VA, Staunton/Shenandoah Valley Regional, NDB or GPS RWY 5, Amdt 9

[FR Doc. 94–29474 Filed 11–29–94; 8:45 am]

BILLING CODE 4910–13–M

UNITED STATES INFORMATION AGENCY

22 CFR Part 518

Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations

AGENCY: United States Information Agency.

ACTION: Final rule with corrections.

SUMMARY: The United States Information Agency is adopting as a final rule, with corrections, the provisions of the interim final rule, as published Wednesday, August 3, 1994 (59 FR 39440), that relates to the administration of grants. No written comments were received by the due date, October 3, 1994. This document contains corrections to the interim final rule.

EFFECTIVE DATE: October 4, 1994.

FOR FURTHER INFORMATION CONTACT: Maggie Ahern or Connie Stinson, U.S. Information Agency, Office of Contracts, Grants Division, Washington, DC 20547, (202) 205–5477.

SUPPLEMENTARY INFORMATION: The authority citation of the interim final rule is corrected and placed in the appropriate location in the interim final rule which is being adopted as final.

Correction

In the preamble, on page 39440, in the second column, the paragraph entitled "Authority:" is removed.

Adoption of Interim Rule

The interim final rule published on August 3, 1994 at 59 FR 39440 is adopted as final with the following correction:

In part 518, the authority citation is added at the end of the table of contents to read as follows:

Authority: 22 U.S.C. 2658; 31 U.S.C. 503 and 1111; Reorganization Plan No. 2 of 1977, 42 FR 62461, 3 CFR, 1977 Comp. p. 200; E.O. 12048, 43 FR 13361, 3 CFR, 1978 Comp. p. 168.

Dated: November 16, 1994.

Philip Rogers,

Director, Office of Contracts.

[FR Doc. 94–29403 Filed 11–29–94; 8:45 am]

BILLING CODE 8230–01–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2609

RIN 1212–AA64

Debt Collection by Administrative Offset

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation ("PBGC") is amending its regulations to provide for debt collection by administrative offset. The procedures in this rule implement administrative offset, as authorized by the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982, and in accordance with standards prescribed by the Comptroller General of the United States and the Attorney General of the United States. The PBGC believes that adoption of this rule will enhance its debt collection ability.

EFFECTIVE DATE: December 30, 1994.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026, 202–326–4024 (202–326–4179 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation ("PBGC") administers the pension plan termination insurance program under title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") (29 U.S.C. 1301 *et seq.*). In conjunction with the pension plan termination insurance program, persons (including organizations and entities) incur various types of debts to the PBGC, and the PBGC incurs various types of liabilities (including contractual obligations). The PBGC anticipates that administrative offset will enhance its debt collection ability because persons owing debts to the PBGC sometimes receive payments from federal government agencies (*e.g.*, in connection with government contracts). (As was stated in the preamble to the proposed administrative offset rule, the PBGC generally will not offset against plan benefits.)

Administrative offset is defined as "withholding money payable by the United States Government to, or held by the Government for, a person to satisfy a debt the person owes the Government" (31 U.S.C. 3701(a)(1)). The Debt Collection Act of 1982, which amended the Federal Claims Collection Act of 1966 (31 U.S.C. 3701, et seq.), authorizes the collection of debts owed to the United States by administrative offset (31 U.S.C. 3716). Before collecting a claim by administrative offset, the head of an agency must prescribe regulations on administrative offset based on the best interests of the United States Government, the likelihood of collecting a claim by administrative offset, and, for collecting a claim by administrative offset after the six-year period for bringing a civil action on a claim under 28 U.S.C. 2415 has expired, the cost-effectiveness of leaving a claim unresolved for more than six years (31 U.S.C. 3716(b)).

The Comptroller General of the United States and the Attorney General have amended the Federal Claims Collections Standards ("FCCS") (4 CFR parts 101 through 105) to implement the Debt Collection Act of 1982. Part 102 of those regulations prescribe standards for debt collection by administrative offset. The procedures prescribed in this rule are consistent with applicable provisions of those regulations.

The PBGC's Financial Operations Department ("FOD") will have primary responsibility for the new debt collection procedures in this rule, including applying amounts recovered by administrative offset to multiple debts, requesting offset by other agencies, and processing requests for offset from other agencies. However, ascertaining the indebtedness and providing notice to the debtor and administrative review will continue to be handled by the organizational unit with functional responsibility for the type of claim involved, including,

where applicable, review by the Appeals Board (see § 2606.1(b) (5) through (9)). (Applicable assignments of responsibilities are set forth in the mission and functions statements issued by the Executive Director and included (along with organization charts) in the PBGC Directives Manual as section 30–1 of Part GA (General Administration).)

On May 20, 1994 (59 FR 26467), the PBGC proposed to add part 2609, Debt Collection—Administrative Offset, to its regulations (29 CFR part 2609). The PBGC received no comments on proposed part 2609.

The provisions of this final rule are identical to those proposed. However, in the near future the PBGC expects to issue an interim final rule on tax refund offset (as anticipated in the agency's semiannual regulatory agenda (59 FR 58424, 58429, November 14, 1994)). Because the PBGC plans to add its tax refund offset procedures to part 2609 (as subpart C), it is designating all but the definitions section of the proposed administrative offset regulations as subpart B (and substituting "subpart" for "part"). (The terms in § 2609.2 are included in a general subpart A.)

Finally, in response to a letter from the Small Business Administration, the PBGC is reiterating its certification that sections 603 and 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply to this action, with an expanded explanation of the reasons for such certification.

E.O. 12866 and the Regulatory Flexibility Act

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866 because the rule will not have an annual effect on 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; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866. The purpose of the rule is to enhance the PBGC's debt collection ability. The procedures will be triggered only by a failure to pay a debt already owed.

The PBGC certifies that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, as provided in section 605 of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), sections 603 and 604 do not apply. As indicated above, this rule is limited to procedures required by the Federal Claims Collections Standards for use of administrative offset to collect certain debts owed to the United States. Thus, a small entity can avoid the application of this rule by paying such debts when due. Further, insofar as provisions of this rule do apply, their primary effect will be to provide procedural protection to persons whose debts are otherwise subject to collection by administrative offset.

List of Subjects in 29 CFR Part 2609

Administrative practice and procedure, Claims.

For the reasons set forth above, the PBGC is amending subchapter A, chapter XXVI of 29 CFR by adding a new part 2609 to read as follows:

PART 2609—DEBT COLLECTION

Subpart A—General

Sec.

2609.1 [Reserved]
2609.2 Definitions.

Subpart B—Administrative Offset

2609.21 Purpose and scope.
2609.22 Application of Federal Claims Collection Standards.
2609.23 Administrative offset procedures.
2609.24 PBGC requests for offset by other agencies.
2609.25 Requests for offset from other agencies.

Subpart C—Tax Refund Offset [Reserved]

Authority: 29 U.S.C. 1302(b); 31 U.S.C. 3701, 3716; 4 CFR part 102.

Subpart A—General

§ 2609.1 [Reserved]

§ 2609.2 Definitions.

For purposes of this part:

Administrative offset has the meaning set forth in 31 U.S.C. 3701(a)(1).

Agency means an executive or legislative agency (within the meaning of 31 U.S.C. 3701(a)(4)).

Claim and *debt*, as defined in the Federal Claims Collection Standards (4 CFR 101.2(a)), are used synonymously and interchangeably to refer to an amount of money or property which has been determined by an appropriate agency official to be owed to the United States from any person, organization, or entity, except another Federal agency.

Federal Claims Collection Act means the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3701 *et seq.*).

Federal Claims Collection Standards means 4 CFR parts 101 through 105, which are regulations issued jointly by the Comptroller General of the United States and the Attorney General of the United States that implement the Federal Claims Collection Act.

PBGC means the Pension Benefit Guaranty Corporation.

Repayment agreement means a written agreement by a debtor to repay a debt to the PBGC.

Subpart B—Administrative Offset

§ 2609.21 Purpose and scope.

(a) *Purpose.* This subpart prescribes procedures for debt collection by administrative offset, as authorized by the Federal Claims Collection Act (31 U.S.C. 3716), and consistent with applicable provisions of the Federal Claims Collection Standards.

(b) *Scope.* The procedures in this subpart apply when the PBGC determines that collection by administrative offset of a claim that is liquidated or certain in amount is feasible and not otherwise prohibited or when another agency seeks administrative offset against a payment to be made by the PBGC.

§ 2609.22 Application of Federal Claims Collection Standards.

The PBGC will determine the feasibility of collection by administrative offset, whether to accept a repayment agreement in lieu of offset, and how to apply amounts collected by administrative offset on multiple debts as provided in the Federal Claims Collection Standards (4 CFR 102.3).

(a) *Feasibility.* The PBGC will determine whether collection by administrative offset is feasible on a case-by-case basis in the exercise of sound discretion. In making such determinations, the PBGC will consider:

(1) Whether administrative offset can be accomplished, both practically and legally;

(2) Whether administrative offset is best suited to further and protect all governmental interests;

(3) In appropriate circumstances, the debtor's financial condition; and

(4) Whether offset would tend to interfere substantially with or defeat the purposes of the program authorizing the payments against which offset is contemplated.

(b) *Repayment agreements.* The PBGC will exercise its discretion in determining whether to accept a repayment agreement in lieu of offset, balancing the Government's interest in collecting the debt against fairness to the debtor. If the debt is delinquent (within the meaning of 4 CFR 101.2(b))

and the debtor has not disputed its existence or amount, the PBGC will accept a repayment agreement in lieu of offset only if the debtor is able to establish that offset would result in undue financial hardship or would be against equity and good conscience.

(c) *Multiple debts.* When the PBGC collects multiple debts by administrative offset, it will apply the recovered amounts to those debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, paying special attention to applicable statutes of limitations.

§ 2609.23 Administrative offset procedures.

(a) *General.* Except as otherwise required by law or as provided in paragraph (e) of this section, the PBGC will not effect administrative offset against a payment to be made to a debtor prior to the completion of the procedures specified in paragraphs (b) and (c) of this section. However, the PBGC will not duplicate any notice or other procedural protection it previously provided in connection with the same debt under some other statutory or regulatory authority, such as part 2606 of this subchapter.

(b) *Notice.* The PBGC will provide written notice informing the debtor of the following:

(1) The nature and amount of the debt, and the PBGC's intention to collect by offset;

(2) That the debtor may inspect and copy PBGC records pertaining to the debt in accordance with part 2603 or part 2607 of this subchapter, as applicable (access under the Freedom of Information Act (5 U.S.C. 552) or the Privacy Act (5 U.S.C. 552a), respectively);

(3) How and from whom the debtor may obtain administrative review of a determination of indebtedness;

(4) The facts and circumstances that the PBGC will consider in determining whether to accept a repayment agreement in lieu of offset; and

(5) If the PBGC has not previously demanded payment of the debt, the date by which payment must be made to avoid further collection action.

(c) *Administrative review.* (1) A debtor may obtain review within the PBGC of a determination of indebtedness by submitting a written request for review, designated as such, to the PBGC official specified in the notice of indebtedness. Unless another regulation in this chapter specifies a different period of time, such a request must be submitted within 30 days after the date of a PBGC notice under paragraph (b) of this section.

(2) A request for review must:

(i) State the ground(s) on which the debtor disputes the debt; and

(ii) Reference all pertinent information already in the possession of the PBGC and include any additional information believed to be relevant.

(3) The PBGC will review a determination of indebtedness, when requested to do so in a timely manner. The PBGC will issue a written decision, based on the written record, and will notify the debtor of its decision.

(i) The review will be conducted by an official of at least the same level of authority as the person who made the determination of indebtedness.

(ii) The notice of the PBGC's decision on review will include a brief statement of the reason(s) why the determination of indebtedness has or has not been changed.

(4) Upon receipt of a request for administrative review, the PBGC may, in its discretion, temporarily suspend transactions in any of the debtor's accounts maintained by the PBGC. If the PBGC resolves the dispute in the debtor's favor, it will lift the suspension immediately.

(d) *Repayment agreement in lieu of offset.* (1) The PBGC will not consider entering a repayment agreement in lieu of offset unless a debtor submits a copy of the debtor's most recent audited (or if not available, unaudited) financial statement (with balance sheets, income statements, and statements of changes in financial position), to the extent such documents have been prepared, and other information regarding the debtor's financial condition (*e.g.*, the types of information on assets, liabilities, earnings, and other factors specified in § 2622.6 (b)(3) through (b)(7) of this chapter).

(2) The PBGC may require appropriate security as a condition of accepting a repayment agreement in lieu of offset.

(e) *Exception.* (1) The PBGC may effect administrative offset against a payment to be made to the debtor prior to completing the procedures specified in paragraphs (b) and (c) of this section if:

(i) Failure to take the offset would substantially prejudice the government's ability to collect the debt; and

(ii) The time before the payment is to be made does not reasonably permit the completion of those procedures.

(2) The PBGC has determined that a case in which it applies the special rule in § 2622.9(c) of this chapter meets the criteria in paragraph (e)(1) of this section.

(3) If the PBGC effects administrative offset against a payment to be made to a debtor prior to completing the procedures specified in paragraphs (b) and (c) of this section, the PBGC—

(i) Will promptly complete those procedures; and

(ii) Will promptly refund any amounts recovered by offset but later found not to be owed to the Government.

§ 2609.24 PBGC requests for offset by other agencies.

(a) *General.* The PBGC may request that funds payable to its debtor by another agency be administratively offset to collect a debt owed to the PBGC by the debtor. A PBGC request for administrative offset against amounts due and payable from the Civil Service Retirement and Disability Fund will be made in accordance with 5 CFR part 831, subpart R (Agency Requests to OPM for Recovery of a Debt from the Civil Service Retirement and Disability Fund).

(b) *Certification.* In requesting administrative offset, the Director of the Financial Operations Department (or a department official designated by the Director) will certify in writing to the agency holding funds of the debtor—

(1) That the debtor owes the debt (including the amount) and that the PBGC has fully complied with the provisions of 4 CFR 102.3; and

(2) In a request for administrative offset against amounts due and payable from the Civil Service Retirement and Disability Fund, that the PBGC has complied with applicable statutes and the regulations and procedures of the Office of Personnel Management.

§ 2609.25 Requests for offset from other agencies.

(a) *General.* As provided in the Federal Claims Collections Standards (4 CFR 102.3(d)), the PBGC generally will comply with requests from other agencies to initiate administrative offset to collect debts owed to the United States unless the requesting agency has not complied with the applicable provisions of the Federal Claims Collection Standards or the offset would be otherwise contrary to law.

(b) *Submission of requests.* (1) Any agency may request that funds payable to its debtor by the PBGC be administratively offset to collect a debt owed to such agency by the debtor by submitting the certification described in paragraph (c) of this section.

(2) All such requests should be directed to the Director, Financial Operations Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026.

(c) *Certification required.* The PBGC will not initiate administrative offset in response to a request from another agency until it receives written certification from the requesting agency, signed by an appropriate agency official, that the debtor owes the debt (including the amount) and that the requesting agency has fully complied with the provisions of 4 CFR 102.3 (with a citation to the agency's own administrative offset regulations).

Subpart C—Tax Refund Offset [Reserved]

Issued in Washington, DC this 21st day of November, 1994.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 94–29432 Filed 11–29–94; 8:45 am]

BILLING CODE 7708–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300359A; FRL–4920–4]

RIN 2070–AB78

Polystyrene; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance for residues of polystyrene (CAS Reg. No. 9003-53-6) when used as an inert ingredient (suspending agent, thickener) in pesticide formulations applied to growing crops, raw agricultural commodities after harvest, or animals. Dow Chemical Co. requested this regulation.

EFFECTIVE DATE: This regulation becomes effective November 30, 1994.

ADDRESSES: Written objections, identified by the document control number, [OPP-300359A], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing request to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Tina Levine, Registration Support Branch, Registration Division (7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Westfield Building North, 6th Fl., 2800 Crystal Drive, Arlington, VA 22202, (703)-308-8393.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 28, 1994 (59 FR 49373), EPA issued a proposed rule that gave notice that Dow Chemical Co., 1320 Waldo Ave., Suite 300, Midland, MI 48674, had submitted pesticide peititon (PP) 4E04371 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 346a(e)), propose to amend 40 CFR part 180 by establishing an exemption from the requirement of a tolerance for residues of polystyrene (CAS Reg. No. 9003-53-6) when used as an inert ingredient (suspending agent, thickener) in pesticide formulations applied to growing crops, to raw agricultural commodities after harvest, or to animals.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted relevant to the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance exemption will protect the public health. Therefore, the tolerance exemption is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or (4) raising 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 the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 16, 1994.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.1001, paragraphs (c) and (e) are amended in the tables therein by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
* * * * * * *		
Polystyrene (CAS Reg. No. 9003-53-6), minmum number average molecular weight 50,000).	.....	Suspending agent, thickener.
* * * * * * *		

* * * * *

(e) * * *

Inert ingredients	Limits	Uses
* * * * * * *		
Polystyrene (CAS Reg. No. 9003-53-6), minmum number average molecular weight 50,000).	.....	Suspending agent, thickener.
* * * * * * *		

[FR Doc. 94-29149 Filed 11-29-94; 8:45 am]
BILLING CODE 6560-50-F

40 CFR Parts 180, 185, and 186

[PP 3F4169 and FAP 3H5655/R2090; FRL-4922-8]

RIN 2070-AB78

Pesticide Tolerance for Imidacloprid

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes certain permanent and time-limited pesticide tolerances and food and feed additive regulations for the insecticide imidacloprid (1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine) and its metabolites in or on various commodities. Miles, Inc., requested these regulations to establish these maximum permissible levels for residues of the insecticide and to establish the food and feed additive regulations.

EFFECTIVE DATE: November 17, 1994.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 3F4169 and FAP 3H5655/R2090], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251

FOR FURTHER INFORMATION CONTACT: By mail: Dennis H. Edwards, Product Manager (PM 19), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-3686.

SUPPLEMENTARY INFORMATION: EPA issued notices, published in the **Federal Register** of October 21, 1993 (58 FR 54353) and amended in the **Federal Register** of September 28, 1994 (59 FR 49397), which announced that Miles, Inc., Agricultural Division, P.O. Box 491, Kansas City, MO 64120, had submtted a pesticide petition (PP 3F4169) and a food/feed additive petition (FAP 3H5655) to EPA requesting that the Administrator, pursuant to sections 408(d) and 409(b) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d) and 348(b), establish tolerances for residues of the insecticide 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine in or on the raw agricultural commodities apples at 0.5 part per million (ppm), potatoes at 0.3 ppm, and cottonseed at 6.0 ppm. FAP

3H5655 proposed establishing a food or feed additive regulation for cottonseed meal at 9 ppm and for combined residues of imidacloprid and its metabolites containing the 6-chloropyridinyl moiety, all expressed as imidacloprid, on apple pomace (wet or dried) at 3 ppm, on potato chip at 0.4 ppm, and on potato waste at 0.9 ppm. A time limitation was requested on the cottonseed tolerance and the cottonseed meal food additive tolerance. There were no comments or request for referral to an advisory committee received in response to the notices of filling.

The database for imidacloprid is relatively complete. The most significant data gap is the need to complete additional cotton crop field trials and present a final report, and this is the reason for the 2-year time limitation on the tolerances. On June 2, 1994, the Agency issued a guidance document on crop residue trials. Among other things, this document provided guidance on the number and location of domestic crop field trials for establishment of pesticide residue tolerances. Based on this guidance document, additional residue trials are needed to fully support the cotton tolerance. Given the relatively low risk presented by imidacloprid, EPA does not believe that the missing data will significantly change EPA's risk assessment.

The scientific data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the tolerance include:

1. A three-generation rat reproduction study with a noobserved-effect level (NOEL) of 100 ppm (8 mg/kg/bwt). Rat and rabbit teratology studies were negative at doses up to 30 mg/kg/ bwt and 24 mg/kg/bwt, respectively.

2. A 2-year rat feeding/carcinogenicity study that was negative for carcinogenic effects under the conditions of the study and a NOEL of 100 ppm (5.7 mg/kg/bwt in male and 7.6 mg/kg/bwt female) for noncarcinogenic effects that included decreased body weight gain in females at 300 ppm and increased thyroid lesions in males at 300 ppm and females at 900 ppm.

3. A 1-year dog feeding study with a NOEL of 1,250 ppm (41 mg/kg/bwt).

4. A 2-year mouse carcinogenicity study that was negative for carcinogenic effects under conditions of the study and that had a NOEL of 1,000 ppm (208 mg/kg/day).

There is no cancer risk associated with exposure to this chemical. Imidacloprid has been classified under "Group E" (no evidence of carcinogenicity for humans) under EPA's cancer Assement Guidlines by the Office of Pesticide Programs (OPP) Reference Dose (RfD) Committee.

The reference dose (RfD), based on the 2-year rat feeding/carcinogenic study with a NOEL of 5.7 mg/kg/bwt and 100-fold uncertainty factor, is calculated to be 0.057 mg/kg/bwt. The theoretical maximum residue contribution (TMRC) from published uses is .001734 mg/kg/bwt/day. This represents 3% of the RfD. The proposed tolerances contribute .0008957 mg/kg/bwt/day. This represents a 1.56% increase in RfD. Dietary exposure from the existing uses and proposed uses will not exceed the reference dose for any subpopulation (including infants and children) based on the information available from EPA's Dietary Risk Evaluation System.

The nature of the residue in plants and livestock is adequately understood. The residues of concern are imidacloprid and its metabolites that contain the 6-chloropyridinyl moiety, all calculated as imidacloprid. The analytical methods are common moiety methods for imidacloprid and its metabolites containing the 6-chloropyridiyl moiety using a permanganate oxidation, silyl derivatization, and capillary GC-MS selective ion monitoring. Adequate geographically representative magnitude of the residue crop field trial data for imidacloprid on apples, potatoes, and cotton indicate that residues of total imidacloprid will not exceed the proposed tolerances when the formulation is used as directed. Cotton, potato, and apple processing studies were conducted using the raw agricultural commodities bearing detectable imidacloprid residues. These studies followed commercial processing practices. Imidacloprid was found to concentrate in apple pomace, cottonseed meal, potato chips, and potato waste. Appropriate imidacloprid food additive tolerances have been requested. Based on the results of the imidacloprid bovine and poultry feeding studies finite imidacloprid residues will occur in meat, milk, poultry, and eggs from feeding of imidacloprid-treated feed items, or their processed feed items, when the formulations are used as directed. Appropriate secondary tolerances have been requested. Although additional cotton field trial are needed, EPA does not believe the additional data will change its risk assessment.

There are currently no actions pending against the continued registration of this chemical.

This pesticide is considered useful for the purposes for which the tolerances are sought and capable of achieving the intended physical or technical effect. Based on the information and data considered, the Agency has determined that the tolerances regulations established by amending 40 CFR part 180 will protect the public health and that use of the pesticide in accordance with the terms of the requested food/feed additive tolerances will be safe. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating

serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising 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 this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Parts 180, 185, and 186

Environmental protection, Administrative practice and procedures, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 17, 1994.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. By revising § 180.472, to read as follows:

§ 180.472 1-[(6-Chloro-3-pyridinyl) methyl]-N-nitro-2-imidazolidinimine; tolerances for residues.

(a) Tolerances are established permitting the combined residues of the insecticide 1-[6-chloro-3-pyridinyl) methyl]-*N*-nitro-2-imidazolidinimine and its metabolites containing the 6-chloropyridinyl moiety, all expressed as 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine, in or on the following raw agricultural commodities:

Commodity	Parts per million
Apples	0.5
Cattle, fat	0.3
Cattle, meat	0.3
Cattle, mbyp	0.3
Eggs	0.02
Goats, fat	0.3
Goats, meat	0.3
Goats, mbyp	0.3
Hogs, fat	0.3
Hogs, mbyp	0.3
Hogs, meat	0.3
Hops, dried	3.0
Horses, fat	0.3
Horses, mbyp	0.3
Horses, meat	0.3
Milk	0.1
Potatoes	0.3
Poultry, fat	0.05
Poultry, mbyp	0.05
Poultry, meat	0.05
Sheep, fat	0.3
Sheep, mbyp	0.3
Sheep, meat	0.3

(b) A time-limited tolerance, to expire November 17, 1994, is established permitting the combined residues of the insecticide 1-[6-chloro-3-pyridinyl) methyl]-*N*-nitro-2-imidazolidinimine and its metabolites containing the 6-chloropyridinyl moiety, all expressed as 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine, in or on the following raw agricultural commodity:

Commodity	Parts per million
Cotton seed	6

PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346a and 348.

b. By adding new § 185.900, to read as follows.

§ 185.900 1-[(6-Chloro-3-pyridinyl)methyl]-N-nitro-2-imidazolidinimine; tolerances for residues.

A food additive regulation is established permitting residues of the insecticide 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine in or on the following food resulting from application of the insecticide to potatoes:

Food	Parts per million
Potato, chip	0.4

PART 186—[AMENDED]

3. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

b. By adding new § 186.900, to read as follows.

§ 186.900 1-[(6-Chloro-3-pyridinyl)methyl]-N-nitro-2-imidazolidinimine; tolerances for residues.

(a) A feed additive regulation is established permitting residues of the insecticide 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine in or on the following feeds resulting from application of the insecticide to apples and potatoes:

Feed	Parts per million
Apples, pomace (wet)	3.0
Potato, waste	0.9

(b) A time-limited tolerance, to expire November 17, 1996, is established permitting residues of the insecticide 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine in or on the following feed resulting from application of the insecticide to cotton:

Feed	Parts per million
Cottonseed meal	9.0

[FR Doc. 94-29501 Filed 11-29-94; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Parts 180 and 186

[PP 3F4234 and FAP 3H5682/R2091; FRL-4922-9]

RIN 2070-AB78

Pesticide Tolerances and Feed Additive Regulation For Flumiclorac Pentyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: These rules establish tolerances for residues of the herbicide flumiclorac pentyl in or on the raw agricultural commodities field corn, grain; field corn, fodder; field corn, forage; and soybean, seed at 0.01 part per million (ppm), and in or on the feed additive commodity soybean hulls at 0.02 ppm. Valent U.S.A. Corp. requested

these regulations to establish maximum permissible levels for residues of the herbicide.

EFFECTIVE DATE: These regulations become effective November 30, 1994.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 3F4234 and FAP 3H5682/R2091], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Product Manager (PM-23), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-7830.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of June 29, 1994 (59 FR 33503), which announced that Valent U.S.A. Corp., 1333 N. California Blvd., Suite 600, Walnut Creek, CA 95496, had submitted a pesticide petition (PP 3F4234) to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), establish a tolerance for residues of the herbicide flumiclorac pentyl (pentyl[2-chloro-4-fluoro-5-(1,3,4,5,6,7-hexahydro-1,3-dioxo-2H-isoindol-2-yl)phenoxy]acetate), including all metabolites of flumiclorac pentyl, in or on the raw agricultural commodity field corn, grain; field corn, fodder; field corn, forage; and soybean, seed at 0.01 part per million (ppm). Valent had previously submitted feed additive petition (FAP) 3H5682 to EPA (see the **Federal Register** of October 21, 1993 (58 FR 54356)) proposing under section 409 of the FFDCA (21 U.S.C. 348) an amendment to 40 CFR part 186 to establish a feed additive regulation for flumiclorac pentyl in or on soybean hulls at 0.02 ppm that inadvertently appeared under petition number FAP 3H5665: The correct petition number is FAP 3H5682. The tolerance level for each commodity is expressed in terms of the parent only, which serves as an indicator of the use of flumiclorac pentyl on these commodities.

There were no comments received in response to the notice of filing. The scientific data submitted in the petitions and other relevant material have been evaluated. The toxicological data considered in support of the tolerances include:

1. Acute toxicological studies placing the technical-grade flumiclorac pentyl in Toxicity Category III.

2. A 90-day feeding study in rats resulted in a lowest-observed-effect level (LOEL) of 659 mg/kg/day in males and 724 mg/kg/day in females, and a no-observed-effect level (NOEL) of 64.9 mg/kg/day in males and 70.6 mg/kg/day in females.

3. A 90-day feeding study in dogs resulted in a NOEL of 100 mg/kg/day in males and 10 mg/kg/day in females, and a LOEL of 1,000 mg/kg/day in males and 100 mg/kg/day in females. The only significant finding in males was slight to mild vacuolation in the kidneys in the 1,000-mg/kg/day group. In females, a prolongation of the activated partial thromboplastin time was observed in the 100- and 1,000-mg/kg/day groups.

4. A 21-day dermal toxicity study in rats resulted in the LOEL for systemic and dermal toxicity of greater than 1,000 mg/kg/day. No treatment-related effects were noted in mortality, body weight gain, food consumption, clinical pathology, or absolute and relative organ weight gains. No relevant histopathological findings were observed.

5. A 1-year chronic oral toxicity study in dogs resulted in a LOEL of 1,000 mg/kg/day and a NOEL of 100 mg/kg/day for systemic toxicity. There were no treatment-related clinical signs.

6. A 79-week oncogenicity study in mice resulted in a LOEL of 307.9 mg/kg/day and a NOEL of 31.5 mg/kg/day for systemic toxicity in males and a NOEL of 850.2 mg/kg/day for females. There was no evidence of carcinogenicity in this study.

7. A combined chronic toxicity/carcinogenicity study in rats was performed. Consistent treatment-related changes at both 360.4 and 744.9 mg/kg/day were observed in males, while no treatment-related effects were noted in females. Based on these findings, a LOEL of 360 mg/kg/day and a NOEL of 35 mg/kg/day were established for systemic toxicity in male rats, and a NOEL of 919.4 mg/kg/day was established for female rats. There was no evidence of carcinogenicity in this study.

8. Teratology—developmental toxicity studies performed on rabbits and rats. No developmental toxicity was present at the highest dose tested in any of the four studies performed.

9. A dietary two-generation reproduction study in rats resulted in a systemic NOEL of 16 mg/kg/day in males and 18 mg/kg/day in females, and a reproductive NOEL of 16 mg/kg/day in males and 18 mg/kg/day in females.

10. A micronucleus study was performed to test structural chromosomal aberration on male and female ICR mice. No significant differences in the frequency of micronucleated cells were noted in the bone marrow cells of the treated animals.

11. An *in vitro* unscheduled DNA synthesis assay was performed on rats to examine other genotoxic effects. At concentrations up to 300 micrograms/mL, unscheduled DNA synthesis was not elicited in primary cultures of rat hepatocytes.

12. Metabolism studies in rats resulted in essentially all of the administered dose being eliminated within 2 days of dosing. Based on the results of the study, the high amounts of unmetabolized chemical present in the feces was determined to be due to lack of absorption rather than biliary excretion.

The Office of Pesticide Programs' Health Effects Division's Carcinogenicity Peer Review Committee (CPRC) has classified flumiclorac pentyl in Group E carcinogen (no evidence of carcinogenicity) under the Agency's "Guidelines for Carcinogen Risk Assessment," published in the **Federal Register** of September 24, 1986 (51 FR 33992). In its evaluation, CPRC gave consideration to organ weight changes in the 2-year feeding study in rats and the 2-year feeding study in mice.

The Reference Dose (RfD) is established at 0.35 mg/kg/day, based on a NOEL of 35.4 mg/kg/day from the 2-year feeding study in rats and an uncertainty factor of 100. The Theoretical Maximum Residue Contribution (TMRC) from the current action is estimated at 0.001005 mg/kg of body weight/day for the general population and utilizes less than 1% of the RfD for the U.S. population. The TMRC for the most exposed subgroups are 0.000012 mg/kg body weight/day for nonnursing infants (less than 1 year old) and 0.000009 mg/kg body weight/day for children (1 to 6 years old), or 0.0036

and 0.0026 percent of the RfD, respectively. Therefore, no appreciable risk is expected from chronic dietary intake since the RfD is not exceeded for either the general population or any subgroup.

The nature of the residue is adequately understood for the purposes of the tolerance.

An adequate analytical method, gas chromatography with a thermionic-specific detector, is available for enforcement purposes.

The enforcement methodology has been submitted to the Food and Drug Administration for publication in the Pesticide Analytical Manual, Vol. II (PAM II). Because of the long lead time for publication of the method in PAM II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202 (703)-305-5232.

There is no reasonable expectation that secondary residues will occur in milk, eggs or meat of livestock or poultry as a result of this action.

The pesticide is considered useful for the purpose for which the tolerances are sought, and the tolerances are capable of achieving the intended physical or technical effect. There are currently no actions pending against the registration of this chemical.

Based on the information and data considered, the Agency has determined that the tolerances established by amending 40 CFR parts 180 and 186 will protect the public health and that use of the pesticide in accordance with the terms of the proposed food additive tolerance will be safe. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising 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 this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Parts 180 and 186

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 18, 1994.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR parts 180 and 186 are amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. By adding new § 180.477, to read as follows:

§ 180.477 Flumiclorac pentyl; tolerances for residues.

Tolerances are established for residues of the herbicide flumiclorac pentyl, pentyl[2-chloro-4-fluoro-5-(1,3,4,5,6,7-hexahydro-1,3-dioxo-2H-isoindol-2-yl)phenoxy]acetate, including all the metabolites of flumiclorac pentyl, in or on the raw agricultural commodities listed below. The tolerance level for each commodity is expressed in terms of the parent only which serves as an indicator of the use of flumiclorac pentyl on these raw agricultural commodities.

Commodity	Parts per million
Corn, field, grain	0.01
Corn, field, fodder	0.01
Corn, field, forage	0.01
Soybean, seed	0.01

PART 186—[AMENDED]

2. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

b. By adding new § 186.3325, to read as follows:

§ 186.3325 Flumiclorac pentyl; tolerances for residues.

Tolerances are established for residues of the herbicide flumiclorac pentyl, pentyl[2-chloro-4-fluoro-5-(1,3,4,5,6,7-hexahydro-1,3-dioxo-2H-isoindol-2-yl)phenoxy]acetate, including all the metabolites of flumiclorac pentyl, in or on the feeds listed below. The tolerance level for each commodity is expressed in terms

of the parent only which serves as an indicator of the use of flumiclorac pentyl on these feeds.

Commodity	Parts per million
Soybean, hulls	0.02

[FR Doc. 94–29499 Filed 11–29–94; 8:45 am]
BILLING CODE 6560–50–F

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 201–3, 201–4, 201–9, 201–18, 201–20, 201–21, 201–23, 201–24, and 201–39

[FIRMR Amdt. 2]

RIN 3090–AE75

Amendment of Miscellaneous FIRMR Provisions

AGENCY: Information Resources Management Service, GSA.

ACTION: Final rule.

SUMMARY: This document amends Federal Information Resources Management Regulation (FIRMR) provisions with regard to: updating General Services Administration (GSA) offices and symbols; changing the definition of "performance validation"; providing GSA advance notice of agency offices authorized to submit agency procurement requests; clarifying delegation of procurement authority (DPA) requirements for using GSA's Information Resources Management Service (IRMS) contracts programs and services; clarifying provisions regarding DPAs, including acquisitions when an agency uses the Small Business Administration's (SBA's) 8(a) Program for Federal information processing (FIP) resources; changing procedures for obtaining exceptions to the use of FTS2000 and clarifying that determinations regarding whether the FTS2000 network will be used in an acquisition is subject to GSA approval; and changing the Purchase of Telecommunications Services (POTS) Program from a mandatory-for-use program to a nonmandatory program.

EFFECTIVE DATE: This rule is effective December 30, 1994.

FOR FURTHER INFORMATION CONTACT: Anne Horth, GSA/KMR at (202) 501–0960 (v) or (202) 501–0657 (tdd).

SUPPLEMENTARY INFORMATION: (1) Notices of proposed rulemaking (NPRs) were published in the **Federal Register** (FR) on September 21 and December 7, 1993 proposing various amendments to several sections of the FIRMR. The September 21 FR notice contained proposed amendments regarding acquisitions to be issued through SBA's 8(a) Program and regarding procedures when using GSA's nonmandatory schedule contracts. The December 7 FR notice contained other miscellaneous changes as noted in the Summary above, including provisions regarding the use by one agency of another agency's contracts for FIP resources. Changes in the December 7 FR notice regarding nonmandatory schedules, the Federal IRM Review Program, and the use of other agency contracts (except for contracts and services provided by GSA/IRMS) will be covered in a separate amendment. To expedite issuance, all other amendments are combined in this final rule

(2) All comments were considered and, where possible, incorporated into the final rule. While most of the comments were resolved in the final amendment, a few comments could not be fully accommodated. Also, in an effort to keep regulations to a minimum, where a subject is already covered, additional provisions will not be included. Major comments that will not be reflected in the amendment are addressed below.

(a) Requests were made for explanations as to when justifications for specific make and model and for other than full and open competition are required for 8(a) contracts. FIRMR § 201–39.601 already requires a justification for specific make and model that applies to all acquisitions, including 8(a) acquisitions. The Federal Acquisition Regulation (FAR) contains rules governing documentation for SBA's 8(a) Program contracts. Additional FIRMR provisions are not required, but this does not preclude GSA from asking for supporting documentation in specific cases when SBA's 8(a) Program is used.

(b) There were requests to include provisions requiring that agencies be informed of the scope and manner of GSA reviews and that would have the effect of regulating the timing of reviews. These changes are not desirable in view of the changing nature of the reviews program and since agencies are now notified of pending reviews.

(c) Suggestions that agencies, not GSA, make determinations regarding FTS2000 exceptions were not accepted because of GSA's statutory responsibilities.

(d) Suggestions that were not particularly relevant to the published notices were not addressed in this amendment, but will be reviewed for future bulletins or FIRMR changes.

(3) Explanations of the changes made by this amendment are shown below:

(a) Various sections of the FIRMR are amended to update GSA offices and symbols.

(b) FIRMR part 201–4 is amended to change the definition of "performance validation" to reflect that benchmarking is not the only method of validation. FIRMR Bulletin C–4 is also being revised to reflect this change.

(c) Section 201–20.305(a) is amended to require agencies to provide GSA the position title and organizational identity of offices authorized to submit agency procurement requests for DPAs.

(d) Section 201–20.305–1 is amended to clarify that a delegation is not required for FIP supplies even though they may be part of an acquisition that contains other FIP resources. It will serve to correct an error in FIRMR Interim Rule 2 appearing in the October 24, 1994 **Federal Register.**

(e) Section 201–20.305–1 is also amended to clarify that, when an agency elects to use SBA's 8(a) Program to acquire FIP resources, the FIRMR policies and delegation thresholds for obtaining DPAs apply. This final rule is responsive to agencies' concerns about when the DPA thresholds apply; explains the difference between a requirement "available from only one responsible source" and a "sole source" acquisition issued under SBA's 8(a) Program; and explains that the thresholds apply to all FIP resource acquisitions (including indefinite delivery, indefinite quantity contracts). The FAR contains general policies that apply to all acquisitions. The FIRMR, which is the primary regulation for FIP acquisitions, contains policies and procedures that are unique to FIP resources. In acquiring FIP resources, acquisition personnel must follow the policies and procedures in the FAR except in those areas where the FIRMR prescribes special policies and procedures. This applies to acquisitions using SBA's 8(a) Program for FIP resources. To apply DPA thresholds to acquisitions conducted through SBA, an agency needs to determine if the requirement is (i) a specific make and model, or (ii) a requirement for which only one source of supply or service exists. If a requirement fits into either of these categories, a delegation is required if the value of combined FIP resources (including optional periods and quantities) exceeds the regulatory delegation threshold established in the FIRMR for the agency for a specific make and model or a requirement available from only one responsible

source, unless the agency has a specific agency delegation at a different level. In all other cases, the higher regulatory delegation threshold established for the agency applies, unless the agency has a specific agency delegation at a different level.

(f) Section 201–24.101–3 is amended to (i) provide a new address to which requests for exceptions to the use of FTS2000 are submitted, and (ii) clarify procedures when an agency's intercity telecommunications may fall outside the scope of FTS2000. Requirements for intercity telecommunications within the United States, Guam, Puerto Rico, or the Virgin Islands must be submitted to GSA for inclusion in the FTS2000 program or for a final determination as to whether a requirement is outside the scope of FTS2000. The changes will ensure that agencies follow appropriate procedures when acquiring intercity telecommunications services.

(g) Section 201–24.104 is deleted to remove the POTS Program from GSA's mandatory programs. Agencies are encouraged to consider use of POTS, since the contracts are competed and provide cost-effective services. This change allows flexibility to agencies to acquire telecommunications resources that are most advantageous to their individual needs.

(h) Subpart 201–39.8 is amended to remove provisions that require mandatory use of the POTS contracts. The POTS contracts are available for use on a nonmandatory basis as an optional source of supply. The name of the program is changed to "Purchase of Telecommunications Services."

(i) The FIRMR Index is amended to reflect references changed or added by this amendment.

(4) This rule was submitted to, and approved by, the Office of Management and Budget in accordance with Executive Order 12866, Regulatory Planning and Review. The rule will not have a significant economic impact upon a substantial number of small entities under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*).

List of Subjects in 41 CFR Parts 201–3, 201–4, 201–9, 201–18, 201–20, 201–21, 201–23, 201–24, and 201–39

Archives and records, Computer technology, Telecommunications, Government procurement, Property management, Records management, Federal information processing resources activities.

PART 201–3—THE FIRMR SYSTEM

1. The authority citation for part 201–3 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

§ 201–3.402 [Amended]

2. In § 201–3.402, paragraph (b), remove the words "Policy and Regulations Division (KMP)" and add in their place the words "Regulations Analysis Division (KMR)."

PART 201–4—DEFINITIONS AND ACRONYMS

3. The authority citation for part 201–4 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

4. In § 201–4.001, the definition of "performance validation" is revised to read as follows:

§ 201–4.001 Definitions.

* * * * *

Performance validation means the technical verification of the ability of a proposed FIP system configuration or replacement component to meet agency specified performance requirements.

* * * * *

PART 201–9—CREATION, MAINTENANCE, AND USE OF RECORDS

5. The authority citation for part 201–9 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

§ 201–9.202–1 [Amended]

6. In § 201–9.202–1, paragraph (b)(7), remove the words "Standards Branch (KMPS)" and add in their place "Regulations Analysis Division (KMR)."

§ 201–9.202–2 [Amended]

7. In § 201–9.202–2, paragraph (b)(1)(ix), remove the words "Authorizations Branch (KMAS)" and add in their place "Acquisition Reviews Division (KMA)."

PART 201–18—PLANNING AND BUDGETING

8. The authority citation for part 201–18 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

§ 201–18.003 [Amended]

9. In § 201–18.003 remove the words "Authorization and Management Reviews Division (KMA)" and add in their place "Acquisition Reviews Division (KMA)."

PART 201–20—ACQUISITION

10. The authority citation for part 201–20 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

§ 201–20.303 [Amended]

11. In § 201–20.303, paragraph (d)(2), remove the words "Policy and Regulations Division (KMP)" and add in their place "Regulations Analysis Division (KMR)."

§ 201–20.305 [Amended]

12. Section 201–20.305 is amended by adding paragraph (a)(7) to read as follows:

(a) * * *

(7) The DSO shall provide, in writing, the position title and organizational identity of offices authorized to submit a request for a DPA from GSA to: General Services Administration, Acquisition Reviews Division (KMA), 18th and F Streets, NW., Washington, DC 20405.

* * * * *

13. Section 201–20.305–1 is amended by revising paragraph (a)(1) and adding paragraph (c) as follows:

§ 201–20.305–1 Regulatory delegations.

* * * * *

(a) * * *

(1) FIP equipment, software, services, and support services when the total estimated dollar value of all of the FIP resources to be acquired under the contract, including all optional items and all option periods, does not exceed $20,000,000 ($2,000,000 for a specific make and model or a requirement available from only one responsible source) for Department of the Air Force, Department of the Army, Department of Defense/Office of the Secretary of Defense, Department of Energy, Department of Health and Human Services, Department of the Navy, Department of Transportation, Department of the Treasury, and National Aeronautics and Space Administration; $10,000,000 ($1,000,000 for a specific make and model or a requirement available from only one responsible source) for Department of Agriculture, Department of Commerce, Environmental Protection Agency, General Services Administration, Department of the Interior, Department of Justice, Department of State, and Department of Veterans Affairs; $5,000,000 ($500,000 for a specific make or model or a requirement available from only one responsible source) for all agencies; and if either paragraph (a)(1) (i), (ii), or (iii) of this section applies:

* * * * *

(c) When an agency acquires FIP resources through the Small Business Administration's 8(a) Program, the regulatory delegations in paragraph (a)(1) above apply unless an agency is granted specific agency delegations with

different thresholds. If a requirement to be satisfied through the 8(a) Program is for a specific make and model or is one that is available from only one responsible source, the lower of the two specific agency delegation thresholds (or, if none exists, the FIRMR regulatory delegation thresholds) applies. For all other acquisitions, the higher of the two specific agency delegation thresholds (or, if none exists, the FIRMR regulatory delegation thresholds) apply. For acquisitions conducted through SBA's 8(a) Program, a requirement available from only one responsible source is one for which only one source of supply or service exists. The fact that the requirement is directed to one particular source under SBA's 8(a) Program does not necessarily mean the requirement is available from only one responsible source. When using an indefinite delivery, indefinite quantity contract, the FIRMR thresholds apply to the maximum value of all combined FIP resources (including optional periods and quantities), not the minimum guaranteed value.

PART 201–21—OPERATIONS

14. The authority citation for part 201–21 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

§ 201–21.403 [Amended]

15. In § 201–21.403, paragraph (a)(2)(ii), remove the words "Authorizations Branch (KMAS)" and add in their place "Acquisition Reviews Division (KMA)."

§ 201–21.603 [Amended]

16. In § 201–21.603, paragraphs (d)(1) and (d)(3), remove the words "Regulations Branch (KMPR)" and add in their place "Regulations Analysis Division (KMR)."

§ 201–21.604 [Amended]

17. In § 201–21.604(a) remove the words "Authorizations Branch (KMAS)" and add in their place "Acquisition Reviews Division (KMA)."

PART 201–23—DISPOSITION

18. The authority citation for part 201–23 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

§ 201–23.003 [Amended]

19. In § 201–23.003, paragraphs (a) and (c), remove the words "Authorizations Branch (KMAS)" and add in their place "Acquisition Reviews Division (KMA)."

PART 201–24—GSA SERVICES AND ASSISTANCE

20. The authority citation for part 201–24 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

§ 201–24.101–2 [Amended]

21. Section 201–24.101–2 is amended by revising the introductory text of paragraph (a) to read as follows:

(a) Federal agencies shall use the FTS2000 network to satisfy long distance telecommunications requirements within the United States, Guam, Puerto Rico, or the Virgin Islands for requirements which are within the scope of FTS2000 network voice, data, and video services as such services become available unless:

* * * * *

§ 201–24.101–3 [Amended]

22. In § 201–24.101–3, paragraph (a), remove the words "Information Resources Management Service, Office of Network Services (KN), Customer Services Branch" and add in their place "Office of FTS2000 (T)."

23. Section 201–24.101–3 is amended by revising paragraph (d) and adding paragraph (g) to read as follows:

§ 201–24.101–3 Procedures.

* * * * *

(d) Any agency exception request shall be sent to the General Services Administration/Office of FTS2000 (T) at the appropriate offices listed in FIRMR Bulletin C–18.

* * * * *

(g) If an agency has a requirement for long distance telecommunications within the United States, Guam, Puerto Rico, or the Virgin Islands that may be outside the scope of FTS2000, the requirement shall be submitted to GSA/T prior to initiating acquisition action. An exception to the mandatory use of FTS2000 will be given if GSA determines the service cannot be provided by FTS2000. Additionally, if a requirement is above the regulatory or specific agency delegation, and FTS2000 is not used, a specific acquisition delegation must be obtained. Requests for an exception and a DPA may be submitted simultaneously to GSA.

§ 201–24.102 [Amended]

24. In § 201–24.102, paragraph (c)(2), remove the words "Authorizations and Management Reviews Division" and add in their place "Acquisition Reviews Division."

§ 201.24.104 [Reserved]

25. Section 201–24.104 is removed and reserved.

PART 201–39—ACQUISITION OF FEDERAL INFORMATION PROCESSING RESOURCES (FIP) BY CONTRACTING

26. The authority citation for part 201–39 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

27. Section 201–39.001 is amended by revising paragraph (b) to read as follows:

§ 201–39.001 General.

* * * * *

(b) To assist Federal agencies in preparing solicitations for FIP resources, the General Services Administration (GSA) makes available standard solicitations and other guidance. Copies may be obtained by contacting: GSA, Regulations Analysis Division (KMR), 18th and F Streets, NW., Washington, DC 20405. Acquisition guides may be obtained by contacting: GSA, Agency Liaison Division (KML), 18th and F Streets, NW., Washington, DC 20405.

§ 201–39.101–6 [Amended]

28. In § 201–39.101–6, paragraph (b), remove "(KMPR)" and add in its place "(KMR)."

§ 201–37.104–1 [Amended]

29. In § 201–39.104–1, paragraph (b)(3), remove the words "Policy and Regulations Division (KMP)" and add in their place "Regulations Analysis Division (KMR)."

30. Sections 201–39.802, 201–39.802–1, 201–39.802–2, and 201–39.802–3 are revised to read as follows:

§ 201–39.802 Purchase of Telecommunications Services (POTS) contracts.

§ 201–39.802–1 General.

(a) GSA has established nonmandatory POTS contracts to provide an optional source for telecommunications supplies and services, including purchase, installation, maintenance, repair, de-installation, and relocation of both contractor-provided and Government-owned telephone equipment, at locations throughout the country.

(b) The POTS contracts are available for use by all Federal agencies.

(c) Federal agencies may obtain information and assistance concerning the use of POTS contracts from: GSA, Technical Contract Management Division (KVT), 18th and F Streets, NW., Washington, DC 20405.

§ 201–39.802–2 Policies.

(a) Federal agencies may use POTS contracts when the requirements are within the scope of the POTS contracts.

(b) Use of the POTS contracts is a competitive procedure.

(c) Orders issued under a POTS contract are not subject to the publication requirements in FAR Part 5.

§ 201–39.802–3 Procedures.

Procedures for using the POTS program are contained in FIRMR Bulletin C–21.

31. Section 201–39.3304–1 is revised to read as follows:

§ 201–39.3304–1 Protest notice.

Within one working day after receiving a copy of the protest, the contracting officer shall give oral or written notice of the protest to: General Services Administration, Acquisition Reviews Division (KMA), 18th and F Streets, NW., Washington, DC 20405, telephone (202) 501–1566. If the protest involves an acquisition issued under a specific acquisition delegation of procurement authority (DPA), the DPA number shall be provided to GSA with the notice. If the protest involves an acquisition issued under a regulatory or specific agency DPA, the solicitation number and the total dollar value of the acquisition shall be provided to GSA with the notice.

FIRMR Index [Amended]

32. The following reference in the FIRMR Index is revised to read as follows:

* * * * *

POTS—201–39.802 Bulletin C–21

* * * * *

Dated: October 7, 1994.

Roger W. Johnson,

Administrator of General Services.

[FR Doc. 94–28111 Filed 11–29–94; 8:45 am]

BILLING CODE 6820–25–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 5

[ET Docket No. 93–266; FCC 94–276]

Pioneer's Preference Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By this Memorandum Opinion and Order the Commission denies a petition for reconsideration of the First Report and Order in this proceeding filed by CELSAT, Inc. This action will result in Celsat's pioneer's preference request, PP–28, being considered in RM–7927, the proceeding in which Celsat's companion petition for rule making is under consideration, rather than in ET Docket No. 92–28, the above 1 GHz low-Earth orbit satellite service proceeding.

EFFECTIVE DATE: November 30, 1994.

FOR FURTHER INFORMATION CONTACT: Rodney Small, Office of Engineering and Technology, (202) 653–8116.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, adopted October 24, 1994, and released November 3, 1994. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision also may be purchased from the Commission's duplication contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Memorandum Opinion and Order

1. In the Notice of Proposed Rule Making (Notice) in this proceeding, 58 FR 57578 (October 26, 1993), the Commission sought comment on whether and how the pioneer's preference rules could be amended to take into account competitive bidding and its experience administering them, or whether they should be repealed. In the *First R&O*, 59 FR 8413 (February 22, 1994), the Commission determined that it would not apply amendments to its rules to the three proceedings in which Tentative Decisions had been issued. Celsat requested reconsideration or clarification of the *First R&O* insofar as that decision affects the inclusion or exclusion of Celsat's pioneer's preference request, PP–28, in Docket 92–28, which is one of the three proceedings in which a Tentative Decision had been issued and therefore, under the decision in the *First R&O*, would be considered under the existing pioneer's preference rules. Celsat argues that its pioneer's preference request is pending in Docket 92–28.

2. The *First R&O* did not address whether Celsat's pioneer's preference request is being considered in Docket 92–28 and had no effect on the status of Celsat's request. However, because Celsat argues that it is uncertain as to the status of the request, the Commission clarifies that the request has been, and remains, pending in RM–7927.

3. Celsat states that the Commission issued a Public Notice on March 11, 1992 "in an apparent response to Celsat's [pioneer's preference] filing [that] established April 10, 1992 as the final day for filing any additional pioneer's preference requests" in Docket 92–28. Celsat also argues that the Commission's Office of Engineering and Technology issued an Order consolidating Celsat's pioneer's preference request with five other pioneer's preference requests in Docket 92–28, and that the Commission made an initial ruling on Celsat's companion petition for rule making in the Notice of Proposed Rule Making and Tentative Decision (NPRM) in that docket.

4. The Commission finds that Celsat's petition for rule making addressed a number of frequency bands, several of which were already the subject of an ongoing proceeding. Those portions of Celsat's petition that addressed two bands being considered for low-Earth orbit satellite operations, 1610–1626.5 and 2483.5–2500 MHz, were considered in the proceeding initiated to address those bands, Docket 92–28. Because Celsat's petition as it related to those bands proposed a terrestrial component that was inconsistent with the international allocation of those bands, the portion of Celsat's petition that addressed those bands was dismissed. Had Celsat's petition addressed only those bands, its request for pioneer's preference also would have been dismissed, inasmuch as a pioneer's preference request is tied to adoption of rules consistent with the request. However, since the portion of Celsat's petition addressing other bands remains pending in RM–7927, its companion pioneer's preference request also remains pending in that proceeding.

5. Celsat's arguments that its pioneer's preference request was associated with Docket 92–28, either in addition to or instead of RM–7927, are demonstrably incorrect. Celsat's request was placed on public notice on March 9, 1992. The public notice clearly stated on it face that the pioneer's preference request was filed in conjunction with Celsat's petition for rulemaking, RM–7927. Pioneer's preference requests pertaining to Docket 92–28 were separately placed on public notice and clearly marked with that docket number on the same day. There was no mention of Docket 92–28 in the Public Notice addressing Celsat's request, and no mention of RM–7927 in the Public Notice addressing Docket 92–28.

6. Additionally, an Order extending comment time periods cited by Celsat as consolidating the two proceedings clearly did not do so. While the Order denied an extension of time request that was filed with respect to the two separate proceedings, the request did not ask us to consolidate the two proceedings. Both the caption and text

of the Order, as released March 27, 1992, made clear that RM–7927 and Docket 92–28 are separate and distinct. The Order twice refers to the "proceedings," and paragraph 4 exclusively discusses Docket 92–28 while paragraph 5 separately discusses RM–7927. Not only would consolidation have been beyond the bounds of a routine ruling on an extension of time request that made no reference to consolidation, but the Order itself left no doubt that it did not address consolidation.

7. Finally, the NPRM and Report and Order in Docket 92–28 dismissed Celsat's petition for rulemaking only with respect to the 1610–1626.5 and 2483.5–2500 MHz bands. The Commission explicitly stated therein that the surviving portion of Celsat's petition remained pending. Furthermore, Celsat's pioneer's preference request was addressed in the Tentative Decision in Docket 92–28, and Celsat did not file comments nor request clarification of the status of its request despite its request not being addressed.

8. For the above reasons, we conclude that Celsat's pioneer's preference request remains pending before the Commission in RM–7927. Whether any changes to the pioneer's preference rules that may be adopted in the instant proceeding will apply to pending requests, such as Celsat's PP–28, is yet to be determined. Accordingly, it is ordered, That the petition for reconsideration filed by Celsat, Inc., is denied.

List of Subjects

47 CFR Part 2

Frequency allocations and radio treaty matters, Radio.

47 CFR Part 5

Experimental radio services (other than broadcasting), Radio.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 94–29440 Filed 11–29–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–73; RM–8097]

Radio Broadcasting Services; Nogales, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 256A to Nogales, Arizona, as that community's second local FM service, in response to a petition for rule making filed on behalf of Felix Corporation. *See* 58 FR 19394, April 14, 1993. Coordinates used for Channel 256A at Nogales are 31–20–24 and 110–54–56. As Nogales is located within 320 kilometers (199 miles) of the Mexican border, concurrence of the Mexican government to this proposal was obtained. With this action, the proceeding is terminated.

DATES: Effective January 6, 1995. The window period for filing applications for Channel 256A at Nogales, Arizona, will open on January 6, 1995, and close on February 6, 1995.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530. Questions related to the window application filing process for Channel 256A at Nogales, Arizona, should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 93–73, adopted November 14, 1994, and released November 22, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, located at 1919 M Street, NW, Room 246, or 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by adding Channel 256A at Nogales.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 94–29441 Filed 11–29–94; 8:45 am]

BILLING CODE 6712–01–F

Proposed Rules

Federal Register
Vol. 59, No. 229
Wednesday, November 30, 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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 945

[Docket No. AO-150-A6; FV-92-945-2]

Irish Potatoes Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon; Recommended Decision and Opportunity to File Written Exceptions to Proposed Further Amendment of the Marketing Agreement and Order No. 945

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and opportunity to file exceptions.

SUMMARY: This recommended decision invites written exceptions on proposed amendments to the subject marketing agreement and order (order). The proposed amendments would include authority to: regulate shipments of potatoes within the production area, change representation and quorum procedures of the Idaho-Eastern Oregon Potato Committee (committee), set container marking and labeling requirements, and require the committee to consider, at least every six years, changes in committee size or reapportionment of committee membership. Also, other proposals would change committee fiscal operations, add confidentiality and verification provisions to the order, and make other miscellaneous changes that would be consistent with the proposed amendments. The proposed amendments are designed to improve order operations.

DATES: Written exceptions must be filed by December 30, 1994.

ADDRESSES: Written exceptions should be filed with the Hearing Clerk, U.S. Department of Agriculture, Room 1081–S, Washington, D.C. 20050-9200, Fax (202) 720-9776. Four copies of all written exceptions should be submitted and should reference the docket number and the date and page number of this issue of the **Federal Register**. Exceptions will be made available for public inspection in the Office of the Hearing Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Valerie L. Emmer or James B. Wendland, Marketing Specialists, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2523–S, P.O. Box 96456, Washington, D.C. 20090–6456; telephone: (202) 205–2829 or 720–2170 respectively, or Fax (202) 720–5698; or Gary Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 S.W. Third Avenue, Room 369, Portland, Oregon, 97204; telephone: (503) 326–2725, or Fax (503) 326–7440.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on August 3, 1993, and published in the August 11, 1993, issue of the **Federal Register** [58 FR 42696].

This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code, and, therefore, is excluded from the requirements of Executive Order 12866.

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to the proposed further amendment of the Marketing Agreement and Marketing Order No. 945, regulating the handling of Irish potatoes grown in designated counties in Idaho and Malheur County, Oregon, and of the opportunity to file written exceptions thereto. Copies of this decision may be obtained from Valerie L. Emmer, James B. Wendland, or Gary D. Olson, whose addresses are listed above.

This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601 *et seq.*], hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders [7 CFR part 900].

The proposed further amendment of the Marketing Agreement and Order No. 945 is based on the record of a public hearing held in Idaho Falls, Idaho, on September 8, 1993. Notice of this hearing was published in the **Federal Register** on August 11, 1993. The notice of hearing contained eight proposals submitted by the committee, which locally administers the order.

Those proposed amendments would: (1) Redefine "ship or handle" to include shipments of potatoes within the production area; (2) provide seed producers with representation on the committee and add authority for the committee to recommend to the Secretary changes in the committee size and composition; (3) update "Districts" to show the current composition; (4) require the committee to consider, at least every six years, whether to recommend changes in committee size or reapportionment of committee membership; (5) change committee quorum procedures; (6) remove an outdated assessment limitation of $1 per carload and allow the committee to impose late payment or interest fees, or both, on late assessment payments, accept advance payments, and borrow monies in an extreme emergency for program administration; (7) add authority for the committee to recommend container marking and labeling requirements; and (8) specify confidentiality requirements for handler reports submitted to the committee.

The notice of hearing also included one proposal and a portion of another by the Fruit and Vegetable Division, Agricultural Marketing Service (AMS), U.S. Department of Agriculture (Department), which would add requirements regarding the verification of reports; and make such changes as are necessary to the order, if any or all of the above amendments are adopted, so that all of its provisions conform with the proposed amendments. The Department also proposed revising the language in several sections of the order that are in need of updating.

No person testified in opposition to any of the proposals offered at the hearing and no alternative proposals were offered.

At the conclusion of the hearing, the administrative law judge fixed October 1, 1993, as the final date for interested persons to file corrections to the hearing transcript, proposed findings and conclusions, and written arguments or briefs based on the evidence received at the hearing. On October 1, the administrative law judge extended the deadline to October 15, since the transcript of the hearing had not been

received. On October 14, the deadline was further extended to November 1.

Russell O. Baum of Ashton, Idaho, submitted a comment objecting to the term "Irish Potato" as an ethnic misrepresentation of the true identity of the commonly referred potato. He suggested that consideration be given to more accurately renaming the potato by either: (1) Dropping "Irish"; (2) changing it to "Burbank Potato", in recognition of the fact that Luther Burbank originated the major species of potatoes grown in Idaho; (3) changing it to "American Generic Potato" because the potato originated in the Americas, and not in Ireland; or (4) adopting any other more correct name. Since this comment is outside the scope of the proposals specified in the notice of hearing, it is denied.

Small Business Considerations

In accordance with the provisions of the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*], the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities. Small agricultural service firms, which include handlers regulated under this order, have been defined by the Small Business Administration (SBA) [13 CFR 121.601] as those having annual receipts for the last three years of less than $5,000,000. Small agricultural producers are defined as those having annual receipts of less than $500,000.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed amendments on small businesses. The record indicates that handlers would not be unduly burdened by any additional regulatory requirements, including those pertaining to reporting and recordkeeping, that might result from this proceeding. The record also indicates that a majority of handlers and producers would meet the SBA definitions of small agricultural service firms and small agricultural producers, respectively.

During the 1992–93 crop year, 66 handlers were regulated under Marketing Order No. 945. In addition, there were approximately 2,200 producers of potatoes in the production area. The Act requires the application of uniform rules on regulated handlers. Since handlers covered under the potato marketing order are predominantly small businesses, the order itself is tailored to the size and nature of small businesses. Marketing orders and amendments thereto, are unique in that they are normally brought about through group action of essentially small entities for their own benefit. Thus, both the RFA and the Act are compatible with respect to small entities.

The proposed amendments to the order include amending: § 945.20 Establishment and membership pertaining to operations of the committee, including providing seed producers representation on the committee; § 945.23 Redistricting and reapportionment authorizing changes in committee size, composition, and representation; § 945.30 Procedure regarding quorum requirements; and § 945.42 Assessments removing a $1 per carload maximum assessment rate and allowing the committee to impose late payment and interest fees on late assessment payments and borrow monies in an extreme emergency for program administration. These proposed amendments would provide an opportunity for broader based representation on the committee and more flexibility to adjust to future changes in industry structure, potato production and financial operations. These changes are designed to enhance the administration and functioning of the order and would have negligible, if any, economic impact on small businesses.

The proposal amending § 945.9 Ship or handle would broaden the scope of the order by revising the definition of these terms to include the handling of potatoes in the current of commerce within the counties covered by the order's production area. This would require the inspection of all regulated shipments of potatoes for fresh market and compliance with order requirements, including grade, size, quality, pack, and payment of assessments. This proposal would improve the market for potatoes handled within the production area. This would benefit both producers and handlers because minimum grade, size and quality requirements established under the order are important to the industry in fostering consumer satisfaction, increasing the demand for Idaho-Eastern Oregon potatoes, and improving industry returns. The additional assessment income would improve the financial operations of the order. Any added burden on small businesses should be outweighed by the added benefits accruing to them.

The proposed change to allow the rate of assessment to be based on a hundredweight of potatoes, rather than an outdated maximum amount of $1 per railroad carload, would improve the financial operations of the order and not adversely impact small businesses. This change would provide more efficient funding of order operations and activities. Fresh potato shipments have stabilized in recent years, and if costs continue to rise, the current maximum rate is likely to be insufficient to properly fund committee operating costs beyond the next few years.

Another recommended change would amend § 945.52 Issuance of regulations to add authority to require accurate and uniform marking and labeling of the containers. The benefits of the expected higher returns that could result from increases in buyer and consumer satisfaction due to accurate marking and labeling should outweigh any potential burden on small businesses.

Another proposed amendment, to § 945.80 Reports, would provide confidentiality requirements for reports submitted to the committee. This would safeguard handlers' proprietary information, including that for small businesses, without imposing any burden on them. Additionally, new § 945.80 provisions would add authority for the Secretary and the committee to verify the accuracy of reports filed by handlers, and handler compliance with recordkeeping requirements. The requirement would not have a significant impact on small entities in the industry.

Finally, the proposed amendments would have no significant impact or burden on small businesses' recordkeeping and reporting requirements.

All of these changes are designed to enhance the administration and functioning of the marketing agreement and order to the benefit of the industry. If implemented, these amendments might impose some costs on affected handlers and producers. However, the added burden on small entities, if present at all, would not be significant because the benefits of the proposed amendments are expected to outweigh the costs.

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file

with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

In accordance with the Paperwork Reduction Act of 1980 [44 U.S.C. Chapter 35], any additional handler reporting and recordkeeping requirements, including any new reports and the two succeeding fiscal periods record retention, that might result from the proposed amendments would be submitted to the Office of Management and Budget (OMB). The provisions would not be effective until receiving OMB approval.

Material Issues

The material issues of record addressed in this decision are:

(1) Whether to redefine "ship or handle" to include shipments of potatoes within the production area;

(2) whether seed producers should be provided representation on the committee and whether there should be authority to change committee size and composition;

(3) update "Districts" to list the current composition;

(4) whether to require the committee to consider, at least every six years, whether to recommend changes in committee size or reapportionment of committee membership;

(5) whether committee procedures should be changed to require a simple majority of all members to constitute a quorum, pass a motion or approve a committee action, except to change committee size would require a unanimous vote;

(6) whether the $1 per carload maximum rate for handler assessments should be removed and assessments be permitted on a rate per hundredweight of assessable potatoes handled and whether there should be authority for the committee to impose late payment/interest charges, accept advance assessment payments, and borrow monies in an extreme emergency;

(7) whether there should be authority for container marking and labeling requirements;

(8) whether to add provisions for the Secretary and the committee to verify the accuracy of reports filed by handlers, protect the confidentiality of such information, and require each handler to maintain records of potatoes handled for at least two succeeding fiscal periods to verify required reports specified in the rules and regulations; and

(9) whether any conforming changes should be made to the order if any or all of these proposals were to become effective.

Findings and Conclusions

The findings and conclusions on the material issues, all of which are based on evidence presented at the hearing and the record thereof, are:

(1) Section 945.9 Ship or handle of the order should be amended to authorize the regulation of fresh market shipments of Irish potatoes within the production area, which includes Malheur County, Oregon, and the counties of Adams, Valley, Lemhi, Clark, and Fremont in Idaho, and all of the counties in Idaho lying south thereof. Currently, the order authorizes regulating interstate and foreign shipments of fresh market Irish potatoes grown in the production area. This recommended change would broaden the scope of the order to cover shipments within the production area, as well as those outside the production area. The Act exempts potatoes for canning, freezing, or other processing from regulation under any order.

The lack of regulation of fresh market potatoes within the production area has caused a number of significant problems for the industry. Sales of unregulated potatoes within the production area have (1) depressed the price of potatoes sold in other markets; (2) made compliance more difficult since the committee cannot track these unregulated potatoes, allowing handlers to claim that their potatoes were sold within the production area and were thus exempt from regulation; and (3) adversely affected the committee's income since assessments are not collected on these potatoes. Yet, such handlers may receive the higher prices typically paid for the higher quality potatoes resulting from the committee's mandatory quality control activities, without absorbing any of the costs to conduct these activities. Based on per capita figures, an estimated 48.8 million pounds of Idaho-Eastern Oregon fresh market potatoes are consumed annually within the production area, compared with about 3.3 billion pounds of sales outside the production area. Since potatoes marketed within the production area are not currently subject to the order's mandatory inspection, minimum grade, size, quality, maturity, pack, and assessment requirements, the market for potatoes within the production area has received a large volume of poor quality, ungraded potatoes. The prices paid for such undesirable potatoes are typically lower than those paid for the better quality required under the order for potatoes shipped outside the production area. This lower quality price has depressed the price for all potatoes in that market. Also, with modern communications and daily Market News reports nationwide, lower prices in the production area become known quickly in other markets and have a depressing effect on prices in those markets as well. This negative effect on prices is contrary to the policy of the Act, which includes establishing and maintaining orderly marketing conditions and increasing returns to producers.

Record evidence indicates that the price of potatoes in production area markets has a direct and immediate effect on prices in markets outside that area. Therefore, under the order, the handling of potatoes within the production area directly burdens, obstructs, or affects the handling of potatoes in interstate commerce to such an extent as to make appropriate the regulation of potatoes in Malheur County, Oregon, and in the counties of Adams, Valley, Lemhi, Clark, and Fremont in the State of Idaho, and all counties in Idaho lying south thereof.

Although it was not included in the notice of hearing, the proponents testified that "consign" should be added to the other actions included in the definition of "ship or handle" specified in § 945.9. The record indicates that "consign" is defined as an agreement between a buyer and seller for the transportation of product to be marketed with no previous determination of the return of the product. It is the responsibility of the buyer to market the product and return to the seller the proceeds. This should be included as "handling" because the "agent" or "handler" who receives the commodity is engaged in the buying, selling and distributing of the commodity into market channels. Record evidence supported adding "consign" to the definition of "ship or handle".

Such changes are hereby recommended and would be implemented upon amendment of the order.

(2) Section 945.20 Establishment and membership should be amended to provide that at least one member and alternate member position for District

No. 1 on the Idaho-Eastern Oregon Potato Committee shall be represented by producers predominately of potatoes for seed. The committee is the administrative body selected by the Secretary to make recommendations for operating the order. Currently, the order specifies that the committee shall consist of eight members, of whom five shall be producers. For each member there shall be an alternate who shall have the same qualifications as the member. However, there has been no requirement that any producer should be predominately a seed producer. There are approximately 200 seed producers involved in this unique production and marketing facet of the industry. Since approximately 90 percent of the order's seed production comes from District No. 1, it is appropriate that the seed producer member and alternate should come from that district.

Seed potatoes are typically produced in areas isolated from where potatoes are produced for commercial fresh or processing markets. Seed potato needs are different than those for fresh market consumption. Seed potato buyers are particularly concerned about receiving certified seed potatoes, which require that certain plant diseases are within established tolerances, and that potatoes are of an appropriate (smaller) size for planting.

This change in representation would allow for new and more specific ideas from this unique facet of the industry. Providing for such representation would be consistent with a stated objective of the Department's Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders of improving representation and allowing for different and more contemporary ideas.

A proponent for this proposal testified that proposed seed producer members not be required to be producing potatoes or to have produced potatoes during the previous two years. However, the order specifies that to be eligible to serve as a producer on the committee the person must be currently producing potatoes. Also, being a current producer would result in better qualified nominees who would be more knowledgeable of the current problems and situation regarding seed potato production and marketing. To best represent seed producers, the nominees for the position should be current producers who predominately produce seed potatoes and who have produced such potatoes during at least three of the last five years. The order defines *Producer* as any person engaged in the production of potatoes for market. It is also a requirement that to vote in any referendum held under the order a producer must be producing potatoes at that time. Currently, the order only specifies two types of committee members—producers and handlers.

This proposal would encourage, to the maximum extent possible, broader-based participation by all industry members of the regulated community in the administration of the order. It is hereby concluded that this provision should be changed.

The section should also be amended by adding a paragraph (d) to require that at least every six years, the committee shall review committee size, composition, and representation and recommend to the Secretary whether changes should be made, as provided in § 945.23 Redistricting and reapportionment. Currently, no minimum period is specified during which the committee should review whether significant changes in the industry warrant a change in committee representation. However, the industry is dynamic and some changes in acreage, production, and number of producers and handlers occur every year. Although review of the committee structure could be conducted annually, testimony indicated that at least every six years was an appropriate period within which the committee should review the changes and recommend whether the Secretary should change committee makeup or representation. Record evidence supports the need to provide the committee with flexibility to make necessary changes in the composition of the committee to reflect future changes in industry structure or production shifts. These changes to this section are hereby recommended.

(3) Section 945.22 Districts currently specifies the original districts which had been established in 1941. The order has authority in § 945.23 to change districts through informal rulemaking. In 1972, new districts were established, based on the significant changes in industry conditions since the order was first issued in 1941. The proposal simply updates the Districts section to list the current districts. This change would also bring the district listings in § 945.22 in conformity with the listings specified in § 945.130 Reestablishment of districts and reapportionment of committee membership of the rules and regulations. It is hereby recommended that § 945.22 be revised by listing the current districts.

(4) The proposed amendment to § 945.23 Redistricting would revise the heading to read "Redistricting and reapportionment", and would reapportion committee membership. No new authority is being proposed. Existing provisions are simply being rearranged for easier reference. In § 945.20 it is recommended that authority be provided for a seed producer member and alternate to serve on the committee representing District No. 1. The section should continue to provide flexibility to reestablish districts within the production area, reapportion committee membership among the various districts, and change committee size and composition. Section 945.24 Selection currently specifies committee membership as it was constituted prior to being reapportioned in 1972. The order has authority in § 945.23 to reapportion committee membership among the various districts through informal rulemaking. The proposal is simply to update the listing to the current apportionment. District No. 1 is shown as consisting of two producer members and one handler member, with their respective alternates. The proponents testified that District No. 1's representation should be shown as three producer members (one to be a new seed producer position) and one handler member, with their respective alternates. District No. 2 specifies one producer member and one handler member, with their respective alternates. No revision in this representation is needed for District No. 2. District No. 3 currently lists two producer members and one handler member, with their respective alternates. The proponents testified that it should show one producer member position (after one had been moved to District No. 1, to now provide a new seed producer member position). Therefore, District No. 3 membership should be revised to provide for one producer member and one handler member, with their respective alternates.

Future representation should be as recommended by the committee and approved by the Secretary, as significant changes occur in the industry.

Also § 945.24 Selection, should be revised to eliminate paragraphs (a), (b) and (c) which lists the committee membership apportionment for Districts Nos. 1, 2 and 3, to avoid redundancy in the language as recommended in § 945.23.

Based on the recommended revision of § 945.20 Establishment and membership that adds a paragraph requiring that the committee, at least every six years, review committee size, composition, and representation, and recommend any changes to reflect developments in the industry, § 945.23 should also be revised by adding a similar paragraph specifying that at least

every six years the committee should review industry changes and recommend any necessary redistricting, reapportioning, or change in committee size or composition.

(5) Paragraph (a) of § 945.30 Procedure should be revised to require a simple majority of all members of the committee, including alternates acting for members, to constitute a quorum or to pass any motion or approve any committee action, except any motion regarding a change in committee size shall require a unanimous vote. Currently, there is an eight-member committee, and five members are necessary to constitute a quorum and to pass any action. The proponents have testified that the committee should have the authority to recommend changes in the size of the committee to adjust to future changes in the industry. Any size increase approved by the Secretary would necessitate a corresponding change in the number required for a quorum and to pass any action. Rather than specify all the possible combinations of such numbers, record evidence supports adoption of the proponents' proposed language that a quorum be a simple majority. This would simplify procedures if the committee size is changed. Therefore, it is hereby recommended that § 945.30 Procedure be amended by specifying that a simple majority of all members, including alternates acting for members, shall be necessary to constitute a quorum to pass any motion or approve any committee action, except any motion regarding a change in committee size shall require a unanimous vote. Changing the committee size is such a significant action that it should be favored by all committee members. It was testified that a near unanimous vote would not suffice, even if it might give one member veto power over the committee.

(6) Section 945.42 Assessments deals with the administrative funding of committee operations. The Act authorizes establishment of an agency, the committee, to administer the order. Currently, the order authorizes the committee, with the approval of the Secretary, to make expenditures and establish an assessment rate for each fiscal period for assessable potatoes shipped under the order. Any assessment in excess of expenses incurred during a fiscal period may be carried over as a reserve, provided that reserve funds do not exceed approximately one fiscal period's budgeted expenses. Each handler who ships potatoes into regulated markets is required to pay a pro rata share of the committee's expenses. Currently, the order specifies such assessments shall not exceed $1 per carload, or equivalent quantity. Potatoes for canning, freezing, or other processing are exempt from regulation, including assessments. Record evidence supports revising paragraph (b) to remove the outdated assessment limitation of $1 per carload. Since railcar capacities have increased significantly after this limit was set more than three decades ago and the load per carload may vary greatly, it has become impractical to base the assessment rate on this fixed rate per carload.

Committee operating costs have continued to rise over the years along with the cost of living and presumably will continue to do so. However, total assessments collected during the past five years have tended to stabilize at an average of $78,434 per year. Thus, assessment income under present order authority is not expected to keep up with rising costs. Although the committee presently has adequate operating reserve funds and does not anticipate any need to increase the assessment rate in the near future, record evidence indicates that the current maximum assessment rate of $1 per carload will not be sufficient to properly fund committee expenses for the long term administration of the order. Therefore, the evidence supports providing authority to establish an assessment on a different unit basis of potatoes. The proponents recommended that the assessment be levied at a rate per hundredweight of potatoes or equivalent quantity. Such rate would be recommended by the committee and approved by the Secretary through informal rulemaking.

This section should also be amended by adding a paragraph (c) to provide authority for the committee to impose a late payment or interest charge, or both, upon any handlers who are delinquent in their assessment payments. Currently, there is no such incentive to pay assessments in a timely manner. It is unfair to other handlers who pay assessments promptly if another handler fails to pay assessments when due. A delinquent handler has an advantage in the use of these unpaid assessment funds. Also, delinquencies by some handlers leads to delinquencies by others. Moreover, nonpayment of assessments can have an adverse effect on the stable financial operation of an order and may require the committee to borrow money and pay interest to continue operation. Record evidence indicates that the charging of late payment or interest charges, or both, on all late accounts would defray some of the added cost of collecting such accounts and discourage handlers from delaying their payments. The late payment and interest rate charges would be recommended by the committee, subject to approval by the Secretary through informal rulemaking. An example of such charges would be similar to what commercial businesses charge, such as a five dollar late fee and one and one-half percent per month on the unpaid balance. Other similar programs which had experienced problems in collecting assessments promptly have found such provisions useful and effective. The provision should be of similar value to the Idaho-Eastern Oregon potato order.

This section should also be amended by adding a paragraph (e) to provide authority for the committee to accept advance assessment payments from handlers. Although handlers could make advance payments of assessments at any time, the provision would be most needed by the committee when its funds were short. The committee could send a request to handlers for voluntary advance assessment payments. Prepayments would be credited toward assessments levied against that handler during that fiscal period.

A question raised at the hearing was whether the committee should have authority to offer a small discount, such as one percent, to any handler who made advance assessment payments. The witness testifying on the proposal to authorize advance payments declined to answer the question. No witness offered evidence that supported such a discount as a routine procedure. The committee manager testified that he would support a discount in case of emergency. Therefore, due to the lack of record evidence and because such discounted assessment rate is contrary to both § 945.42 Assessments language and the providing of one uniform assessment rate on all first handlers (which shall be such handler's pro rata share of the committee's approved expenses), it is determined that such discount should not be authorized.

The committee should be authorized to borrow money on a short term basis in case of an extreme emergency, such as a disastrous year regarding potato production, to continue normal operations. The authority to borrow money is not intended to permit the committee to obligate itself to borrow large sums of money over an extended period of time. Such borrowing should only be used when necessary to meet financial obligations when operating reserve funds are inadequate and until sufficient assessment revenue could be generated to repay the loan and meet other financial obligations necessary to

insure continued operation of the order. The loan should be repaid by the end of the next fiscal period. Any such borrowed money would only be used to meet the committee's current financial obligations. It is hereby recommended that § 945.42 of the order be amended to include the above provisions.

(7) Section 945.52 Issuance of regulations should be amended by revising paragraph (a)(3) to add authority to require accurate and uniform marking and labeling of the containers in which production area potatoes are shipped. Such authority would help interested persons more readily identify such shipments and help buyers in managing inventory and marketing the potatoes. These advantages can foster buyer satisfaction.

The industry has had problems of confusion from count cartons being sold without the size being marked on the container. Section 945.341 (c) Pack specifies the size, count (number of potatoes needed to fill a 50-pound container), and allowable weight range of each potato therein. Information was provided that such unmarked cartons have been sold at inflated prices by wholesalers who misrepresented the contents as larger and more valuable potatoes. An example is unmarked cartons of 100 count potatoes which were sold by the wholesaler as larger 90 count because 90 count was what the end user had requested. The end users complained because they did not receive the larger potatoes and were overcharged for the smaller ones. Thus, wholesalers were getting paid a higher price by misrepresenting potatoes as a larger size. This practice has damaged the Idaho-Eastern Oregon potato industry in three ways—it deprives the handler of the higher price that should be paid him/her by the wholesaler for the larger potatoes, it harms the industry's high quality reputation and it creates a dissatisfied end user. Such confusion and damage to the industry and consumers would be eliminated by authorizing requirements for accurate markings on containers.

Another example would involve bulk potato loads which enter the order's production area from another State such as Nevada, and are repacked in Idaho. If the repacked containers did not show that the potatoes were grown in Nevada, but showed potatoes were packed or distributed in Idaho, any buyer or consumer could be misled into believing they had purchased Idaho-grown potatoes. Section 945.65 Inspection and certification specifies that potatoes must be inspected and be covered by a valid inspection certificate and that repacking any lot of potatoes invalidates any prior inspection certificate. When non-production area potatoes are repacked in production area facilities, those potatoes must meet the order's requirements unless the Federal-State Inspection Service representative in the facility is satisfied that those potatoes were not commingled with production area potatoes. Procedures for safeguarding such repacking of bulk loads within the production area would be specified in rules and regulations recommended by the committee and approved by the Secretary through informal rulemaking. Damage to the industry would be eliminated by authorizing requirements for accurate markings on containers.

In addition to accurate markings on containers, the committee should also have authority, with the approval of the Secretary, to require accurate and adequate labeling, including the identification of the variety of potato. With more new and different varieties being marketed each season, consumers would benefit from being apprised of the variety in the container. Although variety labeling and use of the Idaho logo are currently a State program requirement of the Idaho Potato Commission (Commission), this would not preclude the committee from issuing regulations concerning marking and labeling for different varieties of potatoes. Such labeling would complement the Commission's potato promotion program. In addition, the committee should have the option of issuing regulations for potatoes grown in the Oregon portion of the production area. Such marking requirements could require the containers to be clearly marked and identified with the variety of potatoes; net weight; count and/or volume; name and address of the packer or shipper; origin of the potatoes; grade and size if applicable; and any other information on quality and pack of the potatoes as may be recommended by the committee and approved by the Secretary through informal rulemaking.

Clear markings also would enable the committee to more easily determine whether the potatoes have been inspected and certified as required under the order. Comparison with inspection documents would be easier. This action is needed to provide flexibility to meet current and future marketing problems. It is hereby recommended that § 945.52(a) be amended by adding authority for container marking and labeling.

(8) Section 945.80 Reports should be amended, as proposed by the Fruit and Vegetable Division, AMS, by adding new paragraphs (b) through (d) to assure confidentiality of information provided by handlers and to expressly state in the order the right of the Secretary, and confer such right on the committee, to verify the accuracy of reports filed by handlers and to check handler compliance with recordkeeping requirements.

A new § 945.80 (b) should be added to specify that confidential information provided to the committee would be protected from disclosure. The section should specify that all data or other information constituting a trade secret or disclosing a trade position or business condition shall be received by, and kept in the custody of, one or more designated employees of the committee. Information which would reveal the circumstances of a single handler shall be disclosed to no person other than the Secretary, except as provided by law. Under certain circumstances, the release of composite information compiled from data and information submitted by handlers may be helpful to the committee in planning operations under the order. Such composite information would not disclose the identities of the individual handlers or their separate business operations.

The record evidence indicates that the proposal on verification would merely specify in the order the investigative authority already provided in the Act. Section 945.80 should be amended to specify that the Secretary and the committee, through its duly authorized employees, would have access to any premises where handlers' potatoes are held and, at any time during normal business hours, would be permitted to examine any such potatoes and any and all records with respect to matters within the purview of the order. Handlers would be responsible for furnishing labor as may be necessary to facilitate such examinations. The Secretary and duly authorized committee employees would thus explicitly have the authority to examine and audit the records of all handlers to determine compliance with provisions of the order. The committee would report the results of such examinations and audits to the Secretary.

So that the committee would be able to perform investigations effectively and to verify compliance under the order, each handler should be required to maintain complete records which accurately show such handler's acquisition and disposition of potatoes each season, including the quantity of potatoes held, sold, and shipped. Such information is generally maintained by handlers in the normal course of business and maintenance of such records would not impose additional

costs and reporting burdens on the handlers.

Further, should it be found necessary, the committee, with the approval of the Secretary, should have the authority to issue regulations which would establish the types of records which must be maintained. Handlers would be required to keep such records for at least two succeeding fiscal periods. This period should afford the committee's employees adequate time to examine and review such records in the event of alleged program violations by handlers. This requirement should not impose an undue burden on handlers, since such records are likely retained for a similar or longer period under normal business practices.

It is hereby recommended that § 945.80 be amended by adding new paragraphs (b) through (d) as discussed above.

(9) The Department proposed in the notice of hearing that it be authorized to make any necessary changes in the order language to make the entire order conform with any amendments resulting from this proceeding. This proposal was supported at the hearing without opposition. Such conforming changes as necessary and stated herein have been incorporated in this recommended decision. The record evidence supports these changes.

Rulings on Briefs of Interested Persons

The presiding officer of the hearing set November 1, 1993, as the final date for filing briefs with respect to the evidence presented at the hearing and the conclusions which should be drawn therefrom. No briefs were received.

General Findings

Upon the basis of the record it is found that:

(1) The findings hereinafter set forth are supplementary to the previous findings and determinations which were made in connection with the issuance of the marketing agreement and order and each previously issued amendment thereto. Except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein, all of the said prior findings and determinations are hereby ratified and affirmed;

(2) The marketing agreement and order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(3) The marketing agreement and order, as amended, and as hereby proposed to be further amended, regulate the handling of potatoes grown in the production area in the same manner as, and are applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order upon which a hearing has been held;

(4) The marketing agreement and order, as amended, and as hereby proposed to be further amended, are limited in their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act; and

(5) All handling of potatoes grown in the production area as defined in the marketing agreement and order, as amended, and as hereby proposed to be further amended, is in the current of interstate or foreign commerce or directly burdens, obstructs or affects such commerce.

List of Subjects in 7 CFR Part 945

Marketing agreements, Potatoes, Reporting and recording requirements.

Recommended Further Amendment of the Marketing Agreement and Order

The following amendment of the marketing agreement and order, both as amended, is recommended as the detailed means by which the foregoing conclusions may be carried out:

PART 945—IRISH POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR part 945 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 945.9 is revised as follows:

§ 945.9 Ship or handle.

Ship is synonymous with *handle* and means to pack, sell, consign, transport or in any other way to place potatoes grown in the production area, or cause such potatoes to be placed, in the current of commerce within the production area or between the production area and any point outside thereof, so as to directly burden, obstruct, or affect any such commerce: *Provided,* That the definition of *ship* or *handle* shall not include the transportation of ungraded potatoes within the production area for the purpose of having such potatoes stored or prepared for market, except that the committee may impose safeguards pursuant to § 945.53 with respect to such potatoes.

3. Section 945.20 is amended by revising paragraph (a) and adding a new paragraph (d) to read as follows:

§ 945.20 Establishment and membership.

(a) The Idaho-Eastern Oregon Potato Committee is hereby established consisting of eight members, of whom four shall currently be producers of potatoes for the fresh market who produced such potatoes during at least three of the last five years; at least one member shall be a producer predominately of potatoes for seed during a similar period; and three shall be handlers. For each member of the committee, there shall be an alternate who shall have the same qualifications as the member. The number of producer and/or handler members and alternates on the committee may be increased and the composition of the committee between producers and handlers may be changed as provided in § 945.23.

* * * * *

(d) At least every six years, the committee shall review committee size, composition, and representation and recommend to the Secretary whether changes should be made, as provided in § 945.23.

4. Sections 945.22 through 945.24 are revised to read as follows:

§ 945.22 Districts.

For the purpose of selecting committee members and alternate members, the following districts of the production area are hereby established: *Provided,* That these districts may be changed as provided in § 945.23.

(a) *District No. 1:* The counties of Bonneville, Butte, Clark, Fremont, Jefferson, Madison, and Teton;

(b) *District No. 2:* The counties of Bannock, Bear Lake, Bingham, Caribou, Franklin, Oneida, and Power; and

(c) *District No. 3:* Malheur County, Oregon, and the remaining designated counties in Idaho included in the production area, and not included in District No. 1 or District No. 2.

§ 945.23 Redistricting and reapportionment.

(a) The Secretary, upon recommendation of the committee, may reestablish districts within the production area, may reapportion committee membership among the various districts, may increase the number of producer and/or handler members and alternates on the committee, and may change the composition of the committee by changing the ratio between producer and handler members, including their alternates. At least every six years, the committee shall review committee size,

composition and representation and recommend to the Secretary whether changes should be made. In recommending any such changes, the committee shall give consideration to:

(1) Shifts in potato acreage within districts and within the production area during recent years;

(2) The importance of new potato production in its relation to existing districts;

(3) The equitable relationship between committee membership and districts;

(4) Economies to result for producers in promoting efficient administration due to redistricting or reapportionment of members within districts; and

(5) Other relevant factors.

(b) Membership of the committee shall be apportioned among the districts of the production area so as to provide the following representation or such other representation as recommended by the committee and approved by the Secretary:

(1) Three producer members, including at least one who predominately produces seed potatoes, and one handler member, with their respective alternates, from District No. 1;

(2) One producer member and one handler member, with their respective alternates, from District No. 2; and

(3) One producer member and one handler member, with their respective alternates, from District No. 3;

§ 945.24 Selection.

Members and alternates of the committee shall be selected by the Secretary on the basis specified in § 945.23 (b) from nominations made pursuant to § 945.25 or from other eligible persons.

5. In § 945.30, paragraph (a) is revised to read as follows:

§ 945.30 Procedure.

(a) A simple majority of all members of the committee, including alternates acting for members, shall be necessary to constitute a quorum or to pass any motion or approve any committee action, except any motion regarding a change in committee size shall require a unanimous vote. At any assembled meeting, all votes shall be cast in person.

* * * * *

6. In § 945.42, paragraph (b) is revised and new paragraphs (d) and (e) are added to read as follows:

§ 945.42 Assessments.

* * * * *

(b) Assessments shall be levied upon handlers at a rate per hundredweight of potatoes or equivalent established by the Secretary. Such rate may be established upon the basis of the committee's budget recommendations, and other available information.

* * * * *

(d) The committee may impose a late payment charge or an interest charge, or both, on any handler who fails to pay, on or before the due date established by the Secretary, the total assessment for which such handler is liable. Such due date and the late payment fee and interest rate shall be recommended by the committee and approved by the Secretary.

(e) In order to provide funds to carry out its function, after the effective date of this subpart the committee may accept advance assessments from handlers. Advance assessments received from a handler shall be credited toward assessments levied against that handler during that fiscal period. In the case of an extreme emergency, the committee may also borrow money on a short term basis to provide funds for the administration of this part. Any such borrowed money shall only be used to meet the committee's current financial obligations, and the committee shall repay all borrowed money by the end of the next fiscal period from assessment income.

7. In § 945.52, paragraph (a)(3) is revised to read as follows:

§ 945.52 Issuance of regulations.

* * * * *

(3) Fix the size, capacity, weight, dimensions, pack, labeling or marking of the container, or containers, which may be used in the packaging or handling of potatoes, or both; or

* * * * *

8. Section 945.80 is amended by designating the existing undesignated text as paragraph (a) and adding new paragraphs (b) through (d) to read as follows:

§ 945.80 Reports.

(a) * * *

(b) All data or other information constituting a trade secret, or disclosing a trade position or business condition of a particular handler shall be treated as confidential and shall at all times be received by and kept in the custody and under the control of one or more designated employees of the committee. Information which would reveal the circumstances of a single handler shall be disclosed to no person other than the Secretary.

(c) Each handler shall maintain for at least two succeeding fiscal periods such records of potatoes received and of potatoes disposed of by such handler as may be necessary to verify reports required pursuant to this section. The committee, with the approval of the Secretary, may prescribe rules and regulations issued pursuant to this section specifying handler records and reports which the committee may need to perform its functions.

(d) For the purpose of assuring compliance and checking and verifying reports filed by handlers, the Secretary and the committee, through its duly authorized agents, shall have access to any premises where applicable records are maintained, where potatoes are held, and, at any time during reasonable business hours, shall be permitted to inspect such handlers' premises and any and all records of such handlers with respect to matters within the purview of this part.

Dated: November 23, 1994.

Lon Hatamiya,

Administrator.

[FR Doc. 94–29505 Filed 11–29–94; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

RIN 3150–AF24

NRC Size Standards; Proposed Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend the NRC's size standards used to qualify an NRC licensee as a "small entity" under the Regulatory Flexibility Act. The amendments would: establish a separate standard to be used to determine whether a licensee who is a manufacturer would qualify as a small entity; and adjust the receipts-based standard to account for the effects of inflation since 1985.

DATES: Comment period expires December 30, 1994. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attn: Docketing and Service Branch.

Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm Federal workdays.

Copies of any comments received may be examined at the NRC Public Document Room at 2120 L Street, NW. (lower level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sarah N. Wigginton, Acting Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, telephone (301) 415–7158.

SUPPLEMENTARY INFORMATION: In 1983, the NRC surveyed its materials licensees to create an economic profile sufficient to consider regulatory alternatives tailored to the size of the licensee. After analyzing the data and consulting with the Small Business Administration (SBA), the NRC developed a proposed size standard that would be appropriate to use in determining which of its licensees would qualify as small entities for the purposes of compliance with the Regulatory Flexibility Act. The NRC published its proposed size standard for notice and comment in the **Federal Register** of May 21, 1985 (50 FR 20913). After considering the comments received, the NRC adopted its final size standards as noted in the **Federal Register** of December 9, 1985 (50 FR 50241). In the **Federal Register** of November 6, 1991 (56 FR 56671), the NRC restated the size standards to include the Regulatory Flexibility Act's definition of small governmental jurisdiction. To further improve clarity, the NRC changed the presentation of the size standards to conform to the listing of definitions of small entities in the Regulatory Flexibility Act.

The size standards developed by the NRC were used in the NRC's final rule implementing Public Law 101–508 to provide for a reduced annual fee for those NRC licensees who qualified as small entities under these standards (56 FR 31472; July 10, 1991 and subsequent years). In response to these rules, the NRC has received a number of comments concerning its size standards and the failure of the NRC to promulgate a size standard that differentiates between manufacturing entities and service providers. These commenters indicated that applying a gross receipts standard to a manufacturing concern resulted in an adverse impact on a manufacturer. The gross receipts of a service provider reflect the value added by the service provider, which is essentially the value of the service itself. However, the gross receipts of a manufacturer that are equal to those of a service provider reflect a smaller percentage of the value added by the manufacturer. A manufacturer's gross receipts include the costs of the raw materials or components that, when added to the cost of manufacture, quickly send a manufacturer's gross receipts into fairly sizeable sums. The SBA size standards for manufacturers are prescribed in terms of a maximum number of employees rather than in terms of gross receipts.

The NRC recently completed a survey to update the economic profile of its materials licensees. The purpose of this survey was to evaluate the continued efficacy of NRC's current size standards and to obtain the information that is necessary to determine the necessity and effect of a separate standard for manufacturers within the context of the nuclear industry.

Of the licensees who responded to the survey request, approximately 20 percent (1131 of 5704) indicated that manufacturing was a primary line of their business. This indicates that a number of licensees would benefit from the establishment of a separate standard for businesses engaged in manufacturing.

Therefore, the NRC is proposing to adopt a size standard for business concerns that are manufacturing entities. The NRC proposes to use a standard of 500 or fewer employees. This standard is the most commonly used SBA employee standard and would be the standard applicable to the types of industries that would hold an NRC license. Under this standard, approximately 48 percent of the licensees who indicated that they were manufacturers would qualify as small entities.

On September 2, 1993 (58 FR 46573), SBA published a proposed rule in the **Federal Register** that would have streamlined its size standards by reducing the number of its fixed size standard levels from 30 to 9. As part of this proposed rule, the SBA proposed to adjust most of its receipts-based size standard levels to mitigate the effects of inflation from 1984 to the present. In a final rule published in the **Federal Register** of April 7, 1994 (59 FR 16513), the SBA adopted only that portion of its proposed rule that increased its receipts-based size standards as a result of inflation.

The NRC is proposing to adjust its receipts-based size standard to accommodate inflation and to conform to the SBA final rule. The NRC proposes to raise its receipts-based small business size standard from $3.5 million to $5 million. After analyzing the data received in response to the survey and the revised SBA size standards, the NRC also is proposing to eliminate the separate $1 million size standard for private practice physicians and apply the revised receipts-based size standard of $5 million to this class of licensees. This would mirror the revised SBA standard of $5 million for medical practitioners. The survey of materials licensees indicates that 26 percent qualify as small entities under current NRC standards. If the NRC adopts the proposed revisions to its size standards presented in this document, 35 percent of these licensees would qualify as small entities, an increase of 9 percent. When NRC adopted its size standards in 1985, the NRC staff estimated that approximately 35 percent of the materials licensees would qualify as small entities.

The Small Business Credit and Business Opportunity Enhancement Act of 1992 (Pub. L. 102–366) amended the Small Business Act concerning the establishment of agency specific small business size standards. The proposed NRC size standards have been developed so as to meet the criteria specified in Pub. L. 102–366. The NRC has submitted these proposed size standards for the review and approval of the Administrator, SBA.

This proposed rule also would codify NRC's size standards in Part 2 of the Commission's regulations. Previously, NRC's size standards had been published in the notices section of the **Federal Register**.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed regulation.

Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0136.

Regulatory Analysis

A regulatory analysis has not been prepared for this proposed rule because the proposed rule is administrative in that it would amend the criteria the NRC uses for determining which of its licensees would qualify as small entities for the purposes of compliance with the Regulatory Flexibility Act. The amended size standards would conform to SBA's revised standards and result in an increase in the number of NRC

licensees that would qualify as small entities.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The proposed rule is administrative in that it would amend the criteria the NRC uses in determining which of its licensees would qualify as small entities for the purposes of compliance with the Regulatory Flexibility Act. The amended size standards would conform to SBA's revised standards and result in an increase in the number of NRC licensees that would qualify as small entities.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule and, therefore, that a backfit analysis is not required for this proposed rule because these amendments do not impose any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Part 2.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

1. The authority citation for Part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161b, i, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat 1246 (42 U.S.C. 5846). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 and Table 1A of Appendix C also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135). Appendix B also issued under sec. 10, Pub. L. 99–240, 99 Stat. 1842 (42 U.S.C. 2021b et seq.).

2. Section 2.810 is added to read as follows:

§ 2.810 NRC Size Standards.

The NRC shall use the size standards contained in this section to determine whether a licensee qualifies as a small entity in its regulatory programs.

(a) A small business is a for-profit concern and is a—

(1) Concern that provides a service or a concern not primarily engaged in manufacturing with average gross receipts of $5 million or less over its last 3 completed fiscal years; or

(2) A manufacturing concern with an average number of 500 or fewer employees based upon employment during each pay period for the preceding 12 calendar months.

(b) A small organization is a not-for-profit organization which is independently owned and operated and has annual receipts of $5 million or less.

(c) Small governmental jurisdictions are governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than 50,000.

(d) A small educational institution is one that is—

(1) Supported by a qualifying small governmental jurisdiction; or

(2) One that is not state or publicly supported and has 500 employees or less.

Dated at Rockville, Maryland this 21st day of November, 1994.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 94–29481 Filed 11–29–94; 8:45 am]

BILLING CODE 7590–01–P

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10 CFR Part 34

Radiography Workshop

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission (NRC) staff plans to convene a public workshop with representatives of Agreement States and the American Society for Nondestructive Testing, Inc. (ASNT) to discuss implementation issues concerning mandatory certification of radiographers and the overall revision of the regulations for radiography, 10 CFR Part 34, including a discussion of the comments received on the proposed rule (59 FR 9429, Feb. 28, 1994).

DATES: The workshop will be held on December 13, 14 & 15, 1994. The meeting times are:

Tuesday, December 13, 1994: 1:00 p.m.–5:30 p.m.

Wednesday, December 14, 1994: 8:30 a.m.–5:30 p.m.

Thursday, December 15, 1994: 8:30 a.m.–12 noon.

ADDRESSES: The meeting will be held at the Houston Plaza Hilton Hotel, 6633 Travis, Houston, Texas 77030 (telephone 713–524–6633, 800–445–8667) (fax 713–529–6806).

FOR FURTHER INFORMATION CONTACT: Cheryl A. Trottier, Office of Research, Mail Stop T–9C24 U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6232.

SUPPLEMENTARY INFORMATION: On February 28, 1994 (59 FR 9429), NRC published for comment a proposed overall revision of the regulations applicable to radiographic operations, 10 CFR Part 34. In an attempt to clarify the rule language and make the regulations more compatible with Agreement State regulations governing industrial radiography, numerous changes to the regulation were proposed. Included with the changes is a proposed amendment that would require licensees to ensure that individuals acting as industrial radiographers, in addition to meeting other existing training and qualification requirements, be certified through a radiation safety program by an NRC recognized certifying entity.

The objective of this workshop is to attempt to resolve the remaining issues

regarding radiographer certification implementation, particularly issues concerning reciprocal recognition, information sharing, inspection and enforcement activities, oversight of certifying entities, and multiple examinations. NRC also plans to discuss certain changes made in the overall revision of Part 34 and modifications to the proposed rule that resulted from the public comments.

Conduct of the Meeting: The workshop will be co-chaired by Mr. Paul H. Lohaus, Deputy Director, Office of State Programs and Dr. John E. Glenn, Chief, Medical, Academic, and Commercial Use Safety Branch, Office of Nuclear Material Safety and Safeguards. The workshop will be conducted in a manner that will expedite the orderly conduct of business. A transcript of the workshop will be available for inspection and copying for a fee at the NRC Public Document Room, 2120 L Street NW, [Lower Level], Washington, DC 20555 on or about January 13, 1995.

The following procedures apply to public attendance at the workshop:

1. Questions or statements from attendees other than participants, i.e., participating representatives of each Agreement State, ASNT, and participating NRC staff, will be entertained as time permits.

2. Seating for the public will be on a first-come, first-served basis.

Dated at Rockville, Maryland this 23rd day of November 1994.

For the Nuclear Regulatory Commission.

Donald A. Cool,

Chief, Radiation Protection and Health Effects Branch, Division of Regulatory Applications, Office of Research.

[FR Doc. 94–29482 Filed 11–29–94; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–153–AD]

Airworthiness Directives; Boeing Model 747–300 and –400 Series Airplanes Equipped With BFGoodrich Stretched Upper Deck Evacuation Slides, Part Number 7A1323–( )

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Boeing Model 747–300 and –400 series airplanes equipped with certain stretched upper deck evacuation slides manufactured by BFGoodrich. This proposal would require modification of the slide's main restraint strap, regulator assembly, and turbo fan flapper retaining roll pins. This proposal is prompted by reports of loss of air pressure and non-inflation of the inflatable tubes of the slide due to problems associated with the restraint strap, regulator assembly, and turbo fan flapper retaining roll pins. The actions specified by the proposed AD are intended to prevent loss of air pressure or non-inflation of the inflatable tubes of the slide, which could impede the successful evacuation of passengers from the airplane during an emergency.

DATES: Comments must be received by January 26, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–153–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from BFGoodrich Company, Aircraft Evacuation Systems, Dept. 7916, Phoenix , Arizona 85040. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Andrew Gfrerer, Aerospace Engineer, Systems & Equipment Branch, ANM–130L, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5338; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–153–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–153–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of various problems involving BFGoodrich stretched upper deck evacuation slides, part number (P/N) 7A1323–( ), installed on Boeing Model 747–300 and –400 series airplanes:

There have been several incidents in which the main restraint strap of the slide was ingested into one of the turbo fans. This resulted in damage to the turbo fan and loss of air pressure in one tube of the slide.

There have been two occurrences of the inflation system regulator shutting down due to internal pressure differentials. These incidents resulted in non-inflation of one inflatable tube of the slide.

There has been a report that, during deployment of the slide, the turbo fan flapper retaining roll pin broke, allowing the flapper to fall out. This resulted in the loss of air pressure in the inflation tube. The cause of the broken pin was determined to be the particular heat treatment used during manufacture of a certain lot of roll pins.

Loss of air pressure or non-inflation of the inflation tubes of an evacuation slide, if not corrected, could impede the successful evacuation of passengers from the airplane during an emergency.

The FAA has reviewed and approved BFGoodrich Service Bulletin 7A1323–25–266, Revision 1, dated September 30,

1994, which describes procedures for the following modifications:

1. Relocating the slide's elastic cord "bungee strap" attachment point and shortening the elastic cord. This will prevent the main restraint strap of the slide from being ingested into the turbo fan.

2. Modifying and making other changes to the regulator assembly, such as modifying the regulator cartridge engagement sleeve by the addition of drilled holes to prevent the potential for pressure differentials that could cause the regulator to shut down; installing a revised burst disk to prevent galling when tightening the cartridge assembly; changing the type of lubricant to reduce friction forces; and installing a new regulator release pin with a baked-on lubricant to provide a consistent release force.

3. Replacing the turbo fan flapper retaining roll pins. This will prevent breakage of the pins, thereby preventing the possibility of the flapper falling out.

4. Replacing the original bottle relief valve assembly (P/N 5A2644–4) with a safety plug assembly (P/N 3A3259–3); and adding a charge fitting on the reservoir safety plug assembly to allow for bottle charging after the modifications described above have been accomplished.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require modifying the stretched upper deck evacuation slide by relocating the elastic cord "bungee strap" attachment point and shortening the elastic cord; modifying the regulator assembly; and replacing the turbo fan flapper retaining roll pins. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Operators should note that this proposed AD is applicable to the manufacturer of the airplane model on which the evacuation slides are installed, rather than to the manufacturer of the slide. The FAA's general policy is that, when an unsafe condition results from the installation of an appliance or other item that is installed in only one particular make and model of aircraft, the AD is issued so that it is applicable to the aircraft, rather than the item. The reason for this is simple: Making the AD applicable to the airplane model on which the item is installed ensures that operators of those airplanes will be notified directly of the unsafe condition and the action required to correct it. While it is assumed that an operator will know the models of airplanes that it operates, there is a potential that the operator will not know or be aware of specific items that are installed on its airplanes. Therefore, calling out the airplane model as the subject of the AD prevents "unknowing non-compliance" on the part of the operator.

(The FAA recognizes that there are situations when an unsafe condition exists in an item that is installed in many different aircraft. In those cases, the FAA considers it impractical to issue AD's against each aircraft; in fact, many times, the exact models and numbers of aircraft on which the item is installed may not be known. Therefore, in those situations, the AD is issued so that it is applicable to the item; furthermore, those AD's usually indicate that the item is known to be installed on, but not limited to, various aircraft models.)

There are approximately 900 BFGoodrich stretched upper deck evacuation slides of the affected design installed on Boeing Model 747 series airplanes worldwide. The FAA estimates that 100 of these slides are installed on airplanes of U.S. registry that would be affected by this proposed AD. It would take approximately 4.5 work hours per slide to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $1,402 per slide assembly. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $167,200, or $1,672 per slide.

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

The regulations proposed herein would 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 proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 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:

Boeing: Docket 94–NM–153–AD.

Applicability: Model 747–300 and –400 series airplanes equipped with BFGoodrich stretched upper deck evacuation slides, part number (P/N) 7A1323–1, –2, –3, –4, –105, –106, –107, –108, –109, or –110; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of air pressure or non-inflation of the inflation tubes of an evacuation slide, which could impede the evacuation of passengers from the airplane during an emergency, accomplish the following:

(a) Within 36 months after the effective date of this AD, modify the BFGoodrich stretched upper deck evacuation slide, P/N 7A1323–( ), in accordance with the Accomplishment Instructions of BFGoodrich Service Bulletin 7A1323–25–266, Revision 1, dated September 30, 1994.

Note 1: Installation of the "product improvements," specified in paragraph 2.J. of the Accomplishment Instructions of the service bulletin, is not required by this AD.

(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, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of

compliance with this AD, if any, may be obtained from the Los Angeles ACO.

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

Issued in Renton, Washington, on November 23, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–29438 Filed 11–29–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–SW–02–AD]

Airworthiness Directives; Schweizer Aircraft Corporation and Hughes Helicopters, Inc. Model 269A, 269A–1, 269B, 269C, and TH–55A Series Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Schweizer Aircraft Corporation and Hughes Helicopters, Inc. Model 269A, 269A–1, 269B, 269C, and TH–55A series helicopters with certain main rotor (M/R) drive shafts installed, that currently requires a one-time radiographic inspection or a non-destructive inspection of certain M/R drive shafts for cracks, distortion, corrosion, or other surface damage, at specified time intervals or upon the occurrence of specified conditions. This action would require the same inspections as the previous AD, but would expand the applicability of certain inspections to additional models of the affected helicopters and would exclude certain M/R drive shafts from certain inspections. This proposal is prompted by a reevaluation of the previous AD as a result of a comment suggesting the need to expand the applicability of certain inspections to additional models of the affected helicopters and to exclude certain M/R drive shafts from certain inspections. The actions specified by the proposed AD are intended to prevent structural failure of the M/R drive shaft, separation of the M/R from the helicopter, and subsequent loss of control of the helicopter.

DATES: Comments must be received by January 30, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–SW–02–AD, 2601 Meacham Boulevard, Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Schweizer Aircraft Corporation, P.O. Box 147, Elmira, New York 14902. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Boulevard, Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond J. O'Neill, Aerospace Engineer, New York Aircraft Certification Office, ANE–170, FAA, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581, telephone (516) 791–7422, fax (516) 791–9024.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–SW–02–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–SW–02–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

On July 13, 1993, the FAA issued AD 93–14–06, Amendment 39–8630 (58 FR 53120, October 14, 1993), to require either a radiographic or a non-destructive inspection of certain main rotor (M/R) drive shafts for cracks, distortion, corrosion, or other surface damage. That action was prompted by an accident resulting from a structural failure of a drive shaft and reports of stress concentrations caused by deep manufacturing tooling marks on the inside surface of the drive shaft. That condition, if not corrected, could result in structural failure of the M/R drive shaft, separation of the M/R from the helicopter, and subsequent loss of control of the helicopter.

Since the issuance of that AD, a commenter states that the FAA incorrectly required inspections of replacement drive shafts with serial number prefixes of "SZ" or "ZS". The drive shafts with serial numbers containing the "SZ" and "ZS" prefixes were excluded from the requirements of paragraph (a) of that AD and should have been excluded from the requirements of paragraph (b), but were not. Also, in paragraph (a)(3) of the AD, the commenter states that the FAA incorrectly limited the applicability of the inspection requirements to the Model 269C helicopter for inspection of those M/R drive shafts with serial numbers S1112 and higher. It is the commenter's position that the inspection required by paragraph (a)(3) should apply to all M/R drive shafts with serial numbers S1112 and higher installed on any Model 269 series helicopters, and should not be limited to those installed on the Model 269C as was stated in that AD. The FAA agrees with the commenter and is hereby proposing to supersede AD 93–14–06 to incorporate the recommended changes.

Since an unsafe condition has been identified that is likely to exist or develop on other Schweizer Aircraft Corporation and Hughes Helicopters, Inc. Model 269A, 269A–1, 269B, 269C, and TH–55A series helicopters of the same type design, the proposed AD would supersede AD 93–14–06 to require a one-time radiographic inspection or a non-destructive inspection of the applicable M/R drive shafts of all Model 269 series

helicopters. The proposed AD would also change paragraph (b) of AD 93–14–06 to exclude those replacement drive shafts having an "SZ" or "ZS" prefix from mandatory inspections prior to their installation.

The FAA estimates that 1,364 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 10 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $818,400.

The regulations proposed herein would 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 proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 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 removing Amendment 39–8630, (58 FR 53120, October 14, 1993) and by adding a new airworthiness directive (AD), to read as follows:

Schweizer Aircraft Corporation and Hughes Helicopters Inc.: Docket No. 94–SW–02–AD. Supersedes AD 93–14–06, Amendment 39–8630.

Applicability: Model 269A, 269A–1, 269B, 269C, and TH–55A series helicopters, with main rotor (M/R) drive shafts, part numbers (P/N) 269A5305–3 and 269A5305–11, except those M/R drive shafts having a serial number with a prefix of "SZ" or "ZS", installed, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent structural failure of the M/R drive shaft, separation of the M/R from the helicopter, and subsequent loss of control of the helicopter, accomplish the following:

(a) Inspect the M/R drive shaft for cracks, distortion, corrosion, or other surface damage, using either the radiographic inspection procedure or the non-destructive inspection procedure in accordance with Part I of Schweizer Service Bulletin B–255.1 (SB), dated February 1, 1993. Conduct this inspection at the time intervals and under the conditions stated in the following:

(1) Inspect M/R drive shafts with serial numbers (S/N) S0001 through S1111, and any drive shaft without an "S" prefix on the S/N, having less than 1,100 hours time-in-service (TIS) on the effective date of this AD—

(i) At the next removal of the drive shaft;

(ii) Within the next 600 hours TIS;

(iii) Prior to attaining 1,200 hours total TIS; or

(iv) Within 1 year after the effective date of this AD, whichever occurs first.

(2) Inspect M/R drive shafts with S/N S0001 through S1111, and any drive shaft without an "S" prefix on the S/N with 1,100 hours or more TIS on the effective date of this AD—

(i) Within the next 100 hours TIS; or

(ii) At the next removal of the drive shaft; or

(iii) Within 1 year after the effective date of this AD, whichever occurs first.

(3) Inspect M/R drive shafts with S/N S1112 and higher, regardless of the number of the total hours TIS on the effective date of this AD—

(i) Within the next 25 hours TIS;

(ii) At the next removal of the drive shaft; or

(iii) Within 1 year after the effective date of this AD, whichever occurs first.

(4) Inspect the M/R drive shaft before further flight if M/R vibrations occur that cannot be corrected with track and balance procedures, or if M/R track and balance procedures are required more than once within a 25-hour TIS interval.

(b) Inspect any replacement M/R drive shaft, except those that have a serial number with a prefix of "SZ" or "ZS", prior to installation in accordance with the procedures in Part I of the SB, dated February 1, 1993.

(c) Replace any unairworthy M/R drive shaft with an airworthy M/R drive shaft before further flight.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used when approved by the Manager, New York Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, New York Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York Aircraft Certification Office.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) only for those helicopters that do not exhibit M/R vibrations due to uncorrected out-of-track or out-of-balance conditions specified in paragraph (a)(4) of this AD. The special flight permit allows flight of the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on November 23, 1994.

James D. Erickson,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 94–25912 Filed 11–29–94; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 94–AGL–33]

Proposed Establishment of Class E Airspace Areas; Moline, IL, Springfield, IL, Grand Rapids, MI, and South Bend, IN

AGENCY: The Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace areas at Quad-City Airport, Moline, IL, Capital Airport, Springfield, IL, Kent County International Airport, Grand Rapids, MI and Michiana Regional Transportation Center Airport, South Bend, IN. Presently, these areas are designated as Class C airspace when the associated control towers are in operation. However, controlled airspace to the surface is needed when the control towers located at these airports are closed. The intended effect of this proposal is to provide adequate Class E airspace for instrument flight rule (IFR) operations when these control towers are closed.

DATES: Comments must be received on or before December 15, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 94–AGL–33, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 E. Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT:

Jeffrey L. Griffith, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–AGL–33". The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Moline, IL, Springfield, IL, Grand Rapids, MI, and South Bend, IN. Currently these airspace areas are designated as Class C when the associated control towers are in operation. Nevertheless, controlled airspace to the surface is needed for IFR operations at Quad-City Airport, Moline, IL, Capital Airport, Springfield, IL, Kent County International Airport, Grand Rapids, MI, and Michiana Regional Transportation Center Airport, South Bend, IN, when the control towers are closed. The intended effect of this proposal is to provide adequate Class E airspace for IFR operations at these airports when these control towers are closed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designated as surface areas for airports are published in Paragraph 6002 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

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

List of Subject in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

AGL IL E2 Moline, IL [New]

Moline, Quad-City Airport, IL
(Lat. 41°26'56" N., long. 90°30'24" W.)

Within a 5-mile radius of the Quad-City Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AGL IL E2 Springfield, IL [New]

Springfield, Capital Airport, IL
(Lat. 39°50'38" N., long. 89°40'39" W.)

Within a 5-mile radius of the Capital Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AGL MI E2 Grand Rapids, MI [New]

Grand Rapids, Kent County International Airport, MI
(Lat. 42°52'58" N., long. 85°31'26" W.)

Within a 5-mile radius of the Kent County International Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will

thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AGL IN E2 South Bend, IN [New]

South Bend, Michiana Regional Transportation Center Airport, IN
(Lat. 41°42'32" N., long. 86°19'07" W.)

Within a 5-mile radius of the Michiana Regional Airport, excluding that airspace within a 1-mile radius of the Chain-O-Lakes Airport, and excluding that airspace 1 mile either side of the 214° bearing from the Chain-O-Lakes Airport to the 5-mile radius of the Michiana Regional Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Des Plaines, Illinois on November 8, 1994.

Jeffrey L. Griffith,

Acting Manager, Air Traffic Division.

[FR Doc. 94-29476 Filed 11-29-94; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 94-AGL-34]

Proposed Modification of Class E Airspace; Williston, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify the Class E airspace area at Sloulin Field International Airport, Williston, ND, to accommodate existing Standard Instrument Approach Procedures (SIAPs) to the airport. The intended effect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before January 9, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL-7, Rules Docket No. 94-AGL-34, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Griffith, Air Traffic Division, System Management Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294-7468.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94-AGL-34." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-220, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267-3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the Class E airspace area at Sloulin Field International Airport, Williston, ND, to accommodate existing SIAPs to the airport. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. Aeronautical maps and charts would reflect the defined area which would enable pilots to circumnavigate the area in order to comply with applicable visual flight rules requirements.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations are published in Paragraph 6002 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR,, 1959-

1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

AGL ND E2 Williston, ND [Revised]

Williston, Sloulin Field International Airport, ND
(Lat. 48° 10'41" N., long. 103° 38'32" W.)
Williston VORTAC
(Lat. 48° 15'12" N., long. 103° 45'02" W.)

Within a 4.1-mile radius of the Sloulin Field International Airport, and within 1.6 miles each side of the Williston VORTAC 135° radial, extending from the 4.1-mile radius to 5.9 miles southeast of the airport, and within 1.8 miles each side of the 124° bearing from the airport, extending from the 4.1-mile radius to 5.6 miles southeast of the airport, and within 1.3 miles each side of the Williston VORTAC 137° and 317° radials, extending from the 4.1-mile radius to 6.3 miles northwest of the airport.

* * * * *

Issued in Des Plaines, Illinois, on November 14, 1994.

Roger Wall,

Manager, Air Traffic Division.

[FR Doc. 94-29475 Filed 11-29-94; 8:45 am]

BILLING CODE 4910-13-M

POSTAL SERVICE

39 CFR Part 111

Manufacture, Distribution, and Use of Postage Meters

AGENCY: Postal Service.

ACTION: Notification of public meeting on proposed rule.

SUMMARY: The Postal Service will be proposing new regulations on the manufacture, distribution, and use of postage meters. These regulations will appear for review and comment in an upcoming **Federal Register** notice. The proposed changes to existing regulations cover new management controls, security measures for the proper payment of postage, and a clarification of the responsibilities of meter manufacturers and meter licensees. A public meeting will be held to review the proposed regulations and to give all interested parties an opportunity to comment.

DATES: December 13, 1994, 9 a.m. to 12:30 p.m.

ADDRESSES: Crystal City Gateway Marriott Hotel, 1700 Jefferson Davis Highway, Arlington, VA, telephone (703) 920-3230.

FOR FURTHER INFORMATION CONTACT: Nicholas Stankosky, (202) 268-5311.

SUPPLEMENTARY INFORMATION: Interested parties are requested to notify Terry Goss, Mailing Systems Development, (202) 268-5313, by December 8 if they plan to attend. Those individuals who do not notify Ms. Goss will be admitted on a space-available basis.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 94-29500 Filed 11-29-94; 8:45 am]

BILLING CODE 7710-12-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300372; FRL-4921-5]

RIN 2070-AC18

Acrylamide-Potassium Acrylate-Acrylic Acid Copolymer, Crosslinked; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to establish an exemption from the requirement of a tolerance for residues of acrylamide-potassium acrylate-acrylic acid copolymer, cross-linked (CAS Reg. No. 31212-13-2), when used as an inert ingredient (carrier) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest. Kelly Products, Inc., requested this proposed rule.

DATES: Written comments, identified by the document control number [OPP-300372], must be received on or before December 30, 1994.

ADDRESSES: By mail, submit written comments to Public Response Section, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Tina Levine, Registration Support Branch, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 2800 Crystal Drive, North Tower, 6th Floor, Arlington, VA 22202, (703)-308-8393.

SUPPLEMENTARY INFORMATION: Kelly Products, Inc., P.O. Box 1508, 4132 Highway 278, NW., Covington, GA 30209, submitted pesticide petition (PP) 4E4348 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 346a(e)), propose to amend 40 CFR 180.1001(c) by establishing an exemption from the requirement of a tolerance for residues of acrylamide-potassium acrylate-acrylic acid copolymer, cross-linked (CAS Reg. No. 31212-13-2), when used as an inert ingredient (carrier) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not to imply nontoxicity; the ingredient may or may not be chemically active.

The data submitted in the petition and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients published in the **Federal Register** of April 22, 1987 (52 FR 13305), the Agency set forth a list of studies which would generally be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. However, where it can be determined without that data that the inert ingredient will present

minimal or no risk, the Agency generally does not require some or all of the listed studies to rule on the proposed tolerance or exemption from the requirement of a tolerance for an inert ingredient. The Agency has decided that no data, in addition to that described below, for acrylamide-potassium acrylate-acrylic acid copolymer, crosslinked, will need to be submitted. The rationale for this decision is described below.

In the case of certain chemical substances that are defined as "polymers," the Agency has established a set of criteria which identify categories of polymers that present low risk. These criteria (described in 40 CFR 723.250) identify polymers that are relatively unreactive and stable compared to other chemical substances as well as polymers that typically are not readily absorbed. These properties generally limit a polymer's ability to cause adverse effects. In addition, these criteria exclude polymers about which little is known. The Agency believes that polymers meeting the criteria noted above will present minimal or no risk. Acrylamide-potassium acrylate-acrylic acid copolymer, cross-linked, conforms to the definition of a polymer in 40 CFR 723.250(b)(11) and meets the following criteria that are used to identify low-risk polymers.

1. The minimum number-average molecular weight of acrylamide-potassium acrylate-acrylic acid copolymer, crosslinked, is estimated to be approximately 1,000,000. Substances with molecular weights greater than 400 generally are not absorbed through the intact skin, and substances with molecular weights greater than 1,000 generally are not absorbed through the intact gastrointestinal tract. Chemicals not absorbed through skin or GI tract generally are incapable of eliciting a toxic response.

2. Acrylamide-potassium acrylate-acrylic acid copolymer, cross-linked, is not a cationic polymer, nor is it reasonably expected to become a cationic polymer in a natural aquatic environment.

3. Acrylamide-potassium acrylate-acrylic acid copolymer, cross-linked, does not contain less than 32.0 percent by weight of the atomic element carbon.

4. Acrylamide-potassium acrylate-acrylic acid copolymer, cross-linked, contains as an integral part of its coposition the atomic elements carbon, hydrogen, nitrogen, and oxygen.

5. Acrylamide-potassium acrylate-acrylic acid copolymer, cross-linked, does not contain as an integral part of its composition, except as impurities, any elements other than those listed in 40 CFR 723.250(d)(3)(ii).

6. Acrylamide-potassium acrylate-acrylic acid copolymer, cross-linked, is not a biopolymer, a synthetic equivalent of a biopolymer, or a dervative or modification of a biopolymer that is substantially intact.

7. Acrylamide-potassium acrylate-acrylic acid copolymer, cross-linked, is not manufactured from reactants containing, other than impurities, halogen atoms or cyano groups.

8. Acrylamide-potassium acrylate-acrylic acid copolymer, cross-linked, does not contain a reactive functional group that is intended or reasonably expected to undergo further reaction.

9. Acrylamide-potassium acrylate-acrylic acid copolymer, cross-linked, is neither designed nor reasonably expected to substantially degrade, decompose, or depolymerize.

Based on the information above and review of its use, EPA has found that, when used in accordance with good agricultural practice, this ingredient is useful, and a tolerance is not necessary to protect the public health. Therefore, EPA proposes that the exemption from the requirement of a tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, that contains any of the ingredients listed herein, may request within 30 days after the publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300372]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 2 of Executive Order 12866.

Pursuant to the requirement of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have an economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subject in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Processed foods, Reporting and recordkeeping requirements.

Dated: November 15, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

Part 180—[Amended]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1001(c) is amended in the table therein by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
* * * * * * *		
Acrylamide potassium acrylate-acrylic acid copolymer, crosslinked (CAS Reg. No. 31212-13-2), minimum number average molecular weight 1,000,000.	.....	Carrier.
* * * * * * *		

* * * * *

[FR Doc. 94–28977 Filed 11–29–94; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 15

[ET Docket No. 94–124; FCC 94–273]

Use of Radio Frequencies Above 40 GHz for New Radio Applications

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This Notice of Proposed Rule Making (Notice) proposes to open for commercial development and use a portion of the "millimeter wave" frequency bands above 40 GHz. This proposal is necessary because the existing FCC rules generally do not permit operation above 40 GHz. Recent advances in technology indicate that commercial use of these frequencies is feasible. The Commission believes the proposals set forth in the *Notice* will stimulate new applications of radio technology for the American public, facilitate technology transfer from the military sector, and create opportunities for economic growth and jobs.

DATES: Comments must be submitted on or before January 30, 1995 and reply comments on or before March 1, 1995.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Please send an electronic mail message via the internet to mmwaves@fcc.gov, or contact either Dr. Michael J. Marcus, Office of Engineering and Technology, (202) 653–8110 or Richard Engelman, Office of Engineering and Technology, at (202) 653–6289.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making in ET Docket No. 94–124, FCC 94–273, adopted October 20, 1994, and released November 8, 1994. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, N.W., Washington, DC. The complete text of this decision also may be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., at (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, DC 20037.

Synopsis of Notice of Proposed Rule Making

1. The Commission is proposing to open for commercial development and use a portion of the millimeter wave frequency bands above 40 GHz. In particular, the Commission proposes to make available a total of 16 GHz of spectrum in the frequency range between 47.2 and 153 GHz on a shared basis with existing and future government users. The Commission also proposes to make available 2 GHz of Spectrum in the 40.5–42.5 GHz band for non-government users.

2. These new frequency bands will permit the development of short-range wireless radio systems with communications capacities approaching that now achievable only with coaxial and optical fiber cable. Such systems could support many short-range applications that require very high bandwidth or data transfer rates. Uses could include applications involving the National Information Infrastructure (NII); educational or medical applications such as remote wireless access to libraries or other informational databases; and non-communications uses such as automobile radar systems to avoid collisions. The proposed rules provide for the operation of such systems on both a licensed and an unlicensed basis. The Commission is also proposing technical standards for millimeter wave band equipment and operation.

3. All of the spectrum above 40 GHz, with the exception of the 40.5–42.5 GHz band, several Amateur Radio Service allocations, and a Government satellite allocation, is allocated on a shared basis to government and non-government use, and most of the bands that the Commission is proposing to open for commercial use will continue to be available for existing and future government use. Thus, in cooperation with the Department of Commerce's National Telecommunications Information Administration (NTIA), the Commission is proposing twelve frequency bands in the region of the spectrum from 47 GHz to 153 GHz for potential use by new millimeter wave technologies. These frequency bands are: 47.2–48.2 GHz, 59.0–64.0 GHz, 71.0–72.0 GHz, 76.0–77.0 GHz, 84.0–85.0 GHz, 94.7–95.7 GHz, 103.0–104.0 GHz, 116.0–117.0 GHz, 122.0–123.0 GHz, 126.0–127.0 GHz, 139.0–140.0 GHz, and 152.0–153.0 GHz. The Commission is also proposing to permit commercial use in the 40.5–42.5 GHz band which is already allocated entirely to nongovernment use.

4. The Commission is tentatively proposing an approximately even division of available spectrum between licensed and unlicensed users, with unlicensed users further divided between general unlicensed devices and unlicensed vehicular radar systems.

5. The extremely limited propagation range of the 59–64 GHz-band, as well as higher millimeter wave frequency bands, suggests that major portions of those bands be designated for general use by unlicensed devices. Therefore, the Commission is proposing to provide the following frequency bands for unlicensed operations under Part 15 of our rules: 59–64 GHz, 71.5–72.0 GHz, 84.5–85.0 GHz, 103.5–104.0 GHz, 116.5–117.0 GHz, 122.5–123.0 GHz, 126.5–127.0 GHz, and 152.5–153.0 GHz. This would provide 3.5 GHz in seven of the frequency bands and 5 GHz in an eighth band, for a total of 8.5 GHz for general unlicensed operations.

6. Based on the demand for licensed services below 40 GHz, the Commission is proposing to designate all of the 40.5–42.5 GHz band and virtually all of the 47.2–48.2 GHz band for licensed use, except for a small portion that would be designated for vehicular radar use. Similarly, the Commission is proposing that portions of the bands above 64 GHz that are not designated for vehicular radar use be designated for licensed use. In particular, the Commission is proposing to provide spectrum for licensed services in each of the following bands: 40.5–42.5 GHz, 47.4–48.2 GHz, 71.0–71.5 GHz, 84.0–84.5 GHz, 103.0–103.5 GHz, 116.0–116.5 GHz, 122.0–122.5 GHz, 126.0–126.5 GHz and 152.0–152.5 GHz. The *Notice* proposed that the licensing rules be contained in 47 CFR Part 21 and that the rules be similar to those proposed in *Notice of Proposed Rulemaking, Order, Tentative Decision and Order on Reconsideration*, CC Docket No. 92–297, 58 FR 6400.

7. The Commission is proposing to designate three of the millimeter wave bands, as well as part of the fourth band, for use by vehicular radar systems. These bands are: 47.2–47.4 GHz, 76.0–77.0 GHz, 94.7–95.7 GHz, and 139.0–140.0 GHz.

8. The Initial Regulatory Flexibility Analysis is contained in the text of the *Notice*.

9. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR Sections 1.415 and 1.419, interested parties may file comments on or before January 30, 1995 and reply comments on or before March 1, 1995. To file formally in this proceeding, you must file an original and four copies of all

comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. 20554.

10. This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's Rules. See generally 47 CFR Sections 1.1202, 1.1203, and 1.1206(a).

11. For further information on this proceeding please send an electronic mail message via the internet to mmwaves@fcc.gov, or contact either Dr. Michael J. Marcus, Office of Engineering and Technology, (202) 653–8110 or Richard Engelman, Office of Engineering and Technology, at (202) 653–6289.

List of Subjects

47 CFR Part 2

Communications equipment, Radio.

47 CFR Part 15

Communications equipment, Highway safety, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Amendatory Text

Title 47 of the Code of Federal Regulations, Parts 2 and 15, are proposed to be amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for Part 2 continues to read as follows:

Authority: Sec. 4, 302, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154, 154(i), 302, 303, 303(r), and 307, unless otherwise noted.

2. In § 2.106, in the 76–81 GHz band revise columns 4 and 6, and in the 40.5–42.5 GHz, 47.2–50.2 GHz, 59–64 GHz, 71–74 GHz, 84–86 GHz, 92–95 GHz, 95–100 GHz, 102–105 GHz, 116–126 GHz, 126–134 GHz, 134–142 GHz, and 151–164 GHz bands, revise column 6, to read as follows:

§ 2.106 Table of frequency allocations.

* * * * *

International table			United States table		FCC use designators	
Region 1-allocation GHz	Region 2-allocation GHz	Region 3-allocation GHz	Government	Non-government	Rule part(s)	Special-use frequencies
			Allocation GHz	Allocation GHz		
(1)	(2)	(3)	(4)	(5)	(6)	(7)
*	*	*	*	*	*	*
40.5–42.5	BROADCASTING-SATELLITE. /BROADCASTING./ Fixed. Mobile		40.5–42.5	40.5–42.5 BROADCASTING-SATELLITE. /BROADCASTING./ Fixed. Mobile	DOMESTIC PUBLIC FIXED (21)	
			US211	US211		
*	*	*	*	*	*	*
47.2–50.2	FIXED. FIXED-SATELLITE (Earth-to-space) 901. MOBILE 905 904		47.2–50.2 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE 904 US264 US297	47.2–50.2 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE 904 US264 US297	RADIO FREQUENCY DEVICES (15) DOMESTIC PUBLIC FIXED (21)	
*	*	*	*	*	*	*
59–64	FIXED INTER-SATELLITE MOBILE 909 RADIOLOCATION 910 911		59–64. FIXED INTER-SATELLITE MOBILE 909 RADIOLOCATION 910 911	59–64. FIXED INTER-SATELLITE MOBILE 909 RADIOLOCATION 910 911	RADIO FREQUENCY DEVICES (15)	

International table			United States table		FCC use designators	
			Government	Non-government		
Region 1-allocation GHz	Region 2-allocation GHz	Region 3-allocation GHz	Allocation GHz	Allocation GHz	Rule part(s)	Special-use frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
*	*	*	*	*	*	*
71–74	FIXED FIXED-SATELLITE (Earth-to-space) MOBILE MOBILE-SATELLITE (Earth-to-space) 906		71–74 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE MOBILE-SATELLITE (Earth-to-space) US 270	71–74 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE MOBILE-SATELLITE (Earth-to-space) US 270	DOMESTIC PUBLIC FIXED (21) RADIO FREQUENCY DEVICES (15)	
*	*	*	*	*	*	*
76–81	RADIOLOCATION Amateur Amateur-Satellite 912		76–81 RADIOLOCATION Space Research (space-to-Earth) 912	76–81 RADIOLOCATION Amateur Amateur-Satellite 912	RADIO FREQUENCY DEVICES (15) Amateur (97)	
*	*	*	*	*	*	*
84–86	FIXED MOBILE BROADCASTING BROADCASTING SATELLITE 913		84–86 FIXED MOBILE 913 US211	84–86 913 US211	FIXED MOBILE BROADCASTING BROADCASTING-SATELLITE	DOMESTIC PUBLIC FIXED (21) RADIO FREQUENCY DEVICES (15)
*	*	*	*	*	*	*
92–95	FIXED FIXED-SATELLITE (Earth-to-space) MOBILE RADIOLOCATION 914		92–95 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE RADIOLOCATION 914	92–95 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE RADIOLOCATION 914	RADIO FREQUENCY DEVICES (15)	
95–100	MOBILE 902 MOBILE-SATELLITE RADIONAVIGATION RADIONAVIGATION SATELLITE Radiolocation. 903 904		95–100 MOBILE 902 MOBILE-SATELLITE RADIONAVIGATION RADIONAVIGATION-SATELLITE Radiolocation 903 904	95–100 MOBILE 902 MOBILE-SATELLITE RADIONAVIGATION RADIONAVIGATION-SATELLITE Radiolocation 903 904	RADIO FREQUENCY DEVICES (15)	
*	*	*	*	*	*	*
102–105	FIXED FIXED-SATELLITE (space-to-Earth) 722		102–105 FIXED FIXED-SATELLITE (space-to-Earth) 722 US211	102–105 FIXED FIXED-SATELLITE (space-to-Earth) 722 US211	DOMESTIC PUBLIC FIXED (21) RADIO FREQUENCY DEVICES (15)	

International table			United States table		FCC use designators	
Region 1-allocation GHz	Region 2-allocation GHz	Region 3-allocation GHz	Government	Non-government	Rule part(s)	Special-use frequencies
			Allocation GHz	Allocation GHz		
(1)	(2)	(3)	(4)	(5)	(6)	(7)
*	*	*	*	*	*	*
116–126	EARTH EXPLORATION-SATELLITE (passive) FIXED INTER-SATELLITE MOBILE 909 722 915 916		116–126 EARTH EXPLORATION-SATELLITE (passive) FIXED INTER-SATELLITE MOBILE. 909 SPACE RESEARCH (passive) 722 915 916 US211 US263	116–126 EARTH EXPLORATION-SATELLITE (passive) FIXED INTER-SATELLITE MOBILE. 909 SPACE RESEARCH (passive) 722 915 916 US211 US263	DOMESTIC PUBLIC FIXED (21) RADIO FREQUENCY DEVICES (15)	122.5 GHz ± 500 MHz; Industrial, scientific and medical frequency.
126–134	FIXED INTER-SATELLITE MOBILE 909 RADIOLOCATION 910		126–134 FIXED INTER-SATELLITE MOBILE. 909 RADIOLOCATION 910	126–134 FIXED INTER-SATELLITE MOBILE. 909 RADIOLOCATION 910	DOMESTIC PUBLIC FIXED (21) RADIO FREQUENCY DEVICES (15)	
134–142	MOBILE 902 MOBILE-SATELLITE RADIO-NAVIGATION-SATELLITE Radiolocation 903 917 918		134–142 MOBILE 902 MOBILE-SATELLITE RADIO-NAVIGATION RADIO-NAVIGATION-SATELLITE Radiolocation 903 917 918	134–142 MOBILE 902 MOBILE-SATELLITE RADIO-NAVIGATION RADIO-NAVIGATION-SATELLITE 903 917 918	RADIO FREQUENCY DEVICES (15)	
*	*	*	*	*	*	*
151–164	FIXED FIXED-SATELLITE (space-to-Earth)		151–164 FIXED FIXED-SATELLITE 211	151–164 FIXED FIXED-SATELLITE 211	DOMESTIC PUBLIC FIXED (21) RADIO FREQUENCY DEVICES (15)	
*	*	*	*	*	*	*

3. Section 2.997 is revised to read as follows:

§ 2.997 Frequency spectrum to be investigated.

(a) In all of the measurements set forth in §§ 2.991 and 2.993, the spectrum shall be investigated from the lowest radio frequency signal generated in the equipment, without going below 9 kHz, up to at least the frequency shown below:

(1) If the equipment operates below 10 GHz: to the tenth harmonic of the highest fundamental frequency or to 40 GHz, whichever is lower.

(2) If the equipment operates at or above 10 GHz and below 30 GHz: to the fifth harmonic of the highest fundamental frequency or to 100 GHz, whichever is lower.

(3) If the equipment operates at or above 30 GHz: to the fifth harmonic of the highest fundamental frequency or to 200 GHz, whichever is lower.

(b) Particular attention should be paid to harmonics and subharmonics of the carrier frequency as well as those frequencies removed from the carrier by multiples of the oscillator frequency. Radiation at the frequencies of multiplier stages should also be checked.

(c) The amplitude of spurious emissions which are attenuated more than 20 dB below the permissible value need not be reported.

(d) Unless otherwise specified, measurements above 40.5 GHz shall be performed using a minimum resolution bandwidth of 1 MHz.

PART 15—RADIO FREQUENCY DEVICES

1. The authority citation for Part 15 continues to read as follows:

Authority: Sec. 4, 302, 303, 304, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154, 302, 303, 304, and 307.

2. Section 15.33 is amended by revising paragraph (a) to read as follows:

§ 15.33 Frequency range of radiated measurements.

(a) For an intentional radiator, the spectrum shall be investigated from the lowest radio frequency signal generated in the device, without going below 9

kHz, up to at least the frequency shown below:

(1) If the intentional radiator operates below 10 GHz: to the tenth harmonic of the highest fundamental frequency or to 40 GHz, whichever is lower.

(2) If the intentional radiator operates at or above 10 GHz and below 30 GHz: to the fifth harmonic of the highest fundamental frequency or to 100 GHz, whichever is lower.

(3) If the intentional radiator operates at or above 30 GHz: to the fifth harmonic of the highest fundamental frequency or to 200 GHz, whichever is lower.

(4) If the intentional radiator contains a digital device, regardless of whether this digital device controls the functions of the intentional radiator or the digital device is used for additional control or function purposes other than to enable the operation of the intentional radiator, the frequency range shall be investigated up to the range specified in paragraphs (a)(1) through (a)(3) of this section or the range applicable to the digital device, as shown in paragraph (b)(1) of this section, whichever is the higher frequency range of investigation.

* * * * *

3. Section 15.35 is amended by revising paragraph (b) to read as follows:

§ 15.35 Measurement detector functions and bandwidths.

* * * * *

(b) On any frequency or frequencies above 1000 MHz, unless otherwise stated, the radiated limits shown are based on the use of measurement instrumentation employing an average detector functions. When average radiated emission measurements are specified in the regulations, including emission measurements below 1000 MHz, there is also a limit on the radio frequency emissions, as measured using instrumentation with a peak detector function, corresponding to 20 dB above the maximum permitted average limit for the frequency being investigated. Unless otherwise specified, measurements above 1000 MHz shall be performed using a minimum resolution bandwidth of 1 MHz. Measurements of AC power line conducted emissions are performed using a CISPR quasi-peak detector, even for devices for which average radiated emission measurements are specified.

* * * * *

4. Section 15.205 is amended by adding a new paragraph (d)(4) to read as follows:

§ 15.205 Restricted bands of operation.

* * * * *

(d) * * *

(4) Any equipment operated under the provisions of § 15.253.

* * * * * *

5. A new § 15.253 is added to read as follows:

§ 15.253 Operation within the bands 47.2–47.4 GHz, 59.0–64.0 GHz, 71.5–72.0 GHz, 76.0–77.0 GHz, 84.5–85.0 GHz, 94.7–95.7 GHz, 103.5–104.0 GHz, 116.5–117.0 GHz, 122.5–123.0 GHz, 126.5–127.0 GHz, 139.0–140.0 GHz and 152.5–153.0 GHz.

(a) Operation under the provisions of this section is not permitted on aircraft.

(b) Operation within the bands 47.2–47.4 GHz, 76.0–77.0 GHz, 94.7–95.7 GHz and 139.0–140.0 GHz is restricted to devices whose primary mode of operation is as a vehicular-mounted field disturbance sensor. The transmission of additional information, such as data, is permitted provided the primary mode of operation is as a vehicular-mounted field disturbance sensor.

(c) The radiated emission limits above 47.2 GHz are as follows:

(1) The power density of any emission within the bands specified in this section shall not exceed 200 nanowatts/square centimeter at 3 meters, except that the power density of any transmitter used as a field disturbance sensor pursuant to paragraph (b) of this section shall not exceed 30 microwatts/square centimeter at 3 meters when the vehicle is moving at a minimum rate of one kilometer/hour.

(2) The power density of any emissions outside the bands specified in this section shall not exceed 2 picowatts/square centimeter at 3 meters.

(3) Fundamental emissions must be contained within the frequency bands specified in this section during all conditions of operation. Equipment is presumed to operate over the temperature range −20 to +50 degrees Celsius with an input voltage variation of 85% to 115% of rated input voltage, unless justification is presented to demonstrate otherwise.

(4) The limits in this paragraph are based on instrumentation employing an average detector.

(d) Radiated emissions below 47.2 GHz shall not exceed the general limits in § 15.209. The provisions in § 15.35 for averaging pulsed emissions and for limiting peak emissions apply. Further, the provisions in § 15.205 that limit spurious emissions appearing in the restricted bands below 40 GHz also apply.

[FR Doc. 94–29193 Filed 11–29–94; 8:45 am]
BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 59, No. 229
Wednesday, November 30, 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

Forms Under Review by Office of Management and Budget

November 25, 1994.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection;
(2) Title the information collection;
(3) Form number(s) if applicable;
(4) How often the information is requested;
(5) Who will be required or asked to report;
(6) An estimate of the number of responses;
(7) An estimate of the total number of hours needed to provide the information;
(8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, D.C. 20250, (202) 690–2118.

Extension

• Forest Service
Volunteer Application for Natural Resources Agencies
OF–301
One-time only
Individuals or households; 58,100 responses; 14,525 hours
Donald T. Hansen (703) 235–8855

• Agricultural Marketing Service
Farmer's Market Questionnaire
TMD–6
Every 2 years
Small businesses or organizations; 425 responses; 34 hours
Arthur F. Burns (202) 720–8317

New Collection

• Food and Nutrition Service
Food Security Supplement to the Current Population Survey
Annually
Individuals or households; 58,000 responses; 9.860 hours
Margaret Andrews (703) 305–2115

Reinstatement

• Federal Grain Inspection Service
Reporting and Recordkeeping Requirements (USGSA and AMA of 46)
Recordkeeping; On occasion; Weekly; Monthly; Semi-annually; Annually
State or local governments; Businesses or other for-profit; Federal agencies or employees; 5,800,110 responses; 1,364,214 hours
George Wollam (202) 720–0292

Reinstatement

• Agricultural Stabilization and Conservation Service
7 CFR Parts 1421 and 1434—General Regulations Governing Price Supports
CCC–64, 156, 601, 638, 665, 666, 666 (Honey), 662, 677, 678, 679, 681, 681–1, 685, 687–1, 691, 699, 906, 906-A, 907, KC–350, UCC–1 and 2
On occasion; Annually
Farms; 2, 103,360 responses; 514,061 hours
Margaret Wright (202) 720–8481

Donald E. Hulcher,
Deputy Departmental Clearance Officer.

[FR Doc. 94–29504 Filed 11–29–94; 8:45 am]
BILLING CODE 3410–01–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) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1995 Annual Demographic Survey – Supplement to the Current Population Survey.

Agency Approval Number: 0607–0354.

Type of Request: Reinstatement of a previously approved collection for which approval has expired.

Burden: 23,442 hours.

Number of Respondents: 58,000 hours.

Avg Hours Per Response: 24 minutes.

Needs and Uses: The Bureau of the Census (Census) conducts the Annual Demographic Survey (ADS) every year in March as a supplement to the Current Population Survey. Census, the Bureau of Labor Statistics (BLS), and the Department of Health and Human Services (HHS) sponsor this supplement. In the ADS, Census collects information in the areas of work experience, migration, personal income and noncash benefits, household noncash benefits, and race. BLS and HHS use data gathered in the ADS to determine the official Government poverty statistics.

Affected Public: Individuals or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, Room 10201, New Executive Office Building, Washington, DC 20503.

Dated: November 25, 1994.

Gerald Taché,
Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94–29513 Filed 11–29–94; 8:45 am]
BILLING CODE 3510–07–F

COMMODITY FUTURES TRADING COMMISSION

Applications of the Chicago Board of Trade as a Contract Market in Futures and Options on Illinois Soybean Yield Insurance, Iowa Corn Yield Insurance, Kansas Winter Wheat Yield Insurance, and North Dakota Spring Wheat Yield Insurance

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures and option contracts.

SUMMARY: The Chicago Board of Trade (CBT or Exchange) has applied for designation as a contract market in futures and futures options on (1) Illinois soybean yield insurance, (2) Iowa corn yield insurance, (3) Kansas winter wheat yield insurance, and (4) North Dakota spring wheat yield insurance.

The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before December 30, 1994.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the CBT contract markets on Illinois soybean yield insurance, Iowa corn yield insurance, Kansas winter wheat yield insurance, and North Dakota spring wheat yield insurance.

FOR FURTHER INFORMATION CONTACT: Please contact Fred Linse of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone 202–254–7303.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the CBT in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the CBT, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on November 22, 1994.

John Mielke,

Acting Director.

[FR Doc. 94–29404 Filed 11–29–94; 8:45 am]

BILLING CODE 6351–01–P

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: 13, 14 December 1994.

Time of Meeting: 1300–1700 & 0800–1700, respectively.

Place: Pentagon, Washington, DC.

Agenda

The Army Science Board's Ad Hoc Study on "ASB Space and Missile Defense Organization" will have its kickoff meeting at the Pentagon on 13 and 14 December. 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 classified and unclassified matter 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.

Herbert J. Gallagher,

COL, GS, Executive Secretary.

[FR Doc. 94–29582 Filed 11–29–94; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Office of Educational Research and Improvement

Library Services and Construction Act

AGENCY: Department of Education.

ACTION: Notice of promulgation of Federal shares.

SUMMARY: Section 7(b) of the Library Services and Construction Act, Pub. L. 84–597, as amended (20 U.S.C. 351 *et seq.*), requires the Secretary of Education to promulgate the Federal share for each State every second fiscal year beginning with fiscal year 1971. The Federal shares are in proportion to the State's per capita income and range from 33 to 66 percent. Per capita income data from the Department of Commerce for the years 1991, 1992, and 1993 have been used to establish the Federal shares applicable to Titles I and II of the Act. The Federal shares published in the table below are effective for the fiscal years ending September 30, 1996, and September 30, 1997.

FOR FURTHER INFORMATION CONTACT: Robert Klassen, Director, State Programs Division, Office of Educational Research and Improvement, Room 402, Capitol Place, 555 New Jersey Avenue, N.W., Washington, D.C. 20208–5571, telephone (202) 219–1303. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Dated: November 23, 1994.

Sharon P. Robinson,

Assistant Secretary for Educational Research and Improvement.

State	Federal share (percent)
Alabama	59.07
Alaska	44.40
Arizona	56.45
Arkansas	61.71
California	46.46
Colorado	48.60
Connecticut	33.00
Delaware	47.47
Florida	50.43
Georgia	53.99
Hawaii	43.92
Idaho	58.35
Illinois	45.99
Indiana	54.40
Iowa	55.41
Kansas	52.29
Kentucky	59.38
Louisiana	60.48
Maine	54.86
Maryland	42.11
Massachusetts	41.03

State	Federal share (percent)
Michigan	50.99
Minnesota	49.41
Mississippi	65.09
Missouri	52.90
Montana	58.76
Nebraska	52.56
Nevada	45.62
New Hampshire	46.05
New Jersey	35.47
New Mexico	61.18
New York	40.25
North Carolina	55.64
North Dakota	58.54
Ohio	52.96
Oklahoma	59.10
Oregon	53.46
Pennsylvania	48.86
Rhode Island	49.36
South Carolina	59.70
South Dakota	56.96
Tennessee	56.31
Texas	54.23
Utah	61.42
Vermont	53.37
Virginia	48.02
Washington	47.40
West Virginia	61.45
Wisconsin	52.67
Wyoming	52.68
District of Columbia	33.00
Puerto Rico	66.00
American Samoa	66.00
Northern Marianas	66.00
Guam	66.00
Virgin Islands	66.00
Palau	(1)

[1] For fiscal year 1996, not to exceed 75% of its 1995 level; for fiscal year 1997, not to exceed 50% of its 1995 level; and in fiscal year 1998 (and final year); not to exceed 25% of its 1995 level. The decreasing Federal shares reflect the provisions of the Compact of Free Association between the U.S. and Palau and is the result of Presidential Proclamation 6726, dated September 27, 1994, entitled PLACING INTO FULL FORCE AND EFFECT THE COMPACT OF FREE ASSOCIATION WITH THE REPUBLIC OF PALAU.

[FR Doc. 94-29399 Filed 11-29-94; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER94-1181-001, et al.]

Electric Rate and Corporate Regulation Filings; C.C. Pace Energy Services, et al.

November 21, 1994.

Take notice that the following filings have been made with the Commission:

1. C.C. Pace Energy Services

[Docket No. ER94-1181-001]

Take notice that C.C. Pace Energy Services tendered for filing on October 28, 1994, certain information as required by the Commission's letter order issued July 25, 1994 in Docket No. ER94-1181-000. Copies of C.C. Pace Resources, Inc.'s filing are on file with the Commission and are available for public inspection.

2. Northern States Power Company (Minnesota Company)

[Docket No. ER94-1622-000]

Take notice that on November 15, 1994, Northern States Power Company (Minnesota) ("NSP-MN"), tendered for filing an amendment to its filing of the Interconnection and Interchange Agreement dated September 17, 1993, between NSP-MN, Northern States Power Company (Wisconsin) [NSP-WI], and Upper Peninsula Power Company [UPP].

The Interconnection and Interchange Agreement provides for the interchange of electrical power and energy between the parties as well as for possible future interconnected electrical operation between the parties' systems. In this amendment to the filing, NSP has modified its service schedules for Base Load Service, Peaking Service, Short Term Power, General Purpose Energy, and Scheduled Outage Energy and Emergency Energy. NSP requests the Commission to accept the Interconnection and Interchange Agreement, as amended, for filing effective date to October 1, 1994.

Comment date: December 5, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Central Hudson Gas & Electric Corporation

[Docket No. ER94-1662-000]

Take notice that on November 14, 1994, Central Hudson Gas & Electric Corporation (CHG&E), tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's Regulation 18 CFR, as an Initial Rate Schedule, an amendment to its Power Sales Tariff whereby Central Hudson may sell capacity and/or energy to electric utilities, as the parties may mutually agree from time to time. The proposed Tariff requires interested purchasers to enter into a Service Agreement with Central Hudson before transactions may commence under this Tariff. Service under this agreement is requested to commence on November 15, 1994.

Central Hudson requests that its Tariff be accepted for filing and allowed to become effective in accordance with its terms specified. CHG&E has served a copy of the amended filing upon the New York State Public Service Commission.

Comment date: December 5, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Kentucky Utilities Company

[Docket No. ER94-1678-000]

Take notice that on November 10, 1994, Kentucky Utilities Company (KU) amended its filing in this docket in order to make the rates for transmission services under the transmission services agreement with AES Power, Inc. subject to the outcome of the Commission proceeding regarding KU's TS Tariff in Docket No. ER94-1698-000.

Comment date: December 5, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Boston Edison Company

[Docket No. ER94-1680-000]

Take notice that on November 4, 1994, Boston Edison Company (Edison) tendered for filing supplemental information pertaining to its proposed amendment to Edison's FERC Electric Tariff, Original Volume No. 6—Power Sales and Exchange Tariff (the Tariff). The purpose of this amendment is to expand the availability of this tariff to transactions with power marketers. The purpose of the supplemental information is to correct a page referenced in the earlier filing.

Edison states that it has served the filing on all utilities that have signed service agreements under the Tariff and on the Massachusetts Department of Public Utilities and on the intervenors in this docket.

Edison requests that this amendment become effective on November 25, 1994.

Comment date: December 5, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Boston Edison Company

[Docket No. ER94-1689-000]

Take notice that on November 3, 1994, Boston Edison Company tendered for filing an amendment to its June 30, 1994, filing in the above-referenced docket.

Comment date: December 5, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Green Mountain Power Corporation

[Docket No. ER95-84-000]

Take notice that on November 14, 1994, Green Mountain Power Corporation (GMP) tendered for filing a request that the FERC waive the notice requirements of Section 35.3 of the Commission's regulations under the Federal Power Act in order to permit the revisions to GMP's FERC Electric Tariff, Original Volume No. 2 necessary to

assure that power marketers will be eligible to purchase power from GMP under the tariff and to permit service agreements for service under the tariff to Louis Dreyfus Electric Power Inc. and Enron Power Marketing to be made effective as of September 28, 1994.

Comment date: December 5, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Green Mountain Power Corporation

[Docket No. ER95–85–000]

Take notice that on November 14, 1994, Green Mountain Power Corporation (GMP) tendered for filing a letter advising the Commission that it was requesting in Docket No. ER95–84–000 that the Commission waive the notice requirements under its regulations in order to permit a service agreement for service under GMP's FERC Electric Tariff, Original Volume No. 2 to Louis Dreyfus Electric Power Inc. to be made effective as of September 28, 1994. GMP states that grant of the requested waiver in Docket No. ER95–84–000 is consistent with Commission policy and will obviate the need that the Commission act separately on the letter agreements for service to Dreyfus which was filed in this docket.

Comment date: December 5, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Southern California Edison Company

[Docket No. ER95–146–000]

Take notice that on November 2, 1994, Southern California Edison Company tendered for filing a Notice of Cancellation of FERC Rate Schedule No. 232 and all supplements thereto.

Comment date: December 5, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. Alabama Power Company

[Docket No. ER95–149–000]

Take notice that on November 2, 1994, Alabama Power Company tendered for filing amendments to the Interconnection Agreement Between Alabama Power Company and Alabama Electric Cooperative, Inc., and the Agreement for Transmission Service to Distribution Cooperative Members of Alabama Electric Cooperative. The purpose of this filing is to declare changes in practice and to amend energy rates contained in the foregoing agreements to reflect the energy-related costs incurred by Alabama Power Company to ensure compliance with the Phase I sulfur dioxide emissions limitations of the Clean Air Act Amendment of 1990.

Comment date: December 5, 1994, in accordance with Standard Paragraph E at the end of this notice.

11. Southern California Edison Company

[Docket No. ER95–150–000]

Take notice that on November 3, 1994, Southern California Edison Company tendered for filing three Supplemental Agreements (Agreements) to the 1990 Integrated Operations Agreements (IOA) with the City of Azusa (Azusa), FERC Rate Schedule No. 247, City of Banning (Banning), FERC Rate Schedule No. 248, and the City of Colton (Colton), FERC Rate Schedule No. 249:

Supplemental Agreements Between Southern California Edison Company and City of Azusa, City of Colton, City of Banning, For The Integration of Replacement Capacity Purchased From Turlock Irrigation District

The agreements establish the terms and conditions for the integration of Replacement Capacity purchased by Azusa, Banning or Colton under the Power Sale Agreement with the Turlock Irrigation District.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: December 5, 1994, in accordance with Standard Paragraph E at the end of this notice.

12. Southern California Edison Company

[Docket No. ER95–151–000]

Take notice that on November 3, 1994, Southern California Edison Company (Edison) tendered for filing changes in rates for partial requirements service as embodied in Edison's 1992 agreements with the following entities:

Entity	FERC rate schedule No.
1. City of Anaheim	15
2. City of Azusa	16
3. City of Banning	21
4. City of Colton	31
5. City of Riverside	17
6. City of Vernon	13

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: December 5, 1994, in accordance with Standard Paragraph E at the end of this notice.

13. Portland General Electric Company

[Docket No. ER95–152–000]

Take notice that on November 3, 1994, Portland General Electric Company (PGE) tendered for filing service agreements under FERC Electric Tariff, Original Volume No. 1 (PGE–1), with Gulf Energy, Ltd. PGE has requested that the Service Agreement be accepted by the Commission, effective October 29, 1994. Copies of the filing have been served on the parties included in the Certificate of Service attached to the filing letter.

Comment date: December 5, 1994, in accordance with Standard Paragraph E at the end of this notice.

14. PacifiCorp

[Docket No. ER95–153–000]

Take notice that on November 3, 1994, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 the Transmission Agreement, Contract No. DE–MS79–94BP94316, dated October 3, 1994 between Bonneville Power Administration (Bonneville) and PacifiCorp. PacifiCorp requests that the Commission grant a waiver of its prior notice requirements in accepting the Transmission Agreement for filing.

Copies of this filing were supplied to Bonneville, the Public Utility Commission of Oregon, the Utah Public Service Commission and the Washington Utilities and Transportation Commission.

Comment date: December 5, 1994, in accordance with Standard Paragraph E at the end of this notice.

15. West Texas Utilities Company

[Docket No. ER95–155–000]

Take notice that on November 3, 1994, West Texas Utilities Company (WTU), tendered for filing an Amendment to its Transmission Service Agreement with the Oklahoma Municipal Power Authority (OMPA), on file with the Commission as Rate Schedule FERC No. 48.

WTU requests waiver of the notice requirements in order that the Amendment, which provides for a negotiated rate decrease, may become effective as of January 1, 1994.

Copies of the filing have been served on OMPA and the Public Utility Commission of Texas.

Comment date: December 5, 1994, in accordance with Standard Paragraph E at the end of this notice.

16. Commonwealth Electric Company

[Docket No. ER95–156–000]

Take notice that on November 3, 1994, Commonwealth Electric Company (Commonwealth) tendered for filing

pursuant to Section 35.12 of the Commission's regulations, a System Power Sale Agreement governing the sale by Commonwealth of System Power (as defined herein) to Catex Vitol Electric Inc. (referred to herein as the Buyer) to become effective on November 5, 1994.

By the provisions of this agreement, Commonwealth proposes to sell to the Buyer electric power upon terms and conditions and in amounts mutually acceptable to the respective party.

A copy of this filing has been served upon the Buyers and upon the Massachusetts Department of Public Utilities.

Comment date: December 5, 1994, in accordance with Standard Paragraph E at the end of this notice.

17. Entergy Power, Inc.

[Docket No. ER95–158–000]

Take notice that on November 4, 1994, Entergy Power, Inc. tendered for filing a letter from the Executive Committee of the Western Systems Power Pool (WSPP) approving Entergy Power's application for membership in the WSPP. Entergy Power requests that the Commission amend the WSPP Agreement to include it as a member.

Entergy Power requests an effective date of one day after filing for the proposed amendment. Accordingly, Entergy Power requests waiver of the Commission's notice requirements for good cause shown.

Copies of the filing were served upon the Western Systems Power Pool Executive Committee and Arkansas Public Service Commission.

Comment date: December 5, 1994, in accordance with Standard Paragraph E at the end of this notice.

18. IES Utilities Inc.

[Docket No. ES95–11–000]

Take notice that on November 15, 1994, IES Utilities Inc. filed an application under § 204 of the Federal Power Act seeking authorization to issue short-term notes in an amount not to exceed $200 million during the years 1995 through 1996 with maturities not to exceed 12 months from the date of issuance.

Comment date: December 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–29427 Filed 11–29–94; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2493–006–WA]

Puget Sound Power & Light Co.; Intent To Hold a Public Meeting in Snoqualmie, WA, to Discuss Staff's Draft Environmental Impact Statement (DEIS) for The Snoqualmie Falls Hydroelectric Project

November 23, 1994.

On November 15, 1994, the Commission staff mailed the Snoqualmie Falls DEIS to the Environmental Protection Agency, resource and land management agencies, and interested organizations and individuals. This document evaluates the environmental consequences of operating the applicant's existing 42-megawatt (MW) hydroelectric project, located on the Snoqualmie River, approximately 25 miles east of Seattle in western Washington.

The applicant proposes extensive structural modifications of the existing project facilities and construction of additional project facilities needed to expand the project from 42 MW to 72 MW; hydraulic capacity would increase from 2,500 to 3,620 cubic feet per second.

The subject DEIS also evaluates the environmental effects of: additional flow options and supplemental measures with the applicant's proposal; a minor upgrade; decommissioning the project; and the no action alternative.

The public meeting on the Snoqualmie Falls Project, which will be recorded by an official stenographer, is scheduled from 7:00 p.m. to 11:00 p.m. on Thursday, December 15, 1994. The meeting will be held at the Mount Si High School in Snoqualmie, Washington.

At the subject meeting, resource agency personnel and other interested persons will have the opportunity to provide oral and written comments and recommendations regarding the Snoqualmie Falls DEIS for the Commission's public record. Written comments may also be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. Comments must be filed by January 17, 1995.

For further information, please contact Kathleen Sherman at (202) 219–2834.

Lois D. Cashell,

Secretary.

[FR Doc. 94–29449 Filed 11–29–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–566–001, et al.]

ANR Pipeline Company, et al. Natural Gas Certificate Filings

November 17, 1994.

Take notice that the following filings have been made with the Commission:

1. ANR Pipeline Company

[Docket No. CP93–566–001]

Take notice that on November 15, 1994, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed an amendment pursuant to Section 3 of the Natural Gas Act, §§ 153.1 and 153.10 through 153.12 of the Commission's regulations, and Executive Order No. 10485, as amended by Executive Order No. 12038 and Secretary of Energy Delegation Order No. 0204–112 to its July 19, 1993 application for Section 3 authorization and a Presidential Permit to site, construct, operate and maintain pipeline facilities at the United States-Canada International Boundary proximate to St. Clair, Michigan, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

ANR states that the purpose of this amendment is to reflect the restructuring of its project as set forth in ANR's companion application in Docket No. CP93–564–002, filed November 9, 1994. ANR states the project has been reconfigured with regard to: the U.S. shippers, the configuration of facilities in the U.S., and the ownership and configuration of complementary facilities in Canada.

Comment date: December 8, 1994, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

2. Southern Natural Gas Company

[Docket No. CP94–682–001]

Take notice that on November 14, 1994, pursuant to Section 7 of the

Natural Gas Act (NGA), as amended, and the Federal Energy Regulatory Commission's (Commission) Regulations (18 CFR Section 157.6), Southern Natural Gas Company (Applicant), P.O. Box 2563, Birmingham, Alabama 35202, filed an amendment to its original application for certificate of public convenience and necessity filed in Docket No. CP94–682–000.

In its original application in Docket No. CP94–682–000, Applicant had requested authorization to construct, install and operate approximately 21 miles of 12-inch pipeline and the necessary measurement facilities to connect Applicant's system at or near mile post 101.44 on its Chattanooga Branch Line in Catoosa County, Georgia, with the facilities of East Tennessee Natural Gas Company in Bradley County, Tennessee. The total cost of the facilities was estimated to be $6,951,000. The facilities were proposed to serve 11 municipal and distribution customers (Customers) in Eastern Tennessee with firm transportation under Applicant's Rate Schedule FT.

Specifically, Applicant states that because of the execution of service agreements for firm transportation by several of its existing customers, Applicant has determined that it requires additional compression on its North Main Lines to provide the full firm subscription requested by the Customers of 11,350 Mcf per day. Accordingly, Applicant requests in the amendment authorization to construct, install and operate an additional turbine compressor engine of 1,452 horsepower isometrically rated at 59 degrees fahrenheit at its existing McConnells Compressor Station (McConnells) located in Tuscaloosa County, Alabama. In addition, Applicant plans to modify the compressor wheel assemblies of the two existing 1,360 horsepower turbine compressor engines at McConnells. The total horsepower at McConnells upon installation of the proposed turbine engine would be 6,872. The cost of the installation and rewheeling of the compressors is estimated to be $2,128,000. Applicant requests authorization from the Commission by May 1, 1995, or sooner, to construct and install the compression and pipeline facilities because of the long lead time required for the purchasing, construction and permitting of the facilities.

In addition to supporting the full firm service subscription to the Customers, Applicant states the compression facilities proposed in the amendment will enable it to provide firm service to the City of Austell, Georgia (Austell) pursuant to a transportation request made by Austell on July 15, 1994. Austell and Applicant have executed a Service Agreement for service under Applicant's Rate Schedule FT for 2,500 Mcf per day for a term of ten years. Applicant states Austell had the next position in its transportation queue after the Customers.

Applicant has submitted a revised statement of revenues and cost of service with the amendment reflecting the cost of the additional facilities and the additional firm subscription of Austell. Applicant represents such statement demonstrates that the project remains a benefit to its system.

Comment date: December 8, 1994, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

3. Northern Natural Gas Company

[Docket No. CP95–43–000]

Take notice that on October 31, 1994, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP95–43–000, a request, supplemented on November 16, 1994, pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to construct and operate two new natural gas delivery points under Northern's blanket certificate issued in Docket No. CP82–401–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern proposes to construct and operate two new delivery points for Sioux City Brick and Tile Company (SCB&T) located in Dallas and Woodbury Counties, Iowa. Northern states that it would deliver, on an interruptible basis, up to 1,000 Mcf per day and 270,000 Mcf per year at the Dallas County delivery point and up to 1,000 Mcf per day and 207,000 Mcf per year at the Woodbury delivery point under its existing transportation rate schedules. Northern mentions that SCB&T will contribute to the estimated $130,634 construction cost.

Northern states that it is currently providing service to other shippers for delivery of gas to facilities operated by Midwest Gas, a Division of Midwest Power Systems, Inc. for redelivery to SCB&T in Dallas and Woodbury Counties. Northern also states that upon approval of this application, it would provide direct service to SCB&T at the two new delivery points. Northern asserts that it has sufficient capacity to accommodate the changes proposed in this application without detriment or disadvantage to its other customers.

Comment date: January 3, 1995, in accordance with Standard Paragraph G at the end of this notice.

4. Sabine Pipe Line Company

[Docket No. CP95–64–000]

Take notice that on November 9, 1994, Sabine Pipe Line Company (Sabine), Post Office Box 4781, Houston, Texas 77210–4781, filed a prior notice request with the Commission in Docket No. CP95–64–000 pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to abandon three sales taps under the blanket certificate issued in Docket No CP83–199–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Sabine proposes to abandon three sales taps, all located in Jefferson County, Texas. Centana Intrastate Pipeline Company (Centana) has acquired the assets of Winnie Pipeline Company (Winnie) and the majority of pipeline assets of Neches Gas Distribution Company (Neches). All of the sales taps, the NGDC/Port Neches, NGDC/Port Arthur and Star/Port Neches are no longer needed to provide gas service due to the Winnie/Jefferson interconnection, which was completed by Sabine and Winnie.

Comment date: January 3, 1995, in accordance with Standard Paragraph G at the end of this notice.

5. Transwestern Pipeline Company

[Docket No. CP95–70–000]

Take notice that on November 14, 1994, Transwestern Pipeline Company (Transwestern), Post Office Box 1188, Houston, Texas 77251–1188 filed an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon (i) certain certificated compression, plants metering dehydration, and pipeline facilities with appurtenances, located in various counties in Kansas Oklahoma, Texas and New Mexico (referred to as the "Facilities") by transfer to Transwestern Gathering Company (TGC), a wholly-owned subsidiary of Transwestern,[1] and (ii) certain certificated agreements and services rendered by Transwestern using such facilities, all as more fully set forth in the application which is on file with the

[1] Transwestern states that the facilities which are proposed to be transferred to TGC mirror the facilities which are identified in the data response filed on September 6, 1994, in Docket No. CP94–254–000 (Refunctionalization Proceeding).

Commission and open to public inspection.

Transwestern states that, because it is also conveying to TGC other facilities that are nonjurisdictional, it requests any permissions and approvals which the Commission deems necessary to permit their transfer to TGC.

Transwestern states that TGC intends to file with the Commission a Petition for a Declaratory Order seeking a determination that the subject facilities, upon the conveyance thereof, are gathering facilities exempt from the Commission's jurisdiction under NGA Section 7(b). Transwestern requests that its application be consolidated with TGC's petition to be filed in the near future.

Transwestern specifically requests authorization to abandon:

1. *Certificated Facilities*—All jurisdictional facilities owned and operated by Transwestern and jurisdictional service provided by Transwestern in Clark County, Kansas; Beaver, Commanche, Custer, Ellis, Harper, Roger Mills and Woodward Counties, Oklahoma; Cimmaron, Crane, Gray, Hansford, Hemphill, Hutchinson, Lipscomb, Loving, Ochiltree, Pecos, Reeves, Roberts, Sherman, Ward and Winkler Counties, Texas, and Eddy, Lea, Roosevelt, and Chaves Counties, New Mexico. Transwestern states that the certificates for the facilities and services for which Transwestern requests abandonment are described in Exhibit T to its application.

2. *Non-Certificated Facilities*—Even though abandonment authority is only required for jurisdictional facilities, since Transwestern is proposing to transfer to TGC all of its gathering facilities, whether certificated or not, Transwestern also requests any permissions and approvals which the Commission deems necessary to permit assignment to TGC of such non-certificated facilities.

3. *Services*—Transwestern proposes to abandon and/or assign the following contracts and services rendered by Transwestern in conjunction with the Facilities:

(i) *Service under Rate Schedule ITS–1*

Transwestern requests authorization to abandon certain interruptible service under Rate Schedule ITS–1, to the extent that receipt points on contracts effectuating such service are located on the Facilities.

(ii) *Service under Rate Schedule FTS–2*

Transwestern requests authorization to abandon certain firm (no-notice) transportation service under Rate Schedule FTS–2 provided to various right-of-way grantors or agricultural users and small general customers.

(iii) *Exchange Agreements*

Transwestern requests authorization to abandon certain certificated exchange services utilizing the Facilities which are performed under Rate Schedules X–1 and X–15.

Transwestern contends that the proposed abandonment will permit it to optimize its system operations and principle business activity of transporting natural gas. It is stated that this benefits customers connected to such facilities as well as Transwestern's remaining shippers by assuring maximum supply access to such shippers and substituting workable competition in lieu of continued regulatory restraints in providing gathering services.

Transwestern states that while preparing for further proceedings in its refunctionalization proceeding in Docket No. CP94–254–000, and upon further analysis of its system in response to the gathering orders recently issued by the Commission, it was discovered that certain field facilities, including certain compressors, plants, meters, dehydrators, and other miscellaneous wellhead facilities are no longer used and useful or are uneconomical or otherwise unnecessary for continued operation of the pipeline. It is stated that this abandonment requests authorization to abandon certain compression, plants, metering, dehydration, and other miscellaneous facilities, and to secure all other authorizations as may be required under the circumstances.

Comment date: December 8, 1994, in accordance with Standard Paragraph F at the end of this notice.

6. NorAm Gas Transmission Company

[Docket No. CP95–72–000]

Take notice that on November 14, 1994, NorAm Gas Transmission Company (NGT), P.O. Box 21734, Shreveport, Louisiana, 71151, filed in Docket No. CP95–72–000 a request pursuant to §§ 157.205 and 157.216 of the Federal Energy Regulatory Commission's (Commission) regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon certain facilities located in Ouachita County, Arkansas under its blanket certificate issued in Docket Nos. CP82–384–000 and CP82–384–001, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

NGT states that it proposes to abandon Line KM–57, a 2-inch diameter line approximately 2,702 feet in length, and appurtenant facilities located in Ouachita County, Arkansas. NGT indicates that this line was originally installed to provide service to ARKLA, a division of NorAm Energy Corporation, (ARKLA), for deliveries to ARKLA's customer Highland Resources, and more recently, GE Railcar. NGT further indicates that authorization for the construction and operation of the line was granted by the Commission on January 19, 1970, in Docket No. CP70–117. It is also indicated that ARKLA's customer is no longer in business and that these facilities are thus currently inactive.

NGT also states that it will cut and cap Line KM–57 where the line intersects with Line KM–6 and abandon the line in place and remove all above ground facilities.

Comment date: January 3, 1995, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–29426 Filed 11–29–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–68–000, et al.]

NorAm Gas Transmission Co., et al.; Natural Gas Certificate Filings

November 18, 1994.

Take notice that the following filings have been made with the Commission:

1. NorAm Gas Transmission Company

[Docket No. CP95–68–000]

Take notice that on November 10, 1994, NorAm Gas Transmission Company (NorAm), 525 Milam Street, P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP95–68–000 a request pursuant to §§ 157.205, 157.211(a)(2), and 157.216(b) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.208(b), and 157.216(b)) for authorization to abandon a 1-inch meter station and regulator at pipeline station no. 18+66, on Line AT–12, in Wood County, Texas and to construct and install a 2-inch meter station and regulator at the same location to deliver gas to Arkla's Rural Extension No. 509 serving the Winnsboro, Texas Townborder Station, under the blanket certificate issued and amended in Docket Nos. CP82–384–000 and CP82–384–001, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

NorAm is seeking abandonment authority because Arkla has requested an increase in deliverability at this delivery point of an additional 5,000 cubic foot per hour. NorAm states that the total deliveries through the upgraded meter station will be approximately 4,464 Mbtu annually and 113 Mbtu per day on a peak day, and that such deliveries are within Arkla's certificated entitlement. NorAm estimates that the cost of the construction will be $18,569. Further, NorAm states that Arkla has agreed to reimburse NorAm for the cost of the project.

Comment date: January 3, 1995, in accordance with Standard Paragraph G at the end of this notice.

2. Williams Natural Gas Company

[Docket No. CP95–73–000]

Take notice that on November 14, 1994, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP95–73–000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to reclaim facilities originally installed for the receipt of transportation gas from Sabine Corporation located in Garvin County, Oklahoma, under WNG's blanket certificate issued in Docket No. CP82–479–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Specifically, WNG proposes to reclaim at an estimated cost of $2,401, measuring and appurtenant facilities Texaco Exploration and Production Inc., (Texaco) acquired several years ago. Texaco has agreed to the reclaim of the facilities by WNG.

Comment date: January 3, 1995, in accordance with Standard Paragraph G at the end of this notice.

3. Transcontinental Gas Pipe Line Corporation

[Docket No. CP95–77–000]

Take notice that on November 15, 1994, Transcontinental Gas Pipe Line Corporation (TGPL), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP95–77–000 a request pursuant to §§ 157.205 and 157.208 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.208) for authorization to construct, replace, and operate certain facilities at Compressor Station No. 185 in Prince William County, Virginia under TGPL's blanket certificate issued in Docket No. CP82–426–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

TGPL proposes to replace existing turbochargers with larger capacity turbochargers and associated equipment at the Compressor Station No. 185 in Prince William County, Virginia. TGPL states that there will be no increase in the capacity on TGPL's system in the vicinity of the station as a result of installation of the larger capacity turbochargers.

Comment date: January 3, 1995, in accordance with Standard Paragraph G at the end of this notice.

4. Southern Natural Gas Company

[Docket No. CP95–83–000]

Take notice that on November 16, 1994, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP95–83–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon by sale 4.5 miles of pipeline to Geodyne Gas Company (Geodyne), abandon in place 4.8 miles of pipeline and abandon by removal two field compressors and a measuring and receiving station which was authorized in Docket Nos. CP82–102–000 and CP82–406–000, all as more fully set forth in the application on file with the Commission and open to public inspection.

Southern proposes to abandon by sale 4.5 miles of pipeline (the Black Warrior Pipeline), which extends from its interconnection with Geodyne's network of gathering facilities in Monroe County, Mississippi, to interconnecting facilities with Mississippi Valley Gas Company (MVG) in Monroe County, Mississippi. Southern also proposes to abandon in place 4.8 miles of pipeline (the Corinne Field Pipeline) which extends from Milepost 4.45 on the Black Warrior Pipeline to an interconnection with Southern's Muldon Pipeline in Monroe County, Mississippi. In addition, Southern proposes to abandon by removal a 600 horsepower compressor and a 360 horsepower compressor which comprise Southern's Corinne Compressor Station, as well as a measuring and receiving station located near Milepost 4.45 on the Black Warrior Pipeline.

Southern states that the facilities it seeks to abandon were originally installed by the Black Warrior Pipeline Company (BWP). It is stated that the compressor units were leased by BWP Southern further states that Southern liquidated BWP and acquired its assets in Docket No. CP82–102–000 and Southern acquired the rental

compressor units under its blanket certificate issued in Docket No. CP82–406–000 as a gas supply facility.

Southern states that since it has acquired BWP, it has operated the facilities to receive gas supplies purchased by Southern from the Corinne Field, Monroe County, Mississippi. It is stated that these gas purchase contracts terminated on November 1, 1994. Southern states that since it has no gas purchase obligations or any firm transportation service obligations in Corinne Field, Southern has no need to continue to operate and maintain the facilities. Southern states that upon receipt of abandonment authorization, the Black Warrior Pipeline will be sold to Geodyne, the Corinne Field Pipeline will be abandoned in place and the compressor units and measuring and receiving station will be removed and either sold, scrapped or returned to inventory.

Comment date: December 9, 1994, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–29427 Filed 11–29–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–65–000, et al.]

Transwestern Pipeline Company, et al.; Natural Gas Certificate Filings

November 16, 1994.

Take notice that the following filings have been made with the Commission:

1. Transwestern Pipeline Company and Natural Gas Pipeline Company of America

[Docket No. CP95–65–000]

Take notice that on November 9, 1994, Transwestern Pipeline Company (Transwestern), 1400 Smith Street, Houston, Texas 77002 and Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP95–65–000 a joint application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon an exchange service between Transwestern and Natural performed under Transwestern's Rate Schedule X–7 and Natural's Rate Schedule X–18, authorized in Transwestern's Docket No. CP68–344 and Natural's Docket No. CP68–358, all as more fully set forth in the joint application on file with the Commission and open to public inspection.

It is stated that pursuant to a gas exchange agreement between Transwestern and Natural dated August 16, 1968 (Agreement), Transwestern and Natural were authorized to exchange natural gas during periods of emergency in Eddy County, New Mexico and Hansford and Gray Counties, Texas. It is also stated that the exchange service was to be performed under Transwestern's Rate Schedule X–7 and Natural's Rate Schedule X–18.

It is stated that by a termination agreement between Transwestern and Natural dated October 12, 1994, Transwestern and Natural agreed to terminate the Agreement as of December 1, 1993. It is also stated that Transwestern and Natural have therefore requested authority in this joint application to abandon the exchange service authorized in Transwestern's Docket No. CP68–344 and Natural's Docket No. CP68–358, which was to be performed by Transwestern and Natural under the Agreement, and cancel Transwestern's Rate Schedule X–7 and Natural's Rate Schedule X–18.

Comment date: December 7, 1994, in accordance with Standard Paragraph F at the end of this notice.

2. Trunkline Gas Company

[Docket No. CP95–67–000]

Take notice that on November 10, 1994, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP95–67–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon 160 feet of 16-inch diameter pipeline located in Cameron Parish, Louisiana, all as more fully set forth in the application on file with the Commission and open to public inspection.

Trunkline proposes to abandon 160 feet of its 205A–0100 Kaplan mainline located between Gate Valves 205A–1 and 205A–101, downstream of its Trident Lowery Plant. Trunkline states that in August 1992, it discovered that this segment of pipeline had incurred an internal corrosion leak and determined that it should be replaced under § 2.55(b) of the Commission's Regulations. Trunkline also states that in December 1993, it removed the 160 feet of pipeline and rerouted the gas coming from the Trident Lowery Plant into its adjacent 24-inch Line 200–2 for a short haul to the next downstream crossover. Trunkline asserts that it is not necessary to replace the subject pipeline segment because its present system is capable of the short-haul of the Lowery Plant volumes without any detrimental impact on system requirements or daily operations.

Comment date: December 7, 1994, in accordance with Standard Paragraph F at the end of this notice.

3. Texas Eastern Transmission Corporation

[Docket No. CP95–74–000]

Take notice that on November 15, 1994, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 1642, Houston, Texas 77056–1642, filed an application in Docket No. CP95–74–000 pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing it to provide additional firm long-term incremental transportation service for Rate Schedule FTS–7 and FTS–8 customers, to construct and operate additional pipeline facilities required to render such services, and to charge revised FTS–7 and FTS–8 rates reflecting the incremental facility costs, all as more fully set forth in the application on file with the Commission and open to public inspection.

Texas Eastern requests the subject authorization to provide firm transportation service for New Jersey Natural Gas Company (NJN), Philadelphia Gas Works (PGW), and Colonial Gas Company (Colonial), collectively referred to as the Customers. Texas Eastern proposes to render the firm transportation service for the Customers to and from the interconnection of Texas Eastern's and CNG Transmission Corporation's (CNG) facilities at the Oakford storage field at Meter Station No. 082 in Westmoreland County, Pennsylvania. Texas Eastern states that it will redeliver the requested volumes of natural gas to the customers at existing points of delivery.

Texas Eastern indicates that pursuant to Rate Schedules FTS–7 and FTS–8, a former SS–2 or SS–3 customer can request firm transportation under Rate Schedules FTS–7 and FTS–8 ("firm-up") of all or a portion the interruptible delivery component of the service formerly provided under Rate Schedules SS–2 and SS–3. their service. It is further stated that Rate Schedules FTS–7 and FTS–8 also provide that if Texas Eastern goes forward with such requests, receives required authorizations and expands its system, the costs associated with the expansion will be borne by all Rate Schedule FTS–7 and FTS–8 customers

In addition, to requesting authorization to provide additional transportation service to the Customers pursuant to Rate Schedules FTS–7 and FTS–8, Texas Eastern seeks to construct and operate certain facilities necessary to provide this service and to "roll-in" the capital costs to its existing FTS–7 and FTS–8 rates as permitted by those rate schedules.

Specifically, Texas Eastern requests authorization to:

(1) Provide firm, additional, long-term, incremental transportation service of natural gas under Rate Schedules FTS–7 and/or FTS–8 of up to a total of 8,776 Dekatherms per day (Dthd) for the Customers as follows:

	FTS–7 Dth/d	FTS–8 Dth/d
NJN	1,449	3
PGW	318	7
Colonial	6,984	15
Total	8,751	25

(2) Construct, install, own and operate facilities necessary to provide the proposed services, consisting of approximately 2.39 miles of 36-inch pipeline looping in two separate segments within the state of Pennsylvania. The specific facilities include:

- 1.0 mile of 36-inch pipeline looping between Texas Eastern's Delmont Compressor Station in Westmoreland County, Pennsylvania and
- 1.39 miles of 36-inch pipeline looping between Texas Eastern's existing Shermans Dale and Grantsville Compressor Stations in Dauphin County, Pennsylvania.

The estimated total cost of the proposed facilities (in 1996 dollar is $8,203,000, of which $8,180,000 is attributable to FTS–7 service and the remaining $23,000 is attributable to FTS–8 service. Texas Eastern would finance the proposed facilities with short-term borrowings or funds on hand. Texas Eastern proposes to complete the construction and installation of the incremental facilities on or about November 1, 1996, the proposed date of in-service for the firm transportation service proposed herein.

(3) Adjust the reservation charges applicable to Rate Schedules FTS–7 and FTS–8 to reflect the impact of "rolling in" the costs associated with the expanded facilities. Texas Eastern states that the rate treatment is a material aspect of the agreements between it and the customers and therefore requests that the Commission specifically authorize this treatment, consistent with the Commission's previous "firm-up" orders, the agreement of the parties and Section 10 of Rate Schedules FTS–7 and FTS–8

Based on the annual cost of service for the facilities proposed herein, Texas Eastern proposes for Rate Schedule FTS–7, a revised reservation charge of $7.138 per dth. For Rate Schedule FTS–8, Texas Eastern estimates a revised reservation charge of $6.972 per dth. Texas Eastern asserts that provision of this service will, therefore, have no impact on the rate or services of Texas Eastern's other customers. Prior to the commencement of the proposed incremental services, Texas Eastern states that it will file revised tariff sheets for Rate Schedules FTS–7 and FTS–8 to reflect the adjusted reservation charges.

Comment date: December 7, 1994, in accordance with Standard Paragraph F at the end of this notice.

4. Transcontinental Gas Pipe Line Corporation

[Docket No. CP95–78–000]

Take notice that on November 15, 1994, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP95–78–000 a request pursuant to §§ 157.205 and 157.208 of the Commission's Regulations under the Natural Gas Act for authorization to construct and operate facilities located at Compressor Station 200, Chester County, Pennsylvania to comply with the Clear Air Act Amendments of 1990, under the blanket certificate issued in Docket No. CP82–426–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Transco states that the Clear Air Act Amendments of 1990 and state implementation plans pursuant thereto require certain reductions of NO_x (oxides of nitrogen) air emissions at certain of Transco's compressor stations. Transco proposes to install certain facilities at the compressor stations to achieve the reductions of NO_x. It is stated that Transco plans to install these facilities pursuant to its part 157 subpart F blanket certificate. [1] Transco states that it would file under the prior notice procedure if the total cost of installing facilities at a compressor station exceeded $6.6 million.

Specifically, Transco states that at Station No. 200 in Chester County, Pennsylvania it plans to install turbocharger and associated equipment on six of the thirteen existing engines in order to reduce NO_x emissions. It is stated that these engines currently do not have turbochargers on them. It is

[1] Transco states that it plans to install these facilities under the blanket authorization based on the precedent established in an order issued to Transco on December 27, 1993, in Docket No. CP93–737–000 (65 FERC ¶ 61,408). It is indicated that in that order the Commission authorized Transco to install under its blanket certificate a turbocharger at one of its compressor stations as a pilot project to reduce NO_x emissions.

also stated that on the other seven engines, Transco states that it plans to modify the existing turbochargers to increase their capacity and install associated equipment in order to reduce NO_x emissions. It is stated that, in both cases, these emissions would be reduced because of an increase in the air-to-fuel ratio and other engine adjustments. Transco states that the higher air content serves to increase the heat capacity of the mixture in the combustion chamber, which lowers combustion temperature and thus reduces the formation of NO_x.

Transco further states that with respect to the installation of turbochargers on the six engines where there have been none before, the potential would be created of these engines being capable of performing at above their current operating horsepower. It is stated that since that station is automated, Transco has the ability to shut down other engines or reduce their load to ensure that the station would not operate above the stations' total certificated horsepower. Transco states that, since it would install these turbochargers at Station No. 200 solely to address an environmental matter, i.e., NO_x emissions, Transco has no intent or need to operate the station above its certificated horsepower. Therefore, Transco states that when it installs these turbochargers at Station No. 200, it would adjust the automation program at the station so the station would not operate above its certificated horsepower.[2]

Transco states that, at the other seven engines, modification of the existing turbochargers to increase their capacity would not create the potential of the engines performing above their current operating horsepower because the engines are already operating at maximum horsepower and cannot operate at a higher horsepower output. Thus, it is stated, there would be increase in the capacity on Transco's system in the vicinity of the station as a result of installation of the six new turbochargers. It is also indicated that all of the installation work would be within the yard of the existing station.

It is stated that the estimated cost of Transco's proposed facilities in $14,694,000.

Comment date: January 3, 1995, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–29425 Filed 11–29–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–211–001, et al.]

Transwestern Pipeline Company, et al.; Natural Gas Certificate Filings

November 21, 1994.

Take notice that the following filings have been made with the Commission:

1. Transwestern Pipeline Company

[Docket No. CP94–211–001]

Take notice that on November 16, 1994, Transwestern Pipeline Company (Transwestern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP94–211–001 a request for modification of a Commission order. Transwestern filed the request for modification pursuant to Rule 212 of the Commission's Rules of Practice and Procedure, 18 CFR 385.212.

Transwestern, "due to changed circumstances", proposes to modify the sale which was granted by the Commission in its Order Authorizing Abandonment, issued November 1, 1994 in Docket No. CP94–211–000, 69 FERC 61,130 (1994). That November 1, 1994, order approved Transwestern's abandonment of the Vaca Lateral by sale to Enron Oil and Gas Company (Enron). Transwestern now proposes to modify the transaction as a spindown whereby the Vaca Lateral will be transferred to Transwestern Gathering Company (TGC), a wholly owned subsidiary of Transwestern. Upon conveyance of the Vaca Lateral facilities to TGC, TGC will in turn reconvey such facilities to Enron, the original transferee.

Comment date: December 12, 1994, in accordance with Standard Paragraph F at the end of this notice.

2. East Tennessee Natural Gas Company

[Docket No. CP95–66–000]

Take notice that on November 9, 1994, East Tennessee Natural Gas Company (East Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP95–66–000 a request pursuant to §§ 157.205, 157.212 and 157.216 of the Commission's

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[2] It is stated that the potential for increased horsepower on these six engines is the same as the situation that existed in connection with installation of the turbocharger referred to in footnote one of this notice. Transco states that as with the representation in this filing, in that previous case Transco represented that it would adjust the automation program at the station so the station would not operate above its certificated horsepower. As stated in footnote one, in that previous case the Commission authorized Transco to install the turbocharger pursuant to its blanket certificate, stating that " the fact that the equipment has the potential to alter capacity is, in this instance, incidental to the purpose [of reducing NO_x emissions] for which the turbocharger would be installed."

Regulations under the Natural Gas Act (18 CFR 157.205, 157.212, 157.216) for authorization to abandon and replace an existing delivery point facility in Sevier County, Tennessee for its customer Sevier County Utility District (Sevier) under East Tennessee's blanket certificate issued in Docket No. CP82–412–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

East Tennessee proposes to install a 4-inch stopple assembly on its Sevierville lateral Line, 581 feet upstream of the current tap which will be abandoned. This abandonment and replacement is necessary for safety since the current tap is located adjacent to a heavily traveled highway. The gas will continue to be metered and transferred to Sevier upstream of the proposed tap.

East Tennessee proposes to abandon all pipe and the current S.V.3302A–111 downstream of the new valve by removal. Sevier's current FT–A contract will reflect the relocation of this tap. There will be no maximum daily quantity increase with the tap's construction and peak day and annual deliveries will not be affected.

East Tennessee will own, operate and maintain the proposed facility. The estimated cost for current facilities abandonment is $8,700, new facilities construction is $16,000, and the total project cost is fully reimbursable to East Tennessee.

The total quantities to be delivered to Sevier after abandonment and replacement of the facilities will not exceed that authorized to be delivered. East Tennessee has sufficient capacity to accomplish deliveries under the proposed change without detriment or disadvantage to other customers.

Comment date: January 5, 1995, in accordance with Standard Paragraph G at the end of this notice.

3. CNG Transmission Corporation

[Docket No. CP95–81–000]

Take notice that on November 16, 1994, CNG Transmission Corporation (CNGT), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP95–81–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon certain pipeline facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

CNGT proposes to (a) abandon in place one old deteriorated pipeline, and (b) abandon by sale to CNG Producing Company (CNG Producing, an affiliate) three short lines, a segment of another line, and a small leased field compressor. CNGT states that the facilities would be sold at net book value, $168,542. CNGT encloses letters from the only affected producers (other than CNG Producing), Shawmut Development Company (Shawmut), and Fairman Drilling Company, consenting to the proposal. CNGT explains that the facilities are no longer necessary to its operations because CNGT is not a merchant under its Order 636 reorganization. CNGT anticipates that the facilities would be operated as part of a non-jurisdictional gathering system, once acquired by CNG Producing.

More specifically, CNGT proposes to:

(1) Abandon in place 2.71 miles of 8–inch pipeline (Line H–176) in McElroy District in Tyler County, West Virginia, due to deterioration. CNGT states that the line was built in 1925 and certificated on May 12, 1942, in Docket No. G–290 (3 FPC 994 (1943)). CNGT further states that the sole customer of Hope Gas Inc., which was located on the line, has been relocated to another line, and the line temporarily has been closed off pending action on CNGT's abandonment proposal.

(2) Abandon three lines (LN 2270, LN 2272, LN 2397) and part of line LN 2246, by sale to CNG Producing. CNGT states that the lines are located in the East Cherry Tree area of Clearfield and Cambria Counties, Pennsylvania, and total 3.22 miles of 2, 3, and 6–inch pipeline. CNGT further states that the lines currently are operated at a pressure of approximately 150 psig. It is stated that the lines were constructed under CNGT's blanket certificate as reported in the annual report of blanket certificated projects for 1984 and the budget application report for 1982 filed by CNGT's predecessor in Docket No. CP80–293–000.

(3) Abandon, by sale to CNG Producing, a 340–horsepower leased field compressor and 63 feet of related 2–inch field pipe at Bells Landing in Ferguson Township, Clearfield County, Pennsylvania. CNGT states that the compressor enables gas from a CNG Producing well to enter a gathering system jointly owned by Shawmut with CNG Producing, and operated by Shawmut. It is further stated that the compressor was built in 1988 and reported in the annual report filed in November 1989 in Docket No. CP82–537–000.

Comment date: December 12, 1994, in accordance with Standard Paragraph F at the end of this notice.

4. NorAm Gas Transmission Company

[Docket No. CP95–82–000]

Take notice that on November 16, 1994, NorAm Gas Transmission Company (NGT), 1600 Smith Street, Houston, Texas 77002, filed, in Docket No. CP95–82–000, an application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations for an order permitting and approving the abandonment and removal of a 300 h.p. skid-mounted compressor unit which will result in the down sizing of its Calhoun Compressor Station in Quachita Parish, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

NGT states that it received authorization in Docket No. CP87–458–000 to construct and operate the Calhoun Compressor Station, consisting of three skid-mounted compressor units with a total of 980 horsepower (h.p.) on NGT's HT–1, Section 34, Township 18N, Range 1E, Quachita Parish, Louisiana. NGT relates that the compressor station was installed to receive gas supply from the Calhoun Field central point for the transmission of such gas through Line HT–1 into its mainline system.

NGT maintains that due to declining production from the Calhoun Field, it is no longer necessary to operate the 300 h.p. unit to receive gas from this field. Additionally, NGT says the 300 h.p. unit has been inactive for some time and would require repair before becoming operational. NGT asserts that it will continue to operate the two 340 h.p. units and no production will be interrupted or abandoned. NGT further states that the removal would only be above ground facilities within an existing fenced compressor station yard and no soil would be disturbed.

Comment date: December 12, 1994, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will

not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–29428 Filed 11–29–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket Nos. RP94–96–009 and RP94–213–006]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

November 23, 1994.

Take notice that on November 18, 1994, CNG Transmission Corporation (CNG), pursuant to Section 4 of the Natural Gas Act and Part 154 of the Commission's Regulations, filed the tariff sheets listed below, for inclusion in Second Revised Volume No. 1 of its FERC Gas Tariff. CNG requests that the following tariff sheets be made effective on July 1, 1994:

Sheet No. 27

Third Substitute First Revised Sheet No. 31
Second Substitute First Revised Sheet No. 201
Second Substitute Alternate First Revised Sheet No. 351

CNG requests that the Substitute Second Revised Sheet No. 31 be made effective on October 1, 1994.

CNG requests that the following tariff sheets be made effective on November 1, 1994:

Substitute Third Revised Sheet No. 31

First Revised Sheet No. 251
First Revised Sheet No. 386

CNG states that the purpose of this filing is to revised provisions of its FERC Gas Tariff in compliance with the Commission's November 3, 1994, order in Docket Nos. RP94–96–004, *et al.*

CNG further states that copies of the filing were served upon parties to the captioned proceeding, and to affected customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before December 1, 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–29450 Filed 11–29–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–4–23–000]

Eastern Shore Natural Gas Co.; Proposed Changes in FERC Gas Tariff

November 23, 1994.

Take notice that on November 21, 1994, Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing certain revised tariff sheets included in Appendix A attached to the filing. Such sheets are proposed to be effective October 1, 1994.

Eastern Shore states that the above referenced tariff sheets are being filed pursuant to § 154.309 of the Commission's regulations and Section 24 of the General and Conditions of Eastern Shore's FERC Gas Tariff to track changes made in storage service rates from Transcontinental Gas Pipe Line Corporation Columbia Gas Transmission.

Eastern Shore states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All motions or protests should be filed on or before December 1, 1994. All protests will be considered by the Commission in determining the appropriate to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–29451 Filed 11–29–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–120–000]

Koch Gateway Pipeline Co.; Informal Settlement Conference

November 23, 1994.

Take notice that Commission Staff will convene an informal settlement conference in this proceeding on November 30, 1994, at 10:00 a.m. The conference will be held in a hearing room at the offices of the Federal Energy Regulatory Commission, 810 First Street, N.E., Washington, D.C.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined in 18 CFR 385.102(b), may attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations, 18 CFR 385.214.

For additional information, contact Donald A. Heydt at (202) 208–0740 or Warren C. Wood at (202) 208–2091.

Lois D. Cashell,

Secretary.

[FR Doc. 94–29452 Filed 11–29–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. PR95-1-000]

Magnolia Pipeline Corp.; Petition for Rate Approval

November 23, 1994.

Take notice that on November 22, 1994, Magnolia Pipeline Corporation (Magnolia) filed pursuant to § 284.123(b)(2) of the Commission's Regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a rate of $0.1621 per MMBtu for firm and interruptible transportation services performed under Section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

Magnolia states that it is an intrastate pipeline within the meaning of Section 2 (16) of the NGPA and it owns and operates an intrastate pipeline system in the State of Alabama. Pipeline proposes an effective date of November 23, 1994.

Pursuant to 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before December 8, 1994. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-29453 Filed 11-29-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP95-7-001]

Mississippi River Transmission Corp.; Proposed Change in FERC Gas Tariff

November 23, 1994.

Take notice that on November 21, 1994, Mississippi River Transmission Corporation (MRT) submitted for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets listed below, with a proposed effective date of November 1, 1994:

Substitute First Revised Sheet No. 127
Substitute First Revised Sheet No. 224

MRT states that the purpose of the filing is to comply with the Commission's November 4, 1994, order by deleting the tariff language on Sheet No. 127 which the Commission viewed as inconsistent with its curtailment policy set forth in Order No. 636, and by revising the tariff language on Sheet No. 224 to the billing, statements, payment and records provisions to reflect the language that was originally approved in MRT's restructuring proceeding under Order No. 636 and that was in effect prior to MRT's October 7, 1994 filing.

MRT states that a copy of the filing has been mailed to each of its sales customers and the State Commissions of Arkansas, Illinois and Missouri.

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 § 385.211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before December 1, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 94-29454 Filed 11-29-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP95-50-000]

Northwest Pipeline Corp.; Petition for Limited Waiver of Tariff

November 23, 1994.

Take notice that on November 18, 1994, pursuant to Rule 207(a)(5) of the Commission's Rules of Practice and Procedure, 18 CFR 385.207(a)(5), Northwest Pipeline Corporation (Northwest) tendered for filing a Petition for Limited Waiver of Tariff.

Northwest seeks waiver of the Federal Energy Regulatory Commission's first-come, first-served policy, as reflected in Section 1 of Northwest's TI-1 Rate Schedule and the Priority Date provisions of Section 12 of the General Terms and Conditions in Third Revised Volume No. 1 of its FERC Gas Tariff, in order to allow the receipt and delivery point priority of service dates held by Cascade Natural Gas Corporation under a Section 311 interruptible transportation agreement to be retained under a replacement § 284.223 interruptible transportation agreement.

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 December 1, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 94-29455 Filed 11-29-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP95-51-000]

Overthrust Pipeline Co.; Proposed Changes in FERC Gas Tariff

November 23, 1994.

Take notice that on November 21, 1994, Overthrust Pipeline Company, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1-A, First Revised Sheet No. 69 and Second Revised Sheet No. 70, to be effective December 1, 1994.

Overthrust states that Commission acceptance of the proposed tariff sheets will enable it to resolve customer concerns by conforming crediting for volumetric releases with crediting for reservation-charge capacity releases.

Questar seeks Commission waiver of 18 CFR 154.22 so that the proposed tariff revision may become effective December 1, 1994. Questar explains that the requested effective date will allow sufficient time for implementation prior to the January 15, 1995, billings, thereby enabling Overthrust to serve its customers more effectively and efficiently.

Overthrust states further that this filing was served upon its customers and the Wyoming Public Service Commission.

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 385.211 and 385.214 of the Commission's Rules and Regulations (18 CFR 385.211 and 385.214). All such motions or protests should be filed on

or before December 1, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 94–29456 Filed 11–29–94; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34067; FRL 4920–7]

Notice of Receipt of Requests for Amendments To Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with Section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on February 28, 1995.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5761.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of FIFRA, provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

II. Intent to Delete Uses

This notice announces receipt by the Agency of applications from registrants to delete uses in the 13 pesticide registrations listed in the following Table 1. These registrations are listed by registration number, product names/active ingredients and the specific uses deleted. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before February 28, 1995 to discuss withdrawal of the applications for amendment. This 90–day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion.

TABLE 1.—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Reg No.	Product Name	Active Ingredient	Delete From Label
000016–00019	DRAGON 50% Malathion Insect Spray	Malathion	In homes
000299–00110	Martin's 50% Malathion Concentrate	Malathion	Beef cattle, sheep, goats, hogs, chickens, turkeys, range treatment for poultry, dogs, plums, apples, pears, melons, household pets
000299–00166	Martin's 57% Malathion 5E	Malathion	Indoor fly control, residual spray for bugged flour & packaged cereals, livestock uses (beef cattle, horses, hogs, sheep, goat poultry), stored grain & grains going into storage
000572–00145	Malathion 57% E.C.	Malathion	Animal buildings, poultry (chickens ducks, geese, turkeys), poultry houses, sheep, goats, swine, roost paint and stored products (barley, corn, grain sorghum, oats, rice, rye, wheatgrains & field or garden seeds)
000572–00285	Vegetable-Tomato Insect Spray	Piperonyl butoxide (Pyrethrins)	Greenhouses
009404–00014	Ethion & Oil Spray	Ethion	Ornamental plants
010370–00165	Di-Syston 2% Granular	Disulfoton	Spinach
034704–00119	Clean Crop Malathion 8EC Insecticide	Malathion	Almonds, apples, dates, cranberries, filberts, melons, pears, plums, prunes, pumpkins, quinces, sugar beets, indoor uses (animal premises, homes, meat processing plants), bagged citrus pulp, stored commodities (wheat, oats, rice corn, rye, barley, grain sorghum, sunflowers, peanuts, almonds, field and garden seeds)
034704–00474	Cythion 8 Aquamul	Malathion	Almonds, apples, asparagus, carrots, dates, cranberries, filberts, melons, peanuts, pears, pineapples, plums, prunes, pumpkins, safflower, soybeans, strawberries (as a soil application), sugar beets
045385–00054	Dursban 12 Insecticide	Chlorpyrifos	Ornamental plants

TABLE 1.—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA Reg No.	Product Name	Active Ingredient	Delete From Label
045385–00065	Chem-Tox Malathion 3%	Malathion	Homes, farm & dairy barns, storage & warehouse areas, commercial eating establishments, food processing plants
045385–00066	Chem-Tox MAL 50–OS	Malathion	Homes, apartments, garages, warehouses, institutions, food processing plants, restaurants, farm buildings, dairy barns
066222–00001	Captan 50 WP	Captan	Dichondra in California

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2.—REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Company No.	Company Name and Address
000016	Dragon Corp., P.O. Box 7311, Roanoke, VA 24019.
000299	C.J. Martin Company, 606 W. Main St., Nacogdoches, TX 75961.
000572	Rockland Corp., P.O. Box 809, West Caldwell, NJ 07006.
009404	Sunniland Corp., P.O. Box 8001, Sanford, FL 32771.
010370	Roussel Uclaf Corp., 95 Chestnut Ridge Road, Montvale, NJ 07645.
034704	Platte Chemical Co., P.O. Box 667, Greeley, CO 80632.
045385	Chem-Tox, Inc., 481 Scotland Road, McHenry, IL 60050.
066222	Makhteshim-Agan of North America Inc., 551 Fifth Ave., Suite 1100, New York, NY 10176.

III. Existing Stocks Provisions

The Agency has authorized registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: November 14, 1994.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 94–28979 Filed 11–29–94; 8:45 am]

BILLING CODE 6560–50–F

[PF–607; FRL–4911–2]

Pesticide Tolerance Petitions; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; Correction.

SUMMARY: EPA is correcting a notice of a pesticide petition (PP) for imadacloprid (PP 4F4337) filed by Gustafson, Inc.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis Edwards, Product Manager (PM-19), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703)-305-6386.

SUPPLEMENTARY INFORMATION: In FR Doc. 94-26087 in the **Federal Register** of November 2, 1994, the following correction is made to item 4 in the first column of page 54907: Under PP 4F4337, filed by Gustafson, Inc., P.O. Box 66065, Dallas, TX 75266-0065, proposing to amend 40 CFR part 180 to establish a regulation to permit residues of imidacloprid on various agricultural commodities, the tolerance for sorghum, grain at 0.1 part per million (ppm) is corrected to read ".05 ppm."

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Records and recordkeeping.

Authority: 21 U.S.C. 346a and 348.

Dated: November 15, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–28978 Filed 11–29–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–64025; FRL 4920–8]

Tributyltin fluoride (TBTF); Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Cancellation Order.

SUMMARY: This Order, issued pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq., announces EPA's cancellation of the registrations for ELF ATOCHEM North America, Inc. ("Atochem") products containing Tributyltin Fluoride (TBTF). Further, this Order announces the Agency's decision prohibiting Atochem's sale, distribution and use of existing stocks of its TBTF products.

DATES: The cancellation and the existing stocks provision shall be effective November 30, 1994.

FOR FURTHER INFORMATION CONTACT: By mail: Ann Sibold, Review Manager,

Special Review and Reregistration Division (7508W), Environmental Protection Agency, 401 M St., S.W., Washington, DC 20460. Office location and telephone number: 3rd floor, 2800 Crystal Drive, Arlington, VA 22202, (703) 308–8033.

SUPPLEMENTARY INFORMATION:

I. Background

TBTF compounds are registered for use in paint formulations as an antifoulant treatment for hulls, outboard motors, and lower drive units of certain types of marine vessels. They are used to inhibit the growth of fouling organisms such as barnacles and algae. Atochem manufactured the technical product, an intermediate formulation, and one end-use product.

On July 7, 1994, EPA published in the **Federal Register** a Notice of Receipt of Request to Cancel Registrations of Atochem's three registrations of TBTF products, EPA registration numbers 5204–19, 5204–61, and 5204–64. In that Notice, EPA announced its intent to grant the request for cancellation of these products and also set forth a proposal to prohibit Atochem's sale, distribution and use of these products effective on the date of the cancellation order. Other dealers and distributors would be permitted to sell and distribute these products until supplies were exhausted. End-users would be permitted to use these products until supplies were exhausted. For further information regarding the request for voluntary cancellation and the existing stocks proposal, see the July 7, 1994 Notice (59 FR 34814). EPA received no comments during the 30–day comment period which ended August 8, 1994.

II. Existing Stocks Determination

EPA has determined that Atochem will not be permitted to sell, distribute, or use existing stocks of its TBTF products as of November 30, 1994. Furthermore, Atochem must, as the basic registrant, notify any and all supplemental registrants of its product(s) that this Agency action also applies to their supplementally registered products. Registrants may be held liable for violations committed by their supplemental registrants. Other dealers and distributors will be permitted to sell and distribute existing stocks of affected Atochem products until stocks are exhausted. End users may use existing stocks until stocks are exhausted.

III. Cancellation Order

Effective November 30, 1994, EPA is hereby issuing a cancellation order for the following Atochem product registrations: EPA registration numbers 5204–19, 5204–61, and 5204–64. Effective November 30, 1994, all sale, distribution, and use of these products must be in accordance with the following existing stocks provision of this cancellation order: Atochem will not be permitted to sell, distribute, or use existing stocks of its TBTF products as of November 30, 1994. Furthermore, Atochem must, as the basic registrant, notify any and all supplemental registrants of its product(s) that this Agency action also applies to their supplementally registered products. Registrants may be held liable for violations committed by their supplemental registrants. Other dealers and distributors will be permitted to sell and distribute existing stocks of affected Atochem products until stocks are exhausted. End users may use existing stocks until stocks are exhausted.

List of Subjects

Environmental protection, Agricultural commodities, Pesticides and pests.

Dated: November 21, 1994.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 94–29502 Filed 11–29–94; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–62143; FRL–4921–4]

Accredited Training Programs Under the Asbestos Hazard Emergency Response Act (AHERA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: National Directory of AHERA Accredited Courses (NDAAC); notice of availability of new edition.

SUMMARY: Effective November 30, 1994, the EPA is announcing the availability of a new edition of its National Directory of AHERA Accredited Courses (NDAAC). This publication, updated quarterly, provides information to the public about training providers and courses approved for accreditation purposes pursuant to the Asbestos Hazard Emergency Response Act (AHERA). As a nationwide listing of approved asbestos training programs and courses, the NDAAC has replaced the similar listing which was formerly published quarterly by EPA in the **Federal Register**. The November 30, 1994, directory, which supersedes the version released on August 31, 1994, may be ordered through the NDAAC Clearinghouse along with a variety of related reports.

ADDRESSES: Parties interested in receiving a brochure which describes the national directory and provides ordering information should contact: EPA AHERA-NDAAC, c/o VISTA Computer Services, 3rd Floor, 6430 Rockledge Drive, Bethesda, MD 20817, Telephone: 1–800–462–6706.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: Pursuant to AHERA, as amended by the Asbestos School Hazard Abatement Reauthorization Act (ASHARA), contractors who prepare management plans for schools, inspect for asbestos in schools or public and commercial buildings, or design or conduct response actions with respect to friable asbestos-containing materials in schools or public and commercial buildings, are required to obtain accreditation by completing prescribed training requirements. EPA therefore maintains a current national listing of AHERA-accredited courses and approved training providers so that this information will be readily available to assist the public in accessing these training programs and obtaining the necessary accreditation. The information is also maintained so that the Agency and approved state accreditation and licensing programs will have a reliable means of identifying and verifying the approval status of training courses and organizations.

Previously, EPA had published this listing in the **Federal Register** on a quarterly basis. The last **Federal Register** listing required by law was published on August 30, 1991. EPA recognized the need to continue publication of this document even though the legislative mandate had expired. The NDAAC fulfills the public need for this information while at the same time, it reduces EPA cost and improves the service's capabilities.

Dated: November 16, 1994.

Susan B. Hazen,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. 94–29379 Filed 11–29–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

November 22, 1994.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW, Suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 418–0214. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, Room 10214 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: 3060–0438

Title: Transmittal Sheet for Cellular Applications for Unserved Areas

Form Number: FCC Form 464

Action: Revision of a currently approved collection

Respondents: Businesses or other for-profit (including small businesses)

Frequency of Response: On occasion reporting requirement

Estimated Annual Burden: 20,000 responses; .166 hours average burden per response; 3,320 hours total annual burden

Needs and Uses: In CC Docket No. 90–6, the Commission adopted its initial rules and requirements for the processing, filing selection of unserved area applications in the Cellular Radiotelephone Service. These rules were later refined in CC Docket No. 92–115 in which the Commission conducted a comprehensive revision of Part 22 rules. The procedures for processing cellular applications were soon thereafter revised in GN Docket No. 93–252. In this proceeding, the Commission determined that it would also use competitive bidding to select among certain mutually exclusive cellular applications. A two phase licensing scheme for accepting applications for unserved area applications is used. In Phase I, applications are filed during specified filing windows for any unserved area that may exist on frequency blocks within each market. In Phase II, unserved area applications are processed using a 30-day notice and cut-off procedures. Applicants must submit a transmittal sheet, FCC Form 464, in addition to other filing requirements. FCC Form 464 is designed to facilitate application intake and other processing functions by serving as a cover sheet to the application. The applicant must certify on the form that the application is complete in every respect and contains all the information required by the Commission's cellular rules. The information on the transmittal sheet must match exactly the information on the jacket of the microfiche and on the cover of the application. *Application filed with an incorrect or previous transmittal sheet will not be accepted for filing.* FCC Form 464 is used only in Phase I of the licensing scheme. In Phase I, applicants need not initially file the paper original with the application. The paper original must be filed seven days after the release of the public notice announcing the applicant as the winner and include a full sized map. For Phase I filings, applicants must file the original or master microfiche and one microfiche copy and a reduced copy of the map should be depicted in the microfiche and contained in the paper original. The microfiche must be a signed copy of the application, be properly labelled and enclosed in a properly labelled envelope. The FCC Form 464 has been updated to replace references to FCC Form 401 with FCC Form 600. Other minor changes have been made to coincide the form with the revised rules. The information collected will be used by FCC staff to determine whether the applicant is qualified legally, technically, and financially to be licensed as a cellular operator. Without such information the Commission could not determine whether to issue licenses to the applicants that provide telecommunication services to the public and therefore fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 94–29445 Filed 11–29–94; 8:45 am]

BILLING CODE 6712–01–F

[GEN Docket No. 90–314; DA 94–1289]

Broadband Personal Communications Services

AGENCY: Federal Communications Commission.

ACTION: Public notice.

SUMMARY: This public notice announces the Canadian Interim Sharing Arrangement for the broadband personal communications service (PCS). This action is taken on the Commission's own motion. The arrangement permits the United States and Canada to use PCS spectrum without causing interference to the operations of the other country.

EFFECTIVE DATE: November 30, 1994.

FOR FURTHER INFORMATION CONTACT: Tom Mooring, Office of Engineering and Technology, (202) 653–8114.

SUPPLEMENTARY INFORMATION: This is the text of the Commission's public notice in GEN Docket No. 90–314, released November 21, 1994. The arrangement itself is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, DC and also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Text of Public Notice

On November 14, 1994, representatives of the FCC and Industry Canada concluded a sharing arrangement for 2 GHz Broadband Personal Communications Services (PCS). This interim sharing arrangement provides for use of the 1850–1990 MHz band for PCS along the United States and Canada border. This sharing arrangement should assist parties intending to participate in the FCC auction process and should facilitate the eventual provision of PCS services along the border.

The principal provisions of this interim sharing arrangement are:

- The frequency band 1850–1990 MHz is to be shared on an equal basis and both countries are to have full use of these frequencies for the provision of PCS services.
- Additional use of the 1850–1990 MHz frequency band for fixed point-to-point microwave use is to be limited and discouraged and any new use of the 1910–1930 MHz band for fixed microwave operations is to be avoided. (The 1910–1930 MHz portion of the 1850–1990 MHz band has been designated for unlicensed PCS use in the United States and a similar type of use in Canada.)
- Any new PCS use of these frequencies is not to cause harmful interference to existing fixed point-to-point microwave operations in the other country.
- Coordination of all PCS systems within 120 km (75 miles) of the border is required and will be based on:

—A technical analysis, using recognized industry procedures such as TIA/EIA Bulletin (TSB10–F), that interference is not caused to existing microwave operations; or, alternatively,
—A mutually acceptable arrangement between the PCS and fixed microwave operators.

• Licenses for PCS base station facilities within 72 km (45 miles) of the border will be conditioned to indicate that future coordination is required between PCS operators in both countries to ensure that interference is not caused to PCS operations in the other country and that the band is shared on an equal basis. (This is similar to actions taken during the initial licensing of the cellular radio service.)

• The predicted or measured median field strength of any PCS base station is not to exceed 47 dBuV/m at any location at or beyond the border unless the affected PCS operators in the adjacent areas agree.

• Compatible PCS operations at the border are best assured through coordination of operating and technical parameters by PCS operators; and, PCS operators are to notify the FCC and Industry Canada of any agreements. Such agreements are subject to review by the Agencies.

The full text of the arrangement has bee placed in GEN Docket No. 90–314 and copies are available from International Transcription Service at (202) 857–3800. For further information, contact Tom Mooring or Rod Small in the Office of Engineering and Technology at (202) 653–8114 (6) or Henry Straube in the International Bureau at (202) 254–3394.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 94–29439 Filed 11–29–94; 8:45 am]

BILLING CODE 6712–01–M

[MM Docket Nos. 91–339, 93–103, 93–165, 93–284, 93–196, 93–203, 93–206, 93–208, 93–213, 93–217, 93–220, 93–237, 93–238, 93–239, 93–256]

Radio Broadcasting Services; Houston, AK, Point Arena, Templeton, CA, Taylorville, IL, Isleboro, Winter Harbor, Maine, Hermantown, MN, Alfred, Grand Gorge, Jeffersonville, Minetto, NY, Norlina, NC, Athens, OH, Bonanza, Keno, Lakeview, Malin, Merrill, OR, Quincy, WA, Balsam Lake, WI.

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that the application filing window for the filing of applications for the following communities and channels is being opened: Houston, AK, Channel 221A; Point Arena, CA, Channel 272B1; Templeton, CA, Channel 263A; Taylorville, IL, Channel 232A; Isleboro, Maine, Channel 288B1; Winter Harbor, ME, Channel 249A; Hermantown, MN, Channel 221A; Alfred, NY, Channel 270A; Grand Gorge, NY, Channel 287A; Jeffersonville, NY, Channel 271A; Minetto, NY, Channel 293A; Norlina, NC, Channel 232A; Athens, OH, Channel 240A; Bonanza, OR, Channel 275A; Keno, OR, Channel 253A; Lakeview, OR, Channel 237C2; Malin, OR, Channel 263A; Merrill, OR, Channel 289A; Quincy, WA, Channel 240C3, Balsam Lake, WI, Channel 285C3.

DATES: The window period for filing applications will open on January 6, 1995, and close on February 6, 1995.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Order*, MM Docket No. 91–339, et al., adopted November 14, 1994, and released November 23, 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, D.C. 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, D.C. 20037.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 94–29447 Filed 11–29–94; 8:45 am]

BILLING CODE 6712–01–F

[Report No. 2042]

Petition for Reconsideration and Clarification of Actions in Rulemaking Proceedings

November 25, 1994.

Petitions for reconsideration and clarification have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to these petitions must be filed December 15, 1994. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992—Rate Regulation (MM Docket No. 92–266). Number of Petitions filed: 2

Subject: Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992—Rate Regulation (MM Docket No. 93–215). Number of Petition filed: 1

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–29446 Filed 11–29–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, N.W., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–002744–084.

Title: West Coast of South America Agreement.

Parties:

A.P. Moller-Maersk Line
Compania Chilena de Navigacion Interoceania, S.A.
Compania Sud Americana de Vapores, S.A.
Americana de Vapores, S.A.
Crowley American Transport, Inc.
Flota Mercante Grancolombiana, S.A.
Lykes Bros. Steamship Co., Inc.
Sea-Land Service, Inc.
South Pacific Shipping Company, Ltd

Synopsis: The proposed amendment authorizes the parties upon unanimous

vote, to include a most-favored-shipper clause in any service contract they enter into.

Agreement No.: 203–011223–009.

Title: Transpacific Stabilization Agreement.

Parties:

American President Line
Evergreen Marine Corp. (Taiwan) Ltd.
Hapag-Lloyd Aktiengesellschaft
Hanjin Shipping Co., Ltd.
Hyundai Merchant Marine Co., Ltd.
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Yusen Kaisha
Orient Overseas Container Line, Inc.
Sea-Land Service, Inc.
Yangming Marine Transport Corp.

Synopsis: The proposed amendment adds the Indian Sub-Continent to the Agreement's geographic scope, except with regard to the Capacity Management ("CMP") Program. It also clarifies, updates and restates portions of the Agreement's Authority. In addition, it lengthens the period of time in which the parties may take to extend each succeeding term of the CMP, and makes other non-substantive changes to the Agreement.

Agreement No.: 201–200063–012.

Title: NYSA–ILA Tonnage Assessment Agreement.

Parties:

New York Shipping Association
International Longshoremen Association

Synopsis: The proposed amendment modifies the treatment of transhipped and empty containers.

Agreement No.: 201–200063–013.

Title: NYSA–ILA Tonnage Assessment Agreement.

Parties:

New York Shipping Association
International Longshoremen Association

Synopsis: The proposed amendment provides that the assessment on containerized bananas be 1 cent per box, whether containerized or palletized, and that the $65 dollar per container charge is eliminated.

Agreement No.: 224–200609–003.

Title: Jacksonville Port Authority/ Columbus Line, Inc. Terminal Agreement.

Parties:

Jacksonville Port Authority
Columbus Line, Inc.

Synopsis: The proposed amendment provides for a rate increase and extends the term of the Agreement.

By Order of the Federal Maritime Commission.

Dated: November 23, 1994.

Joseph C. Polking,

Secretary.

[FR Doc. 94–29411 Filed 11–29–94; 8:45 am]

BILLING CODE 6730–01–M

Hemisphere Forwarding, Inc.; Correction

By notice published in the **Federal Register** on Monday, October 31, 1994 (59 FR 54454) Hemisphere Forwarding, Inc. ("Hemisphere") was listed among other freight forwarders as having its ocean freight forwarder license (No. 2731) revoked because of a failure to maintain a valid surety bond on file with the Commission. This notice was in error. Hemisphere should not have been included on this notice. Accordingly, the October 31, 1994 notice is modified to remove Hemisphere from the October 31, 1994 notice.

It is so ordered.

Bryant L. VanBrakle

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 94–29412 Filed 11–29–94; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Reissuance of License

Notice is hereby given that the following ocean freight forwarder license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR part 510.

License No.	Name address	Date reissued
1830	Westwind Overseas Limited, 633 Broadway, Hastings-On-Hudson, New York, New York 10706.	Oct. 7, 1994.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 94–29413 Filed 11–29–94; 8:45 am]

BILLING CODE 6730–01–M

[Docket No. 94–29]

Practices of the Trans-Atlantic Agreement and its Members With Respect to Independent Action; Order of Investigation and Hearing

The Trans-Atlantic Agreement ("TAA" or "Agreement"), FMC Agreement No. 202–011375, first became effective August 31, 1992, pursuant to the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. 1701 *et seq.* Sixteen ocean common carriers, identified in Appendix A hereto, currently are members of the Agreement.[1]

By Order issued July 27, 1994, the Commission instituted Fact Finding Investigation No. 21, entitled Activities of the Trans-Atlantic Agreement and Its Members. In the Fact Finding Order, the Commission directed the designated Investigative Officers to investigate, *inter alia*, allegations that TAA or its members may have reached agreements or taken other actions which discourage or suppress the right of members to take independent action ("IA") on rate or service items. The Fact Finding Order also provides that the Investigative Officers are not precluded from developing facts related to any possible violations of the 1984 Act that may be uncovered in the course of the proceeding. In commencing the above nonadjudicatory investigation, the Commission's objective was to determine whether sufficient evidence exists to warrant formal adjudicatory, assessment or injunctive proceedings for alleged violations of the 1984 Act by the TAA or its carrier members.

Through responses to subpenas issued by the Investigative Officers and to an order issued by the Commission pursuant to section 15 of the 1984 Act, 46 U.S.C. app. 1714, through testimony in hearings held in connection with the Fact Finding Investigation, and through other means, it now appears to the Commission that carrier members of the TAA engaged in practices which may have artificially constricted the members' right of independent action. Testimony from numerous shipper witnesses appearing in the hearing failed to identify any meaningful IA rate activities taken by a TAA member, despite shipper requests. To the contrary, shippers have testified that

[1] On October 24, 1994, additional modifications of the basic agreement were permitted by the Federal Maritime Commission ("Commission") to take effect under the 1984 Act, among which amendments was a change of the agreement's name to the Trans-Atlantic Conference Agreement. While officially renamed to clarify its designation as a conference, the carrier members continue to refer to the Agreement as TAA.

they had been informed by TAA carrier representatives that independent action would not, or could not be taken under TAA.

In addition to shipper testimony concerning the absence of IA, documents have been obtained which indicate that TAA members may have agreed to a procedure requiring that rate matters be tabled for discussion at a conference meeting before filing an IA rate, and that TAA members expected and demanded that other members adhere to this IA procedure. Also, it appears that TAA members may have agreed to limit their authority to take IAs to one or two designated high level executives, and that TAA's Executive Director may have been authorized by the members to cancel any tariff filing that he deemed not to be in the best interests of TAA. Such strategies appear designed to inhibit and curtail IA rather than facilitate its exercise.

It appears that these alleged agreements or other similar practices designed to constrict IA may violate section 5(b)(8), 46 U.S.C. app. 1704(b)(8), which requires that every conference agreement must provide that any conference member may take IA on any rate or service item required to be filed in a tariff. Such agreements or practices also may violate section 10(a)(2) or (3) of the 1984 Act,[2] 46 U.S.C. app. 1709(a)(2) or (3). In addition, such practices may violate provisions of the Commission's regulations designed to protect the integrity of the right of independent action within conferences. In particular, 46 CFR 572.801 prohibits a conference from prescribing notice periods for adopting, withdrawing, postponing, canceling or taking similar actions on independent action matters; from requiring that notice of independent action be given by the proposing member to the other parties to the agreement; from requiring the proposing member to attend a conference meeting, to submit any further information other than that necessary to accomplish the filing of the independent tariff item, or to comply with any other procedure for the purpose of explaining, justifying, or compromising the proposed independent action; and from failing to include an IA rate or service item in the conference tariff effective no later than 10 days after receipt of an IA notice, 46 CFR 572.801(b)(2), (c), and (d).

In commencing the Fact Finding Investigation, the Commission noted that the right of independent action is a critical ingredient of the compromise reflected in the 1984 Act between carrier and shipper interests and has been guarded carefully by the Commission. In the Conference Report accompanying the 1984 Act, H.R. Rep. No. 98–600, 98th Cong., 2d Sess., 34 (1984), the conferees state their belief "that potential reductions in competition will be at least partially offset by a member carrier's right of independent action and ability to enter and leave the conference freely." It appears that TAA may have suppressed that right and, thus, removed a competitive counterbalance to the conference's ability and desire to increase rates.

The Commission recognizes that its action instituting this formal adjudication necessarily precludes that opportunity to obtain additional testimony on this subject from conference and carrier witnesses in the context of the ongoing Fact Finding Investigation. The Commission is taking action at this time because it believes that there is sufficient evidence to warrant such action, and because of the importance of this issue to effective Commission regulation of conferences. The initiation of a formal adjudicatory proceeding will provide the full measure of procedural due process accorded respondents in adjudicatory matters generally.

Now therefore, *it is ordered*, That pursuant to sections 5, 10, 11, and 13 of the 1984 Act, 46 U.S.C. app. 1704, 1709, 1710, and 1712, an investigation is instituted to determine:

(1) Whether the TAA and its carrier members, jointly or severally, violated section 5(b)(8) of the 1984 Act by not complying with the mandatory independent action provision of that section of the 1984 Act and, if found to be operating in violation of section 5(b)(8) of the 1984 Act, why the Agreement should not be disapproved, canceled or modified by the Commission;

(2) Whether the TAA and its carrier members, joint or severally, violated section 10(a)(2) of the 1984 Act by operating under an agreement violative of the mandatory independent action provisions of section 5(b)(8) of the Shipping Act of 1984, which agreement was never filed with the Commission under section 5 and made effective under section 6 of the 1984 Act and, if found to be operating in violation of section 10(a)(2) of the 1984 Act, why the Agreement should not be disapproved, canceled or modified by the Commission;

(3) Whether the TAA and its carrier members, jointly or severally, violated section 10(a)(3) of the 1984 Act by operating under an agreement required to be filed under section 5 in a manner which was not in accordance with the terms of the agreement, by failing to comply with the mandatory independent action provisions of section 5(b)(8) of the Shipping Act of 1984 and, if found to be operating in violation of section 10(a)(3) of the 1984 Act, why the Agreement should not be disapproved, canceled or modified by the Commission;

(4) Whether the TAA and its carrier members, jointly or severally, violated the provisions of 46 CFR 572.801 by operating under an agreement violative of the mandatory independent action provisions thereof and, if found to be operating in violation of said regulations of the Commission, why the Agreement should not be disapproved, canceled or modified by the Commission;

(5) Whether, in the event violations of sections 5(b)(8), 10(a)(2), or 10(a)(3) of the 1984 Act are found, civil penalties should be assessed and, if so, the amount of such penalties; and

(6) Whether, in the event violations are found, an appropriate cease and desist order should be issued.

It is further ordered, That a public hearing be held in this proceeding and that this matter be assigned for hearing before an Administrative Law Judge of the Commission's Office of Administrative Law Judges at a date and place to be hereafter determined by the Administrative Law Judge in compliance with Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Administrative Law Judge only after consideration has been given by the parties and the Presiding Administrative Law Judge to the use of alternative forms of dispute resolution, and upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matters in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record;

It is further ordered, That TAA (Agreement No. 202–011375) and its carrier members specified in Appendix A are designated respondents in this proceeding;

[2] Section 10(a)(2) and (3) provide that a carrier or conference may not:

(2) operate under an agreement required to be filed under section 5 of this Act that has not become effective under section 6, or that has been rejected, disapproved or canceled; or

(3) operate under an agreement required to be filed under section 5 of this Act except in accordance with the terms of the agreement or any modifications made by the Commission to the agreement.

It is further ordered, That the Commission's Bureau of Hearing Counsel is designated a party to this proceeding;

It is further ordered, That notice of this Order be published in the **Federal Register**, and a copy be served on parties of record;

It is further ordered, That other persons having an interest in participating in this proceeding may file petitions for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 CFR 502.72;

It is further ordered, That all further notices, orders, and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be served on parties of record;

It is further ordered, That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573, in accordance with Rule 118 of the Commission's Rules of Practice and Procedure, 46 CFR 502.118, and shall be served on parties of record;

It is further ordered, That in accordance with Rule 61 of the Commission's Rules of Practice and Procedure, the initial decision of the Administrative Law Judge shall be issued by August 23, 1995 and the final decision of the Commission shall be issued by November 23, 1995.

Joseph C. Polking,

Secretary.

Appendix A

Trans-Atlantic Agreement, Meadows Office Complex, 201 Route 17 North, Rutherford, NJ 07070

Polish Ocean Lines, 1001 Durham Ave., South Plainfield, NJ 07080

Neptune Orient Lines Ltd., c/o Tricom Shipping Agency, 15 Exchange Place, 7th Floor, Jersey City, NJ 07302

Mediterranean Shipping, Company S.A., 420 5th Avenue, 8th Floor, New York, NY 10008–2702

DSR/Senator Joint Service, 50 Cragwood Rd., South Plainfield, NJ 07080

Sea-Land Service, Inc., 150 Allen Road, Liberty Corner, NJ 07938

P&O Containers Limited, One Meadowlands Plaza-12th Fl., E. Rutherford, NJ 07073

Hapag-Lloyd AG, 399 Hoes Lane, Piscataway, NJ 08854

Orient Overseas Container Line, 4141 Hacienda Drive, Pleasanton, CA 90731

Atlantic Container Line AB, 50 Cragwood Road, South Plainfield, NJ 07080

A.P. Moller-Maersk Line, Giralda Farms, P.O. Box 880, Madison, NJ 07940–0880

Nedlloyd Lijnen BV, c/o Nedlloyd Lines (USA) Corp., 2100 RiverEdge Pkwy, Ste. 300, Atlanta, GA 30328–4656

Nippon Yusen Kaisha, NYK Line, 300 Lighting Way, 5th Floor, Secaucus, NJ 07094

Transportacion Maritima, Mexicana, S.A. de C.V., c/o Trans-America S.S. Agency, 140 W. 6th Street, San Pedro, CA 90731

Tecomar S.A. de C.V., c/o Phoenician Int'l Shipping, 2350 N. Belt East, Suite 720, Houston, TX 77032

Cho Yang Shipping Co. Ltd., 301 Route 17 North, 6th Floor, Rutherford, NJ 07070

Hanjin Shipping Co., Ltd., 1521 Pier C Street, Long Beach, CA 90813

[FR Doc. 94–29407 Filed 11–29–94; 8:45 am]

BILLING CODE 6730–01–M

Fact Finding Investigation No. 21; Activities of the Trans-Atlantic Agreement and Its Members; Amended Order of Investigation

On July 27, 1994, pursuant to sections 5, 6, 8, 10, 11, 12 and 23 of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. 1704, 1706, 1707, 1709, 1710, 1711 and 1721, and Part 502, Subpart R of Title 46 of the Code of Federal Regulations, 46 CFR 502.281, *et seq.*, the Federal Maritime Commission ("Commission") issued an order ("July 27 Order") to institute a nonadjudicatory investigation into the practices of the Trans-Atlantic Agreement ("TAA") and its member lines. Recent events have demonstrated a need to clarify and amend various parts of the July 27 Order as explained below.

On July 5, 1994, the TAA member lines filed amendments to the TAA, including a change of the conference's name to the Trans-Atlantic Conference Agreement ("TACA").[1] As noted in footnote 1 of the July 27 Order, the Commission intended that this nonadjudatory investigation would continue if TACA became effective. On October 24, 1994, TACA became effective, with certain modifications. To ensure clarity as to its intent regarding investigation of TACA, the Commission is revising the first ordering paragraph of the July 27 Order to state expressly that this nonadjudicatory investigation is to develop evidence on whether or not TAA, TACA, and some or all of the sixteen ocean common carriers which comprise TACA's membership[2] may have engaged in, or may be engaged in activities violative of various provisions of the 1984 Act, and to provide a basis for any subsequent adjudicatory, assessment or injunctive action.

By three separate orders issued this date, the Commission has commenced adjudicatory proceedings to determine whether TAA and some or all of its members violated various provisions of the 1984 Act in connection with the establishment and operation of container pools; limitations on the right of independent action; and restrictions contained in certain vessel sharing agreements in the trans-Atlantic trades. In view of the institution of these adjudicatory proceedings, the Commission will not seek testimony or further evidence from TAA (or TACA) and its members in the remainder of the Fact Finding investigation as to the issues under adjudication.

To ensure a thorough examination of the facts regarding TACA's implementation, and to provide adequate resources and flexibility for addressing the issues remaining in this investigation, the Commission is amending the July 27 Order to add a sixth Investigative Officer to the proceeding and to give the Investigative Officers additional time for the preparation of a final report of findings and recommendations. The July 27 Order required issuance of a final report within 180 days after publication of that Order. The amendment extends that deadline for approximately two months, to March 24, 1995.

Now therefore, it is ordered, That pursuant to sections 5, 6, 8, 10, 11, 12 and 23 of the Shipping Act of 1984, 46 U.S.C. app. 1704, 1706, 1707, 1709, 1710, 1711 and 1721, and Part 502, Subpart R of Title 46 of the Code of Federal Regulations, 46 CFR 502.281, *et seq.*, the Commission's July 27 Order is amended to preclude the Investigative Officers from seeking additional testimony or further evidence in this proceeding from the Trans-Atlantic Agreement (or the Trans-Atlantic Conference Agreement), or any of its members on the following issues:

1. Whether or not TAA (or TACA) or any of its members has violated or is violating any of the prohibited acts set forth in section 10 of the 1984 Act by providing chassis and/or container equipment to shippers at U.S. West Coast and interior locations other than the carrier's designated containeryard or terminal facility;

2. Whether or not TAA (or TACA) or any of its members has violated or is violating section 5(b)(8), 10(a)(2), or 10(a)(3) of the 1984 Act, or 46 CFR 572.801 of the Commission's regulations by imposing restrictions on the right of members to take independent action; and

3. Whether or not any of the members of TAA (or TACA), and of agreement Nos. 203–011171, 203–011394, 203–011395, and 203–

[1] Despite this modification, the members continue to refer to the modified agreement as TAA. For clarity, this order refers to the modified agreement as TACA.

[2] On August 29, 1994, Hanjin Shipping Co., Ltd. became a member of TAA (and, subsequently, of TACA); the Commission is amending the appended list of conference member lines to include this carrier.

011396, has violated or is violating section 5(b) (2) or (3) of the 1984 Act, by failing to provide reasonable and equal terms and conditions for admission and readmission to conference membership, or by failing to permit any member to withdraw from conference membership upon reasonable notice without penalty.

It is further ordered, That the first ordering paragraph of the Commission's July 27 Order is amended to read as follows:

Now therefore, it is ordered, That pursuant to sections 5, 6, 8, 10, 11, 12 and 23 of the Shipping Act of 1984, 46 U.S.C. app. 1704, 1706, 1707, 1709, 1710, 1711 and 1721, and Part 502, Subpart R of Title 46 of the Code of Federal Regulations, 46 CFR 502.281, *et seq.*, a nonadjudicatory investigation is hereby instituted into the practices of TAA (or TACA) and its member lines (including Hanjin Shipping Co., Ltd.), listed in the Appendix to this order, to develop the issues set forth in this order and to provide a basis for any subsequent adjudicatory, assessment or injunctive action by the Commission.

It is further ordered, That the first sentence of the second ordering paragraph of the July 27 Order is amended as follows:

It is further ordered, That the Investigative Officers shall be Wm. Jarrel Smith, Jr., Vern W. Hill, Charles L. Haslup III, Carolyn H. Grigg, Peter J. King and Martha C. Smith of the Commission.

It is further ordered, That the third ordering paragraph of the July 27 Order is amended as follows:

It is further ordered, That the Investigative Officers shall issue a joint report of findings and recommendations not later than March 24, 1995, and interim reports if it appears that more immediate Commission action, particularly injunctive action, is necessary, such reports to remain confidential unless and until the Commission provides otherwise;

It is further ordered, That the Appendix of the July 27 Order is amended. The amended Appendix is attached as an appendix to this Order;

It is further ordered, That this Amended Order of Investigation be served on the respondents listed in the Appendix attached to this Order and the July 27 Order be served on Hanjin Shipping Co., Ltd.;

Finally, it is ordered, That the July 27 Order is in every other respect unchanged.

By the Commission.

Joseph C. Polking,

Secretary.

Amended Appendix

Trans-Atlantic Agreement, Meadows Office Complex, 201 Route 17 North, Rutherford, NJ 07070

Polish Ocean Lines, 1001 Durham Ave., South Plainfield, NJ 07080

Neptune Orient Lines Ltd., c/o Tricom Shipping Agency, 15 Exchange Place, 7th Floor, Jersey City, NJ 07302

Mediterranean Shipping Company S.A., 420 5th Avenue, 8th Floor, New York, NY 10008–2702

DSR/Senator Joint Service, 50 Cragwood Rd., South Plainfield, NJ 07080

Sea-Land Service, Inc., 150 Allen Road, Liberty Corner, NJ 07938

P&O Containers Limited, One Meadowlands Plaza, 12th Fl., E. Rutherford, NJ 07073

Hapag-Lloyd AG, 399 Hoes Lane, Piscataway, NJ 08854

Orient Overseas Container Line, 4141 Hacienda Drive, Pleasanton, CA 90731

Atlantic Container Line AB, 50 Cragwood Road, South Plainfield, NJ 07080

A.P. Moller-Maersk Line, Giralda Farms, P.O. Box 880, Madison, NJ 07940–0880

Nedlloyd Lijnen BV, c/o Nedlloyd Lines (USA) Corp., 2100 RiverEdge Pkwy, Ste. 300, Atlanta, GA 30328–4656

Nippon Yusen Kaisha, NYK Line, 300 Lighting Way, 5th Floor, Secaucus, NJ 07094

Transportacion Maritima Mexicana, S.A. de C.V., c/o Trans-America S.S. Agency, 140 W. 6th Street, San Pedro, CA 90731

Tecomar S.A. de C.V., c/o Phoenician Int'l Shipping, 2350 N. Belt East, Suite 720, Houston, TX 77032

Cho Yang Shipping Co. Ltd., 301 Route 17 North, 6th Floor, Rutherford, NJ 07070

Hanjin Shipping Co., Ltd., 1521 Pier C Street, Long Beach, CA 90813

[FR Doc. 94–29409 Filed 11–29–94; 8:45 am]

BILLING CODE 6730–01–M

[Docket No. 94–30]

Container Pool Practices of the Trans-Atlantic Agreement and Its Members; Order of Investigation and Hearing

The Trans-Atlantic Agreement ("TAA" or "Agreement"), FMC Agreement No. 202–011375, first became effective August 31, 1992, pursuant to the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. 1701 *et seq.* Sixteen ocean common carriers, identified in Appendix A hereto, currently are members of the Agreement.[1]

By Order issued July 27, 1994, the Commission instituted Fact Finding Investigation No. 21, entitled Activities of the Trans-Atlantic Agreement and Its Members. Among issues to be examined in the course of the Fact Finding Investigation were, *inter alia*, whether the carrier members of the TAA had violated sections 10 (b)(1), (b)(4), and (b)(12) of the 1984 Act.[2] The Fact Finding Order further provides that the designated Investigative Officers are not precluded from developing facts related to any other possible violations of the 1984 Act that may be uncovered in the course of the proceeding. In commencing the above nonadjudicatory investigation, the Commission's objective was to determine whether sufficient evidence exists to warrant formal adjudicatory, assessment or injunctive proceedings for alleged violations of the 1984 Act by the TAA or its carrier members.

Through responses to subpenas issued by the Investigative Officers, testimony in fact finding hearings and through other means, it now appears to the Commission that carrier members of the TAA have engaged in certain practices relating to the provision of chassis and container equipment to shippers at U.S. West Coast and interior locations other than the carrier's designated container yard ("CY") or terminal facility at the port.[3] It further appears that these practices may have encompassed the positioning by the carrier of an inventory of container equipment and chassis either at facilities operated by the shippers (so-called "shippers' pools") or at facilities operated by third parties such as trucking companies ("neutral container pools" or "equipment depots"). It is believed that the ocean common carriers have absorbed all or a portion of the inland costs of positioning empty equipment at these facilities on behalf of the shipper, for loading and subsequent use in the transportation of commodities in the TAA trades. The carriers also may have absorbed related costs of maintaining and controlling such equipment for the benefit of certain shippers, including

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[1] On October 24, 1994, additional modifications of the basic agreement were permitted by the Federal Maritime Commission ("Commission") to take effect under the 1984 Act, among which amendments was a change of the agreement's name to the Trans-Atlantic Conference Agreement. While officially renamed to clarify its designation as a conference, the carrier members continue to refer to the Agreement as TAA.

[2] Section 10(b) of the 1984 Act, 46 U.S.C. app. 1709, states that no common carrier may:

(1) charge, demand, collect, or receive greater, less, or different compensation for the transportation of property or for any service in connection therewith than the rates and charges that are shown in its tariffs or service contracts;

* * * * *

(4) allow any person to obtain transportation for property at less than the rates or charges established by the carrier in its tariff or service contract by means of false billing, false classification, false weighing, false measurement, or by any other unjust or unfair device or means;

* * * * *

(12) subject any particular person, locality, or description of traffic to an unreasonable refusal to deal or any undue or unreasonable prejudice or disadvantage in any respect whatsoever; * * *

[3] Among the export commodities believed to be affected by this practice are dried fruits and nuts, cotton and cotton linters, agricultural commodities including vegetables and rice, and shipments of wines and spirits. Other commodities and U.S. locations also may be involved.

benefits or concessions as to personnel, advance allocations of equipment, and extended freetime arrangements. It does not appear that these individual facilities or benefits are identified or held out generally to the shipping public through the tariffs of the TAA or its member carriers.

In addition, a review of materials furnished in response to subpenas by the Investigative Officers indicate that, in May 1994, the carrier members agreed in a meeting of the TAA to permit such pools to continue in existence through August 31, 1994, despite concerns and complaints by some members that operation of the pools was untariffed and unlawful. It appears that the membership agreed that such pools would be limited to those already established, and further limited to shippers of dried fruit and nuts for the balance of the 1993–1994 shipping season. These latter allegations raise the implication that TAA member carriers, in addition to maintaining container pools or equipment depots on an individual carrier basis, may have participated in a TAA decision jointly to permit some carriers to operate container pools in violation of the 1984 Act. To the extent that TAA's action was further limited to certain shippers of dried fruit and nuts, other shippers of similar commodities or shippers in locations physically proximate to these so-called container pools may have been deprived of equivalent concessions or benefits, or subjected to undue or unreasonable prejudice or disadvantage in respect of such container pools.[4]

Now therefore, it is ordered, That pursuant to sections 10, 11, and 13 of the 1984 Act, 46 U.S.C. app. 1709, 1710, and 1712, an investigation is instituted to determine:

(1) Whether the TAA or its carrier members, jointly or severally, violated section 10 (b)(1) or (b)(4) of the 1984 Act by charging a lesser or different compensation for transportation or services involving the use of container pools than the rates or charges set forth in its tariffs or service contracts, or allowed any person to obtain such transportation or services at less than applicable charges by an unjust or unfair device or means with respect to such container pools;

(2) Whether the TAA or its carrier members, jointly or severally, violated section 10 (b)(3) or (b)(11) of the 1984 Act by extending to any person a privilege, concession, equipment or facility involving the use of container pools except in accordance with its tariffs or service contracts, or made or gave any undue or unreasonable preference or advantage to any particular person or description of traffic with respect to such container pools;

(3) Whether the TAA or its carrier members, jointly or severally, violated section 10 (b)(3), (b)(6) or (b)(12) of the 1984 Act by denying to any person a privilege, concession, equipment or facility involving the use of container pools except in accordance with its tariffs or service contracts, engaged in any unfair or unjustly discriminatory practice in the matter of container pool facilities, or subjected any particular person or description of traffic to any undue or unreasonable disadvantage or prejudice with respect to such container pools;

(4) Whether the TAA or its carrier members, jointly or severally, violated section 10 (b)(1), (b)(3), (b)(4), (b)(6), (b)(11), or (b)(12) of the 1984 Act by agreeing to permit the continuation by certain carriers of the use of container pools through the period ending August 31, 1994;

(5) Whether the TAA or its carrier members, jointly or severally, violated section 10 (b)(1), (b)(3), (b)(4), (b)(6), (b)(11), or (b)(12) of the 1984 Act by agreeing to permit the continuation by certain carriers of the use of container pools through the period ending August 31, 1994, which agreement limited such privileged, concessions or facilities to shippers of dried fruits and nuts in California;

(6) Whether, in event violations of section 10 (b)(1), (b)(3), (b)(4), (b)(6), (b)(11) or (b)(12) of the 1984 Act are found, civil penalties should be assessed and, if so, the amount of such penalties;

(7) Whether, in the event violations of section 10 (b)(1), (b)(3) or (b)(4) of the 1984 Act are found, the Commission should suspend any common carrier's rights to use any or all tariffs of the TAA and, if so, the period of such tariff suspension; and

(8) Whether, in the event violations are found, an appropriate cease and desist order should be issued.

It is further ordered, That a public hearing be held in this proceeding and that this matter be assigned for hearing before an Administrative Law Judge of the Commission's Office of Administrative Law Judges at a date and place to be hereafter determined by the Administrative Law Judge in compliance with Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Administrative Law Judge only after consideration has been given by the parties and the Presiding Administrative Law Judge to the use of alternative forms of dispute resolution, and upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matters in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record;

It is further ordered, That TAA (Agreement No. 202–011375) and its carrier members specified in Appendix A are designated respondents in this proceeding;

It is further ordered, That the Commission's Bureau of Hearing Counsel is designated a party to this proceeding;

It is further ordered, That notice of this Order be published in the **Federal Register**, and a copy be served on parties of record;

It is further ordered, That other persons having an interest in participating in this proceeding may file petitions for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 CFR 502.72;

It is further ordered, That all further notices, orders, and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be served on parties of record;

It is further ordered, That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, in accordance with Rule 118 of the Commission's Rules of Practice and Procedure, 46 CFR 502.118, and shall be served on parties of record;

It is further ordered, That in accordance with Rule 61 of the Commission's Rules of Practice and Procedure, the initial decision of the Administrative Law Judge shall be issued by August 23, 1995 and the final decision of the Commission shall be issued by November 23, 1995.

Joseph C. Polking,

Secretary.

Appendix A

Trans-Atlantic Agreement, Meadows Office Complex, 201 Route 17 North, Rutherford, NJ 07070

Polish Ocean Lines, 1001 Durham Ave., South Plainfield, NJ 07080

[4] It is unclear whether the TAA carriers individually limited their container pool practices to shippers of specified commodities as apparently was agreed for the period prior to August 31, 1994. It is also unclear that the carriers terminated these alleged practices by August 31, 1994.

Neptune Orient Lines Ltd., c/o Tricom Shipping Agency, 15 Exchange Place, 7th Floor, Jersey City, NJ 07302
Mediterranean Shipping Company S.A., 420 5th Avenue, 8th Floor, New York, NY 10008–2702
DSR/Senator Joint Service, 50 Cragwood Rd., South Plainfield, NJ 07080
Sea-Land Service, Inc., 150 Allen Road, Liberty Corner, NJ 07938
P&O Containers Limited, One Meadowlands Plaza-12th Fl., E. Rutherford, NJ 07073
Hapag-Lloyd AG, 399 Hoes Lane, Piscataway, NJ 08854
Orient Overseas Container Line, 4141 Hacienda Drive, Pleasanton, CA 90731
Atlantic Container Line AB, 50 Cragwood Road, South Plainfield, NJ 07080
A.P. Moller-Maersk Line, Giralda Farms, P.O. Box 880, Madison, NJ 07940–0880
Nedlloyd Lijnen BV, c/o Nedlloyd Lines (USA) Corp., 2100 RiverEdge Pkwy, Ste. 300, Atlanta, GA 30328–4656
Nippon Yusen Kaisha, NYK Line, 300 Lighting Way, 5th Floor, Secaucus, NJ 07094
Transportacion Maritima, Mexicana, S.A. de C.V., c/o Trans-America S.S. Agency, 140 W. 6th Street, San Pedro, CA 90731
Tecomar S.A. de C.V., c/o Phoenician Int'l Shipping, 2350 N. Belt East, Suite 720, Houston, TX 77032
Cho Yang Shipping Co. Ltd., 301 Route 17 North, 6th Floor, Rutherford, NJ 07070
Hanjin Shipping Co., Ltd., 1521 Pier C Street, Long Beach, CA 90813

[FR Doc. 94–29410 Filed 11–29–94; 8:45 am]
BILLING CODE 6730–01–M

[Docket No. 94–28]

Vessel Sharing Agreements; Order to Show Cause

Section 5(a) of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. 1704(a), requires the filing at the Federal Maritime Commission ("Commission") of agreements among ocean common carriers regarding vessel space/slot charters, sailing arrangements and vessel deployment (collectively referred to herein as "vessel sharing agreements") for the common carriage of goods by water in the foreign commerce of the United States.[1] In recent years, three vessel sharing agreements involving the trans-Atlantic trade ("Trade") have been filed which require membership in a separate conference agreement. These agreements are Agreement No. 203–011394 ("OOCL Agreement"),[2] Agreement No. 203–011395 ("Maersk Agreement")[3] and Agreement No. 203–011396 ("Cooperative Agreement).[4] They require the participants, Sea-Land Service, Inc. ("Sea-Land"), P & O Containers Ltd. ("P & O"), Nedlloyd Lijnen B.V. ("Nedlloyd"), Orient Overseas Container Line Ltd. ("OOCL") and A.P. Moller-Maersk Line ("Maersk"), to be members of the Trans-Atlantic Agreement ("TAA"), now known as the Trans-Atlantic Conference Agreement ("TACA"), (Agreement No. 202–011375).[5]

A conference is defined by the 1984 Act as an "association of ocean common carriers permitted, pursuant to an approved or effective agreement, to engage in concerted activity and to utilize a common tariff," 46 U.S.C. app. 1702(7). Like vessel sharing agreements, conference agreements must be filed at the Commission. However, to ensure that a conference or its members cannot restrict or otherwise control conference membership, section 5(b)(3) of the 1984 Act, 46 U.S.C. app. 1704(b)(3), requires that a conference agreement must permit any member to withdraw from conference membership upon reasonable notice without penalty. In addition, section 5(b)(2), 46 U.S.C. app. 1704(b)(2), states that each conference agreement must provide reasonable and equal terms and conditions for admission and readmission to conference membership. Any conference agreement that imposes withdrawal penalties or unreasonable terms and conditions for readmission to a conference violates the 1984 Act and may be canceled or modified by the Commission under section 11(c) of the 1984 Act, 46 U.S.C. app. 1710(c).

As noted above, the OOCL Agreement, the Maersk Agreement and the Cooperative Agreement require Sea-Land, Nedlloyd, P & O, OOCL and Maersk to be members of TACA. If one of these carriers withdraws from TACA, it is compelled to withdraw from these vessel sharing agreements.[6] The OOCL Agreement, the Maersk Agreement and Agreement No. 202–011171, another vessel sharing agreement, involving Sea-Land, P & O and Nedlloyd,[7] impose penalties on the carrier that withdraws from the vessel sharing agreements, i.e.,

(1) The withdrawing party must give six months irrevocable notice to the other parties.

(2) The withdrawing party shall cease operation as a common carrier in the Trade.

(3) The withdrawing party shall not re-enter the Trade as a common carrier for a period of five (5) years.

(4) The withdrawing party shall, during the six month notice period, make all reasonable efforts to assist the other parties in succeeding to the business of the withdrawing party including, but not limited to, providing customer lists, and affirmatively recommending the other parties to the withdrawing parties customers.

Because of the withdrawal penalties and conference membership requirements, it appears that these four agreements, when examined in connection with each other and TACA, do not provide reasonable and equal terms and conditions for readmission to TACA and do not permit these conference members to withdraw from TACA upon reasonable notice without penalty. As a result, the carrier parties appear to accomplish indirectly through the interaction of TACA and these vessel sharing agreements that which they are precluded from accomplishing directly under the 1984 Act.

Now therefore, it is ordered, That pursuant to section 11 of the Shipping Act of 1984, 46 U.S.C. app. 1710, the vessel sharing agreements set forth in Appendix A and their members show cause why they should not be found to be operating in violation of section 5(b)(2) of the Shipping Act of 1984, 46 U.S.C. app. 1704(b)(2), for restraining readmission to conference membership for any former vessel sharing agreement member willing to serve the particular trade or route, and, if found to be operating in violation of section 5(b)(2) of the 1984 Act, why these agreements should not be disapproved, canceled or modified by the Commission;

It is further ordered, That pursuant to section 11 of the Shipping Act of 1984, the vessel sharing agreements set forth in Appendix A and their members show cause why they should not be found to be operating in violation of section 5(b)(3) of the Shipping Act of 1984, 46 U.S.C. app. 1704(b)(3), for not complying with the conference membership withdrawal provisions of that section of the 1984 Act and, if found to be operating in violation of section 5(b)(3) of the 1984 Act, why these agreements should not be

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[1] An agreement is defined in section 3(1) of the 1984 Act, 46 U.S.C. app. 1702(1), as "an understanding, arrangement, or association" and may include conference and non-conference agreements.

[2] The agreement allows Orient Overseas Container Line to charter vessel space from Sea-Land Service, Inc., P&O Containers Ltd. and Nedlloyd Lijnen B.V.

[3] The agreement allows Sea-Land Service, Inc., P&O Containers Ltd. and Nedlloyd Lijnen B.V. to charter vessel space from A.P. Moller-Maersk Line.

[4] This is a discussion among Sea-Land Service, Inc., P&O Containers Ltd., Nedlloyd Lijnen B.V., OOCL and Maersk regarding the deployment and redeployment of OOCL vessels in the trans-Atlantic trade.

[5] TACA is the recent modification of the Trans-Atlantic Agreement. TACA became effective on October 24, 1994.

[6] The Maersk Agreement gives Maersk, Sea-Land, Nedlloyd and P & O the option of terminating or withdrawing from the agreement, if one of them withdraws from TACA.

[7] This agreement involves chartering of Sea-Land vessels in the trans-Atlantic trade.

disapproved, canceled or modified by the Commission;

It is further ordered, That should it be determined that the vessel sharing agreements and their members have operated in violation of section 5(b)(2) or 5(b)(3) of the Shipping Act of Act the matter may, pursuant to section 13 of the Shipping Act of 1984, 46 U.S.C. app. 1712, be referred to an Administrative Law Judge in an appropriate proceeding to determine whether penalties should be assessed and, if so, the level of such penalties;

It is further ordered, That this proceeding is limited to the submission of facts and memoranda of law, unless otherwise ordered by the Commission;

It is further ordered, That the Commission's Bureau of Hearing Counsel be made a party to this proceeding;

It is further ordered, That the vessel sharing agreements set forth in Appendix A and their members are named Respondents in this proceeding;

It is further ordered, That any person having an interest and desiring to intervene in this proceeding shall file a petition for leave to intervene no later than January 3, 1995, in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 CFR 502.72;

It is further ordered, That affidavits of fact and memoranda of law shall be filed by Respondents and any intervenors in support of the vessel sharing agreements no later than January 20, 1995. Reply affidavits and Memoranda of law shall be filed by the Bureau of Hearing Counsel and any intervenors in opposition to the vessel sharing agreements no later than February 21, 1995. Rebuttal affidavits and memoranda of law shall be filed by Respondents and inrtervenors in support of the vessel sharing agreements no later than March 3, 1995;

It is further ordered, That:

(a) Should any party believe that an evidentiary hearing is required, that party must submit a request for such hearing together with a statement setting forth in detail the facts to be provided, the relevance of those facts to the issues in this proceeding, a description of the evidence which would be adduced, and why affidavits of fact are not sufficient to present such evidence;

(b) Should any party believe that an oral argument is required, that party must submit a request specifying the reasons therefore and why argument by memorandum is inadequate to present the party's case; and

(c) Any such request for evidentiary hearing or oral argument shall be filed no later than March 10, 1995;

It is further ordered, That notice of this Order to Show Cause be published in the **Federal Register**, and that a copy thereof be served upon Respondents;

It is further ordered, That all documents submitted by any party of record in this proceeding shall be filed in accordance with Rule 118 of the Commission's Rules of Practice and Procedure, 46 CFR 502.118, as well as being mailed directly to all parties of record;

Finally, it is ordered, That pursuant to the terms of Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61, the final decision of the Commission in this proceeding shall be issued by May 3, 1995.

By the Commission.

Joseph C. Polking,

Secretary.

Appendix A

Agreement 203–011171
Sea-Land Service, Inc.
P&O Containers Ltd.
Nedlloyd Lijnen B.V.
Agreement 203–011394
Sea-Land Service, Inc.
P&O Containers Ltd.
Nedlloyd Lijnen B.V.
Orient Overseas Container Line Ltd.
Agreement 203–011395
Sea-Land Service, Inc.
P&O Containers Ltd.
Nedlloyd Lijnen B.V.
A.P. Moller-Maersk Line
Agreement 203–011396
Sea-Land Service, Inc.
P&O Containers Ltd.
Nedlloyd Lijnen B.V.
Orient Overseas Container Line Ltd.
A.P. Moller-Maersk Line

[FR Doc. 94–29408 Filed 11–29–94; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of September 27, 1994

In accordance with § 271.5 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on August 16, 1994.[1] The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests that the pace of economic expansion, though perhaps moderating slightly in recent months, remains substantial. Nonfarm payroll employment advanced appreciably further in August, and the civilian unemployment rate was unchanged at 6.1 percent. Reflecting strength in motor vehicles, industrial production rose sharply in August after posting sizable gains in other recent months, and capacity utilization moved up further from already high levels. Retail sales were up considerably in August, boosted by a rebound in sales of durable goods, including motor vehicles. Housing starts rose in August but were unchanged from their second-quarter level. Orders for nondefense capital goods point to a continued strong expansion in spending on business equipment; permits for non residential construction remain on a mild uptrend. Inventory accumulation appears to have moderated recently after surging in the second quarter. The nominal deficit on U.S. trade in goods and services widened in July from its second-quarter average. Prices of materials have remained under upward pressure, and increases in broad indexes of consumer and producer prices have been somewhat larger in recent months.

On August 16, 1994, the Board of Governors approved an increase in the discount rate from 3-1/2 to 4 percent, and Committee agreed that this increase would be allowed to show through completely to interest rates in reserve markets. Most market interest rates are up somewhat on balance since the August meeting. The trade-weighted value of the dollar in terms of the other G-10 currencies depreciated somewhat over the intermeeting period.

M2 and M3 declined in August after expanding moderately in July; for the year through August, M2 and M3 grew at rates slightly above the bottom of their ranges for 1994. Total domestic nonfinancial debt has continued to expand at a moderate rate in recent months.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. In furtherance of these objectives, the Committee at its meeting in July reaffirmed the ranges it had established in February for growth of M2 and M3 of 1 to 5 percent and 0 to 4 percent respectively, measured from the fourth quarter of 1993 to the fourth quarter of 1994. The Committee anticipated that developments contributing to unusual velocity increases could persist during the year and that money growth within

[1] Copies of the Minutes of the Federal Open Market Committee meeting of September 27, 1994, which include the domestic policy directive issued at that meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

these ranges would be consistent with its broad policy objectives. The monitoring range for growth of total domestic nonfinancial debt was maintained at 4 to 8 percent for the year. For 1995, the Committee agreed on tentative ranges for monetary growth, measured from the fourth quarter of 1994 to the fourth quarter of 1995, of 1 to 5 percent for M2 and 0 to 4 percent for M3. The Committee provisionally set the associated monitoring range for growth of domestic nonfinancial debt at 3 to 7 percent for 1995. The behavior of the monetary aggregates will continue to be evaluated in the light of progress toward price level stability, movements in their velocities, and developments in the economy and financial markets.

In the implementation of policy for the immediate future, the committee seeks to maintain the existing degree of pressure on reserve positions. In the context of the Committee's long-run objectives for price stability and sustainable economic growth, and giving careful consideration to economic, financial, and monetary developments, somewhat greater reserve restraint would or slightly lesser reserve restraint might be acceptable in the intermeeting period. The contemplated reserve conditions are expected to be consistent with modest growth in M2 and M3 over the balance of the year.

By order of the Federal Open Market Committee, November 23, 1994.

Donald L. Kohn,

Secretary, Federal Open Market Committee.

[FR Doc. 94–29457 Filed 11–29–94; 8:45 am]

BILLING CODE 6210–01–F

Keystone Financial, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than December 13, 1994.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Keystone Financial, Inc., Harrisburg, Pennsylvania; to retain the trust activities of its subsidiary, Frankford Trust Company, Philadelphia, Pennsylvania, and thereby engage directly and indirectly in retaining trust activities, pursuant to section 225.25(b)(3) of the Board's Regulation Y. The subsidiary will be renamed Keystone Trust Company.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to acquire Bank of Montana System Great Falls, Montana, and the mortgage banking business of its subsidiaries Montana Bank, N.A., Billings, Montana, and Bank of Montana, N.A., Great Falls, Montana, and thereby engage in making loans and other extensions of credit as would be made by a mortgage company, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 23, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–29458 Filed 11–29–94; 8:45 am]

BILLING CODE 6210–01–F

Meredosia Bancorporation, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than December 23, 1994.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Meredosia Bancorporation, Inc., Springfield, Illinois; to merge with Illiopolis Bancorporation, Inc. Springfield, Illinois, and thereby indirectly acquire First Springfield Bank & Trust, Springfield, Illinois.

Board of Governors of the Federal Reserve System, November 23, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–29459 Filed 11–29–94; 8:45 am]

BILLING CODE 6210–01–F

Douglas M. and Marla Morley, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal

Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 13, 1994.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Douglas M. and Marla Morley, both of Belle Plaine, Kansas; to retain a total of 24.3 percent of the voting shares, and Douglas M. Morley, Irrevocable Trustee, to acquire an additional 1.7 percent, for a total of 14.0 percent, of the voting shares of Morely Bancshares Corporation, Belle Plaine, Kansas, and thereby indirectly acquire The Valley State Bank, Belle Plaine, Kansas.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Whitman Heffernan and Rhein Management Corporation, through Whitman Heffernan and Rhein Workout Fund II, L.P., and Whitman Heffernan & Rhein Workout Fund II-A, L.P., all of Bronxville, New York; to acquire 24.90 percent of the voting shares of SDNB Financial Corporation, San Diego, California, and thereby indirectly acquire San Diego National Bank, San Diego, California.

Board of Governors of the Federal Reserve System, November 23, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–29460 Filed 11–29–94; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Delegation of Authority

AGENCY: Federal Trade Commission (FTC).

ACTION: Delegation of authority.

SUMMARY: The Commission is delegating certain functions in matters wherein a majority of the members of the Commission are unable to resolve or dispose of a matter as a result of recusals. This delegation shall expire at such time as the Commission has a full complement of five members. It is limited to actions affecting parties or interveners that have waived their right to review by the full Commission, or where no such right would be involved.

EFFECTIVE DATE: November 30, 1994.

FOR FURTHER INFORMATION CONTACT:

Bruce G. Freedman, Acting Assistant General Counsel, Office of General Counsel, FTC, 6th Street & Pennsylvania Ave. NW., Washington, DC 20580, (202) 326–2464; Marc L. Winerman, Attorney, (202) 326–2451; John T. Murphy, Attorney, (202) 326–2457; Alex Tang, Attorney, (202) 326–2447.

SUPPLEMENTARY INFORMATION:

Commission Rule 0.7, 16 CFR 0.7, provides that the Commission, pursuant to Reorganization Plan No. 4 of 1961 (75 Stat. 837, 26 FR 6191), may delegate, by published order or rule, certain of its functions to a division of the Commission, an individual Commissioner, or others within the Commission. As noted in section 1(a) of the Plan, this authority supplements the Commission's inherent authority to delegate its functions.

The Commission has determined that there may be instances in which it would be unable to resolve or dispose of certain matters because recusals result in the absence of a quorum for the transaction of business. *See* Commission Rule 4.14(a), 16 CFR 4.14(a) (Commission quorum). Under these circumstances, the Commission believes that delegation of its authority to act to the remaining Commissioner or Commissioners eligible to participate in the matter would be appropriate.

Accordingly, the Commission has determined to delegate its functions, subject to certain limitations, when no quorum is available for the transaction of business. First, the delegate or delegates is authorized to act in matters in which no party or intervener would be adversely affected by the Commission's action and entitled to seek review by the full Commission, as provided by section 1(b) of the Plan. Second, the delegate or delegates is authorized to act in matters where a party or intervener would be adversely affected and entitled to seek such review, but the affected party or intervener has waived such right. In either instance, the delegation would not adversely affect the procedural rights of the relevant party or intervener.

This delegation is not subject to re-delegation, and is not intended to alter or affect existing delegations to Commission staff. The delegation shall expire at such time as the Commission has a full complement of five members.

By direction of the Commission, Commissioner Azcuenaga abstaining with a separate statement.

Donald S. Clark,

Secretary.

Separate Statement of Commissioner Mary L. Azcuenaga

Delegation of Authority in Absence of Quroum

Today the Commission announces a new procedure to delegate "certain functions in matters wherein a majority of the members of the Commission are unable to resolve or dispose of a matter as a result of recusals." Although I have considered the merits of the new delegation procedure, I abstain from expressing a view because the factual context in which the procedure was proposed and debated makes clear to me that the delegation is intended to affect the merits of one or more matters on which I am not participating by reason of recusal. Specifically, it seems clear that the Commission's intention in adopting the delegation is to make possible before judicial review certain changes in two final orders recently issued by the Commission following full adjudicative proceedings. Although the delegate or delegates will decide what changes, if any, to make in these orders, it is also clear to me what those changes now are expected to be.

I have received advice that it would not be inappropriate for me to vote on the merits of the new delegation procedure. I have considered the merits of the new delegation in a manner consistent with my recusal in the cases to which I have alluded, but in my view, given the context and timing of the motion, a substantive vote on the delegation would be inconsistent with those recusals. I have chosen, therefore, to abstain. I regret that I am constrained from expressing a view on the merits of today's action.

[FR Doc. 94–29566 Filed 11–29–94; 8:45 am]

BILLING CODE 6750–01–M

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board

AGENCY: General Accounting Office.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that the regular monthly meeting of the Federal Accounting Standards Advisory Board will be held on Thursday, December 8, 1994 from

9:00 a.m. to 4:00 p.m. in room 7C13 of the General Accounting Office, 441 G St., N.W., Washington, D.C.

The agenda for the meeting includes discussions of issues under the following projects: (1) Revenue Recognition, (2) Entity and Display, (3) Stewardship reporting, and (4) Property, Plant and Equipment.

We advise that other items may be added to the agenda; interested parties should contact the Staff Director for more specific information and to confirm the date of the meeting. Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Ronald S. Young, Executive Staff Director, 750 First St., N.E., Room 1001, Washington, D.C. 20002, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. No. 92–463, Section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990).

Dated: November 22, 1994.

Ronald S. Young,

Executive Director.

[FR Doc. 94–29424 Filed 11–29–94; 8:45 am]

BILLING CODE 4610–01–P

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Activities Under OMB Review

The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090–0235, General Services Administration Multiple Award Schedule, Discount Schedule and Marketing Data.

The sales, discount, and marketing data submitted on the DSMD forms are used to determine the commerciality of items offered, set the government's negotiation objective, and price reasonableness.

Agency: Office of GSA Acquisition Policy.

Addresses: Send comments to Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), 18th & F Streets, NW, Washington, DC 20405.

Annual Reporting Burden: 4,000 responses per year; 15 hours per response; annual burden hours 60,000.

For Further Information Contact: Les Davison (202–501–1224).

Copy of Proposal: A copy of this proposal may be obtained from the Information Collection Management Branch (CAIR), Room 7102, GSA Building, 18th & F Streets, NW, Washington, DC 20405, or by telephoning (202) 501–2691, or by faxing your request to (202) 501–2727.

Dated: November 22, 1994.

Emily C. Karam,

Director, Information Management Division (CAI).

[FR Doc. 94–29401 Filed 11–29–94; 8:45 am]

BILLING CODE 6820–61–M

Agency Information Collection Activities Under OMB Review

The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090–0243, Fixed Price Contracts.

The General Services Administration Acquisition Regulation (GSAR) prescribes the use of an economic price adjustment clause in Federal Supply Service multiple award schedule (MAS) contracts. This clause is used to adjust MAS contract price and requires a MAS contractor to furnish certain pricing information when the MAS contractor requests a price adjustment under the MAS contract.

Agency: Office of GSA Acquisition Policy.

Addresses: Send comments to Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), 18th & F Streets, NW, Washington, DC 20405.

Annual Reporting Burden: 4,371 responses per year; .5 hours per response; annual burden hours 2,186.

For Further Information Contact: Lorraine Randolph (202–501–0044).

Copy of Proposal: A copy of this proposal may be obtained from the Information Collection Management Branch (CAIR), Room 7102, GSA Building, 18th & F Streets, NW, Washington, DC 20405, or by telephoning (202) 501–2691, or by faxing your request to (202) 501–2727.

Dated: November 22, 1994.

Emily C. Karam,

Director, Information Management Division (CAI).

[FR Doc. 94–29402 Filed 11–29–94; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft Recovery Plan for the Steamboat Buckwheat (Eriogonum Ovalifolium var. Williamsiae) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the endangered Steamboat buckwheat (*Eriogonum ovalifolium* var. *williamsiae*). This plant species is endemic to substrates derived from the deposits of a single hot spring in the Steamboat Hills, southern Washoe County, Nevada. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before January 30, 1995, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the State Supervisor, Nevada Ecological Services State Office, U.S. Fish and Wildlife Service, 4600 Kietzke Lane, Building C–125, Reno, Nevada, 89502 (telephone: 702–784–5227), or the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 NE. 11th Avenue, Portland, Oregon 97232–4181 (telephone: 503–231–6241). Written comments and materials regarding the plan should be addressed to Mr. David L. Harlow, State Supervisor, at the above Reno, Nevada address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above Reno, Nevada address.

FOR FURTHER INFORMATION CONTACT: Ms. Janet Bair at the above Reno, Nevada address (telephone: 702–784–5227).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's (Service) endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions

considered necessary for the conservation of the species, establish criteria for reclassification or delisting, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

Eriogonum ovalifolium var. *williamsiae* is endemic to substrates derived from the deposits of a single hot spring in the Steamboat Hills, southern Washoe County, Nevada. This plant is locally abundant, but apparently restricted to approximately 20 hectares (ha) of plants in an area of approximately 100–150 ha. Populations and habitat of *Eriogonum ovalifolium* var. *williamsiae* are threatened by a variety of activities, including geothermal resource development, commercial and industrial construction, highway expansion, and off-road vehicle travel. The habitat for this taxon is under both private ownership and Federal management.

Recovery of *Eriogonum ovalifolium* var. *williamsiae* will require protection of its habitat from adverse physical and biological modifications, identification of factors limiting long-term population viability, and public information and education.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified will be considered prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: November 18, 1994.

Thomas Dwyer,

Acting Regional Director.

[FR Doc. 94–29435 Filed 11–29–94; 8:45 am]

BILLING CODE 4310–55–M

Endangered and Threatened Species Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

In the matter of: Availability of an Environmental Assessment and Receipt of an Application for a Permit to Allow Incidental Take of the Threatened Northern Spotted Owl by Weyerhaueser Company on its Millicoma Tree Farm in Coos and Douglas Counties, Oregon.

SUMMARY: This notice advises the public that Weyerhaueser Company (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The application has been assigned permit number PRT–796822. The requested permit would authorize the incidental take of the threatened northern spotted owl (*Strix occidentalis caurina*) on the Millicoma Tree Farm in Coos and Douglas Counties, Oregon. The proposed incidental take would occur as a result of timber harvest activities in northern spotted owl habitat.

The Service also announces the availability of an Environmental Assessment (EA) for the proposed issuance of the incidental take permit. 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 and EA should be received on or before December 30, 1994.

ADDRESSES: Comments regarding the application or EA should be addressed to Mr. Curt Smitch, Supervisor, U.S. Fish and Wildlife Service, Pacific Northwest Habitat Conservation Plan Program, 3773 Martin Way East, Building C—Suite 101, Olympia, Washington 98501. Please refer to permit No. PRT–796822 when submitting comments. Individuals wishing copies of the application or EA for review should immediately contact the above office (206–534–9330).

FOR FURTHER INFORMATION CONTACT: Robin Bown, U.S. Fish and Wildlife Service, Portland Field Office, 2600 S.E. 98th Ave., Suite 100, Portland, Oregon 97266 (503–231–6179).

SUPPLEMENTARY INFORMATION:

Background

Under section 9 of the Act and its implementing regulations, "taking" of the northern spotted owl, a threatened species, is prohibited. However, the Service, under limited circumstances, may issue permits to take threatened wildlife species if such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for threatened species are in 50 CFR 17.32.

The Applicant proposes to implement a Habitat Conservation Plan (HCP) for the spotted owl that will allow timber harvest on portions of approximately 209,000 acres of the Applicant's land in Coos and Douglas Counties, Oregon. The Applicant's proposed timber harvest may result in the take, as defined in the Act and its implementing regulations, of any owls in the harvest area. The HCP and permit would be in effect for 50 years with the possibility of extending the permit with 10 year extensions, for a total of an additional 30 years, given certain biological and economic criteria are met. The application includes an HCP and Implementation Agreement.

The Applicant proposes to mitigate for the incidental take by maintaining at least 40 percent of the tree farm in dispersal habitat with limitations on gap size between habitat blocks; retaining 1,592 acres of existing forest habitat for 20 years to enhance the dispersal landscape and productive capability at 4 known spotted owl sites; retaining 371 acres of existing forest habitat adjacent to 4 known spotted owl sites on Federal lands near the tree farm for 20 years; protecting at least 70 acres of nesting, roosting, and foraging habitat around all occupied sites. The Applicant will minimize take by prohibiting timber harvest and road construction within 0.25 miles of active spotted owl nests during the active breeding season, March 1 through September 30 each year.

The EA considers the environmental consequences of four alternatives, including the proposed action and no-take alternatives. The proposed action is the issuance of a permit under section 10(a) of the Act that would authorize incidental take of spotted owls on the Applicant's private landholding of the 209,000-acre permit area, and require implementation of the Habitat Conservation Plan. Under the no-take alternative, the applicant would avoid incidental take of spotted owls and the permit would not be issued. The third alternative is to manage the tree farm for dispersal habitat without retaining any nesting, roosting, and foraging habitat. The fourth alternative is to manage the tree farm for dispersal habitat, and simultaneously avoid the incidental take of selected spotted own pairs.

Dated: November 23, 1994.

Bill Shake,

Acting Deputy Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 94–29436 Filed 11–29–94; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Missouri National Recreational River Advisory Group

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 (Public Law 92–463).

MEETING DATE AND TIME: Tuesday, December 13, 1994; 1:30–4:30 p.m.

ADDRESSES: Leona's Cafe & Steakhouse & Gift Shop, Highways 281*50*18, Lake Andes, South Dakota 57356.

Agenda topics include 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.

In the case of bad weather the meeting will be held Thursday, December 15, 1994, at the same location and time.

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: November 17, 1994.

William W. Schenk,

Acting Regional Director, Midwest Region.

[FR Doc. 94–29396 Filed 11–29–94; 8:45 am]

BILLING CODE 4310–70–P

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 19, 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 December 15, 1994.

Carol D. Shull,

Chief of Registration, National Register.

ARIZONA

Maricopa County

Alvarado Historic District, (Residential Subdivisions and Architecture in Phoenix MPS), Roughly bounded by Central Ave., Oak St., 3rd St. and Palm Ln., Phoenix, 94001481

Ashland Place Historic District, (Residential Subdivisions and Architecture in Phoenix MPS), Roughly bounded by Central Ave., Vernon Ave., 3rd St. and Oak St., Phoenix, 94001486

Cheery Lynn Historic District, (Residential Subdivisions and Architecture in Phoenix MPS), 16th St. to Randolph Rd. and Earll Dr. to Flower St., Phoenix, 94001485

Country Club Park Historic Subdivision, (Residential Subdivisions and Architecture in Phoenix MPS), Thomas Rd. to Virginia Ave. and 7th St. to Dayton St., Phoenix, 94001484

Del Norte Place Historic District, (Residential Subdivisions and Architecture in Phoenix MPS), Virginia Ave. to Encanto Blvd. and 15th to 17th Aves., Phoenix, 94001482

Fairview Place Historic District, (Residential Subdivisions and Architueture in Phoenix MPS), Encanto Blvd. to McDowell Rd., 15th Ave. to the alley W of 17th Ave., Phoenix, 94001483

Yavapai County

Fleury's Addition Historic District, (Prescott MRA), Roughly, Western and Gurley from Willow to Grove, and Willow, Garden and Grove, from Western to Gurley, Prescott vicinity, 94001488

Rock House, Pine Tree Ln., NW of Groom Creek, Groom Creek vicinity, 94001489

CALIFORNIA

Del Norte County

Bonney, J. M., House, 408 Princeton Ave., Buena Vista, 94001469

San Bernardino County

Smiley Park Historic District, Roughly bounded by Brookside Ave., Cajon St., Cypress Ave. and Buena Vista St., Redlands, 94001487

COLORADO

Denver County

Lewis, A. T., and Son Department Store, 800–816 Sixteenth St., Denver, 94001470

St. Ignatius Loyola Church, Jct. of E. 23rd Ave. and York St., Denver, 94001468

FLORIDA

Manatee County

Portavant Mound Site, Address Restricted, Palmetto vicinity, 94001475

Polk County

Dixieland Historic District, Roughly bounded by Walnut St., Flordia Ave., Lake Hunter, Hartsell Ave. and Belvedere St., Lakeland, 94001479

GEORGIA

Peach County

Everett Square Historic District, Roughly bounded by Knoxville, Vineville, Anderson, and Macon Sts. and the Central of Georgia RR tracks, Fort Valley, 94001493

MASSACHUSETTS

Suffolk County

Faneuil, Peter, School, 60 Joy St., Boston, 94001492

NEVADA

Washoe County

Brown, Peleg, Ranch, 12945 Old Virginia Rd., Reno, 94001471

Carson City Independent City

Sanford, George L., House, 405 N. Roop St., Carson City, 94001472

NEW YORK

Monroe County

Hagaman, David, House, 661 Highland Ave., Rochester vicinity, 94001477

Suffolk County

Modern Times School, Jct. of Third Ave. and First., St., Brentwood, 94001478

NORTH CAROLINA

Buncombe County

St. Mary's Church, 337 Charlotte St., Asheville, 94001476

Mecklenburg County

Providence Presbyterian Church and Cemetery (Boundary Decrease), 10414 Providence Rd., Charlotte, 94001480

TENNESSEE

Cannon County

Brevard-Macon House, 902 W. Main St., Woodbury, 94001491

TEXAS

Magnolia Petroleum Company City Sales and Warehouse, 1607 Lyte St., Dallas, 94001473

UTAH

Box Elder County

Tompson-Hansen House, 120 N. Main St., Brigham City, 94001474

In order to assist in its preservation, the 15-day comment period has been waived for the following property:

MASSACHUSETTS

Barnstable County

Tobey, Josiah, House, 67 Oxbow Rd. Falmouth, 94001496

[FR Doc. 94–29397 Filed 11–29–94; 8:45 am]

BILLING CODE 4310–70–M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Housing Guaranty Program; Notice of Investment Opportunity

The purpose of this notice is to provide advance notice to interested firms that Nedcor Bank Limited of South Africa ("Nedcor") intends to request proposals for the services of a U.S. financial institution to raise funds in the U.S. market pursuant to the U.S. Agency for International Development's ("USAID") Housing Guaranty Program. Nedcor will seek to borrow US$30 million, or the South African Commercial Rand equivalent thereof (the "Loan"). Nedcor's long-term objective is to develop a relationship with a U.S. financial institution that will provide Nedcor with future access to the U.S. capital market. For the purpose of this particular transaction, Nedcor intends to request proposals on an expedited basis. Therefore, upon receipt of this notice, interested firms should promptly communicate with Nedcor's representative, Dr. Brennan Nelson, at the following address:

South Africa Project No. 674–HG–001, Housing Guaranty Loan No. 674–HG–001 A01

Postal Address

Nedcor Bank Unlimited, P.O. Box 1144, Johannesburg 2000, Republic of South Africa, Attn: Dr. Brennan Nelson (Branch 858)

Physical Address

Nedcor Bank Limited, 100 Main Street, 8th Floor, Johannesburg 2000, Republic of South Africa, Attn: Dr. Brennan Nelson (Branch 858)

Dr. Nelson will be available, upon issuance of this notice, to answer questions concerning this transaction and the programs it will support by telephone at (27 11) 630–7365; and by facsimile transmission at (27 11) 630–7231 or (27 11) 630–7584.

Firms interested in responding to this notice must do so by 12:00 noon, Eastern Standard Time, on January 4, 1995, by submitting their bids to Nedcor at the address specified above. Copies of all bids should be simultaneously sent to the following: Mr. David Grossman, Assistant Director, Mr. Peter Pirnie, Financial Advisor, Facsimile (preferred communication): (202) 663–2772 and (703) 875–4384.

Within 48 hours after the closing time for submission of proposals, Nedcor, with the approval of USAID, will select the financial institution(s) deemed best qualified to arrange the financing on terms most advantageous to Nedcor. Thereafter, Nedcor would seek to close the transaction within 30 days after it has notified the successful financial institution(s) that its proposal has been accepted, but in no event later than 45 days after such notification.

Additional Information

Provided below is a preliminary description of the terms of the financing. Nedcor reserves the right, however, to change these terms after the selection process based upon advice from the consultations with the successful respondent.

I. Background

The Loan will be guaranteed by the U.S. Government acting through USAID. The Loan will be part of the U.S. Government's special aid package in support of the democratic transition in South Africa. It will be the first of its kind to a private sector bank in South Africa. The funds generated by this Loan will be used to provide the initial funding for a home mortgage program dedicated to servicing the large and immediate needs of South African Black families for housing.

The Loan will be either a fixed-rate or a floating rate, 8-year, non-amortizing (bullet) loan, denominated in either United States dollars or South African Rand, and will be made available to Nedcor at any of its branches. Restrictions may be placed on the transferability of the promissory notes evidencing the Loan, in the event such notes are denominated in Rand. All transactions concerning the Loan must be reported to both Nedcor and USAID.

The Loan will be backed by a full faith and credit guaranty as to payment of both principal and interest of the United States of America, acting through USAID. The guaranty will be issued pursuant to the authority of Section 222 of the Foreign Assistance Act of 1961, as amended (the "Act"). In the event the Loan is disbursed in Rand, USAID's liability under its guaranty of the Rand obligations of Nedcor shall be limited to (1) The Rand equivalent of U.S. $30 million in principal, plus (2) the Rand equivalent of the total aggregate interest payments due over the life of the loan as calculated in U.S. dollars, which amounts shall be determined using the closing Rand/U.S. dollar spot rate for Commercial Rand set by the South African Reserve Bank at the close of business on the date on which the Loan is disbursed.

Investors eligible to receive the USAID guaranty are those specified in Section 238(c) of the Act. They are: (1) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least ninety-five percent (95%) owned by U.S. citizens; and (4) foreign partnerships or associations wholly owned by U.S. citizens.

In order to assure compliance with statutory provisions binding USAID, USAID reserves the right to accelerate the Loan only in the extraordinary event of a material breach by Nedcor of its obligations with regard to the use of the proceeds of the Loan. It should be noted that since the inception of the Housing Guaranty Program in 1962, USAID has not exercised its right of acceleration.

II. Objectives of the Proposed Financing

The objectives of Nedcor with respect to the proposed financing are to:

A. Minimize the cost of financing the Loan to Nedcor, and thereby minimize its debt payments, consistent with the other objectives stated herein.

B. Minimize the ongoing administrative costs of financing the program.

C. Establish a positive precedent, in terms of market perceptions, for contemplated future offerings of similar securities by Nedcor.

III. Diversity of Investors and Financial Services Firms

Nedcor desires to encourage the participation of minority- and women-owned and controlled investors and financial services providers to the

maximum extent practicable in the financing of the Loan. To this end, Nedcor strongly encourages such firms to respond to this notice, either directly or through a consortium or some other joint venture arrangement. Nedcor also strongly encourages that all firms proposing to provide financial services make efforts to offer the investment opportunity to such minority- and women-owned and controlled investors, and to other investors who have a long-term commitment to supporting South Africa's democratic transition.

IV. Scope of Services

In order to accomplish Nedcor's objectives, the provider of financial services will need to offer the following:

A. Market the Loan to Eligible U.S. investors and, in the event the promissory notes evidencing the Loan are denominated in Rand, market the Loan to accredited eligible U.S. investors.

B. Provide a mechanism for notification to USAID in the case of any default on the part of Nedcor, in the event the promissory notes evidencing the Loan are denominated in Rand.

C. Advise and assist in obtaining any necessary exemptions or approvals from securities exchanges, governmental securities regulators or other institutions, and any necessary legal opinions.

D. Provide a detailed listing and full disclosure of all fees and costs for the transaction, which must be inclusive of all legal, consulting, and management fees, and costed into the final rate/result.

V. Required Information for Proposals

Each proposal for the provision of banking services will need to address the questions set forth in this section, in the order shown and as specifically and succinctly as possible.

A. Structure of Loan

You will need to discuss your financial institution's views with respect to the structure of the Loan that would best serve Nedcor's objectives, addressing at a minimum the following issues:

1. The terms of the financing have not yet been determined and are subject to USAID's approval. However, for purposes of your proposal, you will need to provide a complete set of financial forms detailing the costs you expect Nedcor would incur as a result of your recommended financing, based on the financing of US$30 million, and in terms of the following two scenarios:

a. Rand-denominated Loan:

(i) Fixed rate, eight-year, non-amortizing (bullet).

b. United States dollar-denominated Loan:

(i) Fixed rate, eight-year, non-amortizing (bullet), and based on the yield of a U.S. Treasury bond with a remaining life of eight years, such as the bond due November 2002; and

(ii) Floating rate, eight-year, non-amortizing (bullet), and based on the yield of the twenty-six (26) week U.S. Treasury bill as of COB December 18, 1994 (indicative).

Please specify the fees you would charge to provide banking services. You will also need to include an itemization of all legal fees, management fees, consultation fees, selling concession fees and costs of issuance.

2. Discuss any alternative structures which should be considered.

B. Marketing Strategy

You will need to discuss your financial institution's view of the optimal strategy for the marketing of the Loan, keeping in mind the requirements for any exemptions from securities registration being relied upon.

C. Organizational Experience and Capabilities

Because Nedcor's overall objective is to develop a long-term banking relationship and not simply to arrange for this US$30 million financing, firms responding to this notice will be required to provide more information than may be typical for a loan of this size. Accordingly, you will need to provide the following information on your organization:

1. A brief, general description of your financial institution. Enclose your audited financial information for the two most recent periods under separate cover.

2. Your financial institution's "equity capital position" (net capital) and "excess net capital position" based on Securities and Exchange Commission regulations for uniform reporting (if applicable).

3. A discussion of your financial institution's qualifications to serve as lead provider of financial services for the Loan, including in particular:

a. Experience in bringing U.S. Government-guaranteed securities to the market;

b. A description of your financial institution's capacity to provide financial services and distribution and marketing capabilities in the U.S., including examples of significant debt-offerings managed by your firm during the last five years;

c. Any other relevant experience or particular strength that would give your firm a distinct competitive advantage in providing the services required.

D. Qualifications of Personnel

You will need to provide the following information:

1. The names and relevant experience of the professionals, including any key sales and distribution personnel, to be assigned to this matter, with a description of each individual's role.

2. If you would expect to rely on outside advisors, such as legal counsel, accountants or local representatives, you will need to identify the persons or firms which you propose to retain.

VI. Criteria for Selection

Selection of the provider(s) of financial services and the terms of the Loan will be initially subject to the individual discretion of Nedcor and thereafter will be subject to the approval of USAID. Disbursements under the Loan will be subject to certain conditions required of Nedcor by USAID as set forth in agreements between Nedcor and USAID. Awards will be made to the proposals found to be most advantageous to Nedcor based on the following criteria, and such other criteria as Nedcor may determine:

A. Financial Plan

Ability to minimize Nedcor's financing costs; and

B. Previous Experience, Distribution Capabilities, and Personnel

The firm's experience with similar, previous financing programs executed primarily in the U.S. capital markets, the extent of the firm's distribution network, and experience of specified assigned personnel.

Information as to the eligibility of investors and other aspects of the USAID housing guaranty program can be obtained from: Mr. Peter M. Kimm, Director, Office of Environment and Urban Programs, U.S. Agency for International Development, Room 409, SA–18, 1601 N. Kent Street, Rosslyn, VA 22209, Fax Nos: (703) 875–4348 or (202) 663–2772, Telephone: (703) 875–4300 or (202) 663–2773.

Dated: November 23, 1994.

Michael G. Kitay,

Assistant General Counsel, Bureau for Global Programs, Field Support and Research, U.S. Agency for International Development.

[FR Doc. 94–29411 Filed 11–29–94; 8:45 am]

BILLING CODE 6116–01–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–365]

Certain Audible Alarm Devices for Divers; Commission Determination Not To Review an Initial Determination Finding a Respondent To Be in Default

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the initial determination (ID) (Order No. 23) of the presiding administrative law judge (ALJ) in the above-captioned investigation finding that respondent Duton Industry Co., Ltd. (Duton) is in default and has waived its rights to appear, to be served with documents, and to contest the allegations in issue in this investigation.

FOR FURTHER INFORMATION CONTACT: Anjali K. Singh, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–3117.

SUPPLEMENTARY INFORMATION: On July 29, 1994, the ALJ issued an order (Order No. 1) requiring Duton to show cause why, pursuant to Commission interim rule 210.25, it should not be found to have waived its right to appear, to be served with documents, and to contest the allegations in issue in this investigation. Duton did not respond to that order. On October 25, 1994, the ALJ issued an ID (Order No. 23) finding Duton to be in default and to have waived the aforementioned rights. No petitions for review of the ID or government agency comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and section 210.53(h) of the Commission's Interim Rules of Practice and Procedure (19 C.F.R. § 210.53(h)).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

By order of the Commission.

Issued: November 21, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–29491 Filed 11–29–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigations Nos. 701–TA–360 and 361 (Final) and 731–TA–688 through 695 (Final)]

Certain Carbon Steel Butt-Weld Pipe Fittings From France, India, Israel, Malaysia, the Republic of Korea, Thailand, the United Kingdom, and Venezuela

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject countervailing and antidumping duty investigations.

EFFECTIVE DATE: November 21, 1994.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202–205–3180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

SUPPLEMENTARY INFORMATION: On May 31, 1994, the Commission instituted the subject countervailing duty investigations and, on October 3, 1994, instituted the subject antidumping duty investigations and established a schedule for the conduct of all investigations (59 FR 52806, October 19, 1994). Subsequently, the Department of Commerce extended the date for its final determinations in the investigations from December 12, 1994 to February 16, 1995 (59 FR 56461, November 14, 1994). The Commission, therefore, is revising its schedule in the investigations to conform with Commerce's new schedule.

The Commission's new schedule for the investigations is as follows: Requests to appear at the hearing must be filed with the Secretary to the Commission not later than February 21, 1995; the prehearing conference will be held at the U.S. International Trade Commission Building at 9:30 a.m. on February 23, 1995; the prehearing staff report will be placed in the nonpublic record on February 14, 1995; the deadline for filing prehearing briefs is February 22, 1995; the hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on February 28, 1995; and the deadline for filing posthearing briefs is March 8, 1995.

For further information concerning these investigations see the Commission's notice of investigation cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules.

By order of the Commission.

Issued: November 25, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–29492 Filed 11–29–94; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

Agency Information Collection Under OMB Review

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) is being submitted to the Office of Management and Budget for review and approval. Copies of the form and supporting documents may be obtained from the Agency Clearance Officer, Ellen R. Keys, (202) 927–5681. Comments regarding this information collection should be addressed to Ellen R. Keys, Interstate Commerce Commission, 1201 Constitution Avenue NW., room 2221, Washington, DC 20423–0001 and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: Desk Officer for ICC, Washington, DC 20503. When submitting comments, refer to the OMB number or the title of the form.

Type of Clearance: New Form
Office: Office of Economics
Title of Form: Annual Report Form M–2 Class II Motor Carriers of Property
OMB Form Number: 3120
Agency Form Number: M–2
No. of Respondents: 1,600
Total Burden Hours: 16,000

Vernon A. Williams,

Secretary.

[FR Doc. 94–29495 Filed 11–29–94; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–431 (Sub-No. 1X)]

The Prescott and Northwestern Railroad Company—Abandonment Exemption—In Hempstead and Pike Counties, AR

The Prescott and Northwestern Railroad Company (PNW) [1] has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 26-mile segment of its rail line between milepost 5.0 near Prescott and the end of the line at milepost 31.0 at Highland, in Hempstead and Pike Counties, AR.

PNW has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line has been rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 30, 1994, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking statements under 49 CFR 1152.29 [4] must be filed by December 12, 1994. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 20, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Fritz R. Kahn, Suite 750 West, 1100 New York Avenue, NW., Washington, DC 20005.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

PNW has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by December 5, 1994. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: November 18, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 94–29497 Filed 11–29–94; 8:45 am]

BILLING CODE 7035–01–P

[1] PNW is controlled by Potlatch Corporation of San Francisco, CA, a noncarrier.

[2] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay based on environmental concerns should file its request as soon as possible in order to permit the Commission to review and act on the request before the exemption's effective date.

[3] *See Exempt of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[4] The Commission will accept late-filed trail use statements as long as it retains jurisdiction over the line.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Neville Jack, M.D., Revocation of Registration

On September 7, 1994, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Neville Jack, M.D., of Tampa, Florida, proposing to revoke his DEA Certificate of Registration, BJ0575603, under 21 U.S.C. 824(a)(4) and (5), and deny any pending applications for registration as a practitioner under 21 U.S.C. 823(f). The basis for the Order to Show Cause was that Dr. Jack's continued registration would be inconsistent with the public interest, and that he had been excluded from participation in a program pursuant to 42 U.S.C. 1320a–7(a).

The Order to Show Cause was sent by registered mail and delivered to Dr. Jack on September 12, 1994, at his registered location in Tampa, Florida. No response was received from Dr. Jack or anyone purporting to represent him.

Pursuant to 21 CFR 1301.54(d), the Deputy Administrator finds that Dr. Jack was waived his opportunity for a hearing. The Deputy Administrator has carefully considered the investigative file in this matter, and enters his final order under the provisions of 21 CFR 1301.57.

The Deputy Administrator finds that Dr. Jack was convicted, on December 16, 1991, in the Circuit Court of Hillsborough County, Florida upon his plea of nolo contendere, of seven misdemeanor counts of petit theft related to the provision of Medicaid services. He was sentenced to three years probation and ordered to pay restitution. On July 14, 1992, the Department of Health and Human Services (HHS) mandatorily excluded Dr. Jack from the Medicare program for a period of five years and directed that he be excluded from state programs pursuant to 42 U.S.C. 1320a–7(a) by virtue of his conviction of criminal offenses defined in 42 U.S.C. 1128(a), and 1128(b)(1–3).

The Deputy Administrator further finds that on January 4, 1994, Dr. Jack was convicted of the felony of retaliation against a witness in the above noted state case and sentenced to four years probation.

The Deputy Administrator may revoke or suspend a DEA Certificate of Registration under 21 U.S.C. 824(a), upon a finding that the registrant:

(1) Has materially falsified any application filed pursuant to or required by this subchapter or subchapter II of this chapter;

(2) Has been convicted of a felony under this subchapter or subchapter II of this chapter or any other law of the United States, or of any state relating to any substance defined in this subchapter as a controlled substance;

(3) Has had his state license or registration suspended, revoked, or denied by competent state authority and is no longer authorized by state law to engage in the manufacturing, distribution, or dispensing of controlled substances or has had the suspension, revocation, or denial of registration recommended by competent state authority;

(4) Has committed such acts as would render his registration under section 823

of this title inconsistent with the public interest as determined under such section;

(5) Has been excluded (or directed to be excluded) from participation in a program pursuant to Section 1320a–7(a) of Title 42.

Pursuant to 21 U.S.C. 823(f), "[i]n determining the public interest, the following factors will be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local was relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety."

It is well established that these factors are to be considered in the disjunctive, i.e., the Deputy Administrator may properly rely on any one or a combination of factors, and give each factor the weight he deems appropriate. *Henry J. Schwarz, Jr., M.D.*, Docket No. 88–42, 54 FR 16422 (1989).

The Deputy Administrator finds that Dr. Jack's conduct underlying his state convictions threatens the public health and safety. Thus, his continued registration is inconsistent with the public interest. The Deputy Administrator further finds that Dr. Jack has been excluded from participation in a program pursuant to 42 U.S.C. 1320a–7(a). Based on the foregoing, the Deputy Administrator concludes that Dr. Jack's registration must be revoked. 21 U.S.C. 824(a)(4) & (5).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104 (59 FR 23637), hereby orders that DEA Certificate of Registration, BJ0575603, previously issued to Neville Jack, M.D., be, and it hereby is, revoked, and that any pending applications for registration, be, and they hereby are, denied. This order is effective December 30, 1994.

Dated: November 23, 1994.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 94–29405 Filed 11–29–94; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

November 23, 1994.

The Department of Labor has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act (44 U.S.C. Chapter 35) of 1980, as amended (P.L. 96–511). Copies may be obtained by calling the Department of Labor Departmental Clearance Officer, Kenneth A. Mills ((202) 219–5095). Comments and questions about the ICRs listed below should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OAW/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 10102, Washington, DC 20503 ((202) 395–7316).

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Domestic Agricultural In-Season Wage Report.

OMB Number: 1205–0017.

Agency Number: ETA 232 and ETA 232A.

Form	Affected public	Frequency	Number of respondents	Average burden per response
Narrative plan	State/local govt	6 times	49	12 hours each.
232 & 232A	Individual or households; farms.	one-time	20,000	15 minutes.

Total Burden Hours: 8,528.

Description: State employment agencies need prevailing wage rates in order to process employers' applications for intrastate and interstate workers. The rates cover agricultural and logging jobs. Migrant and local seasonal farmworkers are hired for these jobs.

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Senior Community Service Employment Program (SCSEP) Program Reporting and Grant Application Package.

OMB Number: 1205–0040.

Agency Number: ETA 8705, ETA 5140, ETA 5–163, SF 424, SF 424A, and SF 269.

Frequency: Quarterly; Annually.

Affected Public: State or local governments; Federal agencies or employees; Non-profit institutions.

Form	Respondents	Frequency	Average per response
ETA 5140	62	4	8 hours.
ETA 5–163.	62	1	40 hours.
ETA 8705	62	1	12 hours.
SF 424/424A.	62	1	8 hours.[1]
SF 269	62	5	8 hours.[1]

[1] Does not include 2,976 hours for Standard Form requirements.

Total Burden Hours: 5,546*

Description: The forms included in this information collection request are needed to manage the Senior Community Service Employment Program: These documents are the sources of program plans, performance data and resource allocation. They form the basis for the aware of funds, Federal oversite and performance reports.

Type of Review: Revision.

Agency: Employment and Training Administration.

Title: State Alien Labor Certification Activity Report.

OMB Number: 1205–0319.

Agency Number: ETA 9037.

Frequency: Semi-annually.

Affected Public: State or local governments.

Number of Respondents: 54.

Estimated Time Per Respondent: 2 hours.

Total Burden Hours: 216.

Description: The ETA 9037 is used to collect information from States on the activities they perform under the Alien Certification Reimbursable Grant. The information collected will be used for program management, budget formulation, State funding and monitoring for compliance with the Grant Statement of Work.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Authorization for Release of Medical Information.

OMB Number: 1215–0057.

Agency Number: CM 937.

Frequency: On occasion.

Affected Public: Individuals or households.

Number of Respondents: 3,000.

Estimated Time Per Respondent: 5 minutes.

Total Burden Hours: 250.

Description: The CM 937 is used to obtain miner medical information. The Privacy Act prevents hospitals, clinics, and physicians from releasing this information without prior consent.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Application for a Farm Labor Contractor Certificate or Registration.

OMB Number: 1215–0038.

Agency Number: WH–510–MIS.

Frequency: Annually.

Affected Public: Individuals or households; Farms; Businesses or other for-profit; Small businesses or organizations.

Number of Respondents: 8,600.

Estimated Time Per Respondent: 30 minutes.

Total Burden Hours: 4,300.

Description: The Migrant and Seasonal Agricultural Worker Protection Act provides that no individual may perform farm labor contracting activities without a certificate of registration. Form WH–510–MIS is the application form which provides the Department of Labor with the information necessary to issue a certificate specifying the farm labor contracting activities authorized.

Type of Review: Reinstatement.

Agency: Employment and Training Administration.

Title: Service Delivery Area Reorganization Plan Appeals.

OMB Number: 1205–0243.

Agency Number: none.

Frequency: On occasion.

Affected Public: State or local governments.

Number of Respondents: 1.

Estimated Time Per Respondent: 2 hours.

Total Burden Hours: 2.

Description: The Job Training Partnership Act (JTPA), Section 106(j)(4) and 5 CFR 627.471 state that a Governor must impose a reorganization plan on a service delivery area (SDA) for failure to meet performance standards for two consecutive years. These reorganization plans may be appealed to the Secretary of Labor (Section 106(j)(6), JTPA) no later than 30 days after the SDA receipt of the Governors written notification of the hearing determination. Pursuant to 20 CFR 627.471, the Governor must offer the SDA an opportunity for a hearing prior to imposing a reorganization plan.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 94–29414 Filed 11–29–94; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATES: Request for copies must be received in writing on or before January 17, 1995. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, College Park, MD 20740. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office of program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of the Air Force (N1–AFU–94–11 and N1–AFU–94–12). Administrative records relating to the documentation of personal property.
2. Department of the Army (N1–AU–93–8). Facilitative and background records from the office of the Chief of Legislative Liaison.
3. Department of Transportation, Research and Special Programs Administration (N1–467–94–2). Routine and facilitative research and development project records.
4. Department of Transportation, Research and Special Programs Administration (N1–461–94–3). Electronic short notice and statutory tariff filing system.
5. Department of the Treasury, Internal Revenue Service (N1–58–93–5).

Information systems management review reports and feedback sheets.
6. Bureau of Engraving and Printing (N1–318–93–7). Messages created in electronic format.
7. Defense Logistics Agency (N1–361–94–3). Records relating to international programs.
8. Farm Credit Administration (N1–103–94–8). Routine and facilitative records pertaining to funding approvals.
9. Farm Credit Administration (N1–103–94–7). Records pertaining to litigation and criminal referrals.
10. General Services Administration (N1–269–92–1). Comprehensive schedule for civil rights and ethics program records.
11. National Security Agency (N1–457–94–2). Litigation files relating to routine cases.
12. Tennessee Valley Authority (N1–142–92–15). Computerized index to water quality reports.
13. Department of the Army (N1–AU–94–17). Routine and facilitative records pertaining to Army training records.
14. Department of Justice, Immigration and Naturalization Service (N1–85–94–1). Videotapes of interviews between INS examiners and their clientele.
15. Department of Justice, Bureau of Prisons (N1–129–95–1). Audiotapes of monitored inmate phone calls.
16. Department of State, Bureau of Economic and Business Affairs (N1–59–94–19). Routine, facilitative, and duplicative records of the assistant secretary.
17. Department of State, Bureau of Economic and Business Affairs (N1–59–94–20). Duplicative, routine, and facilitative records of the Coordinator for Business Affairs.
18. Department of Transportation, Veterans Benefits Administration (N1–15–93–4). Chapter 36 counseling folders.
19. Department of Treasury, Bureau of Engraving and Printing (N1–318–93–5). Records relating to research and testing of materials.
20. Department of Veterans Affairs, Veterans Health Administration (N1–15–94–3). Routine telegraphic messages.
21. Department of Veterans Affairs, Veterans Health Administration (N1–15–94–4). Chapter 106 counseling folders.
22. Environmental Protection Agency (N1–412–94–5). The biennial reporting system and the resource conservation and recovery information systems (exclusive of databases and reports designated for preservation).
23. Federal Deposit Insurance Corporation, Division of Resolutions (N1–34–93–1). Comprehensive schedule for the Division of Resolutions.
24. General Services Administration (N1–269–95–1). Background footage and outtakes from film production which are inappropriate for preservation.
25. United States Information Agency (N1–306–94–2). Routine and facilitative records relating to the Canadian and Osaka World Expositions.
26. Water Resources Council (N1–315–95–1). Primary water resources databases for the Second National Water Assessment.
27. Department of Veterans Affairs, Veterans Benefits Administration (N1–15–94–5). Income verification match folders and control log.

Dated: November 21, 1994.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 94–29514 Filed 11–29–94; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 94–098]

National Environmental Policy Act; Advanced Propulsion Technology Program

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of intent to prepare an environmental impact statement (EIS) and conduct scoping for the development and testing of liquid-fuel engines and components for the Advanced Propulsion Technology Program.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508), and NASA policy and regulations (14 CFR 1216 Subpart 1216.3), NASA intends to prepare an EIS for its proposed Advanced Propulsion Technology Program (hereinafter referred to as the "Program"). NASA is considering a wide variety of liquid-fuel engines to accommodate the propulsion requirements of a new space vehicle(s) that would be the focus of the Access to Space initiative. The proposed Program would consist of (1) testing new and advanced engines and components for possible use in developing the new space vehicle(s) and (2) modifying government-owned facilities to support the Program. Two of the sites being considered for the testing are Marshall Space Flight Center (MSFC) in Huntsville, Alabama, and John C. Stennis Space Center (SSC) near Bay St. Louis, Mississippi.

DATES: Interested parties are invited to submit comments on or before January 17, 1995, or January 15, 1995, whichever is later, to assure full consideration during the scoping process.

ADDRESSES: Comments should be addressed to Dr. Rebecca C. McCaleb, Director, Environmental Engineering and Management Office, Code AE01, Marshall Space Flight Center, Alabama 35812. Information repositories will be maintained at the following locations:

(a) NASA Headquarters, Library, Room 1J20, 300 E Street SW., Washington, DC 20546.

(b) NASA, Marshall Space Flight Center, Library, Building 4200, Huntsville AL 35812.

(c) Huntsville, Library, 915 Monroe Street SW, Huntsville, AL 35801.

(d) Huntsville Library, Madison Branch, 181 Hughes Road, Suite 6, Madison, AL 35758.

(e) Triana Town Hall, 101 Main Street, Triana, AL 35758.

(f) NASA, Stennis Space Center, Research Library, Building 1100, Stennis Space Center, MS 39529.

(g) Hancock County Library, Highway 90, Bay St. Louis, MS.

(h) Margaret Reed Crosby Memorial Library, Goodyear Boulevard, Picayune, MS 39466.

(i) St. Tammany Parish Library, Slidell, LA.

FOR FURTHER INFORMATION CONTACT: Dr. Dominic A. Amatore, Deputy Director, Public Affairs Office, Code CA01, Marshall Space Flight Center, AL 35812, 205–544–6533; or Ms. Myron Webb, Director, Public Affairs Office, Code PA00, Stennis Space Center, MS 39529–6000, 601–688–3341.

SUPPLEMENTARY INFORMATION: To meet the technical and programmatic challenges of developing a new space vehicle(s), key advanced technologies in propulsion systems must be explored. The Program would be designed to demonstrate the technology maturity levels necessary to reduce the development risk of the selected propulsion system(s) to an acceptable level and to produce a highly operable, high thrust-to weight propulsion system. Therefore, NASA is proposing

to develop and test one or more liquid engines and components that could be used in the final configuration(s) of a new space vehicle(s). Engines under consideration would use liquid oxygen as the oxidizer. The fuel would be either liquid hydrogen, kerosene, or a combination of the two.

Facilities under consideration for testing these engines include, but are not necessarily limited to, those located at MSFC and SSC. Existing test facilities at these two NASA Centers would need to be upgraded to accommodate Program objectives. Modification may include addition of a kerosene tank on the test stand(s), a common structural and functional interface, and an engine mounting adapter. Many aspects of the Program would parallel test activities of propulsion systems undertaken in the 1960's for the Apollo Program.

All test facilities at MSFC are located in the southern portion of the Center; in turn, MSFC is almost centrally located within Redstone Arsenal's 15,400 hectares (38,000 acres), with the closest private property being approximately 4 kilometers (2.5 miles) from the proposed MSFC test facilities. SSC occupies 5,480 hectares (13,480 acres) in western Hancock County, Mississippi, and is surrounded by 50,600 hectares (125,000 acres of acoustical buffer zone.

Alternatives for this proposal include, but are not necessarily limited to, (1) alternative test sites, (2) test facility construction and modification options, (3) alternative fuels and engines, and (4) cancellation of the proposed Program ("no action").

The EIS will consider the potential environmental impacts associated with the Program and any needed construction or modification of facilities. An initial assessment of environmental effects suggests that the greatest impacts are likely to arise from noise and air emissions. However, analysis indicates that air quality would remain within the National Ambient Air Quality Standards at both MSFC and SSC. IF MSFC and/or SSC were selected, little environmental impact is anticipated on biological resources, threatened and endangered species, cultural resources, wetlands, and recreational or scenic areas.

A public scoping meeting will be held near MSFC at the Ridgecrest Elementary School, 3505 Cerro Vista SW, Huntsville, Alabama, on December 6, 1994, starting at 7:00 pm. Another such meeting will be held near SSC at the Hancock County High School, 7084 Stennis Airport Drive, Bay St. Louis, Mississippi, on December 13, 1994, starting at 7:00 pm.

Written public input and comments on environmental issues of the proposed Program, including, but not limited to, test site and facility options and fuel and engine alternatives, as well as related environmental concerns, are hereby solicited.

Dated: November 23, 1994.

Benita A. Cooper,

Associate Administrator for Management Systems and Facilities.

[FR Doc. 94–29415 Filed 11–29–94; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Biological Sciences; Amended Notice of Meeting

The time for the Open portion of this meeting has been changed and the notice is being resubmitted as follows. The original notice appeared on November 17, 1994.

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting.

Name: Special Emphasis Panel in Biological Sciences (1754).

Date and Time: December 8–9, 1994; 9:00 a.m.–5:00 p.m.

Place: National Science Foundation, Room 365, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Part-Open.

Contact Person: Dr. Kathie L. Olsen, Acting Deputy Director, Division of Integrative Biology and Neureoscience, Suite 685, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1420.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Minutes: May be obtained from the contact person listed above.

Agenda: Open Session: December 9, 11:30 a.m. to 12:30 p.m., to discuss goals and assessment procedures. Closed Session: December 8, 9:00 a.m. to 5:00 p.m.; December 9, 9:00 a.m. to 11:30 a.m. and 12:30 p.m. to 5:00 p.m. to review and evaluate Research Experiences for Undergraduates (REU) Sites proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 25, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–29493 Filed 11–29–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Biological Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announce the following meeting.

Name: Special Emphasis Panel in Biological Sciences (1754).

Date and Time: December 13, 1994, 9:00 am to 5:00 pm; December 14, 1994, 9:00 am to 12 noon.

Place: Room 320, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Part-Open.

Contact Person: Dr. Christopher Comer, Program Director, National Science Foundation, Room 685, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1420.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Minutes: May be obtained from the contact listed above.

Agenda: Open Session: December 14, 10:00 am to 11:00 am, to discuss trends and opportunities in Neuroscience, Computer and Mathematical Sciences and Engineering. Closed Session: December 13, 9:00 am to 5:00 pm: December 14, 9:00 am to 10:00 am and 11:00 am to noon to review and evaluate Collaborative Research in Neuroscience, Computer and Mathematical Sciences and Engineering as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 25, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–29494 Filed 11–29–94; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposals for the collection of

information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of Submission, new, revision, or extension: Revision

2. Titles of the information collection: 10 CFR Part 25—Access Authorization for Licensee Personnel; and 10 CFR Part 95—Security Facility Approval and Safeguarding of National Security Information and Restricted Data.

3. The form number if applicable: Not applicable

4. How often the collection is required: On occasion

5. Who will be required or asked to report: NRC regulated facilities and other organizations requiring access to NRC classified information.

6. An estimate of the number of responses:

10 CFR Part 25–169

10 CFR Part 95–21

7. An estimate of the total number of hours needed to complete the requirement or request:

10 CFR Part 25

122 hours reporting (.7 hrs/response) × 60 hours recordkeeping = 182 total hours.

10 CFR Part 95

105 hours reporting (5 hrs/response) × 168 hours recordkeeping = 273 total hours

8. An indication of whether Section 3504(h), Public Law 96–511 applies: Not applicable

9. Abstract: 10 CFR Parts 25 and 95—NRC regulated facilities and other organizations are required to provide information and maintain records to ensure that an adequate level of protection is provided NRC classified information and material.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, N.W. (Lower Level), Washington, D.C.

Comments and questions can be directed by mail to the OMB reviewer: Troy Hillier, Office of Information and Regulatory Affairs, (3150–0046) (3150–0047), NEOB–10202, Office of Management and Budget, Washington, D.C. 20503.

Comments can also be submitted by telephone at (202) 395–3084. The NRC Clearance Officer is Brenda Jo Shelton, (301) 415–7233.

Dated at Rockville Maryland, this 11th day of November 1994.

For the Nuclear Regulatory Commission.

Arnold E. Levin,

Acting Designated Senior Official for Information Resources Management.

[FR Doc. 94–29483 Filed 11–29–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–213]

Connecticut Yankee Atomic Power Co.; Haddam Neck Plant Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–61, issued to Connecticut Yankee Atomic Power Company (CYAPCO, the licensee), for operation of the Haddam Neck Plant, located in Middlesex County, Connecticut.

Environmental Assessment

Identification of the Proposed Action

The proposed amendment would revise the Haddam Neck Technical Specification (TS) Table 3.3–2, "Engineered Safety Features Actuation System Instrumentation," Table 3.3–3, "Engineered Safety Features Actuation System Instrumentation Trip Setpoints," and Table 4.3–2, "Engineered Safety Features Actuation System Instrumentation Surveillance Requirements," and their associated Bases sections, to reflect the addition of permissive interlocks on the core deluge system motor-operated valves. The proposed action is in accordance with the licensee's amendment request dated August 4, 1994.

The Need for the Proposed Action

CYAPCO is planning to install permissive interlocks on the core deluge valves SI–MOV–871A and B. The permissive interlocks will serve to block the opening of these valves until the reactor coolant pressure (RCS) has decreased below a specified setpoint. This modification is necessary to ensure that should an inadvertent safety injection actuation signal (SIAS) occur, the low pressure safety injection (LPSI) isolation valves would not open and expose the LPSI system piping, which has a design rating of 600 psi, to the normal operating pressure of the RCS, which is approximately 2000 psi. To assure the operability of the new permissive interlocks the licensee has proposed adding various components of the interlock system to the TS. In addition, the Bases section will be modified to include a discussion on the functioning of the core deluge motor-operated valves and their control circuitry.

Environmental Impacts of the Proposed Action

In the present design a large break LOCA will generate a safety injection signal which will open the core deluge valves SI–MOV–871A and B to provide borated water to the reactor vessel. The new design will install redundant open permissive interlocks in the core deluge valve control circuitry to prevent opening of these valves on a SIAS until the RCS pressure falls below 1135 psig. This permissive interlock system has been included in the TS to assure its operability. The Commission has completed its evaluation of the proposed modifications and the associated TS changes and concludes that the modifications and TS changes will decrease the possibility of an intersystem loss-of-coolant-accident (LOCA) without compromising the previously performed LOCA analysis. The RPS control cabinets were previously evaluated and approved by the NRC. The proposed changes to the RPS TS as result of the new interlocks are similar to previous RPS TS analog-to-digital changes.

The proposed TS change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed TS amendment.

With regard to potential nonradiological impacts, the proposed amendment does involve features located entirely within the restricted area as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed amendment, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the amendment would be to deny the amendment request. Such action would not enhance the protection of the environment and would result in unjustified cost to the licensee.

Alternative Use of Resources

This action does not involve the use of resources not considered previously in the Final Environmental Statement for the Haddam Neck Plant.

Agencies and Persons Consulted

The NRC staff consulted with the Connecticut State official regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this proposed action, see the licensee's letter dated August 4, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Russell Library, 123 Broad Street, Middletown CT 06547.

Dated at Rockville, Maryland, this 21st day of November 1994.

For the Nuclear Regulatory Commission.

Phillip F. McKee,

Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–29484 Filed 11–29–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–321 and 50–366]

Environmental Assessment and Finding of No Significant Impact, Georgia Power Co., et al.; Edwin I. Hatch Nuclear Plant, Units 1 and 2

This U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–57 and NPF–5, issued to Georgia Power Company (GPC or the licensee), for operation of the Edwin I. Hatch Nuclear Plant, Units 1 and 2, located in Appling County, Georgia.

Environmental Assessment

Identification of the Proposed Action

The proposed amendments will replace the existing Technical Specifications (TS) in their entirety with the Improved Technical Specifications (ITS). The proposed action is in accordance with the licensee's amendment request dated February 25, 1994, and supplemented July 8, August 8 and August 31, September 23, October 19, and November 1, 1994.

The Need for the Proposed Action

It has been recognized that nuclear safety in all plants would benefit from improvement and standardization of TS. The "NRC" Interim Policy Statement on Technical Specification Improvements for Nuclear Power Reactors," (52 FR 3788 dated February 6, 1987) and later the Final Policy Statement, formalized this need. To facilitate the development of individual ITS, each reactor vendor owners group (OG) and the NRC staff developed standard technical specifications. For General Electric (GE) plants, the standard TS (STS) are found in NUREG–1433, "Standard Technical Specifications, General Electric Plants, BWR/4," dated September 1992, which formed the basis of the Hatch ITS. The NRC Committee to Review Generic Requirements (CRGR) reviewed the STS, made not of its safety merits, and indicated its support of conversion by operating plants to the STS.

Description of the Proposed Change

The proposed revision to the TS is based on NUREG–1433 and on guidance provided in the Policy Statement. Its objective is to completely rewrite, reformat, and streamline the existing TS. Emphasis is placed on human factors principles to improve clarity and understanding. The Bases section has been significantly expanded to clarify and better explain the purpose and foundation of each specification. In addition to NUREG–1433, portions of the existing TS were also used as the basis for the ITS. Plant-specific issues (unique design features, requirements, and operating practices) were discussed at length with the licensee, and generic matters were discussed with the licensee, GE, and other OGs.

The proposed changes from the existing TS can be grouped into four general categories, as follows:

Non-Technical (administrative) changes were intended to make the ITS easier to use for plant operations personnel. They are purely editorial in nature or involve the movement or reformat of requirements without affecting technical content. Every section of the Hatch TS has undergone these types of changes. In order to ensure consistency, the NRC staff and GPC have used NUREG–1433 as guidance to reformat and make other administrative changes.

Relocation of requirements includes items that were in the existing Hatch TS, but did not meet the criteria set forth in the Policy Statement for inclusion in TS.

In general, the proposed relocation of items in the Hatch TS to the Final Safety Analysis Report (FSAR), appropriate plant-specific programs, procedures, and ITS Bases follows the guidance of the GE STS, NUREG–1433. Once these items have been relocated by removing them from the TS to other licensee-controlled documents, the licensee may revise them under the provisions of 10 CFR 50.59 or other NRC staff-approved control mechanisms which provide appropriate procedural means to control changes.

More restrictive requirements are those proposed Hatch ITS items that are either more conservative than corresponding requirements in the existing Hatch TS, or are additional restrictions which are not in the existing Hatch TS, but are contained in NUREG–1433. Examples of more restrictive requirements include: placing a Limiting Condition of Operation (LCO) on plant equipment which is not required by the present TS to be operable; more restrictive requirements to restore inoperable equipment; and more restrictive surveillance requirements.

Less restrictive requirements are relaxations of corresponding requirements in the existing Hatch TS which provided little or no safety benefit or placed unnecessary burden on the licensee. These relaxations were the result of generic NRC actions or other analyses. They have been justified on a case-by-case basis for Hatch as described in the Safety Evaluation to be issued with the license amendment, which will be noticed in the **Federal Register.**

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the TS. Changes which are administrative in nature have been found to have no effect on technical content of the TS, and are acceptable. The increased clarity and understanding these changes bring to the TS are expected to improve the operator's control of the plant in normal and accident conditions.

Relocation of requirements to other licensee-controlled documents does not change the requirements themselves. Future changes to these requirements may be made by the licensee under 10 CFR 50.59 or other NRC-approved control mechanisms, which assure continued maintenance of adequate requirements. All such relocations have been found to be in conformance with

the guidelines of NUREG–1433 and the Policy Statements, and, therefore, to be acceptable.

Changes involving more restrictive requirements have been found to be acceptable.

Changes involving less restrictive requirements have been reviewed individually. When requirements have been shown to provide little or no safety benefit or to place unnecessary burden on the licensee, their removal from the TS was justified. In most cases, relaxations previously granted to individual plants on a plant-specific basis were the result of a generic NRC action, or of agreements reached during discussions with the OG and found to be acceptable for Hatch. Generic relaxations contained in NUREG–1433 have also been reviewed by the NRC staff and have been found to be acceptable.

In summary, the proposed revision to the TS was found to provide control of plant operations such that reasonable assurance will be provided that the health and safety of the public will be adequately protected.

These TS changes will not increase the probability or consequences of accidents, no changes are being made in the types of an effluent that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed TS amendments.

With regard to potential non-radiological impacts, the proposed amendment involves features located entirely within the restricted areas as defined in 10 CFR Part 20. It does not affect non-radiological plant effluent and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed amendments, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the amendments would be to deny the amendment request. Such action would not enhance the protection of the environment.

Alternative Use of Resources

This action does not involve the use of resources not considered previously in the Final Environmental Statement for the Hatch Nuclear Plant, Units 1 and 2.

Agencies and Persons Consulted

The NRC staff consulted with the State of Georgia regarding the environmental impact of the proposed action.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this proposed action, see the licensee's submittals dated February 25, as supplemented July 8, August 8 and 31, September 23, October 19, and November 1, 1994. The submittals are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513.

Dated at Rockville, Maryland, this 21st day of November 1994.

For the Nuclear Regulatory Commission.

Louis L. Wheeler,

Acting Director, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–29485 Filed 11–29–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–219]

GPU Nuclear Corp.; Oyster Creek Nuclear Generating Station Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–16, issued to GPU Nuclear Corporation (the licensee), for operation of the Oyster Creek Nuclear Generating Station, located in Ocean County, New Jersey.

Environmental Assessment

Identification of the Proposed Action

The proposed action would delete Technical Specification Section 2.3.0 and its associated bases. The amendment would remove the limiting safety system setting for a high recirculation flow reactor scram based on a maximum attainable recirculation flow analysis.

The proposed action is in accordance with the licensee's application for amendment dated June 24, 1994, as supplemented by letter dated September 30, 1994.

The Need for the Proposed Action

The proposed action would delete the high recirculation flow scram setpoint of ≥ 117% of rated flow since the licensee has analytically demonstrated that the flow scram setpoint is not necessary.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that deletion of the high recirculation flow reactor scram based on a maximum attainable flow analysis performed by the licensee with respect to safety system settings and thermal safety limit analysis is acceptable.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the action would be to deny the request. Such action would not enhance the protection of the environment.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Oyster Creek Nuclear Generating Station.

Agencies and Persons Consulted

The NRC staff consulted with the New Jersey State official regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated June 24 1994, as supplemented by letter dated September 30, 1994, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Ocean County Library, Reference Department, 1001 Washington Street, Toms River, NJ 08753.

Dated at Rockville, Maryland, this 22nd day of November 1994.

For the Nuclear Regulatory Commission.

Phillip F. McKee,

Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–29486 Filed 11–29–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–259, 50–260, and 50–296; Docket Nos. 50–327 and 50–328; Docket Nos. 50–390 and 50–391]

Browns Ferry Nuclear Plant, Units 1, 2 and 3; Sequoyah Nuclear Plant, Units 1 and 2; Watts Bar Nuclear Plant, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License Nos. DPR–33, DPR–52, DPR–68, DPR–77, DPR–79. These licenses are issued to the Tennessee Valley Authority (TVA) for operation of the Browns Ferry Nuclear Plant Units 1, 2 and 3 (BFN) located in Limestone County, Alabama, and the Sequoyah Nuclear Plant Units 1 and 2 (SQN) located in Soddy Daisy, Tennessee. In addition, by this action, the Commission is considering issuing a similar exemption to TVA's Watts Bar Nuclear Plant Units 1 and 2 (WBN) located at TVA's site on the west bank of the Tennessee River approximately 50 miles northeast of Chattanooga, Tennessee. Operating licensers have not been issued for WBN; they are currently under Construction Permits CPPR–91 and CPPR–92, for Units 1 and 2 respectively.

Environmental Assessment

Identification of Proposed Action

The proposed action is in accordance with the TVA's application dated October 24, 1994, for exemption from certain requirements of 10 CFR 73.55, "Requirements for Physical Protection of Licensed Activities in Nuclear Power Reactors Against Radiological Sabotage." The exemption would allow implementation of a hand geometry biometrics system to control site access at BFN, SQN, and WBN so that photograph identification badges for non-TVA employees who have been granted unescorted access into protected and vital areas may be taken offsite.

The Need for the Proposed Action

Pursuant to 10 CFR 73.55, paragraph (a), TVA shall establish and maintain an onsite physical protection system and security organization. Regulation 10 CFR 73.55(d), "Access Requirements," paragraph (1), specifies that "licensee shall control all points of personnel and vehicle access into a protected area." Regulation 10 CFR 73.55(d)(5) specifies that, "A numbered picture badge identification system shall be used for all individuals who are authorized access to protected areas without escort." Regulation 10 CFR 73.55(d)(5) also states that an individual not employed by the licensee (i.e., contractors) may be authorized access to protected areas without escort provided the individual "receives a picture badge upon entrance into the protected area which must be returned upon exit from the protected area. * * *"

Currently, unescorted access into protected areas of BFN and SQN (with plans to establish a similar system at WBN) plants is controlled through the use of a photograph on a badge/keycard (hereafter referred to as a "badge"), which is stored at the access point when not in use. The security officers at each entrance station use the photograph on the badge to visually identify the individual requesting access. The badges for both TVA employees and contractor personnel who have been granted unescorted access are given to the individuals at the entrance location upon entry and are returned upon exit. In accordance with 10 CFR 73.55(d)(5), the badges are not allowed to be taken offsite.

TVA proposes to implement an alternative unescorted access control system which would eliminate the need to issue and retrieve badges at the entry point and would allow all individuals with unescorted access to keep their badges with them when departing the site.

An exemption from 10 CFR 73.55(d)(5) is required to permit contractors to take their badges offsite instead of returning them when exiting the site.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of TVA's application. Under the proposed system, each individual who is authorized unescorted access would have the physical characteristics of their hand (hand geometry) registered with their badge number in the access control system. When an individual enters the badge into the card reader and places the hand on the measuring surface, the system would record the individual's hand image. The unique characteristics of the hand image would be compared with the previously stored template to verify authorization for entry. Individuals, including TVA employees and contractors, would be allowed to keep their badge with them when they depart the site.

Based on a Sandia report entitled "A Performance Evaluation of Biometric Identification Devices" (SAND91—0276–UC–906 Unlimited Release, Printed June 1991), and on its experience with the current photo-identification system, TVA demonstrated that the proposed hand geometry system would provide enhanced site access control. Since both the badge and hand geometry would be necessary for access into the protected area, the proposed system would provide a positive verification process. Potential loss of a badge by an individual, as a result of taking the badge offsite, would not enable unauthorized entry into protected areas. TVA will implement a process for periodically testing the proposed system to ensure continued overall level of performance equivalent to that specified in the regulation. The Physical Security Plans for all plants will be revised to include implementation and testing of the hand geometry access control system and to allow TVA employees and contractors to take their badges offsite.

TVA has determined that the proposed hand geometry access control process for identifying personnel meets the American National Standard ANSI/ANS–3.3, "Security for Nuclear Power Plants" criteria. It will provide the same high assurance objective regarding

onsite physical protection as provided by the photo-identification process now in use.

The access process will continue to be under the observation of security personnel. A numbered pictured badge identification system will continue to be used for all individuals who are authorized access to protected areas without escorts. Badges will continue to be displayed by all individuals while inside the protected area.

Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact. With regard to potential non-radiological impacts, the proposed action does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed action.

Alternative to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action did not involve the use of any resources not previously considered in the Final Environmental Statements related to operation of the Browns Ferry Nuclear Plant, dated September 1, 1972; the Sequoyah Nuclear Plant, dated February 13, 1974; or the Watts Bar Nuclear Plant, dated December 1978.

Agencies and Persons Consulted

The NRC staff consulted with the State of Tennessee and Alabama regarding the environmental impact of the proposed action.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the foregoing environmental assessment, the Commission has concluded that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated October 24, 1994 which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC; at the local public document room located at the Athens Public Library, South Street, Athens, Alabama (for the Browns Ferry Nuclear Plant); and at the Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402 (for the Sequoyah Nuclear Plant and the Watts Bar Nuclear Plant).

Dated at Rockville, Maryland, this 22nd day of November 1994.

For the Nuclear Regulatory Commission.

Frederick J. Hebdon,

Director, Project Directorate II–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–29487 Filed 11–29–94; 8:45 am]

BILLING CODE 7590–01–M

NRC Electronic Information Exchange (EIE) Workshop; Meetings

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The NRC staff and the Nuclear Information and Records Management Association (NIRMA) will discuss Electronic Information Exchange between the NRC and the nuclear industry.

DATES: December 6, 7, 8, and 9, 1994.

ADDRESSES: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: John Skoczlas, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415–7186.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to focus on improving electronic information exchange between the NRC and the nuclear industry. There will also be discussions on the future of electronic communications within the NRC and the various issues and the impact that this type of communication has on NRC's regulations.

The meeting will be divided into sessions for the NRC presentations and sessions for licensee questions. The tentative agenda is as follows:

December 6, 1994

—Reception

December 7, 1994

—Improving Industry Communications
—Opening
—Introduction to NIRMA
—Welcome
—Organization and Goals of the EIE Task Force/Introduction of Subcommittees
—Report of Documents/Process Subcommittee
—NRC Document Management System
—Keynote Address
—Report of Technology Subcommittee
—Technology Update

December 8, 1994

—Internet
—Report of Issues Subcommittee
—Document/Records Management at the NRC
—Electronic Submittal Issues
—Adjudicatory Electronic Data Interchange
—AEOD Online Plant Information Book Project

December 9, 1994

—RegNet
—NRR Pilot EIE Plant Program
—Task Force Recommendations and Open Forum

Persons other than NRC staff and licensee representatives are invited to attend and to participate in the discussions only as time allows.

Registration will be conducted prior to the meeting.

Dated at Rockville, Maryland, this 23rd day of November, 1994.

For the Nuclear Regulatory Commission.

Arnold E. Levin,

Deputy Director, Office of Information Resources Management.

[FR Doc. 94–29488 Filed 11–29–94; 8:45 am]

BILLING CODE 7590–01–M

Nuclear Safety Research Review Committee, Meeting of Instrumentation and Control and Human Factors Subcommittee

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

The NSRRC Instrumentation and Control and Human Factors Subcommittee will hold a meeting on January 12, 1995 in Room T–2B1, Two White Flint North (TWFN) Building, 11545 Rockville Pike, Rockville, MD.

The entire meeting will be open to public attendance.

The review to be conducted by the Subcommittee will be an update review of accomplishments, status, and plans for research programs on instrumentation and control and human factors safety issues. The agenda will be as follows:

January 12

8:00–8:30 Introductory remarks (Subcommittee Chairman; Director, Division of Systems research)
8:30–10:00 Program overview: objectives, issues, recent results, plans (NRC staff presentation and discussion)

10:15–10:45 National Academies of Sciences and Engineering study of digital instrumentation and control issues (NRC staff; discussion)
10:45–3:00 Review of research programs (NRC staff presentations and discussion)
10:45–11:30 Software: quality assurance
11:30–12:15 Digital hardware: effects of environmental factors (EMI, smoke, temperature, moisture)
1:30–2:15 Human-system interface review guidelines
2:15–3:00 Personnel performance: Reactor staffing
3:15–6:00 Subcommittee discussion

The Subcommittee will report to the full Committee on the facts and analyses discussed at the meeting.

A detailed agenda will be made available at the meeting.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Subcommittee. Questions may be asked only by members of the Committee and the staff. Persons desiring to make oral statements should notify the Nuclear Regulatory Commission staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee may exchange preliminary views regarding matters to be considered during the balance of the meeting. The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to Mr. George Sege (telephone 301/415–6593) between 8:00 a.m. and 4:30 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: November 23, 1994.

George Sege,

Technical Assistant to the Director, Office of Nuclear Regulatory Research.

[FR Doc. 94–29489 Filed 11–29–94; 8:45 am]

BILLING CODE 7590–01–M

Availability of the License Application Review Plan for a Geologic Repository for Spent Nuclear Fuel and High-Level Radioactive Waste—Draft Review Plan

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission is announcing the availability of NUREG–1323, "The License Application Review Plan for a Geologic Repository for Spent Nuclear Fuel and High-Level Radioactive Waste—Draft Review Plan."

ADDRESSES: Copies of NUREG–1323 can be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy of NUREG–1323 is available for public inspection and/or copying at the NRC Public Document Room, 2120 L Street (Lower Level), N.W., Washington, DC 20555–0001.

FOR FURTHER INFORMATION CONTACT: Anne E. Garcia, High-Level Waste and Uranium Recovery Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission, 11545 Rockville Pike, MD 20852. Telephone: (301) 415–6631.

SUPPLEMENTARY INFORMATION: The License Application Review Plan (LARP) provides guidance to the NRC staff who will review the U.S. Department of Energy's (DOE's) license application to construct a mined geologic repository for the disposal of spent nuclear fuel and other high-level radioactive waste at Yucca Mountain, Nevada. The LARP is intended to ensure the quality and uniformity of the staff reviews and establishes the appropriate review priorities, and presents a well-defined base from which to evaluate proposed changes in the scope and requirements of staff reviews. Because it is a public document, it will also make available to DOE and other interested parties information on the staff's review process so that they may better understand the review strategies, procedures, and acceptance criteria that the staff will use.

In developing the LARP at this time, there are numerous benefits to be realized by the NRC staff. First, the LARP will help structure and coordinate the staff's efforts to develop a well-integrated review capability supported by the staff's independent technical assessment capability and the results of NRC-sponsored research. Second, identifying technical issues most important to geologic repository performance will help focus and prioritize the prelicense application reviews, independent technical assessment capabilities, and research needed by the staff. Third, the regulatory and technical basis for the staff's pre-license application reviews and guidance will be improved due to the focus on regulatory and technical issues.

The LARP is divided into three parts. Part A contains the License Application Review Strategy, which gives general guidance to the staff in conducting its license application reviews. Part B contains eight individual review plans, to be used by the staff to review general information in the license application. Part C contains 89 individual review plans, distributed among ten chapters, which the staff will use to review the Safety Analysis Report, the principal part of the license application in which DOE provides the information needed to demonstrate compliance with the technical requirements of 10 CFR Part 60. The organization of the individual review plans in Parts B and C is consistent with the organization of the license application as specified in the draft regulatory guide "Format and Content for the License Application for the High-Level Waste Repository." Finally, each individual review plan has a standard format consisting of the following seven sections:

(1) Applicable [10 CFR Part 60] Regulatory Requirements;

(2) Review Strategy;

(3) Review Procedures and Acceptance Criteria;

(4) Implementation;

(5) Example Evaluation Findings; and

(6) References.

This draft version, designated Revision 0, represents the staff's initial efforts in developing the LARP. Beginning with this version, the staff anticipates issuing a revision to the draft LARP each year through 2000, culminating with the issuance of the LARP in 2001. Each revision of the draft LARP will contain the work completed by the staff during that particular year. Revision 0 and subsequent revisions of the draft LARP are preliminary documents and, as such, are subject to change.

Dated at Rockville, Maryland, this 14th day of November 1994.

For the Nuclear Regulatory Commission.

Joseph J. Holonich,

Chief, High-Level Waste and Uranium Recovery Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 94–29490 Filed 11–29–94; 8:45 am]

BILLING CODE 7590–01–M

PEACE CORPS

Notice of Submission of Public Use Form Review Request to the Office of Management and Budget

AGENCY: Peace Corps of the United States.

SUMMARY: Pursuant to the Paperwork Reduction Act of 1981 (44 USC Chapter 35), the Peace Corps of the United States has submitted to the Office of Management and Budget a request to approve an extension to use the HOTLINE Employer Follow-up Questionnaire through September 30, 1997. This form is completed voluntarily by employers who have placed announcements in the HOTLINE job bulletin and provides information on the number of returned Peace Corps Volunteers who applied, were interviewed and/or were hired. The information is necessary for Peace Corps to determine the effectiveness of HOTLINE. Two revisions have been made. Peace Corps now clarifies the use of the information by stating that the information may be used for release as general program information, but will maintain confidentiality of personal information of respondent and organization.

INFORMATION ABOUT THE QUESTIONNAIRE:

Agency Address: Peace Corps, 1990 K Street, NW, Washington, DC 20526.

Title and Agency Number: HOTLINE Employer Follow-up Questionnaire, Form # PC–1510.

Type of Request: Form extension approval.

Frequency of Collection: Occasional.

General Description of Respondents: Employers who have placed announcements in HOTLINE.

Estimated Number of Respondents: 1,200 annually.

Estimated Hours for Respondents to Furnish Information: 0.10 hours each.

Respondents Obligation to Reply: Voluntary.

COMMENTS: Comments on this form should be directed to Jeff Hill, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20523. A copy of this form may be obtained from Susan Musich, Returned Volunteer Services, Peace Corps, telephone: (202) 606–3126. This notice is issued in Washington, DC on November 23, 1994.

Stanley D. Suyat,

Associate Director for Management.

[FR Doc. 94–29461 Filed 11–29–94; 8:45 am]

BILLING CODE 6051–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IA–1454]

Notice of Intention To Cancel Registrations of Certain Investment Advisers

November 22, 1994.

Notice is given that the Securities and Exchange Commission (the "Commission") intends to issue an order, pursuant to Section 203(h) of the Investment Advisers Act of 1940 (the "Act"), cancelling the registrations of those investment advisers whose names appear in the attached Appendix.

Section 203(h) provides, in pertinent part, that if the Commission finds that any person registered under Section 203, or who has pending an application for registration filed under that section, is no longer in existence, or is not engaged in business as an investment adviser, the Commission shall by order, cancel the registration of such person.

Paragraph (b) of Rule 204–1, requires an investment adviser to file promptly an amendment to its application for registration (Form ADV) and when its address changes or when certain other information becomes inaccurate in a material manner.[1] The Commission has been sending all registrants a booklet of registration materials annually since 1987. Each booklet contains copies of Forms ADV, ADV–S, ADV–E and ADV–W.[2] These forms, when properly filed, are used to update the Commission's records. Since the 1990 mailing, the Commission has had correspondence for each of the registrants listed in the Appendix returned as "undeliverable" (addressee unknown, forwarding order expired, or no longer at this address) by the U.S. Postal Service. The Commission's records indicate that these registrants have not filed amendments to their registration, reflecting their current business and/or mailing addresses, as required by Rule 204–1(b). The Commission's records also indicate that many of these registrants have not made annual filings of Form ADV–S, as required by Rule 204–1(c). Accordingly, the Division of Investment Management believes that reasonable grounds exist for a finding that these registrants are no longer in existence or are no longer engaged in business as investment advisers.

Notice is also given that any interested person may, by January 6, 1995, at 5:30 P.M., submit to the Commission in writing a request for a hearing on the cancellations, accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, and he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549.

At any time after January 6, 1995, the Commission may issue an order cancelling any or all of the investment advisers listed in the Appendix, upon the basis of the information stated above, unless an order for a hearing on the cancellation shall be issued upon request or upon the Commission's own motion. Persons who requested a hearing, or to be advised as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For further information contact: Robert L. Lewis, Staff Accountant at (202) 942–0517 (Division of Investment Management, Office of Financial Analysis).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Johnathan G. Katz,

Secretary.

Appendix

Northeast Region

(Formerly: Boston, New York and Philadelphia Regional Offices)

801–02439	Indicator Research Group Inc.
801–03852	Kerpen, Fred K.
801–06609	Kuhns Brothers & Laidlaw Inc.
801–06719	Philips Appel & Walden Inc.
801–08780	Lambert, Dorothy May
801–09310	Securities & Commodities Corp
801–09523	Elms Capital Management Inc.
801–09972	Gutman, John Investments Corp
801–10479	Rothschild, L.F. Asset Management Inc.
801–10504	Stewart, Kenneth Roy
801–11255	Pinkham, Robin Remick

[1] Under Section 204 of the Act and Rule 204–1 thereunder, an investment adviser must also file an annual supplement (Form ADV–S) providing the Commission with certain information about its business activities.

[2] Form ADV–E is used by accountants for certification of client funds and securities in the possession of an adviser. Form ADV–W is used to voluntarily withdraw from registration as an investment adviser.

801–13366 Laiken, Leslie Merrill
801–13893 Nixon, Michael
801–13901 Mones, Bruce E.
801–14409 Walker Associates Inc.
801–15141 Bloor, William
801–15281 Weiner, Dennis Paul
801–15449 Erickson Investment Management Corp
801–15488 MEG Asset Management Co. Inc.
801–15522 Glaser Corp
801–15815 Broad Reach Inc.
801–16038 Merchant, Dean Bradley
801–16122 Intervest Group Inc.
801–16592 Bachli, Bill Associates Inc.
801–16681 Managed Advisory Services Inc.
801–16732 Fennell, Paul D.
801–16894 Slowey, Charles Christopher Jr.
801–16923 School Street Fund Adviser Inc.
801–17087 Capital Investment Advisory Services Inc.
801–17126 Financial Service Center Inc.
801–17213 Mordini, Edward Anthony
801–17418 Alster, Henri
801–17677 Norton, Robert H.
801–17723 Progressive Equities Inc.
801–18022 Rosenberg, Richard Jay
801–18187 Goldberg & Roth Financial Advisors Inc.
801–18252 Virtu Management Group, Ltd.
801–18282 Conner, Donald Read
801–18302 Armstrong, Alexandra Advisors Inc.
801–18452 Harlan, Charles Walton
801–18458 Creative Financial Concepts Inc.
801–18483 Reliant Asset Management Inc.
801–18602 Structured Financial Services Inc.
801–18777 North American Investment Corp
801–18781 Hearn Financial Services Inc.
801–19225 Belfiore, Michael
801–19254 Innovative Financial Plans Inc.
801–19326 Stansfield, Martin Inc.
801–19352 Dalton, Paul Steven
801–19546 US Advisory Service Inc.
801–19626 Larin Advisory Inc.
801–19648 Throckmorton, Timothy Henry
801–19651 Mount Keen & Co. Inc.
801–19678 Cardinal Financial Planning Inc.
801–19962 Ridge, Frank & Associates Inc.
801–20009 Hersey, Ralph Bertram Jr.
801–20062 Muncy, Thomas Raymond
801–20229 Financial Compass Inc.
801–20274 Grosnick, Allen Harold
801–20330 Goodstone, Arthur Joseph
801–20453 Norbert, Eric Anthony
801–20498 First Empire Funding Corp
801–20549 Adelson, Zachary
801–20582 Daniels, Alfred Arthur
801–20618 Vimac Corp
801–20885 Financial Advisory Corp
801–21143 Piedmont Advisers Inc.
801–21300 Spence Financial Advisers Inc.
801–21322 Spectrum Planning Group, Ltd.
801–21735 Wolinsky, Harold
801–21874 Investors Information Bureau Inc.
801–21944 James River Equities Inc.
801–22093 Arnold, Steven Alan
801–22144 FPC Advisory Services Inc.
801–22185 Prosperitylife Inc.
801–22228 Galucki, Dennis John
801–22258 Rodermund, Robert Earl
801–22263 Lyniuk, Roman
801–22298 Capital Advisory Group, Ltd.
801–22343 Schwartz, J. & Co. Inc.
801–22368 Levess, Herbert H. Associates Inc., Ltd.
801–22399 Gould, Arthur Inc.
801–22412 McCaffrey, Anthony Daniel
801–22559 FG Asset Management Inc.
801–22582 CFP Services Inc.
801–22738 Shea, Stephen Brian
801–22849 Associated Financial Planners Inc.
801–23059 TCG Consulting Inc.
801–23088 Jarosh, Roman George
801–23152 Professional Financial Management, Ltd.
801–23162 Winslow Asset Management Inc.
801–23246 Custom Financial Consultants Inc.
801–23268 Hamilton, Diane Mary
801–23365 Intercapital Securities Inc.
801–23503 SPI Advisory Corp
801–23518 Vanderpool, Wynant Davis III
801–23630 Cooper Financial Planning Group Inc.
801–23799 Compensation & Benefits Services, Ltd.
801–23918 Naylon Consulting Services Inc.
801–23953 Lamina, Gerald Patrick
801–23984 Steinman, Robert Steven
801–24308 Hauppauge Brokerage Funding Corp
801–24361 Property Planning Inc.
801–24516 Doyle, Lawrence Patrick
801–24603 G&H Financial Services Inc.
801–24890 Lewis, Richard Martin
801–24963 Investment Center of Southern Connecticut Inc.
801–24978 Savage, George F., III
801–24979 Whitman, Gordon Raymond
801–25065 Sterling Financial Group Inc.
801–25120 Napolitano, Gertrude
801–25181 Indexco Inc.
801–25366 MLC Securities Corp
801–25404 Zohar, Oreet
801–25406 Bianchi, Charles Paul
801–25464 RLBA Financial Services Inc.
801–25565 Thomson, Alexander Bennett
801–25612 Public Service Investment Management Co.
801–25635 Wharton Investment Inc.
801–25671 Gerstman, Nanci R.
801–25735 Burke, Walter Healy
801–25780 Bottom Line Advisors Inc.
801–25806 Callahan, Colin William
801–25864 Financial Management Consultants Inc.
801–26003 Wolfson, Stephen
801–26056 Larkin, James E. III, CLU & Associates Inc.
801–26060 Bohling, Gary J.
801–26078 Cambridge Financial Resources, Ltd.
801–26089 Savage, Howard Allan
801–26125 Gallers Financial Group Inc.
801–26137 Syversen, H. & Co., Inc.
801–26308 Tribeca Capital Management Inc.
801–26313 Sharko MacIver & Co Inc.
801–26320 Arundel Financial Planning Inc.
801–26337 Rosenbaum, Gerald Lee
801–26430 Miller & Spector Financial Planners Inc.
801–26554 Weissman, Linda Jacobs
801–26653 Steininger, Michael Gary
801–26729 Intersource Associates Inc.
801–26743 Benicor Advisory Service Inc.
801–26829 Prime Capital Management Inc.
801–26849 Hodes, Lyle
801–26873 Barron, Dean Samuel
801–26896 Brush Hill Management Corp
801–26951 Speros, Peter Charles
801–26959 Rachal, Corbett Eliot Jr.
801–26999 DCM Advisers, LP
801–27022 Boorojian Organization A Fin'l Mgmt Co.
801–27045 Dalton, Paul Steven
801–27088 New Age Financial Services Inc.
801–27147 Turcan Financial Group Inc.
801–27183 Derganc, Richard Drew
801–27209 TRV Securities Inc.
801–27210 Goldstein, George A.
801–27311 Higgins Advisory Group Inc.
801–27333 Tayar, George Majed
801–27477 Dorsett, Burt N.
801–27666 New England Financial Resources Inc.
801–27741 Carter, Raymond Andrew
801–27748 Mascolo, Gerard Anthony
801–27790 Gurwitz, Clive Kenneth
801–27809 Boyd, Trustin Brown
801–27882 Sieben, Marc Alan
801–27953 WG Advisors Inc.
801–28029 Frazier, David Lloyd
801–28065 Pellegrine, Louis John Jr.
801–28121 Strategic Financial Planning Corp
801–28234 Hill, Donald Lance
801–28251 Carlucci, William Daniel Jr.
801–28263 Braun Star Group Inc.
801–28289 Greenfield, Stanley Bertram
801–28367 IMR Financial Advisors Inc.
801–28439 International Heritage Corp
801–28611 Hurley, John J.
801–28639 Bradley, Sheila Gay
801–28653 Clukay, Bruce Alan
801–28681 Private Capital Partners Inc.
801–28699 Intermarket Capital Associates, Ltd.
801–28743 FMG Advisory Inc.
801–28789 Tatasciore, Rocco Nicholas Jr.
801–28846 Robertson, Mark Stephen
801–28865 Investment Advisory Firm Inc.
801–28879 Atlantic Emeritus, Inc.
801–28925 Innovest Inc.
801–28936 Davis International Consultants Inc.
801–28977 Lancing Associates
801–29090 Murray, Michael J. Associates Inc.
801–29132 Jesup & Lamont Asset Management Inc.
801–29241 Rosenbaum, Arnold M.
801–29248 Radnor Financial Consulting Group Inc.
801–29356 Buffalo Financial Planning Inc.
801–29390 Investment Counselors of Roland Park Inc.
801–29393 Anderson, James Burton
801–29541 Anthony, John Management Inc.
801–29550 Island Consulting Services Inc.
801–29561 Savary, William
801–29596 Capital Financial Planning Inc.
801–29653 PCMA Inc.
801–29844 Allen, Gary Paul
801–29849 Atienza, Alberto M.
801–29909 Gregg, Hamilton Stearns II
801–29961 Schwartz, Barton
801–29991 Executive Consultants of New York Inc.
801–30072 Best Investors Group Inc.
801–30275 Pathfinder Investment Co.
801–30337 Perdue, Henry Stafford
801–30382 Eaton, C.P. & Associates, Inc.

801–30390 Financial Support Services Inc.
801–30413 Reutemann Wagner King & Associates, Ltd.
801–30419 Packerkane & Co. Inc.
801–30512 Ludsin, Steven Alan
801–30533 Appel Financial Planning, Ltd.
801–30554 Intrepid One Services Inc.
801–30741 Montgomery Advisors Inc.
801–30767 Bell, George Hamilton
801–30831 Liogys, Zita Danguole
801–30850 Kensington Financial Management Corp
801–30851 Executive Financial Group Inc.
801–30881 Garabedian, Edward John
801–30900 Goodstein, Ricki
801–30925 OCF Advisers Inc.
801–30950 Rockridge Financial Advisers, Ltd.
801–30970 Racaniello, Daniel
801–31016 Snyder, Perry
801–31133 AF Advisory Service Inc.
801–31139 Piper, Philip Karl
801–31153 Gay, Wilson Kell Jr.
801–31223 Westport Capital Group Inc.
801–31266 Morrison, William Edward
801–31289 Lewis, Stephen Ralph
801–31303 Sterling Capital Research Inc.
801–31339 Rosner, Steve & Associates
801–31408 Cathedra Investment Corp
801–31455 Sentinel Financial Services Inc.
801–31538 Westminister Securities Corp
801–31546 Tepper, Stanley
801–31592 Funds Management Co., Inc.
801–31609 Rucker, Suzanne June
801–31639 Littlefield, John Clough
801–31651 World Capital Management Inc.
801–31660 Dumenil Asset Management USA, Inc.
801–31798 Herrell, Philip Theadore Jr.
801–21823 Shaffer & Associates Inc.
801–21829 Stephens, Brooke Marilyn
801–21863 O'Neil, Michael P. & Associates Inc.
801–31914 Lyons Planning Group Ltd.
801–32116 Strategic Financial Advisors, Inc.
801–32132 Fincon Associates Inc.
801–32173 Hinkle, Rod & Associates Inc.
801–32248 Hein, Rohn Allan
801–32298 Business Planning Concepts Inc.
801–32300 Association Advisers Inc.
801–32508 Sacchetti, Carl Michael
801–32677 Driscoll, Andrea Hudack
801–32740 Guiliano, Nicholas J.
801–32799 Adams, Robert H.
801–32952 Empire State Planners Inc.
801–32991 Financial Dynamics Inc.
801–33062 Nationwide Asset Management Inc.
801–33082 Non Profit Financial Corp of America
801–33141 Zullo, Roger Salvatore
801–33185 DFM Associates Inc.
801–33209 Wealth Conservancy International Inc.
801–33292 Rossi, Richard C.
801–33299 Thayer, Mark Allan
801–33353 Graham Rogers & Co Inc.
801–33364 Somerset Investment Consultants Inc.
801–33403 Goldberg Capital Management Inc.
801–33593 ZK Financial Services Inc.
801–33600 Cross Financial Services, Ltd.
801–33613 Advanced Planning Concepts Inc.
801–33623 Berkeley Capital Management Inc.
801–33735 Catlin, Glenn Allen
801–33737 Bloom, Jay Lawrence Magnavest Inc.
801–33844 Hackenberg, Robert Lee Jr.
801–33860 Donald & Co. Securities Inc.
801–33993 Teletrader
801–34255 Richards, Elisabeth Ann
801–34324 ISM Capital Advisors Inc.
801–34551 KRM & Co., Inc.
801–34572 Aegis Advisors Inc.
801–34726 Hawes, Bryan James
801–34770 Process Technology Inc.
801–34826 Viotto, John Eric
801–34838 Wasik & Davidson Inc.
801–34905 Yeomans Financial Corp
801–34928 Armstead Investment Corp
801–34985 Tramo, Robert Joseph
801–35048 AEI International
801–35075 Condolff, James Edward
801–35077 Westfair Financial Analysis Inc.
801–35078 Scot Slavic Advisors Inc.
801–35101 McCaskey Group Inc.
801–35122 Oehmann & Co
801–35184 Strategic Planning Associates Inc.
801–35199 HS&A Personal Advisory Services, Inc.
801–35307 Financial & Investment Consultants Inc.
801–35361 Investment Management Services Inc.
801–35409 Independent Asset Management Corp
801–35423 Startrade Management Inc.
801–35441 T&H Associates Inc.
801–35449 Griffin Atlantic Inc.
801–35485 Chase Investment Consulting Group Inc.
801–35503 Asset & Resource Management Inc.
801–35530 Loeser, M.J. Asset Management Corp
801–35571 Chase, Sarah
801–35595 Brandywine Investment Advisors, Ltd.
801–35607 Klein, Margaret Associates
801–35620 Ruzanic & Co. Inc.
801–35631 Kim, Nicholas Hahn
801–35756 Teichbergs Markey Strategy
801–35827 Dec Ltd. Capital Management
801–35868 Eastland National Corporation
801–35926 Gluck, David M
801–36002 Arauca Capital Management Inc.
801–36030 Surface, Paul Allan
801–36068 Investment Technologies Inc.
801–36166 Perkins, Charles Leonard Brooke
801–35211 Fusco Financial Associates Inc.
801–36287 Boston Municipal Securities Inc.
801–36325 Campbell, Thomas W.
801–36335 McHale, Thomas Gerard
801–36372 Penli Financial Coordinators Inc.
801–36468 IHG Securities Inc.
801–36505 Rothschild, L.F. & Co., Inc.
801–36580 Bush, Joseph Frederick
801–36586 O'Laughlin, Lucy
801–36613 AWP International Inc.
801–36647 Quantitative Investment Services Inc.
801–36657 Family Stewardship Center Inc.
801–36663 Ardan, Ivan Nicholas
801–36672 Arch, David Edward
801–36676 Grandich, Peter
801–36697 Merrifield, Robert Albert
801–36763 Security Analysis Inc.
801–36795 Euronomics Inc.
801–36829 Kouri Capital Advisors Inc.
801–36913 Dismuke & Heisler, Ltd.
801–36928 Fiduciary Investment Advisors Inc.
801–37017 Weaver, Douglas Lee
801–37513 Burns, John Joseph
801–37691 Hamilton Investment Consultants, Ltd
801–37707 BDO Capital Ltd., Inc.
801–37713 Barber, Richard J. Associates, Inc.
801–37745 J.D. Associates of Virginia Inc.
801–37797 Gregware, James Murray
801–37849 Tax & Financial Strategies Inc.
801–37868 Robert Charles Associates, Ltd.
801–37905 Brown, Willard Wishard
801–38133 Strategic Holdings
801–38217 Webster Hart Advisors Inc.
801–38273 Kimbaco New York, Ltd.
801–38288 Ehrlich Bober Advisors Inc.
801–38312 Asset Management Corp of America Inc.
801–38314 Hellmold Associates Inc.
801–38538 Strategic Performance Inc.
801–38588 CEF Publishing Corp
801–38661 Singer, Daniel D.
801–38719 Wheeler, Margaret Long
801–38765 Khanani, Iqbal Ike Ahmed
801–38876 Valscore Consulting Group Inc.
801–38904 Diamond, Bruce W. Financial Group Inc.
801–38951 CJA Associates Inc.
801–38998 Market Master Inc.
801–39101 Singh, Harimohan P.
801–39136 Szrom, Richard Steven
801–39147 Clark, Regina Murphy
801–39262 Trafton, Burke Osgood
801–39595 Ware, Robert
801–39864 Constantinol, Frank Louis
801–39941 Zeppieri, James Benjamin
801–39958 RCM Capital Development, Ltd.
801–40480 Sussman, Robert Mark
801–40493 Sklar, Harry S.

Southeast Region

(Formerly: Atlanta Regional Office)

801–09120 Ziegler, Charles William III
801–09240 Gulf Coast Investment Advisors Inc.
801–11057 Nelson, Leroy W.
801–11220 Bergenfeld, Al
801–12432 Slaughter, Henry George
801–13327 Stake, Roger Dennis
801–13671 Grady, J.J. Co., Inc.
801–15515 Peterson, J. Chandler Wealth Planning Inc.
801–15524 Jacques Miller Investment Co.
801–16207 Gardner, Harvey L. & Associates Inc.
801–16296 Horwitz, S.T. & Associates, Inc.
801–17270 JWF Financial Services Inc.
801–17620 Dobson & Johnson Capital Corp
801–17743 Fye, Marion Franklin
801–17905 Advanced Financial Management Corp
801–18290 Bryan, Charles Eugene
801–18632 Invest Net Group Inc.
801–18698 Pate, Thomas Rankin
801–18892 Tegler, Henry Francis Jr.
801–19153 Financial Advisory Corp
801–19429 First Equities Institutional Properties Inc.

801–19620 Planamerica Financial Services Inc.
801–19709 Fiskanalyse Inc.
801–19730 Capital Management Inc.
801–20510 Innovest Systems Inc.
801–21475 Magalnick, Alvin J.
801–21647 Conservative Investment Planning Inc.
801–21685 JLH Financial Consulting Corp
801–21739 Independence Financial Services Inc.
801–22324 Christe, Joel
801–22377 Mirabella, Frank Daniel, III
801–22449 Atlanta Investment Managers Inc.
801–22787 Certified Capital Corp
801–22809 Morguess, Jack Santiago
801–23540 Financial Planning Services Inc.
801–23719 First Real Estate Capital Inc.
801–23862 Hollis Capital Management Inc.
801–24017 Camus Investment Econometrics Inc.
801–24057 Coordinated Financial Services Advisors Inc.
801–24200 Financial Advisors Inc.
801–24314 Wolfert, Paul Joseph
801–24400 Margaretten Advisory Corp
801–24535 McKendry Options Advisory
801–24865 FWK & Associates Inc.
801–25198 Smith, Howard Lawton
801–25264 Washington, John Garland
801–25429 Vydex Management Group Inc.
801–25484 Fitzgerald McKeown Planning & Advisory Corp
801–26036 National Financial Planning Services Inc.
801–26183 Cooper, Curtis Preston
801–26418 Johnson, R.P. Financial Planning Inc.
801–26604 Blendermann, Louis George
801–26737 Vizzini & Dooley
801–26942 Tate, Michael Wayne
801–26973 Financial Planning & Management Inc.
801–27163 Investment Planning & Management Inc.
801–27204 Future Plans Inc.
801–27304 Hynson, Williamson Ringgold
801–27372 Traynham, James Carroll
801–27648 Strategic Timing Services Inc.
801–27984 Mannin, John Mitchell
801–28002 Vast Co., Inc.
801–28030 Diversified Plans Inc.
801–28134 Tylander, William Hamilton Jr.
801–28208 International Investment Group
801–28275 Saeger Financial Services Inc.
801–28332 Watson, Marcia Moncavage
801–28496 Ashley Securities Corp
801–28569 Stanley, Louis Jerome
801–29018 Dew Thayer & Co., Inc.
801–29035 Wander, Gerald Irwin
801–29046 Long Run Investing Inc.
801–29280 Carspecken, Margaret Logan
801–29685 Investment Bankers of North America
801–29783 Moses, Derek Wayne
801–29947 Wilson, Barbara J. & Associates Inc.
801–29970 Wolf, Ronald Gary
801–30143 Olive, Curtis Andrews
801–30148 Aby, Carroll Darden Jr.
801–30621 Peachtree Planning Advisors Inc.
801–30757 Lin, David A.
801–30761 Norris & Hirshberg
801–31067 Smith, Deborah M.
801–31209 Gibbs, John Phillip
801–31397 Investment Strategies Corp of America
801–31404 Amerivest Capital Management Inc.
801–31636 Olson, Lawrence Victor
801–31801 Francis Schroder & Associates Inc.
801–31845 Lindsey Financial Services Inc.
801–31930 Gilchrist, James Harley Sr.
801–31955 Saltzman, David Alan
801–32044 Chamberlain, Patrick B., Inc.
801–32192 Financial Advisory Services Inc.
801–32249 Walker, Glen Ray
801–32365 Kodl, David Alan
801–32433 Richards, R. Capital Management Inc.
801–32637 Brown, Gerald
801–32736 Capital Financial Consultants Inc.
801–32839 Linnis Capital Management Inc.
801–33449 Trenvest Asset Management Inc.
801–33455 Williams, George Hugh III
801–33535 Faulk & Co., Inc.
801–33539 Weymouth, Trish Financial Planning Services, Inc.
801–33611 Amerifidelity Advisors Corp
801–33729 Healthcare Concepts Inc.
801–34059 Melton, Edgar Phillip
801–34067 Optima Advisory Services, Ltd.
801–34080 Financial Planning Center of Mobile
801–34117 Gray, Richard Currier
801–34164 Sherer, Harry Clement
801–34172 Invest Centro USA, Inc.
801–34311 Executive Privilege Inc.
801–34571 Smith, Todd Elliott
801–34857 Timberlake, Thomas Andrew
801–34981 Janisz, Derrick Albin
801–35091 Southern Partners LP
801–35146 Cooley, Harold Dunbar II
801–35168 Rosenhaus Sports Representation Inc.
801–35256 Landmark Financial Planners Inc.
801–35289 Gemini Investment Advisors, Ltd.
801–35406 Kneller & Purtee Inc.
801–35592 Core Business Services Inc.
801–35956 Investment Directions
801–36055 Chafins, A.D., Inc.
801–36293 Doherty, John Joseph
801–36317 Adams, Salvatore Charles
801–36444 Meadows, Roy & Associates, Inc.
801–36454 Market Leap Inc.
801–36521 North Florida Asset Management Corp
801–36591 Barbetta, Joseph Anthony
801–36653 Asset Diversified Investment, Inc.
801–36900 Healthcare Investment Advisors Inc.
801–37108 Hoffmann & Serralles Inc.
801–37340 CPC Advisors Inc.
801–37424 National Pension Administration Inc.
801–37746 Stuart, H.D. & Associates Inc.
801–37964 South Atlantic Capital Management Group Inc.
801–38067 Surratt, James Michael
801–38383 Jabbour, Richard Thomas
801–38586 Eagle Financial Group Inc.
801–38643 Spartana Trading Inc.
801–38713 Core Planning Group Inc.
801–38912 Financial Benefits Network Inc.
801–39104 Athena Capital Management Corp
801–39239 Boca Raton Investment Advisory Inc.
801–39362 Shubert, John Marc
801–39400 Concourse Capital Asset Management Inc.
801–39642 Automated Business Services Inc.
801–39709 Thomas, Grace Darling
801–39797 Teti, Joseph Nicholas
801–40326 First Palm Beach Investors Inc.
801–40390 Moore, William Mac

Midwest Region

(Formerly: Chicago Regional Office)

801–06162 Investment & Capital Management Corp
801–09141 Whitney Management Co.
801–09198 Rowland, R. & Co Inc.
801–11638 Sucsy Fischer & Co. Inc.
801–12015 LFK Inc.
801–12297 McCarthy, Edwin Thomas
801–13978 Kulberg Whitaker & Associates Inc.
801–14161 Battle Creek Advisors Inc.
801–14291 Financial Strategies Corp
801–15121 Murphy, Thomas H.
801–15954 London Advisors Inc.
801–16405 Capital Market Investments Inc.
801–16498 First Corporate Advisors Inc.
801–16805 Williams, Edward Joseph
801–17313 Wisniewski, Thaddeus Louis
801–17587 PFC Advisory Corp
801–17816 Rice, Daniel John
801–18292 Carano, James Bernard
801–18591 Continental American Inc.
801–18636 Garvey & Associates Inc.
801–18768 MacGregor Financial Securities Inc.
801–18960 Keener, R.L. & Associates Inc.
801–19211 Solomon, S.J. & Associates Inc.
801–19388 Midstate Financial Services Inc.
801–19460 Rub, Peter M.
801–19545 Money Counsel Inc.
801–19618 Adams, Thomas Gregory
801–19661 Deininger & Co. Inc.
801–19879 Financial Investment Consultants Inc.
801–19968 Flamion, John Allen
801–20257 CMF Financial Advisory Corp
801–20403 Trend Planners Advisory Service Inc.
801–20483 Stonehenge Investments, Ltd.
801–20538 McBride Noel & Co.
801–20729 Williamsburg Capital Inc.
801–21044 Sanders, Robert Benn
801–21183 First Financial Advisors Inc.
801–21507 Whitmore, Charles Allan
801–21720 Lewis, Herbert Lee
801–21779 Novick, M.H. & Co. Inc.
801–21854 White Financial Inc.
801–21893 Accuvest Corp
801–22462 Efroymson, Charles Franklyn Jr.
801–22473 Financial Plan Designs Inc.
801–22584 Reed, Milo Andrew
801–22672 Joppe, Dennis Preston
801–22922 Brungardt, Karl Edmund
801–23214 Century Financial Services of Indiana Inc.
801–23267 Fundamental Financial Advisors Inc.
801–23302 Money Management Resources, Ltd.
801–23362 Christian Financial Services
801–23387 Stein Investment Co.

801–23551 HMS Investors Inc.
801–23736 Raeder, James Hamilton
801–23818 Brandt, Peter Lewis
801–23950 Tezco Financial Inc.
801–24036 Paul, Wayne Norbert
801–24189 Prosperity Investment Co.
801–24215 Kiecker, Glenn Dewayne
801–24413 Smith, Donald James
801–24466 Triad Financial Service Inc.
801–24560 North Shore Timing Services Inc.
801–24718 Mahoney, John J., CPA
801–25048 JWD Equity Management Inc.
801–25146 Noble Roberts & Associates Inc.
801–25174 Allen, Matthew Gwyn
801–25241 Pearson, Roger Raye
801–25409 Equity Preferred Corp
801–25667 Financial Consulting Inc.
801–25719 Phoenix Group Inc.
801–25765 Forst, John Kelly
801–26432 Scholberg, Samuel Ray
801–26675 Compensation Management Inc.
801–26791 Dragonette, Anthony John
801–26845 Chase, Peter Advisors Inc.
801–26928 Integrated Professional Planners Inc.
801–26963 Pension Advisors of America Inc.
801–26971 Wade, Ruth Estelle
801–27114 Financial Solutions Inc.
801–27134 Capital & Business Planning Inc.
801–27151 Duncan, Kathy Jean
801–27165 Cambridge Financial Inc
801–27232 Bowen, James Phillip
801–27405 Ross, John Franklin
801–27516 Wallstreet Money Managers Inc.
801–27570 CFS Financial Services Inc.
801–27805 Browere, Stephen Charles
801–27864 Wealth Management Group Inc.
801–27890 Katt, Peter Charles
801–28047 Cunningham Financial Services Inc.
801–28132 DFC Financial Group Inc.
801–28385 Hale, Roger C., Inc.
801–28408 Ohio Savings & Securities Inc.
801–28462 Partners Capital Corp
801–28625 Rocque, Michael Lewis
801–28643 Fink Coleman Edwards & Co. Inc.
801–28802 Massie, Timothy Paul
801–28827 Sussex Financial Group Inc.
801–28847 Brennan, William Patrick
801–28867 Chicago Trading Group, Ltd.
801–28952 Cyrwus, Dennis Joseph
801–29086 Business Benefits Inc.
801–29181 Johnson, Daniel John
801–29192 River North Securities Corp
801–29195 Grand Rapids Investment Advisory Services Inc.
801–29261 Walker Financial Corp
801–29400 Kuhn, George August Jr.
801–29466 Investment & Product Analysis Corp of America
801–29471 Martin Jarrett Inc.
801–29505 Integrated Financial Planning Inc.
801–29524 Misaros, Carol Lee
801–29527 Security Investment Company of Kansas City
801–29684 Foster Marino & Associates Investment Advisory
801–29713 Schneider & Associates
801–29778 Lambert, B.J. Investment Co. Inc.
801–29907 Sandel & Szandzik Inc.
801–29949 Anthol Enterprises Inc.
801–30071 Consolidated Financial Planning Corp
801–30201 Rouse, Philip Bruce
801–30223 Blum, Sidney Arnold
801–30401 MC&L Realty Advisors Inc.
801–30479 Kiene Capital Management Inc.
801–30542 McKenna, Patrick Thayer
801–30733 Schuster, John Carl
801–30785 Nadolna, Alan R.
801–30861 Capital Concepts Inc.
801–30867 Smart Financial Planners
801–30957 Asset Growth Management Corp
801–31037 Investment Horizons Inc.
801–31143 Averill, Suzanne Frances
801–31210 First Gibralter Capital Management Corp
801–31256 Strukoff & Associates, Ltd.
801–31508 Merchant, Robert Louis
801–31536 Larsen, Lewis Gordon
801–31537 Atkinson Gary Joseph, CFP
801–31564 Windsor, John Carpenter Jr.
801–31654 Bray, Thomas Allen
801–31694 Oppenheimer Realty Group
801–31723 Olson, Darwin K.
801–31724 Kilbourne Capital Management, LP
801–31890 Bondy Financial Services Corp
801–31918 Baumann, Timothy Scott
801–31939 Basinger, John Warren
801–32123 Third Coast Stock Review
801–32348 Townsend Institutional Realty Advisors, LP
801–32504 Financial Designs of Illinois Inc.
801–32603 Elling Investment Services Inc.
801–32630 Connolly, Stephen William
801–32844 Investment Management Advisory Inc.
801–32946 Stonestreet Financial Inc.
801–32976 Roy, Thomas Edward
801–33357 Savage, Garry Nelson
801–33448 Oxford Securities Inc.
801–33493 Mather Dawson & Scott
801–33540 Columbus Stewardship Planning Group Inc.
801–33629 Kraus, Norman John
801–33847 Indiana Financial Consulting Inc.
801–33923 Alexander, McIndoe Stewart
801–33940 Inovative Financial Profile Inc.
801–33967 Poloski, Jerome Nicholas
801–34089 Kay, Joseph Anthony
801–34302 Century Financial Services of the Midwest, Ltd.
801–34307 Gekko Partners
801–34398 Smith, Judith Ann
801–34543 Samad Securities Corp
801–34784 Marantette, David Theodore III
801–34807 Ascencio, Ruben Jr.
801–34842 Asset Backed Capital Corp
801–34949 Yaqub, Nizar Abdul
801–35057 Sachem Investment Counsel Inc.
801–35135 Schea, Randi Andrew
801–35157 Brown, Richard Edward
801–35212 Corporate Benefits Counsultants of Minneapolis Inc.
801–35228 Ozark Trading Co. Inc.
801–35244 Powell, Corinne Helen
801–35264 Menconi, Gary R. & Co., Ltd.
801–35280 Kurk, Cover & Kurk
801–35603 DiMaggio, Steven Frank
801–35730 Oak Brook Financial Concepts, Ltd.
801–35743 Wealth Accumulation & Conservation Advisors, Inc.
801–35751 Melet, Barry Dean
801–36036 Dorfman, Marc
801–36066 Jaeger, Carolyn Sue
801–36294 McMurray, Kenneth Edwin
801–36295 Pear, David MacKenzie
801–36366 May, Mariola Kulikowski
801–36379 Integrated Financial Services
801–36418 Capital Protection Associates Inc.
801–36606 Checkmate Financial, Ltd
801–36768 Employee Benefits Strategies Inc.
801–37401 Moses, Michael Scott
801–37528 Phoenix Asset Management Inc.
801–37804 Wexelberg, Penny
801–38082 Minnesota Estate Service Inc.
801–38237 Holco Capital Group
801–38239 Devies, Dennis John
801–38459 Bloomfield Financial Planning Inc.
801–38530 Zimberg, Steven Michael
801–38650 Intelligent Trading Services Inc.
801–38954 Puckett, Kenneth
801–39458 Walker, John Howard
801–39627 Strauchon, Thomas Breslin
801–39715 OCG Investments Inc.
801–39913 Parkinson, Michael Thaddeus

Central Region

(Formerly: Denver and Fort Worth Regional Offices)

801–10884 Eldard, Robert Albert
801–11009 Strategic Management Inc.
801–14272 Shepard, Thomas Charles
801–14502 Newhard Cook Advisory Services Inc.
801–14534 Crutchfield, J.H. & Co
801–14855 Ziedins & Co. Inc
801–16323 Carleton, Charles Edward
801–16859 Security Investment Advisors Inc.
801–17204 Southmark Pension Advisors Inc.
801–17319 First American Financial Cooperative
801–17396 Rheem, John William
801–17413 Listek Co., Inc.
801–17419 Innovative Financial Services
801–17789 Bennatte & Associates Investment Counselors Inc.
801–18225 Lowry, James Saxon
801–18437 Adelmann, Henry Robert
801–18984 Chapman, Norris Ettinger
801–19355 MWL Advisers Inc.
801–20928 American First Advisory Corp
801–21046 Diversified Portfolio Management of Colorado Inc.
801–21324 Knodel, Ted Russon
801–21358 Edgar, James Michael
801–21630 Wimberly, Beadie M.
801–21731 Trans Texas Holdings Corp
801–21767 Financial Planning Strategies Inc.
801–27786 Galante, W.J. Investments Inc.
801–21859 Hughes, Benjamin Brent
801–22276 Barcenas, Jude Ramon Legaspi
801–22818 Young, Frank Hayes
801–22944 Richmond, John Cooper
801–22992 Morris, Stephen Albert
801–23259 Roszel, William Davison
801–23827 Blake, Jeanette
801–24608 IMS Advisory Inc.
801–25056 Hathcock, Harley Glen
801–25518 Rosaluk, Warren John
801–25679 Glover, Edward Kent
801–25775 Sower Financial Group of the Midlands Inc.
801–25877 Baluch, Hess

801–26349 Smith, Marshall Roy III
801–26542 Moldenhauer, George E. & Associates
801–26588 Regalado, Rodney Davis
801–26625 Lutz Invest Inc.
801–26819 Ruth Securities Inc.
801–27317 Franklin Financial Consulting Inc.
801–27325 Market Dynamics Inc.
801–27464 Brown, J.T. Interests Inc.
801–27909 Battle, Charles Edward
801–28123 Brickman, Richard Arlen
801–28192 Azzara, Thomas Peter
801–28577 First Financial Planners Inc.
801–28598 Meridian Asset Management Corp
801–28856 Firstmoney Asset Management Inc.
801–28899 Lake Shore Financial Advisors Inc.
801–29101 Riely, Terrence Paul
801–29222 Financial Profiles Group Inc.
801–29432 Cornerstone Financial Inc.
801–29693 Aday, Jerry Leon
801–29808 IMG Portfolio Management Inc.
801–29839 McLeodco Inc.
801–29841 Guardian Business Consultants Inc.
801–30064 Brown, Federico Lutcher
801–30139 Feezell, William John
801–30494 Brungart, Charles DeBardeleben
801–30674 Equity Planning Inc.
801–30756 Mierendorf, David Gerald
801–31059 Intercap Financial Corp
801–31206 Corless Winslow & Associates
801–31494 Shellenberger, John Jr.
801–31525 Overland Investments Inc.
801–31742 Comstock, Larry Dean
801–31912 Welty, Roy Don Jr.
801–31991 Higgins, James Norman
801–32043 Tomlin Properties Inc.
801–32048 Evans, Neal Albert
801–32054 Hurwitz Investment Management Corp
801–32062 American Family Financial Services Corp
801–32226 Strategic Capital Management Inc.
801–32665 VHC Certified Financial Counseling Inc.
801–32764 L&G Advisors Inc.
801–32848 Colvin, Robert & Co. Advisers Inc.
801–32874 Zaveral Boosalis Raisch
801–32913 Financial Planning Professionals Inc.
801–33225 Underwood Neuhaus & Co., Inc.
801–33285 Shine, Judith Ann
801–33325 Lankford, W.S. & Co. Inc.
801–33384 Anderson Capital Advisors Inc.
801–33548 Options Trading Group Inc.
801–33588 Blan, Santito Baltazar
801–33767 Angell, Charlie L.
801–33789 United Investment Consultants Inc.
801–33790 Lilly, Steven James
801–34043 Amerindian Companies Inc.
801–34374 ISM Financial Group Inc.
801–34493 PCMA Financial Services Inc.
801–34714 Schriver, Edwin Stanton
801–34763 Lauren Capital Management Corp
801–34855 Sperling, Robert Lee
801–34863 Boll, Charles R.
801–34957 Moore, David Paul
801–35029 Pera Equity Management Co
801–35031 Sutton, Allen Keith
801–35236 Neri Advisors
801–35454 Churchill, Arthur Victor
801–35586 Equity Brokerage Services Incorporated
801–35627 HFG Realty Advisors Inc.
801–35628 Lemons, Thomas Craig
801–35847 Phoenix Partners Inc.
801–36034 CCM Inc.
801–36086 Holder Financial Services Inc.
801–36107 Whitehouse & Moore Investments Inc.
801–36108 Hurst, Joel Lee
801–36186 Edwards & Dolph CPA
801–36195 Sundance Capital Management Inc.
801–36382 Wright, Ronald Edward
801–36808 Cherry Creek Capital Inc.
801–36822 Capital Fulcrum Group Inc.
801–36837 Green, Rex Inc.
801–36947 Wilmer Capital Management Inc.
801–36968 Huff, Cynthia Susan
801–37016 Bramm Investments Inc.
801–37406 Sammons, Harry Jr.
801–37437 Portfolio Strategies Inc.
801–37498 Sides, Steven Karl
801–37507 Johnson Capital Management Group Inc.
801–37669 Capital Preservation Associates Inc.
801–37828 Shavano Asset Management Inc.
801–38263 Citadel Financial Advisors Inc.
801–38353 Retirement Plan Savings & Investment Inc.
801–38372 Sanders, Dan Eugene
801–38400 Foutch, Robert Alan
801–38885 Charles, L.P. & Co
801–39902 First Liquidity Advisors Inc.
801–39955 Cofinsa Co
801–40085 Asset Management & Timing Services Inc.
801–40086 Holland, Fred Benjamin

Pacific Region

(Formerly: Los Angeles and Seattle Regional Offices)

801–01255 Lion, John Louis
801–08657 Chicoine & Associates Inc.
801–09663 Schmidt, Eric Clausen
801–10243 Dye, John Paul
801–11079 Thrall, Edwin Fiske Jr.
801–13487 Financial Planners Equity Corp
801–13500 Coleman, Robert Myers
801–15002 Zussman, David Todd
801–15416 Thompson Andersen Inc.
801–15529 Hale System Inc.
801–15588 Doolittle, William Louis
801–15722 Bristol Group Inc.
801–15788 Bolz, David G. & Associates Inc.
801–15840 Financial Management Advisors, Ltd
801–15940 Income Opportunities Inc.
801–16043 Murray, Peter Christopher
801–16130 Lansing Financial Group Inc.
801–16147 Portefeuilles Corp
801–16155 Pension Fund Real Estate Investment Co
801–16252 Klein, Russell Einar
801–16752 Wind River Associates Inc.
801–16852 Compensation Systems Corp
801–17393 Brown Financial Group
801–17575 Morrow, W. Aubrey & Associates Inc.
801–17623 Reeves, Steven Michael
801–17800 Barbee, Wyatt Graham
801–17947 Certified Pension Consultants Inc.
801–17952 Centaur Investments Inc.
801–18762 Brennan, Edward Alexander
801–18775 Elder Nelson Equities Corp
801–18980 Carr & Associates Inc.
801–19255 Financial Assets Inc.
801–19377 Financial & Retirement Planners Inc.
801–19520 Harding Hall Inc.
801–19724 Petzold, Heinz A. & Associates Inc.
801–20099 Burgess Capital Corp
801–20116 Miller, Diane Marie
801–20338 Eliasberg, Kenneth Charles
801–20507 Grimmett, William N. Inc.
801–20522 Jones, Ernest John
801–20836 Shearwater Financial Group Inc.
801–21023 Ross, Paula Jo
801–21144 Olmstead, Harvey Maw
801–21152 Hamel, Stanley Herschel
801–21154 Mooser, Michael Bosworth
801–21167 Iconography & Retirement Systems Inc.
801–21390 Value Equities Corp
801–21635 DeMartini, William E.
801–21912 Certified Equities Inc.
801–21945 Wegener, James Dennis
801–22026 United Resources Financial Planning
801–22038 Humbard, James William
801–22085 Adelstone Associates Inc.
801–22203 O'Malley, Daniel David
801–22213 Clinton, J. Edson Inc.
801–22216 McNeil, Edward James
801–22357 Portfolio Management Services Inc.
801–22407 Alternative Financial Services Corp
801–22425 Earnings Inc.
801–22441 Tonelli, Carlo Nunzio
801–22454 WMS Financial Planners Inc.
801–22596 Diversified Financial Planning Inc.
801–22885 Spectrum Financial Consultants Inc.
801–22896 Capital Synergist Inc.
801–23103 Lambeth, Lorraine Claudette
801–23145 Interrex Financial Network
801–23286 Interlake Financial Services Inc.
801–23323 Schmerman, Richard Mark
801–23325 MD Advisors Inc.
801–23498 Landes & Associates Inc.
801–23639 Perreira, Dominic Anthony
801–23677 Shell, Ellen Elaine
801–24020 EWC Insurance Services Inc.
801–24152 Union Gooch & Wagstaff
801–24182 Hiscox, T.L. & Associates Inc.
801–24221 Files, L. Burke
801–24272 Irvine International Investments Inc.
801–24358 Michaelis, Valerie Ridinger
801–24391 Proforma Financial Corp
801–24447 Garrett, Joe Paul
801–24501 Oak Canyon Enterprizes Inc.
801–24622 Johnston, Marion Elizabeth
801–24641 Vinocur, Brad Lee
801–24690 Mitchell, James Philip
801–24830 Davise, Thomas Frederic Jr.
801–24846 Park Capital Management Corp
801–25035 McDonald, Wilfred John
801–25037 Wong, Wallace
801–25128 Manager of Managers Inc.
801–25141 Solana Capital Management Inc.
801–25334 Affiliated Investment Advisors Inc.

801–25428 Western Century Financial Services Inc.
801–25462 Kestler Associates Inc.
801–25632 Creekside Associates Inc.
801–25754 Boyd, Irvin Alfred
801–25801 Ford, Alexander Lawton III
801–25844 Kramer, Gerald L., Ltd.
801–25845 Gallo, Robert M.
801–25850 Harvey, Bruce Douglas
801–25859 Capital Management Network Inc.
801–25881 Friedman Moon & Co. Inc.
801–25882 Grotenhuis, Gerry Kent
801–25911 American Financial Planning Corp
801–25912 East West Investments Inc.
801–26020 Hockensmith, Robert Franklin
801–26042 United Financial Services Corp
801–26166 Frew, Donald Ray Jr.
801–26354 Herts, Harry Hamilton
801–26426 Neel, Jay Pass & Associates Inc.
801–26583 Russell, John D. & Associates
801–26587 American Investment Advisors Inc.
801–26609 Olivas, George Scott
801–26628 Financial Investment Services Inc.
801–26738 Foxwood Financial Co
801–26877 Monroe, Richard Emmett
801–26985 Hutchinson Financial Services Inc.
801–27024 Kurihara, Brian Haruo
801–27287 Murray, Raymond Andrew
801–27379 Adler, Patricia Murphy
801–27407 Southwest Planning Consultants Inc.
801–27765 Hirata & Miyashiro
801–27829 Portfolio Strategies Inc.
801–27865 Charter Investment Management Inc.
801–27927 Noyer, Terry Preston
801–27955 Reed, D. Stephen Co., Inc.
801–27993 Romverse Inc.
801–28033 Clark, Richard G. Inc.
801–28035 Vendetti, Michael Paul
801–28042 AVT Financial Associates
801–28048 Stenburg, Robert Michael
801–28284 Wilson, Lloyd G. Inc.
801–28366 Ruff Investments Inc.
801–28636 Fraune, David Gerard
801–28734 Q West Investment Timing Strategies
801–29378 Financial Planning Group
801–29388 Betts, John Maitland
801–29677 Sewell, Thomas Richard
801–29712 Investment Planners of America
801–29793 Yung, Joseph S. & Co
801–29824 Mooneys Securities Inc.
801–29869 Nordlie, Robert Odd
801–29997 Schlosser, Michael Norton
801–30105 Alaska Securities Management Inc.
801–30129 American Investment Counselors Inc.
801–30161 Strategic Tax & Financial Planning Inc.
801–30202 Scates, Monty Timothy
801–30234 Goodlin Financial Inc.
801–30295 Jackson, John Charles
801–30324 Halliday Capital Partners Inc.
801–30448 Eaton, Robert Leon Jr.
801–30655 Serenity Financial Services
801–30857 Institute for Personal Economics Inc.
801–30903 Quigley, John Louis
801–30934 Tasler, Frank
801–31124 Investment Research Group Inc.
801–31164 lavioe, Steven Gregory
801–31193 Financial Foundations Inc.
801–31361 Michaelis Asset Management
801–31388 Best, Jeanette Anne
801–31479 Goldman, Alan Stephen
801–31494 Shellenberger, John Jr.
801–31576 Boulden, James Baynard
801–31599 Stephens, Edward Michael
801–31704 Schramm, Bert
801–31751 Lee, Edward Juck Quon
801–31923 Clingo, Daniel Lee
801–32001 Menini, Alfred Emanual
801–32278 Kelley, Philip Sheridan
801–32289 Bessemer Capital Management
801–32308 Johnson, Donald Oscar
801–32366 Financial West Group Planning Corp
801–32510 Wilson, Jean Pierre
801–32733 Coles, Michael James
801–32749 Water Research Associates
801–32768 Kristensen, Tommy John Moller
801–32803 First American Equities Corp
801–32808 Zvirbulis & Goetz Tax & Financial Mgmt. Inc.
801–32968 Investment Advisory Services Inc.
801–32971 Lyons, Gary Scott
801–33011 Kobayashi, Ray Hiromu
801–33038 Green, Jon Norman
801–33089 Pyramid Financial Corp
801–33108 Tharp, William Granison II
801–33195 Odesky, Gerald Alan
801–33205 Laughlin, Jerry Marion
801–33206 Ballantyne, Thomas Clinton
801–33256 Emde, J.C. Mason Jr.
801–33277 Ameritrust Equities Inc.
801–33378 Busch Financial Group, Ltd.
801–33418 Hatfield, Jean Williams
801–33423 Beck, Arnold Thomas Jr.
801–33481 Postle, Frederic Patton
801–33491 Whitman, James Daly
801–33525 Meade, Stephen Alan
801–33634 Jorgensen, James Aleck
801–33640 Shapiro, Ansel
801–33666 La Jolla Capital Management Inc.
801–33706 Hasenstab, Gary Martin
801–33723 Millennium Capital Management Inc.
801–33752 Klein, Stanley Lewis
801–33820 Independent American Financial Services, Inc.
801–33826 Rogers, Michael William
801–33896 Dorner, Jim & Associates
801–33903 Schneider, Frank Joseph
801–33912 Equitrust Resources Co
801–33983 BW & Associates
801–34138 Mission 110 Inc.
801–34200 Recorp Partners Inc.
801–34242 Parsell, Rene Andre
801–34263 Eurogold Exchange, Ltd
801–34299 Lansill, Clay Burt
801–34433 Gholson, Richard Michael
801–34525 Real Asset Management Advisors Inc.
801–34588 Clark, George Douglas
801–34614 Smith, Martin C.
801–34646 Polcyn, Rebecca Ann
801–34672 Wendt, Alvin Edward
801–34696 Kestler, Bernie Anthony
801–34848 Wilson, Ronald Edward
801–34975 Kilikauskas, Andrew
801–35009 Olmstead, James Alan
801–35114 Sands, Daniel Arthur
801–35372 CU First Securities Inc.
801–35434 Roger, Gordon Silberman
801–35559 RDS Investment Management Inc.
801–35597 Rideau, I.C. Securities Inc.
801–35623 TS Financial Services Inc.
801–35626 Nakata, Keith Akio
801–35664 Star Group International Inc.
801–35686 Carroll, Jonathan Pitts
801–35945 Webb, Jack Donald Eugene
801–36147 Almond, David Lee
801–36299 Luongo, J.M. Inc.
801–36388 Fisher, Paul James
801–36958 Argus Pension Advisors Inc.
801–36971 Small, Celia Marie
801–37018 Robinson, Allen Ray
801–37021 Harris, Richard Dyas Jr.
801–37151 Zures Co. Financial & Insurance Services
801–37195 Pinedo, Mario Edward
801–37259 Wolin, William Douglas
801–37270 Sippl, Thomas Lee
801–37289 Schwartz, Gilbert Bruce
801–37601 Athena Sports Management Inc.
801–37671 Rirdan, Daniel
801–37734 Westfield Consultants Group
801–37800 Rippe, Clarence Francis
801–38022 Panelli, Roy Louis
801–38091 Bowles, Howard Gay
801–38146 Commercial Financial Capital Group Inc.
801–38198 Denali Capital Management Inc.
801–38236 Ingersoll & Associates Inc.
801–38418 Municipal Government Investment Associates Inc.
801–38482 Macy & Co
801–38487 Strategic Property Investments Inc.
801–38548 Russell, Dale Marland
801–38600 Vestar Development Co.
801–38737 Sobol, David Loeb
801–38786 Stone Capital Management Inc.
801–39087 Robertson, Donn John Jr.
801–39238 Atrius Capital Management Inc.
801–39842 DeGreef, Jules Anthony
801–40110 Johnsen, Anna Calogheropoulou
801–40170 Sansei Insurance & Financial Services

Foreign

801–16387 Caldwell, John Spencer Jr.
801–17653 Brexmari Partners
801–22807 Morley, Geoffrey & Partners, Ltd.
801–23156 Crondall Investment Advisers, Ltd.
801–26656 Kim, Caroline Young
801–28994 Arbuthnot Government Securities
801–31176 Panet, Raymond Pierre B.
801–32078 Hulan, Godfrey Carl
801–32171 Khalil, Tarek Fehmi
801–33975 Castle Cairn Fund Managers, Ltd.
801–35028 Storrs, Pamela Renee
801–36402 Visconti, James Anthony
801–36848 P&R Holdings, SA
801–36849 Pahler, Robert

[FR Doc. 94–29462 Filed 11–29–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35003; File No. S7–27–93]

Consolidated Tape Association; Notice of Filing and Immediate Effectiveness of Sixteenth Charges Amendment to the Restated Consolidated Tape Association Plan

November 23, 1994.

Pursuant to Rule 11Aa3–2 of the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on November 18, 1994, the Consolidated Tap Association ("CTA") and Consolidated Quotation ("CQ") Plan Participants filed with the Securities and Exchange Commission ("Commission" or "SEC") amendments to the Restated CTA Plan increasing CTA charges to ticker subscribers. The new rates are effective as of January 1, 1995.

CTA/CQ has designated the proposals as changing a charge collected on behalf of all the participants, permitting them to become effective upon filing, pursuant to the terms of Rule 11Aa3–2(c)(3)(i) under the Act. The Commission is publishing this notice to solicit comments from interested persons on the amendments.

I. Description and Purpose of the Amendments

The purpose of the amendment is to recover the ticker network expense increases that common carriers have recently imposed on the CTA Plan Participants. The present fees of $110.00 per connection for Network A and Network B have been in effect since 1985. Since 1985, each of the Networks has absorbed a number of increases in common carrier costs. The most recent increases effected in August 1994, however, were significant and CTA has determined to pass the increased costs along to customers. Effective January 1, 1995, Network A charges will increase to $160.00 for those subscribers in the continental USA that are serviced via the AT&T terrestrial network that Dow Jones manages for the CTA Plan Participants and to existing customers located in Montreal and Toronto; the fee for all other locations in Canada will be based on the cost of delivering the ticker signal to the subscriber. Rates for subscribers located south of Chambers Street in New York City, where facilities are leased from NYNEX, and for customers presently receiving the signal via satellite, remain unchanged. Network B charges will increase to $130.00 per unit, effective January 1, 1995, for all customers presently receiving service in the continental USA and Toronto, Canada, including subscribers in downtown New York City and those currently receiving the ticker signal via satellite; the fee for all other locations in Canada will be based on the cost of delivering the ticker to the subscriber.

II. Solicitation of Comments

Rule 11Aa–3(c)(3) under the Act provides that the proposed amendment may be put into effect upon filing with the Commission. The Commission may summarily abrogate the amendment within 60 days of its filing and require refiling and approval of the amendments by Commission order pursuant to Rule 11Aa3–2(c)(2), if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors and maintenance of fair and orderly markets, to remove impediments to and perfect the mechanisms of a National Market System, or otherwise in furtherance of the purposes of the Act.

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, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CTA/CQ. All submission should refer to the file number in the caption above and should be submitted by December 21, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Jonathan G. Katz,

Secretary.

[FR Doc. 94–29463 Filed 11–29–94; 8:45 am]

BILLING CODE 8010–01–M

[1] 17 CFR 200.30–3(a)(27) (1989).

[Release No. 34–34999; File No. SR–CBOE–94–36]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Permanent Approval of the Modified Trading System Pilot Program

November 22, 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 October 21, 1994, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the CBOE. The Exchange filed Amendment No. 1 to the proposal on November 14, 1994.[1] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE is requesting permanent approval of its Modified Trading System pilot program ("MTS Pilot Program").[2] The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

[1] In Amendment No. 1, the Exchange requested permanent approval of the Modified Trading System pilot program, rather than a one-year extension as originally proposed. *See* Letter from Arthur Reinstein, Attorney, CBOE, to Brad Ritter, Senior Counsel, Office of Market Supervision, Division of Market Regulation, Commission, dated November 14, 1994.

[2] *Id.*

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to obtain permanent approval of the Exchange's MTS Pilot Program.[3] Under Exchange Rule 8.80(a), the MTS Pilot Program has been authorized by the Commission to operate through November 30, 1994.[4] The proposed rule change would amend Exchange rule 8.80(a) to delete the expiration date for the MTS Pilot Program that is contained in the rule.

The Exchange's MTS Pilot Program permits the CBOE to assign a Designated Primary Market Maker ("DPM") for options classes traded at the Exchange. A DPM is a CBOE member who functions in assigned securities as market-maker, floor broker, and order book official.[5]

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act, in particular, in that it is designed to perfect the mechanism of a free and open market. Specifically, the CBOE believes that the proposed rule change will continue the operation of a trading system that, in accordance with Section 11A(a)(1)(C)(i) of the Act,[6] assures the economic and efficient execution of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Sections 6(b)(5)[7] and 11A[8] thereunder. Specifically, the Commission concludes that permanently approving the MTS Pilot Program will contribute to the protection of investors and to the Exchange's ability to provide fair and orderly markets in new options products.

The Commission notes that prior to the last extension of the MTS Pilot Program, the CBOE was required to submit a report discussing various aspects of the pilot program ("1993 MTS Report").[9] The findings contained in the 1993 MTS Report were as follows: (1) No complaints had been lodged with the Exchange concerning the operation of the MTS Pilot Program; (2) no disciplinary of performance action had been taken against any Exchange member due to the operation of the pilot program; (3) since its inception, use of the pilot program by members had consistently increased in terms of the number of DPMs, the number of options classes assigned to DPMs, and the aggregate average daily trading volume associated with options classes assigned to DPMs' and (4) objective and subjective evaluations had shown that DPMs were consistently ranked at the high end of the scale in terms of depth of markets, price continuity, and width of bid/ask spreads, in assigned options classes.[10] In granting the last extension of the MTS Pilot Program, the Commission also stated that before the MTS Pilot Program would be permanently approved or further extended, the CBOE would be required to update the 1993 MTS Report highlighting any material developments during the extension of the pilot program ("1994 MTS Report").[11] The Commission notes that the Exchange has submitted the 1994 MTS Report as part of this proposed rule change and that the 1994 MTS Report contains no material changes from the findings reported in the 1993 MTS Report.

Based on the representations made by the Exchange in the 1994 MTS Report, the Commission concludes that the MTS Pilot Program has contributed to the protection of investors and to the Exchange's ability to provide fair and orderly markets in new options products. Additionally, the growth in the use of the MTS Pilot Program as represented by the CBOE, combined with the Exchange's findings that options classes assigned to DPMs, relative to other options classes, rate high in the quality of their markets (*e.g.*, depth of the markets and which of bid/ask spreads), leads the Commission to conclude that the MTS Pilot Program is beneficial for investors and will promote fair and orderly markets for options classes. Accordingly, for the reasons stated herein, for the reasons articulated in the Commission's order establishing the MTS Pilot Program,[12] and because of the success of the pilot program since its inception (as represented by the Exchange in the 1994 MTS Report), the Commission believes that granting permanent approval of the MTS Pilot Program at this time is appropriate.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** in order to permit the uninterrupted continuation of the Modified Trading System. As set forth in the 1994 MTS Report, the CBOE has represented that no adverse comments have been received and no problems have arisen in connection with the operation of the MTS Pilot Program since its inception. Furthermore, the Commission has not received any comments opposing the MTS Pilot Program or otherwise indicating that the MTS Pilot Program is operating other than as originally intended. Accordingly, the Commission believes it is consistent with Sections 6(b)(5), 11A, and 19(b)(2) of the Act to approve the proposed rule change on an accelerated basis.

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[3] The Pilot Program was originally approved by the Commission in 1987 as a two-year pilot program. *See* Securities Exchange Act Release No. 24934 (September 22, 1987), 52 FR 36122 (September 29, 1987) ("Exchange Act Release No. 24934"). The MTS Pilot Program was subsequently extended through November 30, 1994. *See* Securities Exchange Act Release Nos. 27167 (August 22, 1989), 54 FR 35960 (August 30, 1989) (extending the MTS Pilot Program until September 22, 1991); 29935 (November 13, 1991), 56 FR 58595 (November 20, 1991) (extending the MTS Pilot Program until September 22, 1993) ("Exchange Act Release No. 29935"); and 33430 (January 5, 1994), 59 FR 1976 (January 13, 1994) (extending the MTS Pilot Program through November 30, 1994) ("Exchange Act Release No. 33430).

[4] *See* Exchange Act Release No. 33430, *supra* note 1.

[5] Specifically, the Commission notes that in addition to the normal obligations of a market maker, the DPM assumes additional obligations designed to strengthen the market making in the designated options class, such as: (1) Assuring that disseminated market quotations are accurate; (2) being present at the trading post throughout every business day; (3) resolving trading disputes, subject to Floor Official review; and (4) participating at all times in any automated execution system which may be open in appointed options classes. *See* Exchange Rule 8.80(c).

[6] 15 U.S.C. § 78k–1(a)(1)(C)(i) (1990).

[7] 15 U.S.C. § 78f(b)(5) (1982).

[8] 15 U.S.C. § 78k–1 (1982).

[9] *See* Exchange Act Release No. 29935, *supra* note 1.

[10] *See* Exchange Act Release No. 33430, *supra* note 1.

[11] *Id.*

[12] *See* Exchange Act Release No. 24934, *supra* note 1.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the proposed rule change and Amendment No. 1 thereto. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–94–36 and should be submitted by December 21, 1994.

It is therefore ordered, Pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–CBOE–94–36), as amended, is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Jonathan G. Katz,

Secretary.

[FR Doc. 94–29417 Filed 11–29–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Notice Regarding Outstanding Applications for Unlisted Trading Privileges

November 23, 1994.

The recently enacted Unlisted Trading Privileges Act of 1994 ("Act"), Public Law 103–389 (codified as amended at 15 U.S.C. 78l (f) (1) to (3) (1988)), which became effective on October 22, 1994, authorizes any national securities exchange to extend unlisted trading privileges to any security that is listed and registered on a national securities exchange, otherwise registered pursuant to Section 12(g) of the Securities Exchange Act of 1934, or exempt from registration, all in accordance with the requirements and limitations of the Act and the rules thereunder.[1] Prior to the amendment, exchanges were required to apply to the Securities and Exchange Commission ("Commission") and receive approval from the Commission before extending unlisted trading privileges to any security. The Act eliminated these requirements.

As a result, any national securities exchange that has previously applied to the Commission for approval of unlisted trading privileges in any security may extend unlisted trading privileges to such security in accordance with the terms of the Act, notwithstanding that the Commission has yet to approve the exchange's outstanding application.[2] Accordingly, the Commission is publishing this notice to inform interested persons that no further Commission action on these applications is necessary. For further information, interested persons may contact Glen P. Barrentine, 202/942.0145, Senior Counsel, Office of Market Supervision, Division of Market Regulation, Securities and Exchange Commission, Mail Stop 5–1, 450 Fifth Street, N.W., Washington D.C. 20549.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–29464 Filed 11–29–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20727; 812–8906]

Investors Life Insurance Company of North America, et al.

November 22, 1994.

AGENCY: U.S. Securities and Exchange Commission (the "SEC" or the "Commission").

ACTION: Notice of application for an exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Investors Life Insurance Company of North America ("Investors") and its two separate accounts, Investors Life Insurance Company of North America—CIGNA Separate Account I ("Account I") and Investors Life Insurance Company of North America—INA/Putnam Separate Account ("INA/Putnam Account"). (Investors, Account I, and INA/Putnam Account shall be referred to herein collectively as the "Applicants").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 26(b) of the 1940 Act approving proposed substitution of portfolio shares; order requested under Sections 6(c) and 17(b) of the 1940 Act to the extent that the proposed substitution may involve transactions prohibited by Section 17(a) of the 1940 Act.

SUMMARY OF APPLICATION: The Applicants seek an order permitting the substitution (the "Substitution") of shares of each of the portfolios of the CIGNA Annuity Funds Group for shares of corresponding portfolios of Putnam Capital Manager Trust. The Applicants also seek an order permitting the purchase and sale of securities between affiliates in connection with the Substitution.

FILING DATES: The Application was filed initially on March 22, 1994. An amended and restated application was filed on October 24, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing the Secretary of the Commission and serving the Applicants with copies of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 19, 1994, and should be 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 writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, Investors Life Insurance Company of North America, 701 Brazos Street, Austin, Texas 78701, Attention: Theodore A. Fleron, General Counsel.

FOR FURTHER INFORMATION CONTACT: Patrice M. Pitts, Attorney, at (202) 942–0670, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is

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[13] 15 U.S.C. § 78s(b)(2) (1982).

[14] 17 CFR 200.30–3(a)(12) (1993).

[1] The Act initially requires a national securities exchange to wait until the third day of trading before extending unlisted trading privileges to any security that is listed and registered on another national securities exchange and is the subject of an initial public offering. The Act directs the Securities and Exchange Commission, however, to prescribe, before April 21, 1995, the permanent period, if any, that exchanges must observe before extending unlisted trading privileges to any such securities.

[2] The Commission has previously published notice of certain of these outstanding applications. See Securities Exchange Act Release No. 34787 (October 4, 1994); Release No. 34788 (October 4, 1994); Release No. 34789 (October 4, 1994); Release No. 34794 (October 5, 1994); Release No. 34795 (October 5, 1994); Release No. 34796 (October 5, 1994); Release No. 34797 (October 5, 1994); Release No. 34816 (October 7, 1994); Release No. 34824 (October 12, 1994); Release No. 34863 (October 19, 1994).

available for a fee from the SEC's Public Reference Branch.

Applicants' Representations and Statements

1. Investors is a stock life insurance company which was organized under the laws of the Commonwealth of Pennsylvania in 1963. Investors changed its state of domicile to the State of Washington in 1992.

2. In September 1982, Investors established Account I as a separate investment account to fund certain flexible premium and single premium variable annuity policies (the "Account I Policies"). Account I is organized and registered under the 1940 Act as a unit investment trust. Account I currently has five divisions, each of which invests exclusively in shares of a designated portfolio of the CIGNA Annuity Funds Group (the "CIGNA Funds").[1] Each such division contains two subdivisions, one for the allocation of tax qualified and one for non-tax qualified net payments made under variable annuity contracts.

3. The underlying investment vehicle for Account I is the CIGNA Funds, a Massachusetts business trust organized on April 10, 1985, which is registered under the 1940 Act as an open-end management company of the series type. The CIGNA Funds currently consist of five portfolios, each with its own investment objectives and investment portfolio. Before November 29, 1993, the investment adviser to the five portfolios of the CIGNA Funds was CIGNA Investments, Inc. ("CII"), a subsidiary of CIGNA Corporation.

4. In June 1980, the Investors established INA/Putnam Account as a separate investment account to fund certain single premium variable annuity policies (the "INA/Putnam Policies"). The INA/Putnam Account is organized and registered under the 1940 Act as a unit investment trust. The INA/Putnam Account initially had five divisions, each of which invested exclusively in shares of one of the following mutual funds (collectively, the "Putnam Funds"): Putnam Income Fund; Putnam High Yield Trust; Putnam Equity Income Fund (formerly known as Putnam Strategic Income Trust and Putnam Option Income Trust); Putnam Daily Dividend Trust; and Putnam Investors Fund. Each division of the INA/Putnam Account contained two subdivisions, one for the allocation of tax qualified and one for the allocation of non-tax qualified net payments made under variable annuity contracts. Putnam Investment Management, Inc. ("Putnam") currently serves as investment adviser to the Putnam Funds.

5. Following the issuance of Revenue Ruling 81–225 by the Internal Revenue Service on September 25, 1981, Investors discontinued offering the INA/Putnam Policies.[2] For owners of INA/Putnam Policies issued prior to Revenue Ruling 81–225 who were adversely affected by that Revenue Ruling, Investors added an additional division to the INA/Putnam Account, for which the underlying investment vehicle is the CIGNA Funds. Those INA/Putnam Policy owners were able to transfer contract values from the Putnam Funds to the CIGNA Funds. The CIGNA Funds initially offered a money market option (the "CIGNA Annuity Money Market Fund"); subsequently, the investment options were expanded to include the CIGNA Annuity Income Fund and the CIGNA Annuity Equity Fund as well.[3] The Putnam Funds have remained available under INA/Putnam Contracts issued prior to the cut-off dates described in Revenue Ruling 81–225. Accordingly, there currently are eight divisions of the INA/Putnam Account.

6. In July 1993, CII advised the Board of Trustees of the CIGNA Funds that CIGNA Corporation and its subsidiaries intended to redirect resources away from the active management of equity securities and concentrate their equity management activities in indexing strategies. Accordingly, CII indicated to the Board of Trustees of the CIGNA Funds and to Investors that it would be unwilling to continue to serve as investment adviser to any of the CIGNA Funds on a long-term basis. CII also indicated that it would work with Investors to identify and implement a successor arrangement.

7. Following discussions with several major mutual fund groups, Investors and CII determined that Putnam Capital Manager Trust (the "PCM Funds") and Putnam would provide a means for the orderly withdrawal of CII's investment advisory services in light of: (i) The willingness of Putnam to provide interim advisory services to the CIGNA Equity Funds; (ii) the availability of funds which offer investment objectives similar to those provided by each series of the CIGNA funds; and (iii) the availability of a current PCM Funds registration for funds which could be substituted for the CIGNA Funds as the underlying investment vehicle for variable annuity contracts sponsored by Investors.[4]

8. On November 29, 1993, the board of trustees of the CIGNA Funds, acting on the advice of CII, terminated the appointment of CII as investment adviser to the CIGNA Annuity Equity Fund, the CIGNA Annuity Growth and Income Fund and the CIGNA Annuity Aggressive Equity Fund (the "CIGNA Equity Funds"). Concurrently, the board of trustees appointed Putnam as the investment adviser to the CIGNA Equity Funds, effective as of November 30, 1993. The investment advisory agreement between the CIGNA Funds and Putnam is substantially the same as the agreement between the CIGNA funds and CII, except with respect to the provisions of certain administrative services.[5] On March 8, 1994, the shareholders of the CIGNA Equity Funds approved the investment advisory agreement between Putnam and the CIGNA Equity Funds.

9. The PCM Funds are registered under the 1940 Act as an open-end management company of the series type. The PCM Funds currently consist of nine portfolios, each with its own investment objectives and investment portfolio. The proposed substitution would utilize four of the portfolios of the PCM Funds with respect to Account I Policies and three of the portfolios

[1] Before October 1985, the underlying funding vehicle for Account I was the CIGNA Annuity Fund, Inc. On October 16, 1985, the CIGNA Funds acquired the assets and liabilities of CIGNA Annuity Fund, Inc., pursuant to an Agreement and Plan of Reorganization which had been approved by the shareholders of CIGNA Annuity Fund, Inc.

[2] Revenue Ruling 81–225 pertains to variable annuity contracts offered through insurance company separate accounts holding shares of mutual funds which also offer their shares to the public. Revenue Ruling 81–225 questioned the tax treatment of variable annuity contracts when the underlying mutual funds are not managed by the issuing company or an affiliate, or when the policyholder may initially allocate, and subsequently reallocate, the contract values among several underlying funds.

[3] As indicated above, the CIGNA Funds currently consist of five portfolios. However, shares of two of those five portfolios (the CIGNA Annuity Growth and Income Fund and the CIGNA Annuity Aggressive Equity Fund) have not been made available to owners of the INA/Putnam Policies.

[4] Putnam currently serves as investment advisor to the Putnam Funds (which serve as underlying investment options for the INA/Putnam Account) as well as the investment advisor to the PCM Funds. The PCM Funds are structured to satisfy the requirements of Section 817(h) of the Internal Revenue Code. Since the Putnam Funds are not so structured, they are not appropriate for the purposes of the Substitution.

[5] CII was retained to provide administrative services to the CIGNA Equity Funds, pending the effectiveness of the proposed substitution. CII continues to act as investment advisor to the CIGNA Annuity Money Market Fund and the CIGNA Annuity Income Fund. Putnam receives an investment advisory fee calculated at the same annual rate as the fee previously paid to CII for the CIGNA Equity Funds. CII continues to receive reimbursement for a portion of its expenses associated with the administration of the CIGNA Equity Funds. These fees remain subject to reduction under expense waiver or reimbursement arrangements.

with respect to the INA/Putnam Policies.

10. Investors proposes to substitute shares of the CIGNA Funds for shares of the PCM Funds on the following basis.

- As of the effective date of the Substitution, shares of CIGNA Annuity Money Market Fund would be redeemed by Investors. On the same day, Investors would use the proceeds to purchase the appropriate number of shares of the PCM Money Market Fund.
- As of the effective date of the Substitution, shares of CIGNA Annuity Income Fund would be redeemed by Investors. On the same day, Investors would use the proceeds to purchase the appropriate number of shares of PCM U.S. Government and High Quality Bond Fund.
- As of the effective date of the Substitution, shares of CIGNA Annuity Equity Fund would be redeemed by Investors. On the same day, Investors would use the proceeds to purchase the appropriate number of shares of the PCM Growth and Income Fund.
- As of the effective date of the Substitution, shares of CIGNA Annuity Growth and Income Fund would be redeemed by Investors. On the same day, Investors would use the proceeds to purchase the appropriate number of shares of PCM Growth and Income Fund.
- As of the effective date of the Substitution, shares of CIGNA Annuity Aggressive Equity Fund would be redeemed by Investors. On the same day, Investors would use the proceeds to purchase the appropriate number of shares of PCM Voyager Fund.

11. The Substitution would take place at relative net asset values of the CIGNA Funds and the PCM Funds, with no change in the amount of any policyholder's account value under either the Account I or the INA/Putnam Policies.

12. It is expected that the CIGNA Funds will incur brokerage fees and expenses in connection with the redemption by Investors of the shares of the CIGNA Funds. These expenses would be charged to the applicable portfolio of the CIGNA Funds. To alleviate the potential impact of such brokerage fees and expenses upon the CIGNA Funds, CII and the CIGNA Funds have proposed to Investors that the redemption of the shares of the CIGNA Funds be accomplished, in part, by "in kind" payments. Under the proposal, the CIGNA Funds would transfer to Investors cash and/or securities held by the CIGNA Funds at the effective date of the Substitution, and Investors would use such cash and/or securities to purchase shares of the applicable portfolio of the PCM Funds. Investors has indicated that it would be agreeable to the "in kind" aspect of the proposal, on the conditions that: (i) The CIGNA Funds identify prior to the effective date of the Substitution the securities to be included in the "in kind" transfer; and (ii) the PCM Funds and Putnam, in its capacity as investment adviser to the PCM Funds, agree to accept the securities so identified in payment for the purchase by Investors of shares of PCM Funds to effectuate the Substitution. The valuation of any "in kind" transfers will be on a basis consistent with the valuation of the assets of the CIGNA Funds and the normal valuation procedures of the PCM Funds.

13. Following the Substitution, the fees and expenses imposed by Investors under the Account I Policies and the INA/Putnam Policies would remain the same as currently in effect. In addition, the Substitution would not impose any federal income tax liability on owners of Account I Policies or INA/Putnam Policies.

14. Following the Substitution, Account I Policy owners would have the right to transfer account values among the divisions of Account I for which the four PCM Funds described above serve as the underlying investment vehicle. INA/Putnam Policy owners would have the right to transfer account values among the divisions of the INA/Putnam Account for which three PCM funds (the PCM Money Market Fund, the PCM U.S. Government High Quality Bond Fund, and the PCM Growth and Income Fund) serve as the underlying investment vehicles. In addition, INA/Putnam Policy owners who currently utilize one or more of the Putnam Funds as their underlying investment vehicle(s) would be able to transfer such values amongst the PCM Money Market Fund, the PCM U.S. Government and High Quality Bond Fund, and the PCM Growth and Income Fund. The current provisions of the INA/Putnam Policies which prevent a policyholder who transfers values from the Putnam Funds to the CIGNA Funds from subsequently transferring such values back to the Putnam Funds would continue in effect, with the restriction applying to PCM Funds in place of the CIGNA Funds.

15. Following the Substitution, Investors intends to redeem its investment of seed money. However, the timing of such withdrawal has not been established and will be at the discretion of Investors. By making this withdrawal after the Substitution, Investors anticipates that the brokerage and related expenses incurred by the underlying fund would have a substantially reduced impact, if any, upon Policy owners, as a result of the larger overall size of the applicable PCM Funds.

16. Investors has been advised by CII that, following the Substitution and the redemption of CIGNA Funds shares by Investors, the CIGNA Funds intends to file an application under Section 8(f) of the 1940 Act, requesting an order that it has ceased to be an investment company. Following the issuance of such an order, the CIGNA Funds will dissolve, pursuant to the applicable provisions of Massachusetts law.

17. If the Commission approves the Substitution, Policy holders will receive notice of the intended substitution and will have the opportunity to vote on the matter. The Account I Policies and the INA/Putnam Policies provide that a substitution of the shares of one registered investment company for those of another registered investment company may be implemented with respect to a particular division of the applicable separate account only if it (i.e., the substitution) has been previously approved by a majority of the votes to be cast be persons having a voting interest in the fund shares allocated to the applicable separate account division.[6]

18. The historical expense ratios for the CIGNA Funds generally have been higher than the historical expense ratios for the PCM Funds. The difference is attributable, in part, to the larger asset size of the PCM Funds, as compared to the asset size of the CIGNA Funds.

Applicants' Legal Analysis

A. Request for Order Pursuant to Section 26(b) of the 1940 Act

1. Section 26(b) of the 1940 Act provides:

> It shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution. The Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title.[7]

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[6] With respect to the INA/Putnam Policies, Investors will request that the SEC staff confirm that the Substitution will not affect adversely the no-action positions previously issued to Investors and the INA/Putnam Account.

[7] The Applicants represent that the Commission has interpreted Section 26(b) to apply to a "substitution of securities in any sub-account of a registered separate account." See Investment Company Act Rel. No. 12678 (Sept. 21, 1982) at 13.

2. The purpose of Section 26(b) is to protect the expectation of investors in a unit investment trust that the unit investment trust will accumulate the shares of a particular issuer, and to prevent unscrutinized substitutions which might, in effect, force shareholders dissatisfied with the substituted security to redeem their shares, thereby incurring either a loss of the sales load deducted from initial proceeds, an additional sales load upon reinvestment of the redemption proceeds, or both. Section 26(b) affords this protection to investors by preventing a depositor or trustee of a unit investment trust holding the shares of one issuer from substituting the shares of another issuer for those shares, unless the Commission approves the substitution.

3. The Applicants represent that, for the following reasons, the purposes, terms, and conditions of the Substitution will not entail any of the abuses that Section 26(b) is designed to prevent.

- The Substitution is being proposed because the investment adviser to CIGNA Funds has indicated that it would be unwilling to serve as investment adviser to any of the CIGNA Funds on a long-term basis. This decision, which is beyond the control of Investors, has necessitated the proposal of an alternative funding vehicle for variable annuity contracts offered by Investors.
- The Substitution is for shares of PCM Funds with investment objectives which are sufficiently similar to the objectives of the corresponding portfolios of the CIGNA Funds to provide a means for Policy holders to continue their current investment goals and risk expectations.
- The transactions effecting the Substitution, including the redemption of the shares of the CIGNA Funds and the purchase of shares of PCM Funds, will be effected at net asset value of the respective shares, in conformity with Section 22(c) of the 1940 Act and Rule 22c–1 thereunder.
- Utilization of "in kind" redemptions by the CIGNA Funds, to the extent appropriate, followed by the use by Investors of the shares received to purchase shares of PCM Funds, would reduce the expenses and transaction costs involved in the Substitution.
- The Substitution will not alter or affect the insurance benefits provided by Investors to Policy holders under the terms of the contracts.
- The Substitution will not affect adversely the tax benefits available to Policy holders. The Substitution will not give rise to any current federal income tax to Policy holders.
- The Substitution provides Policy holders with an underlying investment vehicle with enhanced asset size.

4. The Account I Policies and the INA/Putnam Policies reserve to Investors the right—subject to prior approval of affected Policy holders, as well as approval by the SEC—to substitute shares of another management investment company for shares of an investment company held by a division of Account I or the INA/Putnam Account, or to add or eliminate one or more such divisions.

5. Investors reserved this right of substitution in order to protect itself and its Policy holders in several adverse situations. This includes the present situation where the investment adviser to the underlying investment vehicles has stated that it intends to withdraw from the equity advisory business, with the related implication that a dissolution of the CIGNA Funds would result in a forced liquidation of Account I and that portion of the INA/Putnam Account for which the CIGNA Funds serves as the underlying investment vehicle.

6. The Applicants submit that, under the circumstances, it is in the best interests of Account I and INA/Putnam Policy owners to proceed with the Substitution. The Applicants represent that the overall investment objectives of the portfolio of PCM Funds which would be substituted for the corresponding portfolio of the CIGNA Funds are sufficiently similar for the Substitution to be appropriate. The Applicants believe that the investment objectives are compatible.

7. The Applicants further represent that total fees and expenses, as a percentage of net assets, for the portfolios of PCM Funds which would be so substituted are not expected to increase as a result of the Substitution. The Applicants acknowledge that, with the exception of the PCM Money Market Fund, the advisory fee for each of the PCM Funds is higher than the advisory fee for the corresponding CIGNA Fund. However, the Applicants submit that since the PCM Funds are substantially larger in asset size than the CIGNA Funds, the operating expenses are spread over a larger base, thereby producing total expense ratios for the PCM Funds which, on a historical basis, have been lower than the ratios for the CIGNA Funds.

B. Request for Order Pursuant to Sections 6(c) and 17(b) of the 1940 Act

1. Under certain circumstances, Section 17(a)(1) of the 1940 Act prohibits any affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling any security or other property to such registered investment company. Section 17(a)(2) of the 1940 Act prohibits any of the persons described above from purchasing any security or other property from such registered investment company.

2. The Applicants submit that because the Substitution may be deemed to involve one or more purchases or sales of securities between and among affiliated persons as a result of the purchase by Account I and the INA/Putnam Account of shares of PCM Funds with proceeds (including "in kind" distributions of securities in lieu of cash) from the redemption of shares of the CIGNA Funds, the Substitution may involve transactions prohibited by Section 17(a) of the 1940 Act. The Applicants further submit that the Substitution would not be exempt from Section 17 of the 1940 Act pursuant to Rule 17a–7 thereunder, since the affiliations among the parties do not arise solely by reason of having common investment advisers, common directors and/or common officers.

3. Section 17(b) of the 1940 Act provides that:

Notwithstanding subsection (a), any person may file with the Commission an application for an order exempting a proposed transaction of the applicant from one or more provisions of that subsection. The Commission shall grant such application and issue such order of exemption if evidence establishes that—

(1) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned;

(2) The proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under this title; and

(3) The proposed transaction is consistent with the general purposes of this title.

4. The Applicants seek an exemption from Section 17(a) under both Sections 17(b) and 6(c) of the 1940 Act, because Section 17(b) refers to a single "proposed transaction" while, under Section 6(c), the Commission may exempt a series of transactions.

5. The Applicants represent that the terms of the Substitution meet all of the requirements of Section 17(b). The Applicants submit that, for the reasons set forth in their request for exemptive relief under Section 26(b) of the 1940 Act—particularly those set forth below, the terms of the Substitution are reasonable and fair and do not involve

overreaching on the part of any person concerned.

• The Substitution will be effected pursuant to the established net asset values of CIGNA Funds and PCM Funds as of the effective date of the Substitution, in conformity with Section 22(c) of the 1940 Act and Rule 22c–1 thereunder.

• The Substitution is intended to provide owners of Account I Policies and INA/Putnam Policies with underlying investment vehicles which correspond to the options currently available under the CIGNA Funds.

• The Substitution is intended to provide owners of Account I Policies and INA/Putnam Policies with continuity, given the announced intention of CII to withdraw as investment adviser to the CIGNA Funds.

• The Substitution is expected to result in lower expense ratios.

• The Substitution is not expected to have federal income tax consequences for Policy holders.

6. The Applicants further submit that, with respect to the "in kind" aspects of the Substitution: (a) Investors has been advised by CIGNA Funds and PCM Funds that only those securities which Putnam otherwise would select for the applicable portfolios of PCM Funds will be included in the "in kind" transfer to Investors; (b) Investors has been assured by CII and Putnam that the securities to be included in the "in kind" transfer will be valued at independent current market prices on the effective date of the Substitution; and (c) CII and Putnam have assured Investors that no brokerage commissions, fees or other remuneration would be paid or charged in connection with the in kind transfers.

7. The Applicants represent that because the "in kind" transfer would occur only once—i.e., on the effective date of the Substitution, Account I and INA/Putnam Account have not adopted the written procedures described in paragraph (e)(1) of Rule 17a–7. Investors submits that the purposes intended to be served by such written procedures are not applicable to the current situation. Investors submits that the proposed transactions involved in the Substitution fall within the intent of Rule 17a–7 securities redeemed in kind and that, consequently, there will be no overreaching because all securities redeemed in kind and used to purchase shares of the PCM Funds will be consistently valued for all purposes. Nonetheless, Investors, Account I and INA/Putnam Account will comply with paragraphs (b), (c) and (d) of Rule 17a–7.

8. The Applicants submit that the Substitution is consistent with the general purposes of the 1940 Act and does not present any of the investor protection concerns that Section 26(b) is designed to address. The Applicants note that Policy holder will be informed fully of the terms of the Substitution and will have an opportunity to vote on the Substitution following the approval of this application by the Commission. The variable annuity contracts issued by Account I and the INA/Putnam Account provide that, in the event of a substitution of underlying fund shares, "prior approval by the vote of a majority of the votes to be cast by persons having their contract values determined by the affected [separate account] [d]ivision will be obtained."

Applicants' Conclusion

For the reasons discussed above, the Applicants submit that the requested order under Section 26(b) meets the standards of that section, and that the requested exemption from Section 17(a) meets the standards of Sections 6(c) and 17(b).

For the Commission by the Division of Investment Management pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–29419 Filed 11–29–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20730; 811–5894]

Iowa Business Development Finance Corporation; Notice of Application for Deregistration

November 23, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Iowa Business Development Finance Corporation.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on October 26, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 19, 1994, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 200 East Grand Avenue, Des Moines, Iowa 50309.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Senior Attorney, at (202) 942–0565, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a closed-end diversified management investment company organized as an Iowa corporation. On August 28, 1989, applicant registered under section 8(a) of the Act. On January 2, 1990, applicant filed a registration statement under section 8(b) of the Act. Applicant did not file a registration statement under the Securities Act of 1933 but rather undertook a private offering of its securities under Rule 506 of Regulation D under the Securities Act of 1933.

2. Applicant has 174 shareholders, consisting exclusively of banks and bank holding companies, three insurance companies, and one utility company.

3. The purpose of the applicant is to advance economic development in the State of Iowa. Applicant is authorized by and regulated under the Iowa Business Development Finance Act of 1988 (the "Iowa Act"). The Iowa Act provides for pervasive government regulation of applicant. As required by the Iowa Act, applicant's board of directors consists of twelve directors, seven of whom are Iowa public officials. Among applicant's public directors are the Iowa Superintendent of Banking and the Iowa Commissioner of Insurance. Applicant's president is appointed by the Director of the Iowa Department of Economic Development (the "Department") from the division within the Department that administers business financial assistance programs. Currently, two employees of the Department are the only officers of applicant.

4. The Iowa Act requires applicant to submit annual reports of its operations

and condition to the Iowa Governor and the Iowa Legislature. The Iowa Act also gives the Department authority to request the Iowa Superintendent of Banking to examine applicant and submit a report to the Department, with copies to the Governor and Iowa Legislature.

5. Applicant received an order from the SEC under section 6(c) granting an exemption from all provisions of the Act.[1] Thus, applicant was exempted from the requirement that it register as an investment company under the Act. In the application for the exemptive order, applicant undertook to file an application under section 8(f) of the Act for an order declaring that it ceased to be an investment company. Upon deregistration, applicant will remain an ongoing corporation subject to regulation under the Iowa Act.

6. As of August 31, 1994, applicant had assets of approximately $6.7 million consisting primarily of cash, and debt and equity securities. After deregistration, applicant will continue as an ongoing entity, and thus there will be no winding-up of applicant's affairs and no distributions to shareholders relating to a winding up of affairs. Applicant is not a party to any litigation or administrative proceedings.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–29465 Filed 11–29–94; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 20728; 811–3827]

Merrill Lynch Institutional Tax-Exempt Fund; Notice of Application for Deregistration

November 22, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Merrill Lynch Institutional Tax-Exempt Fund.

RELEVANT ACT SECTION: Order requested under section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring it has ceased to be an investment company.

FILING DATES: The application was filed on September 20, 1994 and amended on November 21, 1994.

[1] Investment Company Act Release Nos. 20542 (Sept. 8, 1994) (notice) and 20596 (Oct. 4, 1994) (order).

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 19, 1994, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, One Financial Center, Boston, MA 02111–2646.

FOR FURTHER INFORMATION CONTACT: Marianne H. Khawly, Law Clerk, at (202) 942–0562, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representatives

1. Applicant is a diversified open-end investment management company organized as a Massachusetts business trust. On August 17, 1983 applicant filed a Notification of Registration on Form N–8A and a registration statement on Form N–1 pursuant to section 8(b) of the Act. The registration statement became effective on December 1, 1983 and the initial public offering commenced shortly thereafter.

2. On December 13, 1993, applicant's Board of Directors approved a plan of reorganization whereby applicant would become a separate series of Merrill Lynch Funds for Institutions Series (the "Acquiring Fund"). The Acquiring Fund is a series company organized as a Massachusetts business trust. The Acquiring Fund's Declaration of Trust authorizes the issuance of shares in different series and authorizes the Board of Trustees to establish and create additional series and designate the rights and preferences thereof. Pursuant to such authority, on December 13, 1993, the Board of Trustees designated a new series of the Acquiring Fund to be known as the "Merrill Lynch Institutional Tax-Exempt Fund" series (the "Series").

3. Applicant and the Series share the same investment adviser, Fund Asset Management, L.P. Accordingly, applicant and the Series may be deemed to be affiliated persons by reason of being under the common control of the same investment adviser. Applicant therefore relied on the exemption provided by rule 17a–8 under the Act to effect the transaction. Consequently, the trustees of the Series determined, in accordance with rule 17a–8, that the purchase of the assets of applicant by the Series was in the best interest of the shareholders of the Series, and that such purchase would not result in any dilution to the interests of the existing shareholders of the Series.[1]

4. On December 17, 1993 preliminary copies of proxy materials were filed with the SEC. On January 6, 1994, definitive copies were distributed to applicant's shareholders and transmitted to the SEC. At a special meeting held on February 18, 1994, the shareholders of the applicant approved the reorganization.

5. On February 18, 1994, applicant had one class of securities outstanding, shares of beneficial interest of $.10 par value, of which 378,376,365 shares were outstanding on that date, having an aggregate and per share net asset value of $378,400,368 and $1.00, respectively. On February 18, 1994, applicant transferred all of its business and assets and assigned all of its liabilities to the Acquiring Fund in exchange for delivery to applicant of a number of shares (both full and fractional) of beneficial interest of the Series equivalent to the number of shares of beneficial interest of the Applicant outstanding on that date.

6. Shares of the Series were immediately distributed to applicant's shareholders. Each shareholder of the applicant received, in exchange for his shares in the applicant, an equal number of shares of the Series having a net asset value equal to the net asset value of his shares in the applicant immediately prior to the reorganization.

7. Applicant bore approximately $4,750 in expenses in connection with the reorganization. The Acquiring Fund bore approximately $144,250 in expenses in connection with the reorganization. Such expenses were for legal, registration, and proxy solicitation fees.

8. As of the date of the application, applicant had no shareholders, assets, or

[1] Rule 17a–8 provides relief from the affiliated transaction prohibition of section 17(a) of the Act for a merger of investment companies that may be affiliated persons of each other solely by reason of having a common investment adviser, common directors, and/or common officers.

liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is neither engaged in nor proposes to engage in any business activities other than those necessary for the winding-up of its affairs.

9. Applicant terminated its existence as a Massachusetts business trust on August 16, 1994.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–29418 Filed 11–29–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26171]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

November 23, 1994.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 19, 1994, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Georgia Power Company et al. (70–8193)

Georgia Power Company ("Georgia Power"), 333 Piedmont Avenue, N.E., Atlanta, Georgia 30308, and Savannah Electric and Power Company ("Savannah"), 600 East Bay Street, Savannah, Georgia 31402, both electric public-utility subsidiary companies of The Southern Company, a registered holding company, have filed an application-declaration under sections 9, 10, 12(d) and 13(b) of the Act and rules 43, 44, 86, 90, and 91 thereunder.

Savannah and Georgia Power propose to construct on real property owned by Savannah eight combustion turbine-generator units ("CTs") to be known as Plant McIntosh CT Nos. 1 through 8, and up to eight additional CTs to be known as Plant McIntosh CT Nos. 9 through 16. Six of the initial CTs will be developed for Georgia Power, two will be developed for Savannah. Upon completion, each applicant will own 100% interest in and will be entitled to 100% of the output of its respective CTs. The construction costs of the eight CTs and associated facilities are estimated to be approximately $182 million for Georgia Power and $61 million for Savannah.

The initial CTs will be simple-cycle generators each having a nominal capacity of 80 megawatts, and will burn primarily natural gas with No. 2 fuel oil as a backup fuel supply. In addition to the CT units, other facilities to be constructed for the project include fuel systems, water systems, an extension of existing fire protection systems, a switchyard, a 230-kv tie line to the existing Plant McIntosh substation, and a service building.

Savannah proposes to sell to Georgia Power, and Georgia Power proposes to purchase, a percentage undivided ownership interest in certain of the equipment which will comprise the facilities common to all of the Plant McIntosh CTs ("Common Facilities"). Savannah and Georgia Power will hold the Common Facilities as tenants-in-common. The assets to be acquired by Georgia Power at closing consist of pre-existing fuel oil storage tank which shall be converted into a demineralized water tank. The purchase price for the fuel oil storage tank represents Georgia Power's pro-forma ownership interest (75%) of the original book cost of the asset less depreciation, which, if calculated as of December 31, 1992, is estimated to be $648,710.

Savannah also proposes to lease to Georgia Power a 100% leasehold interest in the real property on which Georgia Power's CTs will be developed, a percentage undivided interest in that portion of the Common Facilities which consist of real property, and any related easements or other rights necessary to develop Georgia Power's CTs and the Common Facilities. It is estimated that the rental payments to be made by Georgia Power to Savannah will amount to $2,220 annually.

Georgia Power proposes to make Savannah its agent in the procurement, construction, management, control, operation, maintenance, renewal, addition, replacement, modification, and disposal of the Plant McIntosh CTs, the Common Facilities, and the fuel supply for the Plant McIntosh CTs. The operating agreement provides for the sharing of operating costs and costs of construction by Savannah and Georgia Power in accordance with their respective pro forma ownership interests.

The Columbia Gas System, Inc., et al. (70–8235)

The Columbia Gas System, Inc. ("Columbia"), a registered holding company, and its wholly owned nonutility subsidiary company, TriStar Ventures Corporation ("TVC"), and the following direct or indirect nonutility subsidiaries of TVC, TriStar Binghamton General Corporation, TriStar Binghamton Limited Corporation, TriStar Fuel Cells Corporation, TriStar Georgetown General Corporation, TriStar Georgetown Limited Corporation, TVC Nine Corporation, TriStar Pedrick General Corporation, TriStar Pedrick Limited Corporation, TriStar Rumford Limited Corporation, TriStar Ten Corporation, TriStar Vineland General Corporation, and TriStar Vineland Limited Corporation (collectively, "TVC Subsidiaries"), all located at 20 Montchanin Road, Wilmington, Delaware 19807, have filed an application-declaration with this Commission under Sections 6, 7, 9, 10, 12(b), 12(c), and 33 of the Act and Rules 43, 45, 46, and 54 thereunder.

To fund preliminary development, administration, and new investments through December 31, 1997 by using up to $34.1 million of their self generated funds ("Self Generated Funds"), TVC and the TVC Subsidiaries request authority for: (1) the TVC Subsidiaries to issue and sell to TVC shares of its common stock, and for TVC to acquire the shares; (2) the TVC Subsidiaries to issue and sell to TVC installment promissory notes ("Notes"), and for TVC to acquire these Notes; and/or (3) TVC to make short-term advances and/or capital contributions to the TVC Subsidiaries. The shares of the TVC Subsidiaries' common stock are valued at $25 par value per share, and TVC would acquire the shares at or above par value.

Alternatively, the TVC Subsidiaries could issue and sell to TVC Notes bearing a fixed interest to be determined at the time of issuance. The interest rate

would be based upon the preceding calendar quarter three-month average yield on newly issued "A" rated 25-30 year utility bonds as published in Salomon Brothers' weekly Bond Market Roundup or 2% per annum above the foregoing applicable rate if interest or principal payment on the Notes becomes past due. The Notes would be payable in installments over a period not to exceed 30 years and would be dated the date of their issue.

TVC's short-term advances to the TVC Subsidiaries would be made on open account, would bear interest at a rate equivalent to the composite weighted effective cost of Columbia's short-term financing transactions, and would be repaid by the TVC Subsidiaries as funds are available but no later than April 30 of the following year.

TVC and the TVC Subsidiaries request authority through December 31, 1997, for the payment of dividends out of capital surplus by the TVC Subsidiaries to permit TVC to recapture funds generated by the operations of its subsidiaries and excess to the needs of the subsidiaries. The proposed amount of dividends paid out of capital surplus would not exceed the following: TriStar Binghamton General Corporation, $1.2 million; TriState Binghamton Limited Corporation, $2.8 million; TriStar Vineland General Corporation, $350,000; and TriStar Vineland Limited Corporation, $3.15 million.

TVC also requests authority through December 31, 1997 to invest directly or indirectly in exempt wholesale generators ("EWGs") and foreign utility companies ("FUCOs") on the same basis as Columbia with regard to permissible activities under Sections 32 and 33. TVC proposes to use all or a portion of its Self Generated Funds for such investments.

TVC plans to form, acquire, finance and own the securities or interest in the business of EWGs and/or FUCOs directly or indirectly through subsidiary companies ("Project Parents"). The Project Parents would be special purpose domestic corporations, foreign corporations, partnerships, or limited liability companies (or the equivalent thereof) and could include joint ventures engaged in EWG/FUCO activities. With regard to FUCO activities, the organization, formation, or acquisition of one or more Project Parents may be necessary or desirable to facilitate such projects. A holding structure of one or more Project Parents also may be necessary or desirable to minimize tax liabilities, to bid on projects through joint ventures, to facilitate a participant's consolidated tax and accounting activities in joint ventures, to insulate TVC from certain risks, and to facilitate adjustments to or sales of interests of joint ventures or partnerships. A single Project Parent may also acquire and hold direct and indirect interest in both EWGs and FUCOs.

Investments by TVC directly or indirectly in any Project Parent may take the form of any combination of acquisitions of capital shares, partnership interest, trust certificates or the equivalent of any of the foregoing. Any investment in the capital shares or other equity securities of a Project Parent that have a stated par value will be in an amount equal to or greater than par value.

To the extent that a Project Parent is itself determined to be an EWG or FUCO, it would be exempt from project financing filing under the Act except as may otherwise be provided in Sections 32 and 33. As to Project Parents that are not EWGs or FUCOs, TVC and the Project Parent would make a filing, if required, for project financing authority at the appropriate time.

TVC does not contemplate utilizing the services of employees of the Columbia system's domestic public utility companies for its EWB and FUCO activities. However, were it to do so, no more than two percent of the employees of the system's domestic public utility companies would render services at any one time, directly or indirectly, to EWGs or FUCOs in which TVC may directly or indirectly hold an interest unless previous Commission approval were sought.

In addition, TVC proposes to provide fuel management, operations and maintenance, and related services to nonaffiliated entities. These services would be provided at negotiated rates.

TVC proposes to cancel the debt of three of its subsidiaries through December 31, 1996. These companies were involved in projects that never proceeded past development. The amount of debt cancelled would not exceed: TriStar Georgetown General Corporation, $125,000; TriStar Georgetown Limited Corporation, $6.2 million; and TriStar Fuel Cells Corporation, $900,000.

Northeast Utilities, et al. (70–8507)

Northeast Utilities ("NU"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01089, a registered holding company, and its wholly owned subsidiary companies, Charter Oak Energy, Inc. ("Charter Oak") and COE Development Corporation ("COE Development"), both located at 107 Seldon Street, Berlin, Connecticut 06037, (collectively, the "Applicants") have filed an application-declaration under Sections 6(a), 7, 9(a), 10, 13(b) and 33 of the Act and Rules 53, 83, 86, 87, 90 and 91 thereunder.

NU proposes to invest directly in Charter Oak and indirectly in COE Development up to an aggregate principal amount of $200 million from January 1, 1995 through December 31, 1996. In addition, the Applicants propose: (1) to form intermediate subsidiary companies ("Intermediate Companies") to acquire an interest in, finance the acquisition and hold the securities of exempt wholesale generators, as defined by Section 32 of the Act ("EWGs"), and foreign utility companies, as defined by Section 33 of the Act ("FUCOs") through the issuance of equity securities and debt securities to third parties; (2) for Intermediate Companies to make partial sales of qualifying congeneration and small power production facilities as defined in the Public Utility Regulatory Policies Act of 1978 ("QF"), independent power production facilities that would constitute a part of NU's "integrated public utility system" within the meaning of Section 2(a)(29)(A) of the Act ("Qualified IPPs"), EWGs and FUCOs ("Exempt Projects"); (3) to participate in joint ventures engaged exclusively in Exempt Project activities and to dissolve Intermediate Companies under specified circumstances; and (4) for Charter Oak's employees and employees of other NU service companies to provide a de minimis amount of services to affiliated Intermediate Companies, EWGs (both foreign and domestic) and FUCOs.

NU, Charter Oak and COE Development are seeking to invest up to $200 million in development activities associated with QFs, Qualified IPPs and Exempt Projects. Any debt financing which Charter Oak may obtain may not exceed a term of 15 years or bear an interest rate in excess of 6.5% over the then applicable prime rate ("Applicable Prime Rate") at a U.S. money center bank designated by NU. Similarly, any debt financing backed by NU's guarantee will be limited to a term of 15 years and will be at an interest rate not to exceed 6.5% over the Applicable Prime Rate.

Charter Oak also requests authority for itself and its subsidiaries to make loans (on either a recourse or non-recourse basis) to unaffiliated developers of QFs, Exempt Projects or Qualified IPPs as part of its financing of the acquisition of interests in such projects. Such loans shall count against the overall $200 million funding authorization.

Applicants seek approval for any Intermediate Company to issue equity securities and debt securities, with or without recourse to the Applicants, to persons other than the Applicants including banks, insurance companies, and other financial institutions, exclusively for the purpose of financing (including any refinancing of) investments in Exempt Projects through December 31, 1996. The Intermediate Companies' investments in Exempt Projects may take the form of acquisitions of common stock, capital contributions, open account advances, and/or subordinated loans, provided that such open account advances or subordinated loans will bear interest at a rate based on NU's cost of funds in effect on the date of issue, but in no case in excess of the prime rate at a bank designated by NU.

It is proposed that the aggregate principal amount of recourse debt securities issued by Intermediate Companies to persons other than the Applicants will not exceed $150 million at any one time outstanding, provided that no more than $100 million principal amount of such debt securities at any time outstanding may be denominated in currencies other than U.S. dollars. The aggregate amount of nonrecourse debt securities, to persons other than Applicants, will not be more than $600 million outstanding at any one time and not more than $400 million denominated in currencies other than U.S. dollars.

The recourse to the Applicants will be in the form of the guarantees and assumptions of liability and will be included within the Applicants overall investment authorization limit or $200 million. In any case in which the Applicants directly or indirectly own less than all of the equity interests of an Intermediate Company, only that portion of the recourse or non-recourse indebtedness of such Intermediate Company equal to the Applicants' equity ownership percentage shall be included for purposes of the foregoing limitations.

The Applicants assert that the amount and type of such securities, and the terms thereof, including (in the case of any indebtedness) interest rate, maturity, prepayment of redemption privileges, and the forms of any collateral security granted with respect thereto, would be negotiated on a case by case basis, taking into account differences from project to project in optimum debt-equity ratios, projections of earnings and cash flow, depreciation lives, and other similar financial and performance characteristics of each project.

Notwithstanding the foregoing, the Applicants state that no equity security having a stated par value would be issued or sold by an Intermediate Company for a consideration that is less than such par value; and that any note, bond or other evidence of indebtedness issued or sold by any Intermediate Company will mature not later than 30 years from the date of issuance thereof, and will bear interest at a rate not to exceed the following: (1) If such note, bond or other indebtedness is U.S. dollar denominated, at a fixed rate not to exceed 6.5% over the yield to maturity on an activity traded, non-callable, U.S. Treasury note having a maturity equal to the average life of such note, bond or other indebtedness (the "Applicable Treasury Rate"), or at a floating rate not to exceed 6.5% over the Applicable Prime Rate; and (2) if such note, bond or other indebtedness is denominated in the currency of a country other than the United States, at a fixed or floating rate which, when adjusted (i.e., reduced) for the prevailing rate of inflation in such country, as reported in official indices published by such country, would be equivalent to a rate on a U.S. dollar denominated borrowing of identical average life that does not exceed 10% over the Applicable Treasury Rate (interpolated if necessary) or Applicable Prime Rate, as the case may be.

In connection with the issuance of any debt securities by any Intermediate Company, it is anticipated that such Intermediate Company may grant security in its assets. Such security interest may take the form of a pledge of the shares or other equity securities of an Exempt Project that it owns, including a security interest in any distributions from any such Exempt Project, and/or a collateral assignment of its rights under and interests in other property, including rights under contracts.

The Applicants are also requesting authorization for Intermediate Companies to effect adjustments in the respective ownership interests in any Exempt Project held by the Applicants and unaffiliated co-investors and to facilitate a partial sale of an interest in any such Exempt Project. In addition, the Applicants also request authority to participate directly or through Intermediate Companies in joint ventures with non-associates which join ventures are in the business of researching investment opportunities in, and owning and developing Exempt Projects. The Applicants also request authority to liquidate, dissolve or sell any Intermediate Company within 45 days after the Applicants determine that the purpose for owning such Intermediate Company no longer exists unless the Applicants determine that such Intermediate Company may be used in connection with a proposal or plan to develop or acquire an interest in a different Exempt Project.

The Applicants request authorization for Charter Oak employees (who are employees of Northeast Utilities Service Company) or other NU Service Company employees (collectively, "Service Company Employees") to provide a de minimis amount of services to affiliated Intermediate Companies, EWGs (both foreign and domestic) and FUCOs, subject to certain limitations.

The services to be rendered to affiliated Intermediate Companies, EWGs and FUCOs by Service Company Employees include: management, administrative, legal, tax, and financing advice, accounting, engineering consulting, software development and language skills. The total number of Service Company Employees engaged in rendering such services will not exceed, in the aggregate, 0.5% of the total NU holding company system's employees and no more than 1% of the total of Service Company Employees at any one time.

The provision of services to affiliated domestic EWGs and Intermediate Companies will be made at cost pursuant to Section 13(b) of the Act. Applicants request authority to provide such services at market rates to affiliated foreign EWGs, Foreign Intermediate Companies and FUCOs, which are companies that do not derive, directly or indirectly, any material part of their income from sources within the United States and are not public-utility companies operating in the United States.

Ohio Valley Electric Corporation (70-8527)

Ohio Valley Electric Corporation ("Ohio Valley"), P.O. Box 468, Piketon, Ohio 45661, an electric public-utility subsidiary company of American Electric Power Company, Inc., a registered holding company, has filed a declaration under sections 6(a) and 7 of the Act.

Ohio Valley proposes to incur short-term debt through the issuance and sale of notes ("Notes"), prior to January 1, 1997, to banks in an aggregate amount not to exceed $25 million outstanding at any one time. It is stated that the Notes will mature not more than 270 days after issuance, and no note will mature later than June 30, 1997. Notes will bear interest at an annual rate not greater than the bank's prime commercial rate.

Such credit arrangements may require the payment of a fee that is not greater than 1/5 of 1% per annum of the size of the line of credit made available by the bank and the maintenance of additional balances of not greater than 20% of the line of credit.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–29466 Filed 11–29–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 2119]

Bureau of Oceans and International Environmental and Scientific Affairs; U.S. Man and the Biosphere Program: Request for Proposals for the Tropical Ecosystems Directorate

The Tropical Ecosystems Directorate (TED) of the U.S. Man and the Biosphere Program (U.S. MAB) announces a call for research and activity proposals addressing the theme of sustainable use of tropical forest resources. A total of $60,000 is available to support a small number of research and activity grants, in the range of $10,000 to $20,000 which will be awarded in the summer of 1995. Preference will be given to proposals which focus on the Tri-National Region of Belize, Guatemala, and/or Mexico and complement the core project activities of the TED. Persons interested in applying for these grants are encouraged to first obtain a copy of the TED core project, "A Regional Approach for Sustainable Development and the Conservation of Natural Resources in the Maya Tri-National Region of Belize, Guatemala and Mexico," from the U.S. MAB Secretariat.

Funding Objectives

The U.S. MAB/TED small grant program is intended to directly foster cross-border cooperation, research, and exchange of information to promote the sustainable management of tropical forests in the Tri-National Region. Given limited available funding and the purpose of the program, U.S. MAB/TED places highest priority on activities that are bi- or tri-national in nature. In addition, U.S. MAB/TED funding can assist research teams and/or activity projects to: add a national researcher to their effort; better integrate conservation and sustainable development; add a particular discipline to an ongoing research project; explore the application of ongoing site-specific research to an additional site in the Maya Tri-National region; or carry out activities complementary to the TED project in the region. U.S. MAB/TED funding will not be provided for planning purposes.

Focal Issues

Within the broad thematic focus of sustainable use of tropical forest resources in the Maya Tri-National Region, U.S. MAB/TED encourages research projects and activities addressing focal issues such as community-based production systems, tropical forest management for timber and/or non-timber products, economic valuation and accounting of tropical forest products and services, benefits and costs of low impact uses such as ecotourism, or integration of biodiversity conservation with production forestry. Proposals which focus on other issues should be consistent with and complementary to the U.S. MAB/TED core project activities.

Proposal Content

Each proposal should have a title page, a one-page synopsis of the proponent's existing research project if any, a one-page synopsis of the proposed activities, and up to five pages detailing the proposed use of U.S. MAB/TED funds that would be complementary of the TED core program, and a one-page itemized budget including personnel, travel, operations, equipment/supplies, and justification. All sources of income for the project must be included in the budget. No funds are available for institutional overhead; only direct costs can be supported.

Evaluation and Review Process

A review panel of the U.S. MAB Tropical Ecosystems Directorate will evaluate the proposals based on the following criteria:

—Degree of relevance to TED core program objectives;
—Bi-national or tri-national nature of the research or activity;
—Applicability to promoting sustainable use of tropical forest resources in the Maya Tri-National Region;
—Degree of involvement of host country investigators;
—The quality and demonstrated productivity of the principal investigators.

Persons interested in applying should first submit a one to two page project prospectus by January 31, 1995. This prospectus should provide a brief description of the proposed project and explain how the project meets U.S. MAB/TED selection criteria. The prospectus should include a simple four-item budget (salaries, equipment/materials, travel, other costs). The U.S. MAB/TED will review the prospectuses and invite full proposals by March 10, 1995.

Invitees will have until June 16, 1995 to submit a full proposal. The U.S. MAB/TED will evaluate all proposals and make final decisions by July 14, 1995. Funds will be committed to the managing institutions identified in the proposals during August 1995. Principles will receive from the U.S. MAB Secretariat copies of all U.S. MAB/TED review evaluations of their proposals and a written notification of the directorate's decision on their proposal.

For further information contact Dr. Roger Soles, U.S. MAB Secretariat, OES/EGC/MAB, Department of State, Washington, DC 20522. Tel. (703)–235–2946, Fax. (703)–235–3002.

Submission of Proposals

Mail prospectuses and proposals to: U.S. MAB Secretariat, OES/EGC/MAB, U.S. Department of State, Washington, DC 20522. Attention: Tropical Ecosystems Directorate.

The deadline for prospectus is January 31, 1995. The deadline for invited proposals is June 15, 1995.

Dated: November 14, 1994.

Roger E. Soles,

Executive Director, U.S. Man and the Biosphere Program, Office of Global Change.

[FR Doc. 94–29515 Filed 11–29–94; 8:45 am]

BILLING CODE 4710–09–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Civil Tiltrotor Development Advisory Committee, Infrastructure Subcommittee; Meeting

Pursuant to Section 10(A)(2) of the Federal Advisory Committee Act, Public Law (72–362); 5 U.S.C. (App. I), notice is hereby given of a meeting of the Federal Aviation Administration (FAA) sponsored Civil Tiltrotor Development Advisory Committee (CTRDAC) Infrastructure Subcommittee that will be held on December 9, 1994 in the Committee Room at the Airport Administration Building, 3200 E. Airport Dr., DFW Airport, Texas 75261. The meeting will begin at 10:00 a.m. and conclude by 4:30 p.m.

The agenda for the Infrastructure Subcommittee meeting will include the following:

(1) Receive briefings on preliminary results of the Civil Tiltrotor Economic Analysis.

(2) Inspect the Dallas Vertiport.

(3) Review the Infrastructure Subcommittee work plans, schedule and assumptions.

(4) Review draft issues papers, report chapters, and other efforts.

Persons who plan to attend the meeting should notify Ms. Karen Braxton on 202–267–8759 or Ms. Deborah Ogunshakin on 202–267–9451. Attendance is open to the interested public, but limited to space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting.

Members of the public may provide a written statement to the Subcommittee at any time.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Ms. Karen Braxton or Ms. Deborah Ogunshakin at least three days prior to the meeting.

Issued in Washington, DC, November 21, 1994.

Paul S. Erway,

Acting Designated Federal Official, Civil Tiltrotor Development Advisory Committee.

[FR Doc. 94–29477 Filed 11–29–94; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc. (Special Committee 184 Fifth Meeting); Minimum Performance and Installation Standards for Taxi-Hold Position Lights

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for Special Committee 184 meeting to be held December 15–16, 1994 starting at 9:00 a.m. The meeting will be held at the RTCA Conference Room, 1140 Connecticut Avenue, NW, Suite 1020, Washington, DC 20036.

Agenda will be as follows: (1) Administrative announcements; (2) Chairman's introductory remarks; (3) Review and approval of meeting agenda; (4) Review and approve minutes of last meeting RTCA Paper No. 471–94/SC184–16; (5) Review status of action items; (6) Review of draft document inputs; (7) Work group drafting session; (8) Other business; (9) Set agenda for next meeting; (10) Date and place of next meeting.

Attendance is open to the interested public but limited to space availability. With the appoval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, D.C. 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on November 17, 1994.

David W. Ford,

Designated Officer.

[FR Doc. 94–29478 Filed 11–29–94; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc., (Special Committee 173 Ad-Hoc Meeting); Minimum Operational Performance Standards for Airborne Weather and Ground Mapping Pulsed Radar

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for Special Committee 173 meeting to be held January 17–18, 1995 starting at 9:30 a.m. The meeting will be held at the RTCA Conference Room, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

Agenda will be as follows: (1) Chairman's opening remarks; (2) Review of DO–220 for inclusion of required changes bring it into compliance with 5256v10 document; (3) Review of DO–220 for any requested changes; (4) Consideration of any further work thought necessary in light of limited operational experience; (5) Review of DO–213 for inclusion of required changes to bring it into compliance with 5256v10 document; (6) Review of DO–213 for any requested changes; (7) Other business; (8) Date and place of next meeting, if necessary.

Attendance is open to the interested public but limited to space availability. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 18, 1994.

David W. Ford,

Designated Officer.

[FR Doc. 94–29480 Filed 11–29–94; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc.; New Document Releases

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for information on the release of RTCA/DO–225, and Change 2 to RTCA/DO–210.

Information is as follows:

RTCA DO–225—VHF air ground communications system improvements alternatives study and selection of proposals for future action—This report represents a broad study of very high frequency (VHF) air-ground communications system improvements. The study includes: (1) Gaining an understanding of the present VHF air-ground communications system, (2) developing future Air Traffic Service (ATS) and Aeronautical Operational Control (AOC) communications functional requirements and desirable features, (3) studying present system improvements, (4) selecting a future system candidate to pursue towards implementation, and (5) developing recommendations resulting from this study. Seven candidate future system alternatives were evaluated against future system requirements and desirable features and as a result of this study, six recommendations to pursue present and future system improvements were adopted.

US $60.00 for US/Canada/Mexico; US $75.00 for all other countries. Plus applicable shipping and handling.

Change to RTCA DO–210, parts A&B—Minimum operational performance standards for aeronautical mobile satellite services (AMSS)—To provide the user community with the most current and technically correct information available, Change 2 was developed to incorporate new data that applies to FANS implementation; to clarify the measurement procedure of Section 2.4.4.2.4, and to improve several diagrams by providing more detailed information. The change has also been designed to produce a clean "cut and paste" revision for document users.

US$20.00 for US/Canada/Mexico; US$30.00 for all countries. Plus applicable shipping and handling charges.

Persons wishing to obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, D.C. 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on November 22, 1994.

David W. Ford,

Designated Officer.

[FR Doc. 94–29479 Filed 11–29–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1994—Rev., Supp. No. 3]

Surety Companies Acceptable on Federal Bonds Change of Name; The Mountbatten Surety Company, Inc.

Mountbatten Environmental Insurance & Surety Company, Inc., a Pennsylvania corporation, has formally changed its name to The Mountbatten Surety Company, Inc., effective April 25, 1994. The Company was listed as an acceptable surety on Federal bonds at 59 FR 34166, July 1, 1994.

A Certificate of Authority as an acceptable surety on Federal bonds, dated today, is hereby issued under Sections 9304 to 9308 of Title 31 of the United States Code, to The Mountbatten Surety Company, Inc., Bala Cynwyd, Pennsylvania. This new Certificate replaces the Certificate of Authority issued to the Company under its former name. The underwriting limitation of $173,000 established for the Company as of July 1, 1994, remains unchanged until June 30, 1995.

Certifiates of Authority expire on June 30, each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the Company remains qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1, in the Department Circular 570, which outlines details as to underwriting limitations, areas in which licensed to transact surety business and other information. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1994 Revision, at page 34166 to reflect this change.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, Hyattsville, MD 20782, telephone (202) 874–6850.

Dated: November 18, 1994.

Charles F. Schwan III,

Director Funds Management Division, Financial Management Service.

[FR Doc. 94–29398 Filed 11–29–94; 8:45 am]

BILLING CODE 4810–35–M

Federal Register

Wednesday
November 30, 1994

Part II

Department of Labor

Mine Safety and Health Administration

30 CFR Part 6, et al.

Testing and Evaluation by Nationally Recognized Testing Laboratories and Use of Equivalent Testing and Evaluation Requirements; Proposed Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 6, 18, 19, 20, 21, 22, 23, 26, 27, 29, 33, and 35

RIN 1219–AA87

Testing and Evaluation by Nationally Recognized Testing Laboratories and Use of Equivalent Testing and Evaluation Requirements

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish new procedures and requirements for testing and evaluation of products MSHA approves for use in underground mines. It would require manufacturers of certain products who seek MSHA approval to use an independent laboratory recognized by the Occupational Safety and Health Administration (OSHA) as a Nationally Recognized Testing Laboratory (NRTL) to perform the necessary testing and evaluation for approval. The NRTL would conduct the product testing and evaluation currently done by the Agency according to the appropriate MSHA testing and evaluation requirements. The proposed rule would revise MSHA's testing and evaluation responsibilities and allow the Agency to expand its post-approval product audit program and pursue the evaluation of new and safer technology as applied to underground mining products. The proposal would also enable the Agency, upon an applicant's request, to approve products based upon testing and evaluation requirements other than MSHA's, provided that the alternative requirements are equivalent to MSHA's requirements and provide at least the same measure of protection for the miner. The proposed rule would increase the availability of a wider variety of mining products having enhanced safety components by reducing costs and broadening the market for mining equipment. Conforming amendments to some parts of MSHA's approval regulations are also being proposed as part of this rulemaking.

DATES: Written comments must be submitted by February 13, 1995.

ADDRESSES: Commenters are encouraged to send comments on a computer disk along with the hard copy. Send written comments and computer disks to the Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, Room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203.

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

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

This proposal contains information collection requirements in paragraphs (a), (e), and (f) of § 6.10. These paperwork requirements have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act of 1980.

Currently, when manufacturers seek to have MSHA test and evaluate a product they must supply MSHA with the necessary documentation. Under the proposed rule, manufacturers would still need to produce this documentation. Thus, the manufacturers' burden hours related to developing documentation needed to perform tests and evaluations would not change.

Under proposed § 6.10(a), in order for MSHA to issue an approval to a manufacturer, MSHA would need to review a copy of the NRTL's test and evaluation results along with the NRTL's statement of product compliance with MSHA requirements. MSHA anticipates that most manufacturers would request two copies of the test and evaluation results and statement of product compliance from the NRTL and forward one set to MSHA along with the application for approval of its product.

Currently, MSHA spends about 14,750 staff hours testing and evaluating products. The actual duration of the testing and evaluation varies significantly from product to product. MSHA expects that the NRTLs would spend about the same amount of time. Absent an MSHA regulation requiring approval of products for underground mines, MSHA estimates that at least 10 percent of manufacturers would still have their products tested and evaluated by an independent laboratory to make them more acceptable to the mining industry. Thus, MSHA estimates that about 13,275 paperwork burden hours per year would be associated with generating the NRTL test and evaluation records that would be required under the proposed rule.

Under proposed § 6.10(e), an NRTL would make available for MSHA review internal audits of the NRTL conducted as a part of its internal audit program to assure that the required procedures, controls, and practices are in place. NRTLs recognized by OSHA currently are required to do internal audits and verify that they were done and, as a result, already maintain the necessary records to verify that such audits are performed. Thus, there are no paperwork burden hours associated with § 6.10(e).

Also, under proposed § 6.10(f), NRTLs must make available for MSHA review the results of their field audit (follow-up) programs. This includes reports of factory inspections of manufacturers whose products the NRTL is testing and evaluating and any field audits of products to monitor and ensure the proper use of the NRTL's mark. In addition, the NRTL must notify MSHA expeditiously, for example by telephone or by fax, and send the Agency any necessary documentation when audits reveal nonconformities in products issued an MSHA approval. Because NRTLs currently maintain records of audits performed on products as a normal business practice, there are no paperwork burden hours related to maintaining such records. However, as a result of the proposed rule, the NRTLs would have to notify and send necessary documentation to MSHA when audits reveal nonconformities in approved products. MSHA estimated that NRTLs would find product nonconformities in about 12 percent of audits, and it would take an NRTL about 30 minutes to notify and send MSHA the necessary documentation. In FY 1993, MSHA audited 709 units of approved products. Thus, the associated burden hours are estimated to be about 43 hours.

Comments regarding the proposed paperwork provisions, estimates, or any other aspect of this collection of information, including suggestions for reducing these burdens, should be sent to Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, Room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203, and directly to the Office of Information and Regulatory Affairs of OMB, Attention: Steve Semenuk, Desk Officer for the Mine Safety and Health Administration, Room 3001, New Executive Office Building, Washington, DC 20503.

II. Background

From its creation by Congress in 1910, MSHA's predecessor, the Bureau of Mines, Department of the Interior (Bureau), was responsible for the testing and evaluation of mining products. Under the Federal Mine Safety and Health Act of 1977 (Mine Act), MSHA is responsible for prescribing the technical design, construction, and test requirements for certain products used in underground mines, and for testing

and evaluating them for approval based on those requirements. These technical requirements are set forth in the Agency's approval regulations in 30 CFR parts 7 through 36.

MSHA's approval regulations govern the process through which manufacturers may obtain MSHA approval, certification, acceptance or evaluation of certain products for use in underground mines. Each of these separate approval actions has specific application procedures and technical requirements for testing and evaluation. MSHA currently conducts the testing and evaluation of products for a fee paid by the applicant. Following MSHA approval, manufacturers must ensure that the product continues to conform to the technical requirements tested, evaluated, and approved by MSHA.

When MSHA receives an application for approval of a product for use in underground mines, every aspect of the documentation package is scrutinized to determine whether the technical requirements of the applicable provisions of 30 CFR parts 15 through 36 have been met. Each drawing and specification in the package is cross-checked against these requirements and, for some products, samples of the product or parts of the product are disassembled and examined by MSHA for conformity with the drawings and specifications. After MSHA verifies that an applicant's product complies with the design and construction requirements, MSHA then tests the product to determine whether it performs according to the approval requirements, unless the design obviates the need for testing. If the product passes the tests and meets all MSHA requirements, MSHA issues an approval for the product.

Once MSHA has approved a product, the manufacturer is authorized to place an MSHA approval marking on the product that identifies it as approved for use in underground mines. Use of the MSHA marking obligates the manufacturer to maintain the quality of the product as approved. The MSHA marking indicates to the mining community that the product has been manufactured according to the drawings and specifications upon which the approval was based. Any proposed change to an approved product that causes it to differ from the design or construction described in the original documentation approved by MSHA must be submitted to the Agency for approval prior to implementation of the change. If MSHA approves the change, the Agency issues an extension of approval or a notice of acceptance of the modified product to the manufacturer.

About 10 years ago, the Agency reviewed its product approval program to determine if it could be restructured to provide improved safety to miners without increasing the level of resources expended. That review resulted in the promulgation in 1988 of 30 CFR part 7, Applicant or Third-Party Testing, which represented MSHA's first departure from its role of front-end prototype testing of products for approval by substituting manufacturer or third-party testing of a limited number of products for the testing that previously had been conducted by MSHA.

The objectives of the program were to permit MSHA to redirect its resources to its post-approval product audit functions, as well as to the review of technological improvements in mining products. The Agency made this shift in emphasis to enhance the safety of products in mines by providing the mining community a greater assurance that approved products in mines continue to be manufactured as approved, by detecting any defective products more effectively, and by enabling a more expeditious introduction of new technology.

Products selected as suitable for applicant or third-party testing under part 7 were those with characteristics which could be objectively tested in a routine and readily reproducible manner, with no elements of subjective analysis. Products whose testing results depend on the experience, judgment, and knowledge of the personnel executing the tests, such as testing a complex intrinsically safe circuit, were not included in the part 7 program.

Under part 7, all product testing is conducted according to MSHA-specified tests and procedures, using calibrated and accurate instruments. Moreover, the product testing is subject to Agency observation or witnessing. Part 7 is not a self-certification program. The part 7 concept shifts only the testing of certain products to the applicant or a third party. The evaluation of the test results and the issuance of the approval remain the responsibility of the Agency. Under this proposal, part 7 would not be changed.

In 1993, as part of President Clinton's National Performance Review, MSHA initiated a further review of its approval and certification activities, including its part 7 applicant or third-party testing program. Based on this review, the Agency reaffirmed the objectives of the part 7 concept to increase post-approval product audits and direct more resources to evaluation of safety and technological improvements in products for use underground. However, MSHA determined that while the part 7 program was a step in the right direction, the limited scope of that program did not free up sufficient resources to allow MSHA to fully redirect its efforts to meet those objectives. After considering how best to accomplish those goals, the Agency has decided to initiate rulemaking to modify MSHA's approval program in two ways. First, applicants seeking MSHA product approval would be required to use independent laboratories for the required testing and evaluation. This would be in lieu of MSHA testing and evaluation of products. As with the part 7 program, however, MSHA would continue to verify that approval requirements were met and would retain full responsibility for issuing the product approval. Thus, this proposed modified approach would not constitute a self-certification program. Second, MSHA or appropriately recognized independent laboratories would be permitted, upon an applicant's request, to test and evaluate a product for approval based on approval requirements other than the Agency's, as long as those requirements provide an equal or greater degree of protection. This would allow MSHA to approve a product meeting the International Electrotechnical Commission's (IEC) approval standards, or some other approval requirements different from those specified in MSHA's regulations, provided that MSHA had determined previously that those requirements were equivalent or could be enhanced to provide protection equivalent to that afforded by products tested and evaluated according to MSHA approval requirements. In this way, the Agency could take advantage of revisions to product approval standards developed by other countries or standards development organizations to address technological advances or improvements in product safety. Such an approach would permit the introduction of a wider variety of improved products into U.S. mines more quickly than if the Agency had to undertake rulemaking to address each technological advance or improvement in product safety, capability, and performance.

III. Discussion of Proposed Rule

Section 6.10 Use of Independent Laboratories

The proposed rule, which would require applicants to use independent laboratories to perform the product testing and evaluation necessary for issuance of MSHA's product approval, is intended to form the foundation of a modified approval program providing

enhanced product user protection and more rapid introduction of new technology into the mining industry. This modified approval program would require applicants for product approval to submit to MSHA, along with their application and product drawings and specifications, the test and evaluation data and results developed by a qualified independent laboratory in addition to the laboratory's statement of product conformance with MSHA testing and evaluation requirements.

In deciding to propose such a modification to its approval program, the Agency concluded that it was essential for the laboratories performing testing and evaluation to be recognized under some type of accreditation program. The existence of three accreditation programs administered by the U.S. Government led MSHA to decide to use one of these programs rather than establish its own program and duplicate the work of others. The three programs considered were:

(1) The National Institute of Standards and Technology's (NIST) National Voluntary Conformity Assessment System Evaluation (NV CASE) program, 15 CFR part 286;

(2) NIST's National Voluntary Laboratory Accreditation Program (NV LAP), 15 CFR part 285; and

(3) The Occupational Safety and Health Administration's (OSHA) Nationally Recognized Testing Laboratory Program (NRTL), 29 CFR 1910.7.

The NV CASE program became effective on May 23, 1994. As of July 1994, NIST had received only one letter expressing possible interest in establishing a specific program under NV CASE. Therefore, no organization which determines the conformity of products to technical regulations based on testing and evaluation; i.e., a conformity assessment body, has yet been accredited by NIST under the NV CASE program. Moreover, as indicated by NIST in the preamble to the final rule for NV CASE, the program was intended to assist U.S. manufacturers in demonstrating that their products meet other countries' technical requirements for export purposes. Accrediting an organization to determine the conformity of products with domestic regulatory requirements, such as MSHA's product approval regulations, was specifically stated to be outside the scope of the NV CASE program. Therefore, NV CASE is not suitable for MSHA's purposes in this rulemaking.

After comparing the other two programs, NIST's NV LAP and OSHA's NRTL, MSHA has selected the OSHA Nationally Recognized Testing Laboratory program as the appropriate platform by which private sector, independent laboratories could provide prototype testing and evaluation of products for use in mines. The Agency has chosen the OSHA program over the NIST NV LAP program for several reasons.

First, in order for a laboratory to become recognized or accredited as an NRTL under OSHA's program, the laboratory must be independent; i.e., free from influence by manufacturers whose products it tests and evaluates, by vendors and suppliers, and by employers using approved products. This independence does not exist under NIST's NV LAP program to accredit calibration and testing laboratories because manufacturers' in-house laboratories are eligible to receive accreditation. Independence of the testing laboratory from the manufacturer is essential for MSHA and the public to have confidence in testing and evaluation conducted outside its Approval and Certification Center.

Second, the OSHA NRTL accreditation signifies that the independent laboratory has the capability (including proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality control programs) to perform testing and evaluation of products to determine compliance with specified design, construction, or test requirements. An NRTL does more than just test products. One key feature distinguishing an NRTL from a testing house, such as one accredited by NIST under NV LAP, is its ability to evaluate products during production to ensure that the products conform to technical standards. The term "evaluation" means the systematic examination of the extent to which a product fulfills specified requirements. Thus, an NRTL must be qualified both to test products to specific standards and to certify, after evaluation, that the products meet applicable requirements.

Finally, an important factor in MSHA's decision to use laboratories accredited by OSHA is the requirement that NRTLs maintain oversight of products they test, evaluate, and certify and which carry the NRTL's marking. One of the goals of MSHA's modified approval proposal is to provide greater assurance that products actually in service in underground mines are manufactured as approved. OSHA's program, which mandates organized product "follow-up," would provide this assurance. This "follow-up" program serves three functions. It (1) implements control procedures for identifying listed or labeled products; (2) to the extent necessary, conducts production line inspections to ensure conformance with test and evaluation standards; and (3) to the extent necessary, initiates post-marketing field inspections to ensure that the product continues to meet the test standards and requirements. Laboratories accredited under the NV LAP program, because they only test and do not evaluate product compliance, are not required to conduct product auditing functions such as those an NRTL must perform.

The OSHA procedures for recognizing Nationally Recognized Testing Laboratories are set forth in Appendix A to 29 CFR 1910.7. (See 53 FR 12123, April 12, 1988.) This appendix provides requirements and criteria which OSHA uses to evaluate and recognize an NRTL.

Under Appendix A, each applicant for accreditation as an NRTL must list the specific test standards it intends to use. OSHA then evaluates the laboratory's capabilities based on the list and an on-site review by an assessment team. As a part of the accreditation process, the assessment team visits the applicant laboratory to verify its capabilities, including facilities, test equipment, calibration program, product handling procedures, product evaluation procedures, test procedures, technical reports, technical records, test standards, quality assurance program, internal audits, complaint resolution procedures, follow-up program for manufacturers, personnel programs, and other procedures for producing credible findings and objective, unbiased reports. Since the inception of the OSHA program in 1988, MSHA has assisted OSHA in assessing the capability of applicant laboratories to fulfill the requirements of the NRTL program. In this cooperative effort, MSHA personnel brought to the OSHA program broad experience in test procedures and conformity assessment of products to technical requirements.

After reviewing a laboratory's application and capabilities, OSHA makes a preliminary decision to grant or deny the application. This decision is published in the **Federal Register** for comment. After the comment period, which must be at least 60 days, the validity of any comments received is evaluated. These evaluations are used to help determine whether the applicant has met the criteria for accreditation. Upon approval, a final announcement is published in the **Federal Register** outlining the scope of the recognition and any conditions that apply to the newly-recognized NRTL.

Each recognition lasts for 5 years. During that time, OSHA exercises oversight to assess conformance of the

NRTL with the terms of its accreditation. Unresolved issues or discrepancies could result in withdrawal of the NRTL recognition. At the present time, twelve laboratories are accredited by OSHA under its NRTL program.

Foreign laboratories also may apply for NRTL accreditation. In determining eligibility for a foreign-based testing agency or organization, however, OSHA takes into consideration the policy of the foreign government regarding both the acceptance in that country of testing, data, equipment acceptances, and listings and labeling, which are provided through nationally recognized testing laboratories recognized by the Assistant Secretary for OSHA, and the accessibility to government recognition or a similar system in that country by U.S.-based, safety-related testing agencies, whether recognized by the Assistant Secretary or not, if such recognition or a similar system is required by that country. Presently, one foreign laboratory has been recognized by OSHA as an NRTL. That laboratory is the Canadian Standards Association (CSA).

B. Section-by-Section Discussion

Section 6.1 Purpose and Effective Date

Under the proposal, this part would establish the procedures and requirements for independent laboratories to perform testing and evaluation for MSHA product approval. It also would authorize MSHA, when requested by an applicant for product approval, to approve a product based on testing and evaluation requirements other than those set forth in MSHA product approval regulations if the other requirements are equivalent to MSHA's or can be enhanced to provide at least the same degree of protection as MSHA's requirements.

The provisions of this part would apply to all applications for approval and extensions of approval except those filed under 30 CFR parts 7, 31, 32, and 36 received by MSHA after [insert the effective date of this rule]. However, MSHA recognizes that it may take some time before there are NRTLs accredited by OSHA to perform testing and evaluation to all the various MSHA product approval regulations. Until such time as an NRTL has been recognized to perform the necessary testing and evaluation for a particular product, MSHA would continue to perform the required testing and evaluation for that product for approval purposes. Once an NRTL is recognized to perform the required tests and evaluations for a given product, however, the manufacturer would be required to have the necessary testing and evaluation conducted by an NRTL recognized by OSHA to perform those specific tests and evaluations and to submit the testing and evaluation results and the statement of product compliance along with its application for approval or extension of approval. Thus, for example, if an NRTL had been recognized by OSHA to perform the testing and evaluation of hose conduit for approval under 30 CFR part 18, then the manufacturer would be required to use an NRTL to perform those tests and evaluations for an approval or extension of approval and submit the results to MSHA as part of its application. On the other hand, if no NRTL had been accredited to perform the hose conduit testing and evaluation, MSHA would continue to perform the testing and evaluation required for product approval.

If only one NRTL is accredited to perform the necessary testing and evaluation for a particular product, the manufacturer would have to use that NRTL to conduct the requisite testing and evaluation work. Where more than one NRTL has been recognized, manufacturers would have a choice as to which NRTL would perform the work.

Section 6.2 Definitions

The following definitions would apply to the provisions of this part.

Approval. This term would be used to describe a written document issued by MSHA which states that a product has met the requirements of part 18, 19, 20, 21, 22, 23, 26, 27, 29, 33, or 35. It would not apply to the provisions of 30 CFR part 7. The definition would be based on the existing definitions of "approval" in the parts specified above. It would be expanded to include "certification" and "acceptance" because these terms also are used to denote MSHA approval.

Evaluation. This term would mean the systematic examination of the extent to which a product fulfills the specified requirements for MSHA product approval.

Section 6.10 Use of Independent Laboratories

Proposed § 6.10(a) would require the applicant seeking MSHA product approval under part 18, 19, 20, 21, 22, 23, 26, 27, 29, 33, or 35 to provide, as a part of its application, documentation of the testing and evaluation necessary to ensure compliance with MSHA requirements. Such testing and evaluation would be performed by an independent laboratory that has been accredited by OSHA as a Nationally Recognized Testing Laboratory and has demonstrated its capability to perform the specific testing and evaluation required by MSHA for the product for which approval is sought.

To implement this proposed rule, MSHA and OSHA intend to expand by a subagreement the 1979 Interagency Agreement between MSHA and OSHA which provides for interagency coordination to develop compatible safety and health standards, regulations, and policies with respect to the mutual goals of the two organizations. That subagreement would include specific provisions for detailing the coordination between the two agencies with respect to the NRTL program.

In order to become accredited under OSHA's NRTL program to perform MSHA testing and evaluation, a laboratory would have to submit an application to OSHA which provides sufficient information and detail demonstrating that it meets the requirements set forth in 29 CFR 1910.7. As part of its application, the laboratory also would identify the scope of the NRTL-related activity for which it seeks recognition. This would include identifying those specific testing and evaluation methods set forth in MSHA product approval regulations that the laboratory would use to test and evaluate the product being submitted for MSHA approval. Based on pre-rulemaking discussions between MSHA and OSHA, the Assistant Secretary for OSHA would consider MSHA testing and evaluation requirements set out in 30 CFR parts 18, 19, 20, 21, 22, 23, 26, 27, 29, 33, and 35, or other testing and evaluation requirements which MSHA determines under 30 CFR 6.20 are equivalent to the requirements in those approval parts, to be "alternative test standards" as defined in 29 CFR 1910.7(d), which provide an "adequate level of safety" for products to be used in gassy underground mines. However, unless otherwise specifically indicated by OSHA, the MSHA testing and evaluation requirements considered as "alternative test standards" shall not be used to test and evaluate products for use in workplaces other than gassy underground mines subject to MSHA jurisdiction under the Mine Act.

Under OSHA's Appendix A to § 1910.7, an on-site assessment of the testing facilities of the applicant laboratory, as well as its administrative and technical practices, would then be conducted by OSHA. The assessment team selected to evaluate the capabilities of the laboratory desiring to test to MSHA approval requirements would be a joint OSHA/MSHA group, including MSHA personnel skilled in

the details of MSHA testing and evaluation requirements. Although under its regulation OSHA has the authority to contract with outside personnel to perform the on-site assessment, OSHA has agreed that this critical responsibility would not be contracted out to private sector personnel for evaluating applicant laboratories seeking recognition to perform MSHA testing and evaluation. The subagreement to the Interagency Agreement between MSHA and OSHA would specifically eliminate this option for the MSHA program.

It is the Assistant Secretary for OSHA who has the authority to grant recognition to an NRTL or to expand, renew, or revoke such recognition. However, MSHA staff would participate in all aspects of the process for determining whether an application for recognition of an NRTL to perform testing and evaluation for MSHA product approval should be approved. This would include preparation of written reports of on-site assessment, review of any public comments received regarding the laboratory's application for accreditation, and participation in any special review or informal hearing ordered by the Assistant Secretary for OSHA to address public objection to an applicant's request for recognition by OSHA. MSHA personnel also would participate fully in any action to expand, renew, or revoke recognition of an NRTL to perform the testing and evaluation necessary under MSHA's product approval regulations. In this manner, MSHA would be assured that the applicant laboratory is capable and has complete understanding of the testing and evaluation requirements, procedures, and protocol specified in MSHA's product approval regulations. All these areas of MSHA participation in the OSHA process to accredit an NRTL to perform MSHA testing and evaluation would be delineated in the subagreement between the agencies.

As required under this paragraph (a) of the proposed rule, once an NRTL has been recognized by OSHA to perform testing and evaluation for MSHA approval of a particular product, the manufacturer seeking approval of that product must submit to MSHA, as part of its application, the NRTL testing and evaluation results along with a statement of product compliance with the applicable MSHA approval requirements. It is at this point that the MSHA review process would begin.

MSHA would initiate an administrative review of the application package upon receipt to ensure that the applicant had included all of the necessary information to process the application. This information would include, among other things, a complete description of the product, product drawings and specifications, the NRTL product testing and evaluation results, the NRTL statement of product compliance with the applicable MSHA approval requirements, and payment of the nonrefundable MSHA application fee. If the manufacturer has submitted an incomplete application package without all the information required, MSHA immediately would notify the applicant of the deficiency by mail. MSHA would then hold the deficient application for a reasonable period of time, without further processing, while awaiting a response from the manufacturer. If the applicant fails to respond to the MSHA request for additional information to complete the application package within a reasonable time, MSHA would cancel the application and the applicant would forfeit the application fee. Applications submitted without the required application fee would be considered invalid.

After determining that an application package is complete, MSHA would initiate a technical review to ensure that the NRTL testing and evaluation results were both reasonable and appropriate for the particular product. If technical review of the package indicates deficiencies resulting from inadequate data, illogical or unreasonable testing or evaluation results, or the omission of required information, the applicant would be notified of the discrepancy and given a reasonable period of time to provide the needed information and/or explain the apparent deficiency. Failure to respond to the MSHA notification of a discrepant application with the required information and/or satisfactory explanations within a reasonable period would result in cancellation of the application and forfeiture of the application fee.

Following the administrative and technical review of the product application package, MSHA would issue an approval, or notice denying approval, to the applicant. A notice denying approval would state the reasons upon which the denial was based. If an approval is issued, the approval holder is authorized and required to place an MSHA marking on the product which signifies to the user of the product that the product is approved for use in gassy underground mines. The product drawings and specifications, the NRTL testing and evaluation results, and the NRTL statement of product compliance with the applicable approval requirements would be retained in an approval file. The MSHA approval constitutes a license which authorizes the approval holder to manufacture, distribute, and sell the product constructed in exact accordance with the approval documentation on file with MSHA.

Proposed § 6.10(b) would require that NRTL testing and evaluation of products for MSHA approval be performed only by NRTLs accredited by OSHA to perform the specific MSHA tests and evaluations. Because of the critical nature of the testing and evaluation of products to be used in the underground mining environment, where hazards such as flammable methane gas may exist, the proposal would not permit the NRTL to contract out any portion of the testing and evaluation conducted for applicants seeking MSHA approval. Additionally, the proposed rule would require the testing and evaluation to be performed in-house at the facilities of the NRTL specifically accredited by OSHA to perform the MSHA tests and evaluations required. In this way, MSHA could continue to ensure that the NRTL accredited by OSHA as having the capability, including the necessary equipment and trained personnel, to perform the specific MSHA tests and evaluations is, in fact, the laboratory conducting the testing and evaluation work.

Under the proposal, the specific NRTL receiving recognition to perform MSHA testing and evaluation would be required to perform all tests and evaluations in strict accordance with MSHA regulations, including the procedures and protocol used by MSHA in conducting such testing and evaluation. The proposed rule would not permit an NRTL to change a testing standard or any elements incorporated in the standard. Therefore, the provisions of "II. Supplementary Procedures, A. Test Standard Changes" of Appendix A to 29 CFR 1910.7 would not be a part of the MSHA program.

Proposed § 6.10(c) would reserve the right of MSHA to observe or verify the testing and evaluation conducted for products approved by MSHA. This is to ensure that the OSHA-recognized NRTLs continue to perform tests and evaluations to MSHA requirements in an appropriate manner. This safeguard would supplement the existing NRTL quality control program which includes the performance of internal audits as required by the OSHA recognition.

Proposed § 6.10(d) would require that the manufacturer of the MSHA-approved product affix a durable NRTL mark as well as a durable MSHA mark to the product. The test standard used in testing and evaluating the product for MSHA approval also would be required

to be referenced on the NRTL's marking. This would allow the role of the NRTL participating in the MSHA approval program to be clearly identified in the field, both to the user of the approved product and to MSHA inspection personnel. In addition, this inclusion would protect the product user from unknowingly using a product bearing the MSHA and NRTL's marks in an environment for which the product has not been tested, evaluated, and approved. In this way, product defects discovered in the field by users or reported to and confirmed by MSHA could be addressed without delay. MSHA would promptly notify the manufacturer and associated NRTL of product defects identified or confirmed by MSHA, so that coordinated corrective action could be initiated to protect the safety of the miners and ensure the integrity of the MSHA and NRTL's marks.

Under proposed § 6.10(e), internal audits performed by an NRTL as part of the quality control program required by the OSHA accreditation would have to be made available for review by MSHA. This provision would not require NRTLs to submit copies of all internal audits to MSHA. Instead, it simply would require an NRTL to make such audits available to MSHA for review when requested by the Agency. These internal audits provide documented verification that the OSHA-recognized NRTL continues to satisfy the requirements of 29 CFR 1910.7(b)(4), is performing within its "letter of recognition" and its quality control program, and has not misrepresented the scope or conditions of its accreditation. Internal audits under the OSHA NRTL program are done at appropriate intervals by trained and qualified persons. Guidelines for the establishment of quality control programs for laboratories are available in ISO guides 25, 28, and 38.

Under proposed § 6.10(f), NRTLs recognized by OSHA to perform MSHA testing and evaluation would be required to formulate and implement a "follow-up" program in accordance with the OSHA requirements of 29 CFR 1910.7(b)(2). In addition, the proposal would mandate that NRTLs make available to MSHA for review any information gathered by an NRTL during manufacturing site inspections or field audits of manufactured products approved by the MSHA. As indicated in the discussion of paragraph (d) on internal audits, NRTLs would not be required to submit copies to MSHA of "follow-up" reports of manufacturing site inspections and products audits. They would need only to provide MSHA with copies upon MSHA's request.

Further, NRTLs would be required to notify MSHA immediately of product defects discovered so that appropriate corrective action could be initiated to protect the safety and health of the miners. Because product defects can create hazards underground, immediate notification should be by expeditious means, such as by telephone or fax. Telephone or other contact should then be confirmed in writing. The oral and written notification should include a description of the nature and extent of the problem.

The prompt sharing of NRTL product audit information would enhance the MSHA post-approval product audit program, permit rapid response to safety problems caused by product defects, and ensure the integrity of the MSHA and NRTL marks.

Proposed § 6.10(g) would provide that approved products tested and evaluated by NRTLs recognized by OSHA to perform MSHA testing and evaluation would be subject to periodic audit by MSHA to determine conformity with the technical requirements upon which the approval was based. This aspect of the proposal would complement the "follow-up" program required by the OSHA recognition and provide a mechanism for independent evaluation by MSHA of approved products.

Proposed paragraph (g) would require an approval holder, upon MSHA's request, to make an approved product available to MSHA for audit, at no cost to MSHA. MSHA would make such a request no more than once a year, except for cause. This would be in addition to MSHA's ongoing quality assurance program through which the Agency can obtain products for audit at any time at MSHA's expense, and the field audit program conducted by the specific NRTL upon whose testing and evaluation MSHA bases its approval action.

Approved products to be audited by MSHA would be selected by the Agency as representative of those distributed for use in underground mines. When an approved product is requested by MSHA for audit from the approval holder, the Agency would arrange to examine and evaluate it at a mutually-agreed-upon time and location and would permit the approval holder to observe any audit-related tests conducted. This examination and evaluation could take place at an MSHA facility, at the manufacturer's plant or distribution center, or at any other place agreed upon by MSHA and the approval holder. The approval holder would be able to obtain any final report resulting from such audits.

The proposed rule would allow MSHA to more effectively determine whether products are, in fact, being manufactured as approved. MSHA, not the manufacturer, would select the product and MSHA also would continue to obtain approved products from sources other than the manufacturer. This approach is particularly useful for products that are "one of a kind" or of limited distribution. Because these products are not readily found at mine suppliers or distributors, they would be difficult to locate without the assistance of the approval holder.

In determining which approved products would be subject to audit at any particular time, MSHA would consider a variety of factors such as whether the manufacturer has previously produced the approved product or similar products, whether the approved product is new or part of a new product line, or whether the approved product is intended for a unique application or limited distribution. Other considerations may include product complexity, the manufacturer's previous product audit results, product population in the mining community, and the time since the last audit or since the product was first approved.

Based on MSHA's experience, the Agency anticipates few instances in which it would request at no cost more than one approved product from any one manufacturer in any one year. There are circumstances or causes, however, under which additional products for audit may be necessary to ascertain compliance with the technical requirements upon which an approval was based. Examples of such circumstances include verified complaints about the safety of an approval product, evidence of product changes that have not been approved, audit test results that warrant further testing to determine compliance, and evaluation of corrective action taken by an approval holder. Under these circumstances, the approval holder would have to provide, at no cost to MSHA, additional approved products so the Agency could ensure that the approval holder is meeting the obligation to manufacture the product as approved.

When discrepancies are found during MSHA audits of approved products, MSHA would require that the manufacturer take all necessary corrective actions. These actions could include, but are not limited to, the approval holder's recalling or retrofitting the approved product

involved and issuing user notices. Revocation of the approval by MSHA could result when discrepancies in approved products are not successfully corrected.

Proposed § 6.10(h) would require all proposed changes to approved products to be submitted to MSHA for an extension of approval prior to implementation of the change to ensure that product changes do not result in hazardous conditions or violations of MSHA requirements when approved products are used underground. It is important that MSHA be aware of and approve any changes to the approved product that may impact on the approval requirements. Such changes would be tested and evaluated, as necessary, to determine compliance with MSHA approval requirements. In keeping with the philosophy and intent of this proposed regulation, testing and evaluation of changes to approved products would be carried out by an NRTL specifically recognized by OSHA to perform the necessary tests and evaluations for MSHA product approval.

Proposed § 6.10(i) would establish the bases and procedures for revocation of NRTL recognition. The Assistant Secretary for OSHA has the authority to revoke for cause the recognition of any NRTL accredited under OSHA's NRTL program, and this would include the authority to revoke the recognition of an NRTL accredited to perform testing and evaluation to MSHA approval requirements. Under the proposal, action to revoke recognition of an NRTL to perform MSHA testing and evaluation would be taken if the NRTL: (1) Has failed to continue to substantially satisfy the requirements of 29 CFR 1910.7 or Appendix A to 1910.7; (2) has failed to reasonably perform the NRTL testing requirements encompassed within its letter of recognition; (3) has materially misrepresented itself in its applications or misrepresented the scope or conditions of its recognition; or (4) has failed to comply with the requirements set forth in this proposed rule for recognition as an NRTL to perform testing and evaluation to MSHA approval requirements.

In initiating action to revoke the recognition of an NRTL to perform testing and evaluation to MSHA requirements, the proposed rule would require that the procedures for revocation established in Appendix A to 1910.7 be followed. Under those procedures, OSHA is required to provide the recognized NRTL notice in writing of the alleged deficiencies, giving the NRTL the opportunity to rebut or correct the alleged deficiencies within a reasonable period. If the deficiencies are not corrected or reconciled within the time period provided, OSHA would propose, in writing, to revoke the recognition. The revocation would be effective in 60 days unless within that period the recognized NRTL corrects the deficiencies or requests a hearing in writing. If a hearing is requested, it would be held before an administrative law judge (ALJ) of the Department of Labor according to the rules specified in 29 CFR part 1905, subpart C. In the hearing, the burden of proof would be on OSHA to demonstrate by a preponderance of the evidence that the recognition should be revoked based on the causes alleged in the proposed notice of revocation.

Under paragraph E.3., Final Decision, of Appendix A, the ALJ would issue a decision based on the entirety of the record as to whether the recognition should be revoked. Exceptions to the ALJ decision would be accepted for 20 days. If no exceptions were filed, this would become the final decision of the Assistant Secretary of OSHA. If exceptions are filed, the ALJ decision, the exceptions filed, and the entire file would be forwarded to the Assistant Secretary for OSHA for final decision. A copy of the Assistant Secretary's final decision on the revocation would be provided to the NRTL and a notification would be published in the Federal Register announcing the decision.

Section 6.20 Use of Equivalent Testing and Evaluation Requirements

Proposed § 6.20 (a) and (b) would permit MSHA, and appropriately recognized NRTLs, when requested by the applicant for product approval, to use international, consensus, or other recognized approval requirements that differ from those set forth in existing MSHA regulations to test and evaluate certain mining equipment after MSHA has determined that such requirements are "equivalent" or can be enhanced to provide equivalency. Part 7 would not be affected by this proposed provision.

The Agency believes that this proposal would encourage a more rapid introduction of mining products embodying new technology with enhanced safety features. In addition, testing and evaluation to "equivalent" requirements, that provide the same or a greater degree of protection to miners as those set forth in the various MSHA product approval regulations, would stimulate metric conversion, lead to greater compatibility with international standards, and provide a more competitive posture for U.S. products in the international market. Implementation of this provision would enable manufacturers of U.S. mining equipment or products to obtain MSHA's certification that their equipment meets both the MSHA regulatory requirements and the equivalent international, consensus, or other recognized requirements.

MSHA would decide which alternative requirements for product approval it would evaluate for "equivalency." This decision would be based on factors such as the potential to provide enhanced safety, the extent of usage of the alternative requirements, the needs of the U.S. mining industry, the complexity of the candidate requirements, the difficulty in ensuring equivalency, and the Agency resources available to address the determination. The evaluation would be conducted by the Agency's Approval and Certification Center using personnel with expertise in the approval requirements involved.

Under this proposal, once MSHA has determined that equivalent requirements exist or that certain requirements, other than those in MSHA approval regulations, can be enhanced to provide equivalency, the applicant would be given the option of requesting that MSHA accept testing and evaluation of the applicant's product using the "equivalent" requirements rather than those found in the applicable product approval regulations. This option would permit the manufacturer to design a machine or product to a single set of requirements acceptable to both MSHA and other market areas, rather than designing separate machines to comply with the separate requirements of each market place in which business is sought.

Because this proposal would permit approval of mining equipment intended to compete in multiple market areas with differing approval requirements, the approved product design would incorporate the highest level of safety required by any of the intended market areas. For example, if the target markets include the United States and another nation that has more stringent approval requirements for a specific product, MSHA would have the authority, at the request of the applicant, to issue an approval based on testing and evaluation to the more stringent requirements. The approval documentation would state that the product had fulfilled the more stringent requirements in addition to those of MSHA. In this case, the approved product sold in the U.S. would have a higher degree of safety than that specified by MSHA under existing requirements. Should the targeted foreign market area have product approval requirements which are, in

some aspects, less stringent than those of MSHA, the applicant would be required to fulfill the foreign target area's requirements and, in addition, any other tests, evaluations, or enhancements necessary to ensure that the product is at least as safe as that demanded by the MSHA approval requirements. In this situation, the approved product would exceed the safety requirements of the foreign target area and be no less safe than required by MSHA.

As previously indicated, MSHA approval documentation would show that the product had fulfilled the requirements of the foreign target market area and those of MSHA. In the first instance, the product marketed in the United States would embody a higher level of safety, while in the second instance it would embody equivalent safety. In no case would the product be less safe than mandated by MSHA approval requirements.

The following example illustrates how this concept would work. In testing and evaluating electrical circuits for intrinsic safety under 30 CFR 18.68, MSHA uses spark test apparatus meeting the requirements of the International Electrotechnical Commission (IEC), IEC 79–3 (1990). With this apparatus, each rotation of a four-wire electrode holder produces at least six make-break sparks on a slotted cadmium disk in the presence of the explosive test gas mixture. The MSHA procedure requires that the test duration be 1000 rotations of the four-wire electrode holder and that the polarity of the test circuit be reversed after 500 rotations. This same apparatus is used to test intrinsically safe circuits in partial fulfillment of the requirements of the IEC test, IEC 79–11 (1991), for intrinsic safety. However, the IEC procedure specifies a test duration of 400 rotations of the four-wire electrode holder for DC circuits and 1000 rotations for AC circuits.

With all other factors equal, MSHA could consider the spark test specified by IEC 79–11 (1991) to be equivalent to the spark-test procedure followed by MSHA in fulfillment of 30 CFR 18.68, by increasing the number of rotations of the four-wire electrode holder used in the IEC DC circuit test by 100 rotations and adding 500 rotations with reversed circuit polarity. For AC circuits, in addition to the 1000 rotations of the four-wire electrode holder required by IEC, 500 rotations with reversed polarity tests would be required to meet the MSHA requirements. The resulting test would exceed some aspects of both the MSHA and IEC procedures and would fulfill the requirements of both. In this manner a single test could verify conformity to the test requirements of both parties with no reduction of safety in either case. In like fashion, other MSHA and IEC requirements for the approval of intrinsically safe electrical circuits could be reconciled to obtain equivalency without adverse impact on safety.

MSHA anticipates that savings from use of this option would reduce the manufacturer's unit cost by permitting more standardized construction and, thus, improve the manufacturer's competitive position. This, together with the need to provide products meeting the highest level of safety demanded by the market areas of interest, would encourage a more rapid introduction of mining products embodying new technology with enhanced safety features. Because of the potential for a more global market area, MSHA also expects an improved availability of specialized mining equipment adapted to more safely address unique mining conditions for which equipment could not be developed without significant market demand. In general, this proposal should provide increased opportunity for direct competition leading to improved safety and performance quality in mining products.

As is the case with existing MSHA approval regulations, this proposed rule would be nondiscriminatory as between U.S. and foreign manufacturers. Any manufacturer, either domestic or foreign, wishing to acquire an MSHA product approval would be able to take advantage of this "equivalency" program.

Further, the proposal would be consistent with the North American Free Trade Agreement and the newly negotiated Agreement on Technical Barriers to Trade (TBT) which will become effective when the Uruguay Round Agreements enter into force for the United States.

Proposed § 6.20(c) would require that, after a determination of "equivalency" is made, the industry be notified of the determination through publication of a notice in the **Federal Register**. The notice would clearly identify the alternative requirements evaluated and either indicate that they are "equivalent" or specify how they would need to be enhanced to provide equivalency to the corresponding MSHA product approval requirements. Following publication in the **Federal Register** of the alternative requirements determined by MSHA to be equivalent, MSHA, as well as NRTLs recognized by OSHA to perform the equivalent testing and evaluation requirements, would be able to conduct the equivalent testing and evaluation when so requested by an applicant seeking product approval. The MSHA **Federal Register** notice of equivalent requirements also would specify whether an NRTL recognized by OSHA to perform testing and evaluation to the original MSHA approval requirements would have to obtain an expansion of its OSHA recognition to perform testing and evaluation to the "equivalent" alternative requirements.

Conforming Amendments

The changes to MSHA's procedures and requirements for testing and evaluation of products MSHA approves for use in gassy, underground mines set forth in this new proposed part 6 also would necessitate certain conforming amendments to the Agency's approval regulations in 30 CFR parts 18, 19, 20, 21, 22, 23, 26, 27, 29, 33, and 35. These approval regulations contain application provisions for approval and extension of approval of products which manufacturers seeking MSHA approval must follow. Therefore, appropriate revisions to these application provisions to reference proposed part 6 are being included as part of this proposed rule.

IV. Fees

The Agency's effort in the initial issuance of the approval would be reduced significantly because MSHA's role would change from that of testing and evaluating prototype products to that of oversight, auditing, and addressing new technology. Thus, MSHA fees charged to manufacturers would be reduced significantly. Because the Agency no longer would provide certain kinds of testing and evaluation, its hourly and flat rate charges for such services would be eliminated. However, in order to issue a manufacturer an MSHA approval, the Agency still would have to review the manufacturer's documents. As a result of the proposed rule, the manufacturer's documents would now include the NRTL's testing and evaluation results. MSHA estimates that due to the increased technical and administrative time needed to review the NRTL testing and evaluation data, its application fee would increase from $100 to $400. The $400 estimate is based upon a per-hour fee of $50 and an 8-hour average for technical and administrative review, which account for the fact that applications vary in complexity and, therefore, differ in their review time.

V. Executive Order 12866 and the Regulatory Flexibility Act

Executive Order 12866 requires that regulatory agencies assess both the costs

and benefits of proposed regulations. MSHA has determined that this proposed rule does not meet the criteria of a significant regulatory action and, therefore, has not prepared a separate analysis of costs and benefits. The Regulatory Flexibility Act requires regulatory agencies to consider a rule's impact on small entities. This proposed rule would not have a significant economic impact on a substantial number of small entities. The analysis contained in this preamble meets MSHA's responsibilities under Executive Order 12866 and the Regulatory Flexibility Act.

Benefits

Under this proposed rule, Nationally Recognized Testing Laboratories (NRTLs), rather than MSHA, would test and evaluate most mining products requiring Federal approval. Having more than one entity available to conduct tests and evaluations would facilitate a more efficient process of providing the required services and, thus, expedite the introduction of new and innovative equipment into the Nation's mines. Moreover, the proposed rule would maintain the existing level of workplace safety provided by Federal testing and evaluation because the NRTLs must be recognized by the Department of Labor's Occupational Safety and Health Administration as being qualified to perform specific testing and evaluation for MSHA product approval. More importantly, MSHA still would be fully responsible for approving any equipment tested and evaluated before it could be used in a mine.

Reducing the number of tests and evaluations it conducts would allow MSHA to direct its resources more to auditing products actually used in mines. In addition, NRTLs recognized by OSHA must conduct field audits as part of their follow-up programs, and under MSHA's proposed rule any reports of such audits would have to be made available to MSHA. These field audits would ensure that products in use continue to meet the specifications of the approval. MSHA believes that increasing such field audits would enhance safety. Also, shifting resources from routine testing and evaluation would permit MSHA to direct more attention to evaluating new technology which may be safer than existing technology, potentially accelerating the entry of such equipment into mines.

Further, the proposed rule would permit MSHA to accept product testing and evaluation based upon approval requirements other than its own, so long as the alternative requirements provide at least the same level of safety as MSHA's requirements. In some instances these requirements may be more stringent than MSHA's. Because products approved using the more stringent requirements would have to be built to those requirements, safety would be enhanced. In addition, acceptance of equivalent or enhanced requirements should allow a wider spectrum of safe and improved equipment to be used in mining. This also would eliminate the need for manufacturers to design separate products to meet the demands of different approval requirements, MSHA's approval requirements and, for example, an international requirement, where a single design could provide the necessary level of safety. MSHA expects that this proposed rule also would facilitate the use of metrification in the construction of equipment.

Costs

MSHA estimates that the costs of testing, evaluation, and approval for any particular product would increase under the proposal. However, these costs would be offset by savings. Charges for testing and evaluating by NRTLs are often greater than the fees charged by the Federal Government. NRTLs' operating costs tend to be higher than the Government's and include a profit component that is not present in the Government's fees. NRTLs also charge manufacturers for providing follow-up services with respect to products they have already tested and evaluated. MSHA expects the costs of testing and evaluating any particular product to approximately double under the proposal. Further, although the NRTL, rather than MSHA, would test and evaluate certain products, time would still be required for MSHA to review approval applications that, under this proposal, would include the testing and evaluation data and results prepared by the NRTL and submitted with the application package. Therefore, MSHA estimates that its application fee would increase from $100 to $400.

The proposed rule, however, has the potential to provide substantial cost savings to manufacturers as the program grows to maturity, which MSHA expects would outweigh any cost increases. In particular, manufacturers would realize savings from the ability to design and manufacture a single product to serve multiple markets. Currently, MSHA may not approve products meeting requirements that are different from the Agency's own. Therefore, some companies must alter their products, which currently meet MSHA requirements, to meet the approval requirements of a foreign market area.

Under the proposed rule, MSHA could approve a product based upon approval requirements other than its own, provided that the alternative approval requirements have been determined by MSHA to be equivalent, or can be enhanced to provide equivalency, by affording the same or a greater level of safety as MSHA's. Thus, by not having to design equipment to meet two different approval requirements, manufacturers could have a more standardized product line, reduce unit costs, and improve quality control. Most manufacturers, whether large or small, also should experience cost savings by being able to market their products sooner because more entities would be providing the services that MSHA alone currently supplies. The ability to decrease the amount of time for developing and introducing a product into the market can cut overall costs for manufacturers. Due to the absence of information concerning individual manufacturers' product lines, management objectives, and marketing strategies, MSHA was not able to quantify these cost savings.

Finally, Executive Order 12866 also requires that regulatory agencies assess the impact on the Government for any regulation determined to be a significant regulatory action. MSHA does not believe that the proposed rule would create any significant cost impacts on the Government. Rather, this proposed regulation would allow MSHA to improve its existing post-approval audit program by reallocating its resources from testing and evaluation to audit responsibilities. The proposed rule can be implemented under existing Government practices without any substantial equipment or facility expenditures by the Government.

MSHA solicits comments on the costs and benefits of this proposed rule to all manufacturers who produce products requiring MSHA approval.

List of Subjects in 30 CFR Parts 6, 18, 19, 20, 21, 22, 23, 26, 27, 29, 33, and 35

Laboratory, Mine safety and health, Reporting and recordkeeping requirements, Safety, Testing.

Dated: November 17, 1994.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

Accordingly, subchapter B, chapter I, title 30 of the Code of Federal Regulations is proposed to be amended as follows:

1. A new part 6 is added to read as follows:

PART 6—TESTING AND EVALUATION BY NATIONALLY RECOGNIZED TESTING LABORATORIES AND USE OF EQUIVALENT APPROVAL REQUIREMENTS

Sec.
6.1 Purpose and effective date.
6.2 Definitions.
6.10 Use of independent laboratories.
6.20 Use of equivalent test and evaluation requirements.

Authority: 30 U.S.C. 957.

§ 6.1 Purpose and effective date.

This part sets forth the procedures and requirements for independent laboratories to perform testing and evaluation for MSHA product approval. It also authorizes MSHA, when requested by an applicant for product approval, to approve a product based on testing and evaluation requirements other than those in MSHA product approval regulations, if they are equivalent to MSHA's requirements or can be enhanced to provide at least the same degree of protection as MSHA's requirements. The provisions of this part shall apply to all applications for approval and extensions of approval received after [effective date of the final rule].

§ 6.2 Definitions.

The following definitions apply in this part.

Approval. A document issued by MSHA which states that a product has met the requirements of parts 18, 19, 20, 21, 22, 23, 26, 27, 29, 33, or 35 of this chapter and which authorizes an approval mark identifying the product as approved. The term includes "certification" and "acceptance."

Evaluation. The systematic examination of the extent to which a product fulfills the specified requirements for MSHA product approval.

§ 6.10 Use of independent laboratories.

(a) After [effective date of the final rule], to fulfill the approval requirements of parts 18, 19, 20, 21, 22, 23, 26, 27, 29, 33, and 35 of this chapter, the testing and evaluation of products submitted for MSHA approval shall be performed by an independent laboratory. The independent laboratory must be a Nationally Recognized Testing Laboratory (NRTL) under the provisions of 29 CFR 1910.7 recognized by the Occupational Safety and Health Administration to perform the specific tests and evaluations required by the pertinent approval part or such equivalent requirements accepted by MSHA under the provisions of § 6.20. The applicant for product approval shall submit the NRTL testing and evaluation results and statement of product compliance with its application.

(b) Product testing and evaluation performed by NRTLs shall be conducted on-site (in-house) by NRTL personnel in accordance with the specific MSHA testing and evaluation requirements for the product or such equivalent requirements accepted by MSHA under the provisions of § 6.20. The provisions of II. Supplementary Procedures, A. Test Standard Changes of Appendix A to 29 CFR 1910.7 do not apply to NRTL testing and evaluation for MSHA product approval.

(c) MSHA reserves the right to observe and verify testing and evaluation conducted by NRTLs for products approved by MSHA.

(d) Products approved by MSHA based on NRTL testing and evaluation shall bear a durable NRTL identification mark indicating the test standards used and the MSHA marking required by the appropriate product approval part.

(e) As a part of the quality control program required by 29 CFR 1910.7(b), NRTLs shall make available to MSHA any internal audits conducted as a part of their internal audit program to ensure that the required procedures, controls, and practices are in place.

(f) As a part of the follow-up program required by 29 CFR 1910.7(b)(2), NRTLs shall make available to MSHA any reports of follow-up inspections of manufacturing sites and any reports of product or laboratory audits of products carrying the MSHA and NRTL labels. NRTLS shall notify MSHA immediately of any product defects discovered.

(g) Upon request by MSHA, but not more than once a year, except for cause, the approval holder shall make products whose approval is based on testing and evaluation by NRTLs available for audit at a mutually agreeable site at no cost to MSHA.

(h) Any change to an approved product from the documentation on file at MSHA that affects the technical requirements of the applicable product approval part shall be submitted to MSHA by the approval holder for an extension of approval prior to implementing the change. The NRTL test and evaluation results addressing the change shall be submitted for consideration with the application for extension of approval.

(i)(1) The recognition of an NRTL to perform testing and evaluation to MSHA requirements for product approval may be revoked at any time for cause if an NRTL—

(i) Has failed to continue to substantially satisfy the requirements of the OSHA NRTL recognition program set forth in 29 CFR 1910.7 or Appendix A to 1910.7—"OSHA Recognition Process for Nationally Recognized Testing Laboratories";

(ii) Has not been reasonably performing the NRTL testing requirements encompassed within its letter of recognition to perform testing and evaluation to MSHA requirements for product approval;

(iii) Has materially misrepresented itself in its applications or misrepresented the scope or conditions of its recognition to perform testing and evaluation to MSHA requirements for product approval; or

(iv) Has failed to comply with any of the requirements for testing and evaluation by independent laboratories set forth in § 6.10 of this part.

(2) In revoking recognition of an NRTL to perform testing and evaluation to MSHA requirements for product approval, the provisions established in "Appendix A, II. Supplementary Procedures, E. Revocation of Recognition to 29 CFR 1910.7, shall be followed.

§ 6.20 Use of equivalent testing and evaluation requirements.

(a) After [effective date of the final rule], upon determination by MSHA and notification to the industry that testing and evaluation requirements other than those of parts 18, 19, 20, 21, 22, 23, 26, 27, 29, 33, or 35 of this chapter are available or can be enhanced to fulfill the objectives of these parts, the equivalent requirements, as set forth by MSHA, may be used when requested by applicants seeking product approval.

(b) Testing and evaluation requirements for product approval are equivalent when MSHA determines that, in their original or enhanced form, they provide the same or a greater degree of protection as those set forth for the product in parts 18, 19, 20, 21, 22, 23, 26, 27, 29, 33, or 35 of this chapter.

(c) After a determination of equivalency is made by MSHA, interested parties shall be notified through publication of a notice in the **Federal Register**. The notice shall either indicate that the alternative testing and evaluation requirements are equivalent in their original form, or shall specify the enhancements necessary to make the alternative testing and evaluation requirements equivalent to those required by the applicable MSHA product approval requirements.

2. The authority citation for parts 18, 19, 20, 21, 22, 23, 26, 27, 29, 33, 35 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

PART 18—[AMENDED]

3. Section 18.6 is amended by revising paragraph (a) to read as follows:

§ 18.6 Applications.

(a)(1) Investigation leading to approval, certification, extension thereof, or acceptance of hose or conveyor belt, will be undertaken by MSHA only pursuant to a written application, in duplicate, accompanied by a check, bank draft, or money order, payable to the U.S. Mine Safety and Health Administration to cover the fees. The application shall be accompanied by all necessary drawings, specifications, descriptions, and related materials, as set out in this part.

(2) Where the applicant for approval has used a laboratory recognized by the Occupational Safety and Health Administration as a nationally recognized testing laboratory (NRTL) under part 6 of this chapter to perform the testing and evaluation necessary for approval under this part, the application shall also include the testing and evaluation results and the statement of product compliance from the NRTL.

(3) An applicant may request testing and evaluation to other testing and evaluation requirements which have been determined by MSHA to be equivalent under § 6.20 of this chapter.

(4) The application, all related matters, and all correspondence concerning it shall be addressed to Approval and Certification Center, Box 201 B, Industrial Park Road, Dallas Pike, Triadelphia, WV 26059.

* * * * *

4. Section 18.15 is amended by revising paragraph (a) to read as follows:

§ 18.15 Changes after approval or certification.

* * * * *

(a)(1) Application shall be made as for an original approval or letter of certification requesting that the existing approval or certification be extended to cover the proposed changes and shall be accompanied by drawings, specifications, and related information, showing the changes in detail.

(2) Where the applicant for approval has used a laboratory recognized by the Occupational Safety and Health Administration as a nationally recognized testing laboratory (NRTL) under part 6 of this chapter to perform the testing and evaluation necessary for approval under this part, the application shall also include the testing and evaluation results and the statement of product compliance from the NRTL.

* * * * *

PART 19—[AMENDED]

5. Section 19.3 is revised to read as follows;

§ 19.3 Applications.

(a) Before MSHA will undertake the active investigation leading to approval of any lamp the manufacturer shall make application by letter for an investigation leading to approval of his lamp. This application in duplicate, accompanied by a check, bank draft, or money order, payable to U.S. Mine Safety and Health Administration, to cover all the necessary fees, shall be sent to Approval and Certification Center, Box 201 B, Industrial Park Road, Dallas Pike, Triadelphia, WV 26059, together with the required drawing, one complete lamp, and instructions for its operation.

(b) Where the applicant for approval has used a laboratory recognized by the Occupational Safety and Health Administration as a nationally recognized testing laboratory (NRTL) under part 6 of this chapter to perform the testing and evaluation necessary for approval under this part, the application shall also include the testing and evaluation results and the statement of product compliance from the NRTL.

(c) An applicant may request testing and evaluation to other testing and evaluation requirements which have been determined by MSHA to be equivalent under § 6.20 of this chapter.

6. Section 19.13 is amended by revising paragraph (a) to read as follows:

§ 19.13 Instructions for handling future changes in lamp design.

* * * * *

(a)(1) The manufacturer shall write to Approval and Certification Center, Box 201 B, Industrial Park Road, Dallas Pike, Triadelphia, WV 26059, requesting an extension of the original approval and stating the change or changes desired. With this letter the manufacturer should submit a revised drawing or drawings showing the changes in detail, and one of each of changed lamp parts.

(2) Where the applicant for approval has used a laboratory recognized by the Occupational Safety and Health Administration as a nationally recognized testing laboratory (NRTL) under part 6 of this chapter to perform the testing and evaluation necessary for approval under this part, the applicant shall also include the testing and evaluation results and the statement of product compliance from the NRTL.

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PART 20—[AMENDED]

7. Section 20.3 is revised to read as follows:

§ 20.3 Applications.

(a) Before MSHA will undertake the active investigation leading to approval of any lamp, the manufacturer shall make application by letter for an investigation of the lamp. This application in duplicate, accompanied by a check, bank draft, or money order, payable to the U.S. Mine Safety and Health Administration, to cover all the necessary fees, shall be sent to Approval and Certification Center, Box 201 B, Industrial Park Road, Dallas Pike, Triadelphia, WV 26059, together with the required drawings, one complete lamp, and instructions for its operation.

(b) Where the applicant for approval has used a laboratory recognized by the Occupational Safety and Health Administration as a nationally recognized testing laboratory (NRTL) under part 6 of this chapter to perform the testing and evaluation necessary for approval under this part, the application shall also include the testing and evaluation results and the statement of product compliance from the NRTL.

(c) An applicant may request testing and evaluation to other testing and evaluation requirements which have been determined by MSHA to be equivalent under § 6.20 of this chapter.

8. Section 20.14 is amended by revising paragraph (a) to read as follows:

§ 20.14 Instructions for handling future changes in lamp design.

* * * * *

(a)(1) The manufacturer shall write to the Approval and Certification Center, Box 201 B, Industrial Park Road, Dallas Pike, Triadelphia, WV 26059, requesting an extension of the original approval and describing the change or changes proposed. With this letter the manufacturer should submit a revised drawing or drawings showing the changes in detail, and one of each of the changed lamp parts.

(2) Where the applicant for approval has used a laboratory recognized by the Occupational Safety and Health Administration as a nationally recognized testing laboratory (NRTL) under part 6 of this chapter to perform the testing and evaluation necessary for approval under this part, the applicant shall also include the testing and evaluation results and the statement of product compliance from the NRTL.

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PART 21—[AMENDED]

9. Section 21.4 is revised to read as follows:

§ 21.4 Applications.

(a) Before MSHA will undertake the active investigation leading to approval of any lamp, the manufacturer shall make application by letter for an investigation of the lamp. This application in duplicate, accompanied by a check, bank draft, or money order, payable to the U.S. Mine Safety and Health Administration, to cover all the necessary fees, shall be sent to Approval and Certification Center, Box 201 B, Industrial Park Road, Dallas Pike, Triadelphia, WV 26059, together with the required drawings, one complete lamp, and instructions for its operation.

(b) Where the applicant for approval has used a laboratory recognized by the Occupational Safety and Health Administration as a nationally recognized testing laboratory (NRTL) under part 6 of this chapter to perform the testing and evaluation necessary for approval under this part, the application shall also include the testing and evaluation results and the statement of product compliance from the NRTL.

(c) An applicant may request testing and evaluation to other testing and evaluation requirements which have been determined by MSHA to be equivalent under § 6.20 of this chapter.

10. Section 21.10 is amended by revising paragraph (a) to read as follows:

§ 21.10 Instructions for handling future changes in lamp design.

* * * * *

(a)(1) The manufacturer shall write to Approval and Certification Center, Box 201 B, Industrial Park Road, Dallas Pike, Triadelphia, WV 26059, requesting an extension of the original approval and stating the change or changes desired. With this letter the manufacturer should submit a revised drawing or drawings showing the changes in detail and one of each of the changed lamp parts.

(2) Where the applicant for approval has used a laboratory recognized by the Occupational Safety and Health Administration as a nationally recognized testing laboratory (NRTL) under part 6 of this chapter to perform the testing and evaluation necessary for approval under this part, the application shall also include the testing and evaluation results and the statement of product compliance from the NRTL.

* * * * *

PART 22—[AMENDED]

11. Section 22.4 is revised to read as follows:

§ 22.4 Applications.

(a) Before MSHA will undertake the active investigation leading to approval of any methane detector, the manufacturer shall make application by letter for an investigation leading to approval of the detector. This application in duplicate, accompanied by a check, bank draft, or money order, payable to the U.S. Mine Safety and Health Administration, to cover all the necessary fees, shall be sent to Approval and Certification Center, Box 201 B, Industrial Park Road, Dallas Pike, Triadelphia, WV 26059, together with the required drawings, one complete detector, and instructions for its operation.

(b) Where the applicant for approval has used a laboratory recognized by the Occupational Safety and Health Administration as a nationally recognized testing laboratory (NRTL) under part 6 of this chapter to perform the testing and evaluation necessary for approval under this part, the application shall also include the testing and evaluation results and the statement of product compliance from the NRTL.

(c) An applicant may request testing and evaluation to other testing and evaluation requirements which have been determined by MSHA to be equivalent under § 6.20 of this chapter.

12. Section 22.11 is amended by revising paragraph (a) to read as follows:

§ 22.11 Instructions on handling future changes in design.

* * * * *

(a)(1) The manufacturer should write to Approval and Certification Center, Box 201 B, Industrial Park Road, Dallas Pike, Triadelphia, WV 26059, requesting an extension of the original approval and stating the change or changes desired. With this request, the manufacturer should submit a revised drawing or drawings showing changes in detail, together with one of each of the parts affected.

(2) Where the applicant for approval has used a laboratory recognized by the Occupational Safety and Health Administration as nationally recognized testing laboratory (NRTL) under part 6 of this chapter to perform the testing and evaluation necessary for this part, the applicant shall also include the testing and evaluation results and the statement of product compliance from the NRTL.

* * * * *

PART 23—[AMENDED]

13. Section 23.3 is revised to read as follows:

§ 23.3 Applications.

(a) Before MSHA will undertake the active investigation leading to approval of any telephone or signaling device, the manufacturer shall make application by letter for an investigation leading to approval of the device. This application in duplicate, accompanied by a check, bank draft, or money order, payable to the U.S. Mine and Safety and Health Administration, to cover all the necessary fees, shall be sent to Approval and Certification Center, Box 201 B, Industrial Park Road, Dallas Pike, Triadelphia, WV 26059, together with the required drawings, one complete telephone or signaling device, and instructions for its operation.

(b) Where the applicant for approval has used a laboratory recognized by the Occupational Safety and Health Administration as a nationally recognized testing laboratory (NRTL) under part 6 of this chapter to perform the testing and evaluation necessary for approval under this part, the application shall also include the testing and evaluation results and the statement of product compliance from the NRTL.

(c) An applicant may request testing and evaluation to other testing and evaluation requirements which have been determined by MSHA to be equivalent under § 6.20 of this chapter.

14. Section 23.14 is amended by revising paragraph (a) to read as follows:

§ 23.14 Instructions for handling future changes in design.

* * * * *

(a)(1) The manufacturer shall write to Approval and Certification Center, Box 201 B, Industrial Park Road, Dallas Pike, Triadelphia, WV 26059, requesting an extension of the original approval and stating the change or changes desired. With this request, the manufacturer should submit a revised drawing or drawings showing the changes in detail, together with one of each of the parts affected.

(2) Where the applicant for approval has used a laboratory recognized by the Occupational Safety and Health Administration as a nationally recognized testing laboratory (NRTL) under part 6 of this chapter to perform the testing and evaluation necessary for approval under this part, the applicant shall also include the testing and evaluation results and the statement of product compliance from the NRTL.

* * * * *

PART 26—[AMENDED]

15. Section 26.8 is amended by revising paragraph (a) to read as follows:

§ 26.8 Applications.

(a)(1) No investigation or testing will be undertaken by MSHA except pursuant to a written application, in duplicate, accompanied by a check, bank draft, or money order, payable to the U.S. Mine Safety and Health Administration to cover the fees, and all prescribed drawings, specifications, and related material. The application and all related matters and all correspondence concerning it shall be sent to Approval and Certification Center, Box 201 B, Industrial Park Road, Dallas Pike, Triadelphia, WV 26059.

(2) Where the applicant for approval has used a laboratory recognized by the Occupational Safety and Health Administration as a nationally recognized testing laboratory (NRTL) under part 6 of this chapter to perform the testing and evaluation necessary for approval under this part, the application shall also include the testing and evaluation results and the statement of product compliance from the NRTL.

(3) An applicant may request testing and evaluation to other testing and evaluation requirements which have been determined by MSHA to be equivalent under § 6.20 of this chapter.

* * * * *

16. Section 26.19 is amended by revising paragraph (a) to read as follows:

§ 26.19 Changes after certification.

* * * * *

(a)(1) Application shall be made, as for an original certification, requesting that the existing certification be extended to cover the proposed change. The application shall be accompanied by drawings and specifications and related material as in the case of an original application.

(2) Where the applicant for approval has used a laboratory recognized by the Occupational Safety and Health Administration as a nationally recognized testing laboratory (NRTL) under part 6 of this chapter to perform the testing and evaluation necessary for approval under this part, the application shall also include the testing and evaluation results and the statement of product compliance from the NRTL.

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PART 27—[AMENDED]

17. Section 27.4 is amended by revising paragraph (a) to read as follows:

§ 27.4 Applications.

(a)(1) No investigation or testing for certification will be undertaken by MSHA except pursuant to a written application, in duplicate, accompanied by all drawings, specifications, descriptions, and related materials and also a check, bank draft, or money order payable to the U.S. Mine Safety and Health Administration, to cover the fees. The application and all related matters and correspondence concerning it shall be addressed to Approval and Certification Center, Box 201 B, Industrial Park Road, Dallas Pike, Triadelphia, WV 26059.

(2) Where the applicant for approval has used a laboratory recognized by the Occupational Safety and Health Administration as a nationally recognized testing laboratory (NRTL)) under part 6 of this chapter to perform the testing and evaluation necessary for approval under this part, the application shall also include the testing and evaluation results and the statement of product compliance from the NRTL.

(3) An applicant may request testing and evaluation to other testing and evaluation requirements which have been determined by MSHA to be equivalent under § 6.20 of this chapter.

* * * * *

18. Section 27.11 is amended by revising paragraph (a) to read as follows:

§ 27.11 Extension of certification.

* * * * *

(a)(1) Application shall be made as for an original certification, requesting that the existing certification be extended to cover the proposed changes. The application shall include complete drawings, specifications, and related data, showing the changes in detail.

(2) Where the applicant for approval has used a laboratory recognized by the Occupational Safety and Health Administration as a nationally recognized testing laboratory (NRTL) under part 6 of this chapter to perform the testing and evaluation necessary for approval under this part, the application shall also include the testing and evaluation results and the statement of product compliance from the NRTL.

* * * * *

PART 29—[AMENDED]

19. Section 29.11 is amended by revising paragraph (a) to read as follows:

§ 29.11 Contents of application.

(a)(1) Each application for approval shall contain a complete written description, including operating instructions, of the analyzer or detector for which approval is requested together with a set of drawings and specifications showing full details of construction of the instrument and of the materials used. Drawings and specifications (and lists thereof) shall be submitted in duplicate.

(2) Where the applicant for approval has used a laboratory recognized by the Occupational Safety and Health Administration as a nationally recognized testing laboratory (NRTL) under part 6 of this chapter to perform the testing and evaluation necessary for approval under this part, the application shall also include the testing and evaluation results and the statement of product compliance from the NRTL.

(3) An applicant may request testing and evaluation to other testing and evaluation requirements which have been determined by MSHA to be equivalent under § 6.20 of this chapter.

* * * * *

20. Section 29.35 is amended by revising paragraph (a) to read as follows:

§ 29.35 Changes or modification of approved analyzers and detectors; issuance of modification of certificate of approval.

(a)(1) To change any feature of an approved analyzer or detector an applicant may request a modification of the original certificate of approval issued by MSHA by filing an application for such modification in accordance with the provisions of this section.

(2) Where the applicant for approval has used a laboratory recognized by the Occupational Safety and Health Administration as a nationally recognized testing laboratory (NRTL) under part 6 of this chapter to perform the testing and evaluation necessary for approval under this part, the application shall also include the testing and evaluation results and the statement of product compliance from the NRTL.

* * * * *

PART 33—[AMENDED]

21. Section 33.6 is amended by revising paragraph (a) to read as follows.

§ 33.6 Applications.

(a)(1) No investigation or testing will be undertaken by MSHA except pursuant to a written application, in duplicate (except as otherwise provided in paragraph (e) of this section), accompanied by a check, bank draft, or money order, payable to the U.S. Mine Safety and Health Administration, to cover the fees; and all prescribed drawings, specifications, and all related materials. The application and all related matters and all correspondence concerning it shall be sent to the Approval and Certification Center, Box 201 B, Industrial Park Road, Dallas Pike, Triadelphia, WV 26059.

(2) Where the applicant for approval has used a laboratory recognized by the Occupational Safety and Health

Administration as a nationally recognized testing laboratory (NRTL) under part 6 of this chapter to perform the testing and evaluation necessary for approval under this part, the application shall also include the testing and evaluation results and the statement of product compliance from the NRTL.

(3) An applicant may request testing and evaluation to other testing and evaluation requirements which have been determined by MSHA to be equivalent under § 6.20 of this chapter.

* * * * *

22. Section 33.12 is amended by revising paragraph (a) to read as follows:

§ 33.12 Changes after certification.

* * * * *

(a)(1) Application shall be made as for an original certificate, requesting that the existing certification be extended to cover the proposed changes, and shall be accompanied by drawings, specifications, and related data showing the changes in detail.

(2) Where the applicant for approval has used a laboratory recognized by the Occupational Safety and Health Administration as a nationally recognized testing laboratory (NRTL) under part 6 of this chapter to perform the testing and evaluation necessary for approval under this part, the application shall also include the testing and evaluation results and the statement of product compliance from the NRTL.

* * * * *

PART 35—[AMENDED]

23. Section 35.6 is amended by revising paragraph (a) to read as follows:

§ 35.6 Applications.

(a)(1) No investigation or testing will be undertaken by MSHA except pursuant to a written application, in duplicate, accompanied by a check, bank draft, or money order, payable to the U.S. Mine Safety and Health Administration, to cover the fees; and all descriptions, specifications, test samples, and related materials. The application and all related matters and correspondence concerning it shall be sent to Approval and Certification Center, Box 201 B, Industrial Park Road, Dallas Pike, Triadelphia, WV 26059.

(2) Where the applicant for approval has used a laboratory recognized by the Occupational Safety and Health Administration as a nationally recognized testing laboratory (NRTL) under part 6 of this chapter to perform the testing and evaluation necessary for approval under this part, the application shall also include the testing and evaluation results and the statement of product compliance from the NRTL.

(3) An applicant may request testing and evaluation to other testing and evaluation requirements which have been determined by MSHA to be equivalent under § 6.20 of this chapter.

* * * * *

24. Section 35.12 is amended by revising paragraph (a) to read as follows:

§ 35.12 Changes after certification.

* * * * *

(a)(1) Application shall be made, as for an original certificate of approval, requesting that the existing certification be extended to cover the proposed change. The application shall be accompanied by specifications and related material as in the case of an original application.

(2) Where the applicant for approval has used a laboratory recognized by the Occupational Safety and Health Administration as a nationally recognized testing laboratory (NRTL) under part 6 of this chapter to perform the testing and evaluation necessary for approval under this part, the application shall also include the testing and evaluation results and the statement of product compliance from the NRTL.

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November 30, 1994

Part III

Department of Education

34 CFR Part 674, et al.

Federal Perkins Loan Program, Federal Work-Study Programs, and Federal Supplemental Educational Opportunity Grant Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 674, 675, and 676

RIN 1840 AB71

Federal Perkins Loan Program, Federal Work-Study Programs, and Federal Supplemental Educational Opportunity Grant Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the campus-based programs (Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) programs). These amendments are needed to implement changes made to the Higher Education Act of 1965, as amended (HEA). These regulations also seek to improve the efficiency of the campus-based programs, to reduce the administrative burden for institutions where possible, and to enhance opportunities for postsecondary education.

EFFECTIVE DATE: These regulations take effect on July 1, 1995 and apply to the 1995–96 and subsequent award years. However, affected parties do not have to comply with the information collection requirements in § 674.34(e) until the Department of Education publishes in the **Federal Register** the control number assigned by the Office of Management and Budget (OMB) to these information collection requirements. Publication of the control numbers notifies the public that OMB has approved these information collection requirements under the Paperwork Reduction Act of 1980.

FOR FURTHER INFORMATION CONTACT:

1. For the Federal Perkins Loan Program: Sylvia R. Ross, U.S. Department of Education, 600 Independence Avenue, S.W., (Regional Office Building 3, Room 4018), Washington, DC 20202–5447. Telephone: (202) 708–8242; or

2. For the FWS and FSEOG Programs: Kathy S. Cause, U.S. Department of Education, 600 Independence Avenue, S.W., (Regional Office Building 3, Room 4018), Washington, DC 20202–5447. Telephone: (202) 708–4690.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: These amendments revise the existing campus-based program regulations. The campus-based programs are authorized as follows: Federal Perkins Loan—20 U.S.C. 1087aa–1087hh and 20 U.S.C. 421–429; FWS—42 U.S.C. 2751–2756b; FSEOG—20 U.S.C. 1070b–1070b–3. These regulations implement the provisions of the National and Community Service Act of 1990 (Pub. L. 101–610), enacted November 16, 1990, the Crime Control Act of 1990 (Pub. L. 101–647), enacted November 29, 1990, the Higher Education Amendments of 1992 (Pub. L. 102–325), enacted July 23, 1992 (Amendments), the Higher Education Technical Amendments of 1993 (Pub. L. 103–208), enacted December 20, 1993 (Technical Amendments), the Improving America's Schools Act of 1994 (Pub. L. 103–382), enacted October 20, 1994, and the Bankruptcy Reform Act of 1994 (Pub. L. 103–394), enacted October 22, 1994.

On June 22, 1994, the Secretary published a notice of proposed rulemaking (NPRM) in the **Federal Register** (59 FR 32264–32287). The NPRM included a discussion of major issues surrounding the proposed changes that will not be repeated here. The following list summarizes those issues and identifies the pages of the preamble to the NPRM on which a discussion of those issues can be found.

Campus-Based Programs

The Secretary proposed to amend the definition of "undergraduate student" to remove the restriction that did not allow an undergraduate student to receive Federal Perkins Loan or FWS assistance if he or she has already earned a baccalaureate or first professional degree. The proposal provided that a student is not ineligible for assistance under the Federal Perkins Loan or FWS programs because he or she has previously received a baccalaureate or professional degree (page 32264).

The Secretary proposed to amend the allocation and reallocation procedures for the campus-based programs to provide that if an institution returns more than 10 percent of its Federal Perkins Loan, FWS, or FSEOG allocation for an award year, the institution will have its allocation for the next fiscal year for that program reduced by the dollar amount returned (pages 32264–32265).

The Secretary proposed to amend the criteria for selection of students for campus-based assistance to ensure that independent students and students attending an institution on a less-than-full-time basis would be equitably provided financial assistance (page 32265).

The Secretary proposed to amend the overaward threshold provisions for the campus-based programs (page 32265).

To reduce burden for both the student and the institution, the Secretary proposed to allow an institution to disburse funds under the Federal Perkins Loan and FSEOG programs to a student when he or she is no longer enrolled if the assistance was awarded while the student was still an eligible student (page 32265).

Federal Perkins Loan Program

The Secretary proposed to remove the definitions of "Default rate", "Defaulted principal amount outstanding", and "Matured loans", and add the definitions of "Disposable income", "Enter repayment", "Making of a loan", and "Satisfactory arrangements to repay the loan" (pages 32265–32266).

The Secretary proposed to amend the reallocation formula for the Federal Perkins Loan Program, and to establish an appeals process by which the anticipated collections requirement may be waived for institutions with "low default rates" (page 32266).

The Secretary proposed to add a new section to the regulations to establish the Federal Perkins Loan cohort default rate and penalties for an institution with a high cohort default rate for the 1994–95 award year and subsequent award years (page 32266).

The Secretary proposed to add a new section to the regulations to describe the measures that institutions with high default rates must use to establish a default reduction plan (page 32266).

The Secretary proposed establishment of the Expanded Lending Option as necessary to implement statutory provisions under the Amendments and the Technical Amendments (page 32266).

The Secretary proposed to amend the Program Participation Agreement to implement the increase in the capital contribution requirements as required by the Amendments, and to include new reporting requirements containing information for determining an institution's cohort default rate (pages 32266–32267).

The Secretary proposed to amend the student eligibility requirements to implement statutory provisions under the Amendments (page 32267).

The Secretary proposed to amend the maximum loan limits to reflect statutory changes (page 32267).

The Secretary proposed to remove all references to the term "endorser" to reflect the statutory change that provides that all Federal Perkins Loans are to be made without security or endorsement (page 32267).

The Secretary proposed to incorporate the new statutory requirement that an

institution report loan disbursements to a national credit bureau (page 32267).

In accordance with statutory changes, the Secretary proposed to provide for the transfer of up to 25 percent of an institution's Federal Capital Contribution (FCC) allotment for an award year to either or both the FSEOG and FWS programs (page 32267).

The Secretary proposed to delete the promissory note from the existing regulations and to provide the note in a "Dear Colleague" letter. In addition, the Secretary proposed to delete the defense of infancy provision (page 32267).

In accordance with statutory changes, the Secretary proposed to allow an institution to increase the minimum monthly repayment amount to $40. In addition, the Secretary proposed to establish forbearance of principal and interest where circumstances warrant it, and to authorize an institution to compromise on the repayment of a loan (page 32267).

The Secretary proposed to revise the regulations to reflect statutory changes in the deferment provisions (pages 32267–32268).

The Secretary proposed to amend the regulations to incorporate new statutory loan disclosure requirements that must be met during a borrower's exit interview (page 32268).

To reduce burden for both the borrower and the institution, the Secretary proposed to allow a borrower to elect to repay his loan by means of the electronic transfer of funds from the borrower's bank account (page 32268).

To reduce institutional burden, the Secretary proposed to eliminate skip-tracing as a required due diligence step (page 32268).

In accordance with statutory changes, the Secretary proposed to revise loan collection and litigation procedures to require institutions to report defaulted loans to any one of the credit bureaus with which the Secretary has an agreement. In addition, the Secretary proposed to amend the regulations to reflect the elimination of the statute of limitations on litigating to recover amounts owed on defaulted accounts (page 32268).

In accordance with statutory changes, the Secretary proposed to eliminate the 50-percent limitation on the number of Title 1 schools in a State that meet the eligibility criteria and provided that teaching in any Title 1 school that meets the eligibility criteria now qualifies a borrower for a loan cancellation. This change will increase the opportunities for receiving loan cancellations and encourage more teachers to teach in low-income schools (pages 32268–32269).

The Secretary proposed to expand the loan cancellation employment provisions (page 32269).

The Secretary proposed to amend the definition of permanent and total disability to include the inability of the borrower to attend an institution because of an impairment that is expected to continue indefinitely or result in death (page 32269).

Federal Work-Study Programs

In accordance with statutory amendments and consistent with the Secretary's desire to promote community service activities, the Secretary proposed to amend the purpose of the FWS program to include an encouragement to students receiving program assistance to participate in community service activities (page 32269).

The Secretary proposed to add a new definition of "low-income individual" for purposes of community services (page 32269).

The Secretary proposed to amend the program participation agreement to include assurances that (1) employment under the program may be used to support programs for supportive services to students with disabilities, and (2) institutions will inform all eligible students of the opportunity to perform community service and will consult with local nonprofit, governmental, and community-based organizations to identify community service opportunities. In identifying community service opportunities, the Secretary expects institutions to consult with their students (page 32269).

In accordance with statutory changes, the Secretary proposed to amend several provisions governing use of FWS funds. First, institutions participating in the Work-Colleges program would be allowed to use FWS funds for meeting costs of the Work-Colleges program. Second, the institutional administrative expense allowance for work-study for community service learning would be eliminated. Third, the amount of an institution's allocation under the FWS programs that may be transferred to the FSEOG program would be increased from 10 percent to 25 percent. Fourth, an institution would have additional carry-back authority to pay students who work during the summer. Fifth, an institution would be required to use 5 percent of the total FWS Federal funds granted to the institution to compensate students employed in community service activities for the 1994–95 award year and subsequent award years (page 32269).

In accordance with statutory changes, the Secretary proposed to provide that a student employed by a proprietary institution and performing community services is no longer also required to be furnishing student services (pages 32269–32270).

In accordance with statutory changes, the Secretary proposed to increase the Federal share of FWS compensation paid to a student employed other than by a for-profit organization to 75 percent (page 32270).

As a result of statutory changes the Secretary proposed to remove the "Community Service-Learning Program" from the regulations (page 32270).

Job Location and Development (JLD) Program

The Secretary proposed to combine the regular JLD program to expand off-campus job opportunities and the "Community Services" JLD program to locate and develop community services jobs for students into one program. The Secretary further proposed to expand the statement of purpose for the JLD program to include the encouragement of participation in community service activities. The Secretary also proposed to allow an institution to use the lesser of $50,000 or 10 percent of its FWS allocation to establish or expand a JLD program (page 32270).

The Secretary, in accordance with amended section 446(a) of the HEA, proposed to eliminate the authority for institutions to enter into agreements with nonprofit organizations and limit institutions to working with other institutions for the purpose of developing jobs (page 32270).

Work-Colleges Program

In accordance with the Amendments, the Secretary proposed to add the new "Work-Colleges program" to the regulations (page 32270).

Federal Supplemental Educational Opportunity Grant Program

The Secretary proposed to amend the allocation and reallocation provisions for unexpended FSEOG funds (page 32270–32271).

The Secretary proposed to eliminate an institution's authority to transfer FSEOG funds to the FWS program as necessary to implement statutory provisions (page 32271).

The Secretary proposed to increase the maximum FSEOG award that an institution may award a student per academic year from $4,000 to $4,400 for a student studying abroad (page 32271).

The Secretary proposed that the Federal share of FSEOG awards will not exceed 75 percent effective for award years beginning on or after July 1, 1993

as necessary to implement statutory changes (page 32271).

Substantive Changes to the NPRM

The following discussion describes the significant changes since publication of the NPRM and the manner in which certain critical provisions will be initially implemented. They are discussed in the order in which they appear in the text of the regulations. The changes that apply to more than one program are described first followed by descriptions of changes that pertain to only a specific program.

Student Assistance General Provisions

Section 668.57 Acceptable Documentation

In the June 22, 1994 NPRM, the Secretary proposed to amend § 668.57(c) to require the signature of one parent instead of both parents when verifying the number of family household members enrolled in postsecondary institutions for a dependent applicant. If only one parent's income is considered in the title IV, HEA aid awarding process, that is the parent who must sign. Otherwise, either parent may sign. This burden reduction provision will be addressed in the Student Assistance General Provisions final regulations governing verification of all title IV programs which will provide that either parent may sign, regardless of which parent's income is reported.

Federal Perkins Loan, FWS, and FSEOG Programs

Sections 674.10, 675.10, and 676.10 Selection of Students

In the June 22, 1994 NPRM the Secretary proposed to amend §§ 674.10, 675.10, and 676.10 to state that if an institution's FSEOG allocation, FWS grant, or Federal Perkins Loan FCC is directly or indirectly based in part on the financial need of less-than-full-time or independent students and if the need of all of these students exceeds 5 percent of the total need of all students at an institution, then at least 5 percent of that allotment for FSEOG, 5 percent of that grant for FWS, or 5 percent of the dollar amount of the loans made under the Federal Perkins Loan program must be made available to these students. The Department previously had stated in various documents that "make available" meant that an institution was required to actually "expend" the dollars for these students. In response to the public comments and as part of his efforts to reduce regulatory burden, the Secretary is revising the final regulations to provide that the institution must "offer" the funds to less-than-full-time and independent students. The institution is not required to have actually disbursed the title IV funds to less-than-full-time and independent students.

Sections 674.14, 675.14, and 676.14 Overaward

A financial aid administrator may not award or disburse aid from a campus-based program if that aid, when combined with all other resources, would exceed the student's need. If the student receives additional resources at any time during the award year that were not considered in determining the student's eligibility for aid, and these resources combined with the expected financial aid will exceed the student's need, the amount in excess of the student's need is considered an overaward. Statutory provisions under the Amendments provided for a $300 overaward threshold for FWS. In the June 22, 1994 NPRM, the Secretary proposed that, if a student has FWS, a $300 overaward threshold for the three campus-based programs would be in effect; however, if a student only has an FSEOG or Federal Perkins Loan, the current $200 overaward threshold would be the limit. In response to the public comments and as part of his efforts to reduce regulatory burden, the Secretary is providing a uniform $300 overaward threshold for all the campus-based programs regardless of whether the student has been awarded FWS funds.

Federal Perkins Loan Program

Section 674.33 Repayment

Section 674.34 Deferment of Repayment

In the June 22, 1994 NPRM, the Secretary made proposals for the implementation of the statutory provisions governing forbearance of a borrower's repayment of a Federal Perkins loan and the deferment of repayment due to economic hardship reasons. The provisions contained in the NPRM paralleled the same provisions in the FFEL Program, as detailed in the FFEL Program NPRM, published on March 24, 1994. In response to the comments received on the FFEL Program NPRM, the Secretary made significant changes to the forbearance and economic hardship provisions in the final FFEL Program regulation, published on June 29, 1994. Those same changes have been made to the forbearance and economic hardship provisions in the Federal Perkins Loan program, as part of the Secretary's ongoing effort to reduce the institutional burden of administering the title IV student aid programs. These changes include the revisions to the definition of "full-time employment" for purposes of granting an economic hardship deferment.

In accordance with amendments to the HEA made by the Improving America's Schools Act of 1994 (Pub. L. 103–382), the Secretary is revising the final regulations to include a new criterion under which a borrower may qualify for deferment of repayment due to economic hardship reasons.

Section 674.52 Cancellation Procedures

In accordance with amendments to the HEA made by the National and Community Service Act of 1990 (Pub.L. 101–610), the Secretary is revising the final regulations to include the provision that a borrower may not receive a benefit under subtitle D of title I of the National and Community Service Act of 1990 and a cancellation benefit under the Federal Perkins Loan program.

Federal Work-Study Program

Section 675.2 Definitions

Statutory provisions for community service under the Amendments provide that community service is designed to improve the quality of life for community residents, particularly low-income individuals. In the June 22, 1994 NPRM, the Secretary proposed to add a new definition of "low-income individual" for purposes of community service. In response to public comment and as part of the Secretary's efforts to reduce regulatory burden, the Secretary is not defining "low-income individual" in these regulations.

Work-Colleges Program

Sections 675.41–675.50

Section 448(f) of the HEA contains a separate authorization of appropriations for the Work-Colleges program. Therefore, a new § 675.42—*Allocation and Reallocation*, has been added to the regulations and all other sections of the Work-Colleges program regulations have been redesignated. Sections 675.46 and 675.47 contain paperwork requirements, and have been redesignated as § 675.47 and § 675.48.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 58 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows. Substantive issues are

discussed under the section of the regulations to which they pertain.

Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under applicable statutory authority—are not addressed.

Comments and Responses

Sections 674.4, 675.4, and 676.4 Allocation and Reallocation

Comments: Three commenters suggested that the Secretary permit an institution, under certain circumstances, to appeal an allocation reduction because it returned more than 10 percent of its previous year's allocation. These commenters suggested that the Secretary allow an appeal during occurrences of natural disasters or situations in which enrollments are reduced because students are called to service in areas of hostility, such as the military mobilizations for "Operation Desert Storm."

Discussion: The Secretary believes that this provision of the proposed regulations adequately addresses situations in which these provisions may be waived. As stated in the preamble to the NPRM, the Secretary may waive these provisions in such circumstances as a natural disaster. Additionally, to assist institutions in their recovery from the effects of disasters, or to provide relief to students who have been called to military service in areas of hostility, the Secretary provides enforcement relief from regulatory requirements and provides guidance through "Dear Colleague" letters issued at the time of the natural disaster or the declaration of an area of hostility.

Changes: None.

Comments: One commenter stated that a literal interpretation of a reduction in an institution's allocation for the next fiscal year would require reductions in two award years. This commenter suggested that the term "fiscal year" be replaced by "award year" to make the provision easier to understand while still being in line with congressional intent.

Discussion: The Secretary agrees with the commenter that the use of the term "fiscal year" in this context is confusing.

Changes: The language of this provision is changed to incorporate the concept of an "award year" allocation rather than "fiscal year."

Section 674.10, 675.10, and 676.10 Selection of Students

Comments: Several commenters noted that while sections 413C(d), 443(b)(3), and 464(b)(2) of the HEA require most institutions to "make available" to less-than-full-time and independent students at least 5 percent of the FWS allotment, 5 percent of the FSEOG allotment, and 5 percent of the dollar amount of the loans made under the Federal Perkins Loan program, the NPRM did not define the term "make available." These commenters were concerned that while most students would accept FSEOG as part of their award packages because it is grant money, institutions have no control over whether students will accept Federal Perkins loans or work to earn FWS funds. They believe that it would be very difficult for some institutions to meet this requirement if independent and part-time students have to accept, or even earn, 5 percent of the FWS allocation. One commenter stated that most students attending less-than-full-time are doing so because they are already working and therefore those students are not interested in FWS. The majority of the commenters suggested that the Secretary should interpret the statute in its use of the term "make available" to mean "offer" FWS, FSEOG, and Federal Perkins loans to students rather than "disburse" these funds.

One commenter noted that the wording between the FWS section and the FSEOG section is slightly different and recommended that it be consistent.

Discussion: The Secretary agrees that in some circumstances it may be difficult for an institution to actually disburse to less-than-full-time and independent students at least 5 percent of its FWS allotment, 5 percent of its FSEOG allotment, or 5 percent of the dollar amount of the loans made under the Federal Perkins Loan program. Therefore, to accommodate these circumstances and prevent a burden on institutions to be responsible for what financial aid a student accepts, in interpreting amended sections 413C(d), 443(b)(3), and 464(b)(2) of the HEA, the Secretary considers the words "make available" to mean that the institutions must "offer" to less-than-full-time and independent students at least 5 percent of its FWS allotment, 5 percent of its FSEOG allotment, or 5 percent of the dollar amount of the loans made under the Federal Perkins Loan program if the need of all of these students exceeds 5 percent of the total need of all students at an institution.

Changes: The wording of this provision in the campus-based sections is changed to reflect that institutions must "offer" these campus-based funds to less-than-full-time and independent students. Also, the wording was revised for consistency among the campus-based programs.

Sections 674.14, 675.14 and 676.14 Overaward

Comments: There were a number of comments on these sections, all in favor of the statutory provision that allows a student employed in the FWS program to earn up to $300 for need-based employment in excess of his or her financial need before employment in the FWS program must be discontinued.

Several commenters recommended that the Secretary provide a uniform overaward threshold of $300 for all recipients of campus-based aid to simplify the overaward calculation process and reduce administrative costs.

One commenter suggested that the proposed wording of these provisions is slightly ambiguous and subject to different interpretations. The commenter believed that the application of a uniform overaward threshold to all campus-based aid recipients will avoid any potential confusion.

Discussion: The Secretary has reevaluated his proposal in the June 22, 1994 NPRM. The statutory purpose of the FWS provision is to prevent aid administrators from being administratively burdened by having to make adjustments to financial aid packages when small amounts of overawards occur. The Secretary believes that the use of a uniform campus-based overaward threshold will further reduce the administrative burden for institutions without cost implications to the campus-based programs.

It is important to note that these provisions do not allow an institution to make campus-based awards in excess of the amount of the student's need. Although a threshold is allowed subsequent to the packaging of campus-based aid, the threshold does not allow an institution deliberately to award campus-based aid that, in combination with other resources, exceeds the student's financial need.

Changes: The Secretary has provided a uniform $300 overaward threshold for all recipients of campus-based aid.

Federal Perkins Loan Program

Section 674.2 Definitions

Comments: While most commenters believed that the new definition of "disposable income" was necessary in order to be consistent with the FFEL Program and to establish eligibility for an economic hardship deferment or forbearance of payments, others believed the definition was unclear and needed further clarification.

Commenters were particularly concerned that alimony payments, child support payments, wage garnishment, and other similar items be considered deductions "required by law to be withheld."

Discussion: The term "disposable income" was defined in the NPRM as part of the proposed rules for the forbearance and the economic hardship deferment provisions. Forbearance and economic hardship are provisions common to all title IV loan programs, including the Federal Perkins Loan program, and the Secretary made the identical proposal for these two provisions in the FFEL Program NPRM, published on March 24, 1994. The Secretary received a number of comments on the proposed definition of "disposable income" in the FFEL Program NPRM and, as a result, decided that "total monthly gross income" was a term more easily understood than "disposable income." Consequently, the Secretary replaced "disposable income" with "total monthly gross income" in the final FFEL Program regulation. For a complete discussion of the reasons for making this change, see comment number 18 on page 33584 of the **Federal Register** published on June 29, 1994.

As part of the Department's effort to simplify the regulations and reduce burden at the institution, provisions that are common to both the Federal Perkins Loan program and the FFEL Program will have the same regulatory provisions, to the extent practicable. Therefore, in this final rule, the proposed rules for the Federal Perkins Loan program have been modified to reflect the forbearance and economic hardship provisions contained in the final FFEL Program regulation, published on June 29, 1994.

Changes: The definition of "disposable income" is removed and replaced by the definition of "total monthly gross income."

Comments: Several commenters believed that the definition of "making of a loan" needed to be expanded and clarified. Some commenters stated that the Secretary should define when a disbursement has been made to the borrower as part of the definition of "making of a loan." The commenters believed that without this clarification there would be inconsistencies among institutions and additional tracking mechanisms would be required.

Discussion: The issue of when funds are considered to be disbursed applies to all of the title IV programs, not just to the Federal Perkins Loan program. The Secretary is aware that the current title IV disbursement policies are applied inconsistently by institutions and is preparing to issue final regulations on this and other "cash management" issues by December 1, 1994. The Secretary is making conforming changes to the Federal Perkins Loan program regulations in the "cash management" regulations to be issued by December 1, 1994.

Changes: None.

Comments: Several commenters believed that the Secretary should define when a promissory note should be signed by the borrower as part of the definition of "making of a loan." These commenters believed that Federal Perkins Loan borrowers should be able to sign the promissory note once, at the beginning of the academic year in which the award is made, and not each time a disbursement is made to the borrower.

Discussion: The Secretary is sensitive to the commenters' concerns and will evaluate situations in which an institution could require an annual signature on the promissory note. The Secretary is especially interested in evaluating the possibility of making this option available to those institutions that have demonstrated a high performance level and that have met the stricter cohort default rate requirements adopted for the Federal Perkins Loan program. The Secretary would like to note that an annual signature on the promissory note would necessitate the elimination of the "open-ended" Federal Perkins Loan promissory note. The "open-ended" promissory note, currently available only in the Federal Perkins Loan program, significantly reduces burden at the institution, by allowing an institution to make loans on the same promissory note for as long as the statutory provisions remain the same. Allowing only a "closed-ended" promissory note, as is done in the FFEL and FDSL programs, would result in a major increase in the number of promissory notes an institution would be required to maintain.

Changes: None.

Comments: A number of commenters felt strongly that the term "satisfactory arrangements to repay the loan" should be defined in terms of the impact on the borrower and the institution. Commenters believed that the requirement of 6 months of consecutive payments in this definition is too stringent, particularly when this definition is used to determine when to exclude loans from the cohort default rate calculation. Because of the window of time in the cohort default rate tracking period, one commenter believed it would be more equitable to consider the fact that the institution was able to establish a new repayment plan with the borrower as meeting the criteria for satisfactory arrangements to repay the loans. Other commenters suggested a minimum of three consecutive monthly payments as the basis for excluding the loan from the cohort default rate. These commenters further stated that institutions do not have enough time to locate and contact the delinquent borrower, obtain the written agreement, and have 6 months of payments made prior to June 30. One commenter suggested that once the new written repayment agreement has been signed and all payments due by June 30 have been properly made by the borrower, institutions should be allowed to exclude that account from their cohort default rate.

Discussion: While the Secretary is sensitive to the concerns of the commenters, the Secretary does not agree that six consecutive months of payment is too stringent. In order to reduce the administrative burden at the institution, the Secretary is seeking ways to make the Federal Perkins Loan program consistent with the other title IV loan programs. Including six consecutive monthly payments in the definition of satisfactory arrangements to repay the loan is consistent with provisions in these programs.

Changes: None

Section 674.5 Cohort Default Rate and Penalties

Comments: Several commenters stated that while the definition of "loan rehabilitation" in § 674.5(e)(1) has limited benefit to the school in reducing a school's cohort default rate, it will be a benefit to the borrower whose loan is no longer considered to be in default. These commenters noted that a loan rehabilitated because the borrower has made 12 consecutive monthly payments is not removed from the school's cohort default rate. The commenters recommended that the definition be revised to allow for lump sum payments or up to a three-month payment plan. One commenter also invited the Secretary's consideration of allowing a quarterly repayment option and a reduction in the minimum payments required to consider the loan rehabilitated.

Discussion: While the Secretary is sensitive to the concerns of the commenters, the Secretary does not agree that the definition of a rehabilitated loan is too restrictive. Rehabilitating a loan gets the borrower out of default. Consequently, the borrower must establish a significant repayment history. Again, in order to reduce administrative burden at the institution, the provision is parallel to

similar provisions in the FFEL and FDSL programs.

Changes: None.

Comments: Several commenters were concerned that the credit bureau reporting requirement for rehabilitated defaulted loans in § 674.5(e)(2) was unclear. One commenter recommended including in the definition a requirement to report to the national credit bureau the date of the last payment, the unpaid principal balance, amount past due and date and amount of the last payment. Some commenters recommended that the phrase "no longer in default" should be clarified to mean that the record is not deleted from the borrower's credit history, when in fact it is only reported as a status change. One commenter also stated that the impact of "rehabilitated and no longer in default" affects the future disbursement of title IV aid and that the Secretary should not force the credit bureau to use unique, special definitions.

Discussion: The Secretary understands the concerns of these commenters and agrees that the requirements of this provision are unclear. In drafting the provision the Secretary intended that institutions report to one of the national credit bureaus the change in status of the defaulted loans. The Secretary did not intend that the default be eliminated from the credit bureau records. A default on any loan is an important component of an individual's credit history and credit bureaus are required to maintain such information on an individual's account for 7 years. The Secretary is concerned that a borrower who has made such a serious attempt to take care of his or her defaulted loan have as up-to-date and accurate record at the credit bureau as possible. Therefore, the status of the loan should be accurate on the credit bureau record. In response to the suggestion that additional data be provided to the credit bureau, the Secretary does not want to increase the burden at the institution by imposing additional reporting requirements on the institution. However, it should be noted that these national credit bureaus have standards that have been established by Associated Credit Bureaus (ACB), the industry's trade group. The Department has no regulatory authority over these bureaus' standards. Some of these national credit bureaus might require more than the Department requires, such as follow-up reporting of the borrower's declining balance as it is paid down or paid off. Further, some of their procedures are specifically for credit bureau purposes and more closely in line with common U.S. business practice than with Federal regulations. For example, business practice considers a customer's account to be current up to 30 days past the due date of an invoice; whereas in the Federal Perkins Loan program, a borrower is considered to be in default when he or she fails to make an installment payment when due.

Changes: The language of this provision is changed to require an institution to report to a national credit bureau that a defaulted loan has been rehabilitated, rather than that a rehabilitated loan is no longer in default.

Section 674.6 Default Reduction Plan

Comments: One commenter argued that the Federal Perkins Loan program operates differently from the FFEL Program, and there is no statutory requirement that requires the Federal Perkins Loan program default reduction plan to parallel that of the FFEL Program. The commenter believed that institutions would have to install costly and burdensome tracking mechanisms in order to implement this provision.

Discussion: The Secretary agrees with the commenter that there is no statutory requirement that mandates similar default reduction plans for the Federal Perkins Loan Program and the FFEL Program. However, in the interest of minimizing increases to burden at the institution, it is the Secretary's intent to mirror similar provisions that have existed in other title IV programs for a number of years, such as the FFEL Program. The default reduction plan, as outlined in these provisions, has been in effect in the FFEL Program for many years and, thus, has been thoroughly tested. Since most institutions are already participating in the FFEL Program, the Secretary does not believe that this provision increases burden; rather, he believes it streamlines and improves the delivery of student aid. The Secretary reminds commenters that there is no requirement for a high default institution to implement this specific plan. Each institution has the option of developing its own plan, subject to approval by the Secretary.

Changes: None.

Comments: A few commenters suggested that the Secretary not include a provision in the default reduction plan that would require first-time borrowers to endorse their check and to "pick up" any remaining proceeds at the institution. Instead, because many institutions have Federal Perkins loan disbursement systems that do not involve the issuance of a check, they recommended that the borrower's loan amount be credited directly to his or her student account and that any remaining proceeds also be credited to his or her student account, with one commenter recommending that the borrower be notified as to how he or she will receive his or her funds and that the loan funds will be disbursed 30 days after enrollment. One commenter objected to the requirement that the disbursement to a first-time borrower be delayed until 30 days after enrollment.

Discussion: The Secretary is sympathetic to the concerns of these commenters but does not agree with the comments to remove the delayed disbursement provision from the default reduction plan. The Secretary reminds the commenters that the purpose of the default reduction plan is to help institutions that have large numbers of their Federal Perkins loan borrowers in default to set up procedures and mechanisms to help keep their borrowers out of default. One aspect of keeping a borrower out of default is to require a face-to-face contact in order to finalize the processing of loan proceeds. This will help ensure that the borrower understands that he or she is receiving a loan and ensures to the institution that the borrower is really enrolling. In addition, delayed disbursement of loan proceeds ensures that the borrower is actually enrolled and continuing his or her studies before disbursing a loan, thus avoiding the situation in which a borrower drops out with a large debt that the borrower cannot repay.

Changes: None.

Comments: One commenter was particularly concerned about the intrusive nature of some of the requirements of the default reduction plan. This commenter felt that the ability to benefit provisions in the general provisions regulations should be sufficient to ensure that students "have a reasonable expectation of succeeding in their programs of study." This commenter wonders whether institutions with "open door" admissions policies would be required to revise these policies, and what an institution is to do if admissions policies are set by a Board of Trustees. This commenter also asserts that there is no evidence that monthly reviews of in-school status will improve an institution's default rate.

Discussion: In general, the Secretary does not agree with this commenter. The ability-to-benefit provisions in the Student Assistance General Provisions affords some protection but not all the needed protection. When an institution has a high cohort default rate, one of the first places to look for the cause is to look at who is being admitted to the

institution and into what program of study. Students should not be admitted if there is not a reasonable expectation of success. Moreover, it seems only logical that another procedure to follow for eliminating a potential cause of a high cohort default rate is to follow up on enrollment status to ensure that a student is still enrolled and, if not enrolled, to provide exit counselling to the student as soon as possible. The Secretary reminds the commenter that these provisions have been in effect in the FFEL Program for several years and have not had the intrusive effect on admissions policies or the burden of the increased reviews of enrollment status that the commenter fears.

Changes: None.

Section 674.7 Expanded Lending Option

Comments: One commenter stated that the phrase "in any academic year" as it relates to aggregate loan limits is confusing and should be deleted if it suggests that a student who does not borrow in his or her first year can borrow $8,000 in his or her second year.

Discussion: The Secretary agrees.

Changes: This provision is revised to clarify the distinction between annual and aggregate loan limits.

Section 674.9 Student Eligibility

Comments: While several commenters supported the requirement to "reaffirm" a Federal Perkins loan debt previously canceled due to total and permanent disability, discharge in bankruptcy, or write-off, some of these commenters believed the term "reaffirmation" was a legal term requiring the reopening of the bankruptcy case, and the borrower should "agree" rather than "reaffirm" to repay any loan discharged in bankruptcy.

Discussion: "Reaffirmation," as it relates to this provision, would be the borrower's signature on a new repayment agreement. However, the Secretary has removed the provision in proposed section 674.9(g) that would have required the reaffirmation of Federal Perkins, Direct, or Defense loan amounts that had been discharged in bankruptcy as a prerequisite to further eligibility for additional Federal Perkins Loans. This phrase has been omitted from the final rules because it is no longer permissible by operation of law pursuant to the Bankruptcy Reform Act of 1994, P.L. 103–394.

Section 313 of the Bankruptcy Reform Act of 1994 added a new subsection (c) to 11 U.S.C. Section 525, to provide that the Department and other governmental units may no longer deny a loan, loan guarantee, or loan insurance to a person solely because that person has filed for or received a discharge in bankruptcy, has had a student loan discharged in bankruptcy, or has not paid a student loan that has been judicially determined to be dischargeable in bankruptcy. The Secretary interprets this provision to mean that once a debtor has filed for bankruptcy relief, or had a Federal Perkins Loan, or other student loan, discharged or determined to be dischargeable by a Bankruptcy Court, the bankruptcy may be considered as evidence of an adverse credit history but cannot be the basis for denial of future participation in the Federal Perkins Loan, or other student loan programs. Conforming changes will be made to 34 CFR 668.7(e).

Section 674.9(e) of the current regulations states that a student's failure to meet payment obligations on a previous loan, including a loan discharged in bankruptcy, is evidence that the student is unwilling to repay the loan. Because the Secretary is concerned that section 674.9(e) might be used to deny a student's eligibility for a Federal Perkins Loan based solely on the student's having had a prior loan discharged in bankruptcy, the Secretary is removing the phrase regarding a bankruptcy discharge from the regulations. However, schools may continue to consider the student's post-bankruptcy credit history in determining willingness to repay the loan.

Changes: The Secretary is deleting the requirement that a borrower must reaffirm a loan discharged in bankruptcy before regaining eligibility for further title IV loans. Also, the Secretary is removing the phrase regarding a bankruptcy discharge from the "willingness to repay" provision.

Comments: Another commenter objected to the provision that disabled individuals should have to reaffirm past loans to reestablish eligibility. The commenter believed that disabled individuals should be judged solely on a "snapshot" of their present condition and circumstances; requiring reaffirmation would place yet another obstacle in the way of disabled individuals who wish to further their education. The commenter went further to say he thought this requirement would violate the spirit of the Americans With Disabilities Act.

Discussion: The Secretary is sensitive to this commenter's concerns. The Secretary, as part of the Department's ongoing effort to reduce the administrative burden in the loan programs, will no longer require reaffirmation of a title IV loan as a student eligibility requirement for a borrower whose loan was canceled due to permanent and total disability. However, a borrower who has had a loan canceled for this reason will still be required to obtain a physician's statement attesting that his or her condition has improved, and agree that any new loans may not be canceled for this reason, unless the condition substantially deteriorates.

Changes: The Secretary is eliminating the requirement that a borrower reaffirm a Federal Perkins loan canceled due to total and permanent disability in order for the borrower to be eligible for further Federal Perkins loans.

Section 674.16 Making and Disbursing Loans

Comments: Several commenters objected to the requirement that the borrower must sign for each advance of funds on the promissory note. Instead, the commenters felt that the borrower should sign for the advance of funds on the promissory note at the beginning of each academic year.

Discussion: Due to the legally binding nature of the promissory note and the potential for loan defaults requiring the enforcement of loans in court, the Secretary will continue to require the borrower to sign for each advance of funds for the Federal Perkins Loan program. The Secretary asks the commenters to refer to the previous discussion of this issue in response to the comments on the definition of "making of a loan" in § 674.2.

Changes: None.

Comments: One commenter supported the study abroad provisions, but three commenters felt clarification was needed to indicate that a borrower may sign his or her note in advance, but not be required to sign for each loan disbursement while enrolled in a study abroad program. One commenter suggested deleting this provision.

Discussion: The Secretary intended that this provision allow an institution the option of obtaining from a borrower enrolled in a study abroad program his or her signature on the promissory note in advance for each disbursement of a Federal Perkins. The Secretary made this exception as part of his ongoing effort to reduce administrative burden at the institution. The Secretary does not agree that the regulations are unclear or that clarification is needed regarding loan disbursements made to borrowers who are studying abroad. As stated in the proposed language, "* * * the borrower may not be required to sign for any advance of funds made while the borrower is studying abroad if obtaining the borrower's signature would pose an undue hardship on the institution."

Changes: None.

Comments: One commenter pointed out that small institutions are having difficulty reporting small volumes of loans to a national credit bureau, because these credit bureaus do not want to deal with small volumes. This commenter suggested that the Department demand procedures for reporting small volumes as part of any agreement between the Department and the national credit bureaus.

Discussion: The Secretary will look into what administrative steps he can take to address this situation. In the interim, small schools may want to consider joining together and report their loans cooperatively.

Changes: None.

Section 674.18 Use of funds

Comments: One commenter stated that § 674.18 should reference the allowable transfer by an institution participating in the Work-Colleges program of any portion of its FCC allocation for an award year to the Work-Colleges program. Another commenter indicated that the proposed § 674.18(c) provided for the new transfer of up to 25 percent of the FCC allocation for the FWS program or FSEOG program, or both. However, the commenter believed that the section should include the type of restrictions that appear in § 675.18(f) of the FWS regulations.

Discussion: The Secretary agrees that for clarity and consistency, the regulations should note all the transfers allowed and the restrictions on those transfers of funds.

Changes: The Secretary is including in the Federal Perkins Loan program under § 674.18 the authority for participating institutions to transfer FCC funds to the Work-Colleges program and the restrictions on the FCC funds transferred to other programs.

Section 674.19 Fiscal Procedures and Records

Comments: A few commenters felt that the provision of the proposed rule that describes the types of records to be included in the repayment history of the borrower should include "copies of computer records."

Discussion: The Secretary does not agree with the commenters. The current regulations already provide, in § 674.19(e)(4)(v), that an institution may keep its records in computer format, which would include the computer records held by an institution's servicer. Source documents supporting records in computer format must also be maintained. The Secretary recognizes the predominance of computer servicing, but, in order for computer records to substitute for hard copies of these records, the Secretary would need to develop specifications, for example, regarding electronic signatures, which he is not doing at this time. Because of the need to enforce Federal Perkins loans through the judicial system, the Secretary requires the hard copy supporting documentation.

Changes: None.

Section 674.31 Promissory Note

Comments: One commenter objected to the proposal that institutions be required to use the promissory note developed by the Secretary with no changes, saying that the proposal was in direct violation of the statute. Many commenters supported the provision but felt that some discretion should be retained with the format of the promissory note, as long as they retain the text provided by the Department. Another commenter recommended including language in this provision that would clarify that "stated options" (such as the minimum repayment) are not considered modifications for the purposes of this subsection. One of these commenters pointed out that it could use an NCR form by putting the signatures on the front of the form with all the text on the back, thereby allowing the borrower to pull one copy off the back for his or her records. Another of these commenters wondered whether the institution could still add the provision telling borrowers that their academic transcript would be withheld in the event of a default.

Discussion: The promissory note is a key document in any legal action and serves as a permanent record for reaffirmation of any loans and, therefore, must remain as developed by the Secretary. Optional elements, such as the minimum monthly repayments, have been provided for institutions to use at their own discretion and will continue to be provided as options in the text of the promissory note. As such, the Secretary does not need to provide regulatory language to support the continuation of the optional language. The Secretary intends the text of the Department's Federal Perkins loan promissory note to remain unchanged. The "text" includes the order of the provisions and the placement of the signatures. These may not be changed. The current regulations have provided that the note approved by the Secretary may not have substantive changes made to it. Withholding the official academic transcript is in violation of the Family Educational Rights and Privacy Act (FERPA), regardless of whether the borrower has signed such a provision in his or her promissory note. Such a provision may not be included in the promissory note. The institution may change only the format of the note, e.g., the type, style, and paper size.

Changes: None.

Section 674.33 Repayment

Comments: Many commenters supported the forbearance provision. Several commenters felt that the proposed wording in section 674.33(d)(2) indicates that the minimum period of forbearance is 12 months and should be modified to read "at intervals of up to 12 months." One commenter requested clarification of "disposable income" and "poverty line." Another commenter suggested additional documentation to the Federal tax return for the purposes of documenting "disposable income." Another commenter felt this provision should make reference to the national service award.

Discussion: For a discussion of these issues as they relate to making provisions in the Federal Perkins Loan program comparable to similar provisions in the FFEL Program, the Secretary asks the commenters to refer to the discussion of the definition of "disposable income" under § 674.2. The "poverty line" is determined in accordance with section 673(2) of the Community Service Block Grant Act, and information on the poverty line may be obtained by calling the Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, (202) 690–6141. The Secretary does not have the statutory authority to extend forbearance to borrowers serving in National Community Service jobs. However, the Secretary strongly encourages institutions to use their discretion, allowed under these regulatory provisions, to grant forbearance to borrowers serving in National Community Service jobs.

Changes: The forbearance provision is amended to match the final FFEL Program regulatory provisions for forbearance, where appropriate.

Section 674.34 Deferment of Repayment

Comments: Many commenters disagreed with the Secretary's proposal that if an institution no longer qualifies as an institution of higher education, the borrower's deferment ends on the date the institution ceases to qualify. The commenters argued that the borrower's eligibility should not be affected by circumstances that are beyond the borrower's control. The unanticipated cessation of a deferment would also

pose an undue hardship on the borrower. One commenter suggested that to expect a borrower or an institution and its third party servicer to monitor another institution's qualification as an institution of higher education throughout the borrower's deferment period would be unduly burdensome for the institution and the servicer.

One commenter agreed that borrowers who attend institutions that do not qualify as institutions of higher education should not receive deferments; however, this requirement should be eased for borrowers who begin an academic year at an eligible institution that subsequently loses its eligibility sometime during that academic year. The commenters suggested that, at a minimum, the borrowers should be granted a continuation of their deferment to the end of the academic year in which they are enrolled. A few commenters suggested that a borrower should continue to be eligible for a deferment for the remainder of the deferment period.

Discussion: While the Secretary understands these concerns, the Secretary does not agree with the commenters. The statute is clear that a student must be attending an institution of higher education (IHE). The Secretary feels that very few borrowers would be in the situation in which an initially-eligible IHE would lose its eligibility. However, the Secretary is not requiring the deferment-granting institution to closely monitor this situation. Rather, in order to not unduly increase burden at the institution, the Secretary requires that if the deferment-granting institution becomes aware that an institution is no longer an IHE, the borrower's deferment must be terminated. This borrower then qualifies for a 6-month post-deferment grace period, which effectively reduces the impact on the borrowers.

Changes: None.

Comments: One commenter was concerned that dental residents would be ineligible for a "student" deferment because medical interns and residents are no longer eligible for deferments. This commenter noted that dental residents often receive little or no stipends, and a significant number pay tuition. This commenter suggested that § 674.34(b)(2) be changed to include dental residents as eligible borrowers for a "student" deferment, as has been done in the FFEL and FDSL programs regulations.

Discussion: The Secretary agrees with the commenters.

Changes: A change has been made to include dental residents as eligible for a "student" deferment.

Comments: One commenter recommended that the Secretary include in this section the same hardship deferment provisions as are included in redesignated § 674.35(i), § 674.36(e), and § 674.37(e). The commenter believes that this would provide the opportunity for institutions to maintain their maximum flexibility in working with borrowers.

Discussion: The Secretary feels that any benefits that accrued to borrowers under the "old" hardship deferment are now available under forbearance. Also, there is no statutory authorization for such a deferment in the Federal Perkins Loan program.

Changes: None.

Comments: One commenter recommended that the regulations include a definition for the minimum period during which a borrower must be enrolled in school in order to qualify for the 6-month post-deferment grace period after ceasing to be enrolled. This commenter suggested that the borrower be required to complete the enrollment period.

Discussion: The Secretary is quite interested in this issue and understands that there is a wide variety of interpretations of the applicability of the 6-month post-deferment grace period. As the Secretary understands it, institutions are granting the 6-month post-deferment grace period in one of four ways: (1) granting a 6-month post-deferment grace period regardless of the period of time the borrower is enrolled, even if it is only for one day; (2) granting a 6-month post-deferment grace period (and also a "student" deferment) only after the enrollment records are finalized, usually 5 or 6 weeks into the term; (3) granting the 6-month post-deferment grace period only if the borrower is enrolled longer than the borrower's repayment billing period; or (4) requiring the borrower to complete the enrollment period.

The statute requires granting the post-deferment grace period for "any period" the borrower qualifies for a deferment, and a borrower qualifies for a "student" deferment for "any period" of enrollment as at least a half-time student. Therefore, any institution that is granting post-deferment grace periods under the first condition is in compliance with the Federal Perkins Loan program regulations. All other institutions need to modify the procedures used for determining eligibility for post-deferment grace periods and also student deferments. While the statute allows an institution much discretion in administering the Federal Perkins Loan program, the granting of deferments and post-deferment grace periods to qualified non-defaulted borrowers and the granting of cancellation benefits to qualified borrowers are not at the institution's discretion. These provisions are an entitlement to the borrower once the borrower has provided a written request and acceptable documentation to the institution. The Secretary expects to revisit this issue, should the Secretary find that there is widespread abuse by borrowers of this benefit.

Changes: None.

Comments: A few commenters suggested that the language in § 674.34 should read "interest should not accrue" instead of "interest does not accrue" for consistency with other sections.

Discussion: The Secretary does not agree. Each provision in the current regulations governing the 6-month post-deferment grace period contains the language, "interest does not accrue."

Changes: None.

Section 674.38 Deferment Procedures

Comments: Several commenters felt the proposal to require defaulted borrowers to make "satisfactory arrangements" to repay the loan as one of the conditions to be met in order to be granted a deferment would be unfair to the borrowers and impossible to accomplish in many cases because a borrower is in "default" the first day a payment is missed. Several commenters felt the provisions in the current regulations should be maintained.

Discussion: The Secretary agrees that implementation of this provision as written in the proposed rule is unfair to borrowers and agrees that the current regulatory provision should be maintained. The Secretary reminds the commenters that § 674.37(a)(2) provides the *option* to an institution to declare a borrower in default if the borrower fails to supply a deferment request and documentation. The fact that a borrower is in "default" the first day after a payment is missed is more significant for the cohort default rate calculation. The borrower still has the opportunity to respond to the demand letters before being reported to a national credit bureau, for example, even though this borrower would be counted as a default for purposes of the cohort default rate calculation.

Changes: The Secretary is withdrawing the proposed language in favor of the current language of § 674.37(b).

Section 674.39 Postponement of Loan Repayment

Comments: A few commenters felt that postponement of loan repayment in anticipation of cancellation should reflect loans made before "July 23, 1992" not before "July 1, 1992."

Discussion: There is a typographical error in this section. The date should be "July 1, 1993." The Secretary has included this date to provide for those borrowers who are eligible for cancellation benefits but are not eligible for the new deferment provisions (borrowers whose loans were made on or after July 23, 1992, but before July 1, 1993).

Changes: The Secretary will change this section to reflect "July 1, 1993."

Section 674.43(a)(3) Billing Procedures

Comments: While several commenters supported the Secretary's proposal to amend section 674.43 to allow a borrower to elect to repay his or her Federal Perkins loan by means of the electronic transfer of funds from the borrower's bank account, they felt the Secretary should modify this proposal even further to allow for annual notification to the borrower regardless of the repayment frequency. These commenters felt that this requirement was too burdensome.

Discussion: The Secretary agrees. Using the electronic method of repaying a loan is quite similar to the coupons system, and no statement of account is required under this system. However, the borrower has the remaining coupons to demonstrate the amount still due on the loan. This does not exist under the electronic system, and the borrower needs to be kept apprised of the status of his or her account. This statement of account needs to be no more frequent than annually. As part of the Secretary's effort to be mindful of the burden imposed by regulations on the institution, the Secretary is reducing burden in this provision by requiring only an annual statement of account.

Changes: The Secretary is amending this provision to allow for an annual statement of account.

Section 674.45 Collection Procedures

Comments: While a few commenters strongly supported the provision in this section that preempts state collection laws as they relate to allowing a collection agency to collect a Federal Perkins loan if the collection agency is not physically located in the state, they also recommended that the Secretary apply similar language to billing procedures, § 674.43.

Discussion: The Secretary is not aware of any state law that prohibits a collection agency from billing a borrower if that collection agency does not have residence in that particular state. Moreover, the Secretary has not been informed of any problem with a state that is prohibiting the billing of borrowers in this circumstance. Until such time as a problem develops, the Secretary sees no reason to add this provision.

Changes: None.

Section 674.47 Costs Chargeable to the Fund

Comments: There were a number of comments on this section, and they all recommended that institutions should be allowed to write-off non-defaulted small balances, in amounts of less than $25. The commenters felt that collecting on small balance loans is not cost-effective and this change would ease the paperwork and administrative burdens.

Discussion: While it has been a longstanding policy, and, more recently, a regulatory provision, at the Department to allow institutions to write off defaulted accounts with balances of less than $25.00, it is not the policy to allow, nor do the current regulations allow, the write-off of non-defaulted loans, regardless of the size of the balance. This issue cannot be addressed in this final regulation, because the Secretary is required to provide the public an opportunity to make proposals and to provide comments in this area. However, the Secretary is sensitive to the issue raised by these commenters and will revisit this issue at a later date.

Changes: The Secretary is making a minor modification to the language of this provision to incorporate the word "defaulted."

Section 674.51 Special Definitions

Comments: A large number of commenters objected to the definition of medical technician, because it excluded physical therapists, who are an integral component in providing health care services. One commenter also suggested that the Secretary provide the institutions with job titles for positions that qualify such as medical technicians.

Discussion: The Secretary regrets any confusion that this section might have caused the commenters. The NPRM used the term "allied health professional" which became confused with the American Medical Association's *Twenty-Eight Allied Health Careers.* These twenty-eight careers are those areas in which the American Medical Association (AMA) accredits programs and only comprise a small proportion of "allied health professions." "Allied health professional" is a generic term used to designate a large group of health-related personnel who assist, facilitate, or complement the work of physicians and other specialists in the health care system. "Allied health professionals" range from therapists and counselors to health care assistants. The Secretary intends "allied health professional" to be interpreted in its generic sense. The Secretary's intent was to include those health care professionals who might be working full-time except that the employment takes the form of part-time employment at more than one facility as well as those health care professionals who might be providing health care services in an environment that would not qualify as a health care facility (such as a school), or who might be working in a private facility. The Secretary believes that Congress did not intend to exclude any qualified nurses or medical technicians, as long as they are working full-time and providing health care services. The Secretary will not provide a list of "allied health professions" because the list of professions is too lengthy and does not remain static. The Secretary provides further clarification of issues such as this in the *Student Financial Aid Handbook.*

Changes: The Secretary is revising sections 674.51(i), 674.51(m), 674.52(b), and 674.56(a) for clarity to ensure that all qualifying nurses and medical technicians will receive cancellation benefits.

Federal Work-Study Programs

Section 675.2 Definitions

Low-Income Individual

Comments: Four commenters responded to the Secretary's proposal to define "low-income individual" for the purpose of community service under the FWS program. The commenters wanted either clarification or elimination of the definition.

One commenter acknowledged that the Secretary had been asked to clarify the meaning of low-income clientele in reference to individuals served through a community service program; however, the commenter believed that the proposed language adds another layer of eligibility to FWS program administration. This commenter also believed that the proposed definition of "low-income individual" unduly encumbers the FWS community service concept and strongly suggested that a much more simplified approach be considered.

Another commenter suggested that efforts to increase participation in community service activities through

the FWS program might be hampered if institutions were required to verify the income levels of clientele served by various community organizations.

Discussion: The Secretary has taken these comments under consideration and has determined that at this time there is no need to burden institutions with a formal definition of "low-income individual" for purposes of providing community service under the FWS program. There is no requirement under the statute that a particular number or proportion of the individuals must be low-income persons. However, the Secretary reminds institutions of the statutory emphasis placed on the human, educational, environmental, and public safety needs of low-income individuals.

Changes: The Secretary has deleted this definition from the final regulations for the FWS program.

Community Services

Comments: One commenter requested that more clarity be provided on whether the service has to be "direct" under the community service component of the FWS program. Several commenters were concerned that the Secretary's interpretation of the meaning of providing community service as being "hands-on" or "direct contact" will do a great disservice to student workers by eliminating many behind-the-scene jobs. In general, commenters believed that a successful community services agency requires all types of jobs to operate efficiently and that clerical jobs serve an important function in any organization.

Discussion: The Secretary did not propose in the NPRM a change to the definition of "community services." The Secretary reminds the commenters that the current definition of "community services" in § 675.2 does not require that the service provided by the FWS student must be "direct" to be considered community service. The job duties must include providing services that are designed to improve the quality of life for community residents or solve particular problems related to their needs. In determining whether the service is community service, the institution must always consider whether the service provided by the FWS student primarily benefits the community as opposed to the agency or institution.

The Secretary at this time is leaving flexibility to the institutions in determining what jobs provide service to the community. This approach is adopted to minimize the burden on institutions in administering the community service component of the FWS program.

The Secretary encourages institutions to develop jobs that instill a sense of social responsibility in the students and touch the lives of community residents in a meaningful and lasting way. The Secretary believes that the best way to provide "community services" is for the students' jobs to put them in "direct" contact where possible with the recipients of the services or involve some type of "hands on" service in the community. However, the Secretary does not intend to indicate that certain activities are more important than others or that only jobs that have "direct" contact with community members are acceptable. For example, an FWS student working for a "meals on wheels" program for the elderly may prepare those meals without any "direct" contact with the community recipients, yet the service is very important in meeting the needs of the elderly.

Changes: None.

Section 675.4 Allocation and Reallocation

Comments: Three commenters discussed the proposal required by section 442(e) of the HEA that only an institution that uses at least 10 percent of its total amount of FWS Federal funds granted to compensate students employed in community service are eligible for reallocated FWS funds and that all the reallocated FWS funds must be used for community service. One of these commenters suggested that the Secretary should clarify this proposal in the regulations. The other two commenters expressed the concern that the provision that requires institutions to have a fair-share shortfall in order to receive these reallocated supplemental FWS funds presents a disincentive to institutions, with no shortfall, to strive for the 10 percent figure.

The commenters suggested that the Secretary consider an alternative to the current process of awarding unexpended funds. They would like to see the fair-share requirement changed to consider also those institutions that meet or exceed the 10 percent rule, but do not have a shortfall. In addition, one of these commenters further noted that the use of the reallocated funds should not be restricted to community service wages. Instead, since the institution had already done 100 percent above the requirement, it should be allowed to use reallocated funds in any FWS program or for administrative costs.

Discussion: Under current FWS regulations in § 675.4, the Secretary allocates and reallocates funds to institutions participating in the FWS program in accordance with section 442 of the HEA. Therefore, this provision will not be codified in the regulations. Under section 442 of the HEA, the Secretary reallocates funds on a *pro rata* basis, *i.e.*, the amount of an institution's fair-share shortfall as a percentage of the fair-share shortfalls of all participating institutions with an unmet FWS request. The Secretary continues to believe this position to be the most equitable formula for awarding unexpended funds. The statutory provision that mandates this new rule for receipt of unexpended FWS funds, section 442(e)(1) of the HEA, provides that these funds will only go to institutions that expend at least 10 percent of their total amount of FWS funds (initial and supplemental) to employ students in community service jobs, and that the reallocated FWS funds must also be used only for that purpose. Congress amended this section to encourage students to participate in community service activities.

Changes: None.

Section 675.8 Program Participation Agreement

Comments: Several commenters believed that the jobs performed by an institution's FWS students that provide support services solely to the institution's own students with disabilities should be counted toward meeting the community service requirements under the FWS program. Many commenters believed that not to do this would cause an undue hardship for the institution. One commenter questioned why under the FWS program it is permissible to develop programs that support services to an institution's own students with disabilities yet under the community service component this is not allowed. Two commenters asked for consistency between the program participation agreement and the community service definition concerning the meaning of support services to students with disabilities.

Discussion: Section 441(c) of the HEA under the definition of community service states that an institution may include as part of its community service component support services to students with disabilities. Section 443(b)(9) of the HEA requires institutions under the program participation agreement to assure that employment under the FWS program may be used to support programs for supportive services to students with disabilities.

The Secretary believes the intention of the community service requirement in the statute is for an institution's FWS students to work with elementary and

secondary school students as well as students attending other postsecondary institutions, and provide services to the disabled, and not just for an institution to provide services solely to its own students with disabilities. As allowed by section 443(b)(9) of the HEA, an institution may use FWS funds to provide support services to its own institutional students with disabilities. However, to be providing community service in accordance with section 441(c) of the HEA, the FWS students providing the service must be providing the service to students with disabilities in the community. The fact that the FWS students also provide the services to the institution's own students with disabilities would not necessarily prevent the job from being considered community service.

Changes: The definition of "community services" in § 675.2 has been revised to emphasize that the support services must be provided to students other than an institution's own students to satisfy the community service component of the FWS program. No changes have been made to § 675.8.

Section 675.18 Use of Funds

Community Service Waiver

Comments: Section 443(b)(2)(A) of the HEA provides that for the 1994–95 award year and succeeding award years, an institution shall use at least 5 percent of the total amount of FWS Federal funds granted to such institution to compensate students employed in community service, except that the Secretary may waive this requirement if the Secretary determines that enforcing it would cause hardship for students at an institution.

In the NPRM, the Secretary requested comments regarding the conditions under which the Secretary should grant waivers of this provision. Some commenters believed that means and costs of transportation are major issues the Secretary needs to consider in granting a waiver. The commenters believed that students from low-income backgrounds do not have cars, and some institutions are located in areas that have no public transportation. One commenter believed that there are many institutions located in rural areas and that community service jobs may not be accessible. Some commenters believed it would be a hardship on institutions that could only locate community service jobs with agencies that could not afford to pay a portion of the non-Federal share. Other commenters wanted the Department to regulate the criteria that the Secretary would use to determine this waiver. One commenter expressed concern for the safety of students providing community service in some locations. This same commenter noted that performance of community service might conflict with student class schedules. One commenter believed that private technical universities have very few degree programs offered that are geared toward community service and that placements in this area are somewhat rare.

Discussion: Section 443(b)(2)(A) of the amended HEA mandates that at least 5 percent of an institution's total amount of Federal FWS funds granted must be used to compensate students employed in community service jobs, unless the Secretary waives the requirement.

Based on public comment, the Secretary does not foresee many instances in which a waiver would be granted. However, to allow flexibility to consider factors that are valid reasons for a waiver, the Secretary is not specifying the specific circumstances that would receive a waiver. The fact that it may be difficult for the institution to comply with this provision is not a basis for granting a waiver. The Secretary will consider providing more specific regulatory guidance on this issue as he gains more experience in processing these kinds of waiver requests.

Changes: The language in § 675.18(h) has been revised to emphasize that to receive a waiver, an institution must demonstrate that the 5 percent requirement would cause a hardship for students at the institution.

Administrative Cost Allowance

Comments: Two commenters requested that the additional Administrative Cost Allowance (ACA) available for the expired Community Service Learning program be continued for the community service component under the FWS program. These commenters believed that the regular campus-based ACA provided institutions was already fully utilized and the additional expenses incurred for the new community service mandate will have to be absorbed by the institutions. One commenter believed that the statute should be interpreted to allow use of up to 10 percent of the entire campus-based ACA for the purpose of paying the costs for community service, but no more than the portion of the ACA attributable to the FWS program. The commenter wanted the flexibility to be given to the institutions in using the ACA at no additional cost to the Federal government.

Discussion: The Amendments changed sections 447 and 489(a) of the HEA to eliminate the special ACA for work-study for community service learning. In accordance with the requirements of the HEA, the Secretary removed the special ACA from § 675.18(b)(5). However, the Amendments did amend section 447 of the HEA to permit an institution to use up to 10 percent of the funds available for the institution's regular campus-based ACA and attributable to the institution's FWS program expenditures to cover expenses incurred for its program of community service. The Secretary, in accordance with the requirements of the HEA, further amended § 675.18(b)(5) to provide an institution with this authority.

Changes: None.

Subpart C—Work-Colleges Program

Authorization of Appropriations

Comments: One commenter suggested that under the Work-Colleges subpart of the regulations the Department should provide for the allocation and reallocation of funds as it does under § 675.4 of the FWS program regulations even though no funds are appropriated.

Discussion: The Secretary will implement the allocation and reallocation process for the Work-Colleges program based on the institutions' requests. The funds will be allocated and reallocated based on each institution's approved request for Federal funds for the Work-Colleges program as a percent of the total of such approved requests for all applicant institutions.

Changes: This section is amended to add an allocation and reallocation process.

Executive Order 12866

These final regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently. Burdens specifically associated with information collection requirements were identified and explained in the NPRM.

In assessing the potential costs and benefits—both quantitative and qualitative—of these regulations, the Secretary has determined that the benefits of the regulations justify the costs.

The Secretary has also determined that this regulatory action does not

unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Paperwork Reduction Act of 1980

Section 674.34(e) contains information collection requirements. As required by the Paperwork Reduction Act of 1980, the U.S. Department of Education will submit a copy of this section to the Office of Management and Budget (OMB) for its review.

Waiver of Proposed Rulemaking

In addition to the changes made to these regulations based on public comment on the notice of proposed rulemaking, the Secretary has revised the regulations to include changes made by the Improving America's Schools Act of 1994 (Pub. L. 103–382), and the Bankruptcy Reform Act of 1994 (Pub. L. 103–394), enacted subsequent to publication of the notice of proposed rulemaking.

It is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations in accordance with the Administrative Procedure Act, 5 U.S.C. 553. However, since these changes merely incorporate statutory changes into the regulations, public comment could have no effect. Therefore, the Secretary has determined pursuant to 5 U.S.C. 5532(b)(B) that public comment on the regulations is unnecessary and contrary to the public interest.

Assessment of Educational Impact

In the NPRM, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 674

Loan programs—education, Student aid, Reporting and recordkeeping requirements.

34 CFR Part 675

Loan programs—education, Student aid, Reporting and recordkeeping requirements.

34 CFR Part 676

Loan programs—education, Student aid, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.033 Federal Work-Study Program; and 84.038 Federal Perkins Loan Program)

Dated: November 21, 1994.

Richard W. Riley,

Secretary of Education.

The Secretary amends parts 674, 675, and 676 of title 34 of the Code of Federal Regulations as follows:

PART 674—FEDERAL PERKINS LOAN PROGRAM

1. The authority citation for part 674 continues to read as follows:

Authority: 20 U.S.C. 1087aa–1087ii and 20 U.S.C. 421–429, unless otherwise noted.

2. Section 674.2(b) is amended by removing the definitions of *Default rate*, *Defaulted principal amount outstanding*, and *Matured loans*; by revising the definition of *Undergraduate student*; and by adding, in alphabetical order, the definitions of *Enter repayment*, *Making of a loan*, *National credit bureau*, *Satisfactory arrangements to repay the loan*, *Total monthly gross income* and *Undergraduate student* to read as follows:

§ 674.2 Definitions.

* * * * *

(b) * * *

Enter repayment: The day following the expiration of the initial grace period or the day the borrower waives the initial grace period. This date does not change if a forbearance, deferment, or cancellation is granted after the borrower enters repayment.

* * * * *

Making of a loan: When the borrower signs for an advance of loan funds and those funds are disbursed.

* * * * *

National credit bureau: Any one of the national credit bureaus with which the Secretary has an agreement.

* * * * *

Satisfactory arrangements to repay the loan: The establishment of a new written repayment agreement and the making of one payment each month for six consecutive months.

* * * * *

Total monthly gross income: The gross amount of income received by the borrower from employment (either full-time or part-time) and from other sources.

Undergraduate student: A student enrolled at an institution of higher education who is in an undergraduate course of study which usually does not exceed four academic years, or is enrolled in a four to five academic year program designed to lead to a first degree. A student enrolled in a program of any other length is considered an undergraduate student for only the first four academic years of that program.

* * * * *

3. Section 674.4 is amended by revising paragraph (b) and by adding new paragraphs (e) and (f) to read as follows:

§ 674.4 Allocation and reallocation.

* * * * *

(b) The Secretary reallocates Federal capital contributions to institutions participating in the Federal Perkins Loan program by—

(1) Reallocating 80 percent of the total funds available in accordance with section 462(j) of the HEA; and

(2) Reallocating 20 percent of the total funds available in a manner that best carries out the purposes of the Federal Perkins Loan program.

* * * * *

(e) *Unexpended funds.* (1) If an institution returns more than 10 percent of its allocation for an award year, the Secretary will reduce the institution's allocation for the second succeeding award year by the dollar amount returned.

(2) The Secretary may waive the provision of paragraph (e)(1) of this section for a specific institution if the Secretary finds that enforcement would be contrary to the interests of the program.

(3) The Secretary considers enforcement of paragraph (e)(1) of this section to be contrary to the interest of the program only if the institution returned more than 10 percent of its allocation due to circumstances beyond the institution's control that are not expected to recur.

(f) *Anticipated collections.* (1) For the purposes of calculating an institution's share of any excess allocation, an institution's anticipated collections are equal to the amount that was collected during the second year preceding the beginning of the award period multiplied by 1.21.

(2) The Secretary may waive the provision of paragraph (f)(1) of this section for any institution that has a cohort default rate that does not exceed 7.5 percent.

4. A new § 674.5 is added to read as follows:

§ 674.5 Federal Perkins Loan program cohort default rate and penalties.

(a) *Default penalty.* If an institution's cohort default rate meets the following levels, a default penalty is imposed on the institution as follows:

(1) If the institution's cohort default rate equals or exceeds 15 percent, the institution must establish a default reduction plan in accordance with § 674.6.

(2) If the institution's cohort default rate equals or exceeds 20 percent, but is less than 25 percent, the institution's FCC is reduced by 10 percent.

(3) If the institution's cohort default rate equals or exceeds 25 percent, but is less than 30 percent, the institution's FCC is reduced by 30 percent.

(4) If the institution's cohort default rate equals or exceeds 30 percent, the institution's FCC is reduced to zero.

(b) *Cohort default rate.* (1) The term "cohort default rate" means, for any award year in which 30 or more current and former students at the institution enter repayment on a loan received for attendance at the institution, the percentage of those current and former students who enter repayment in that award year on the loans received for attendance at that institution who default before the end of the following award year.

(2) In determining the number of students who default before the end of the following award year, the Secretary excludes any loans that, due to improper servicing or collection, would result in an inaccurate or incomplete calculation of the cohort default rate.

(3) For any award year in which less than 30 current and former students at the institution enter repayment on a loan received for attendance at the institution, the "cohort default rate" means the percentage of those current and former students who entered repayment on loans received for attendance at that institution in any of the three most recent award years and who defaulted on those loans before the end of the award year immediately following the year in which they entered repayment.

(c) *Defaulted loans to be included in the cohort default rate.* For purposes of calculating the cohort default rate under paragraph (b) of this section—

(1) A borrower must be included only if the borrower's default has persisted for at least—

(i) 240 consecutive days for loans repayable in monthly installments; or

(ii) 270 consecutive days for loans repayable in quarterly installments;

(2) A loan is considered to be in default if a payment is made by the institution of higher education, its owner, agency, contractor, employee, or any other entity or individual affiliated with the institution, in order to avoid default by the borrower;

(3)(i) Any loan that is in default, but on which the borrower has made satisfactory arrangements to repay the loan, or any loan that has been rehabilitated before the end of the following award year is not considered to be in default for purposes of the cohort default rate calculation; and

(ii) In the case of a student who has attended and borrowed at more than one institution, the student and his or her subsequent repayment or default are attributed to the institution for attendance at which the student received the loan that entered repayment in the award year; and

(4) Improper servicing or collection means the failure of the institution to comply with subpart C of this part.

(d) *Locations of the institution.* (1) A cohort default rate of an institution applies to all locations of the institution as it exists on the first day of the award year for which the rate is calculated.

(2) A cohort default rate of an institution applies to all locations of the institution from the date the institution is notified of that rate until the institution is notified by the Secretary that the rate no longer applies.

(3) For an institution that changes status from a location of one institution to a free-standing institution, the Secretary determines the cohort default rate based on the institution's status as of July 1 of the award year for which a cohort default rate is being calculated.

(4)(i) For an institution that changes status from a free-standing institution to a location of another institution, the Secretary determines the cohort default rate based on the combined number of students who enter repayment during the applicable award year and the combined number of students who default during the applicable award years from both the former free-standing institution and the other institution. This cohort default rate applies to the new consolidated institution and all of its current locations.

(ii) For free-standing institutions that merge, the Secretary determines the cohort default rate based on the combined number of students who enter repayment during the applicable award year and the combined number of students who default during the applicable award years from both of the institutions that are merging. This cohort default rate applies to the new, consolidated institution.

(iii) For an institution that changes status from a location of one institution to a location of another institution, the Secretary determines the cohort default rate based on the combined number of students who enter repayment during the applicable award year and the number of students who default during the applicable award years from both of the institutions in their entirety, not limited solely to the respective locations.

(5) For an institution that has a change in ownership that results in a change in control, the Secretary determines the cohort default rate based on the combined number of students who enter repayment during the applicable award year and the combined number of students who default during the applicable award years from the institution under both the old and new control.

(e) *Loan rehabilitation.* (1) A loan is considered rehabilitated only after the borrower has executed a new written repayment agreement and has made one payment each month for 12 consecutive months.

(2) Within 30 days of the date of the rehabilitation, the institution shall report the rehabilitation to the same national credit bureau to which it originally reported this defaulted loan.

(Authority: 20 U.S.C. 1087bb)

5. A new § 674.6 is added to read as follows:

§ 674.6 Default reduction plan.

(a) *General.* An institution with a cohort default rate that equals or exceeds 15 percent shall establish and implement a plan designed to reduce defaults by its students in the future. The institution shall submit to the Secretary by December 31 of the calendar year in which the cohort default rate was calculated—

(1) A written description of the default reduction plan;

(2) A statement indicating that the institution agrees to comply with the required measures in paragraph (b) of this section; or

(3) For an institution that is participating in the Federal Family Education Loan Program and has in place a default reduction plan for that program, a statement indicating that the institution agrees to apply that plan to the Federal Perkins Loan program.

(b) *Required measures.* The default reduction plan required under this section must include a description of the measures to be taken by the institution to reduce defaults. The institution shall explain how it plans to implement the following measures:

(1) Revise admission policies and screening practices, consistent with applicable State law, to ensure that

students enrolled in the institution, especially those who are not high school graduates or those who are in need of substantial remedial work, have a reasonable expectation of succeeding in their programs of study.

(2) Improve the availability and effectiveness of academic counseling and other support services to decrease withdrawal rates, including—

(i) Providing academic counseling and other support services to students on a regular basis, at a time and location that is convenient for the students involved;

(ii) Publicizing the availability of the academic counseling and other support services;

(iii) Establishing procedures to identify academically high-risk students and schedule those students for immediate counseling services; and

(iv) Maintaining records identifying those students who receive academic counseling.

(3) Attempt to reduce its withdrawal rate by conforming with that accrediting agency's standards of satisfactory progress and with those described in 34 CFR 668.14, and improving its curricula, facilities, materials, equipment, qualifications and size of faculty, and other aspects of its educational program in consultation with its academic accrediting agency.

(4) Increase the frequency of reviews of in-school status of borrowers to ensure the institution's prompt recognition of instances in which borrowers withdraw without notice to the institution. Reviews must be conducted each month.

(5) Expand its job placement program for its students by—

(i) (A) Increasing contacts with local employers, counseling students in job search skills, and

(B) Exploring with local employers the feasibility of establishing internship and cooperative education programs;

(ii) Attempting to improve its job placement rate and licensing examination pass rate by improving its curricula, facilities, materials, equipment, qualifications and size of faculty, and other aspects of its educational program in consultation with the cognizant accrediting body; and

(iii) Establishing a liaison for job information and placement assistance with the local office of the United States Employment Service and the Private Industry Council supported by the U.S. Department of Labor.

(6) Remind the borrower of the importance of the repayment obligation and of the consequences of default and update the institution's records regarding the borrower's employer and employer's address as part of the contacts with the borrower under § 674.42(b).

(7) Obtain from the borrower at the time of a borrower's admission to the institution information regarding references and family members beyond those provided on the loan application to provide the institution or its agent with a variety of ways to locate a borrower who later relocates without notifying the institution.

(8) Explain to a prospective student that the student's dissatisfaction with, or nonreceipt of, the educational services being offered by the institution does not excuse the borrower from repayment of any Federal Perkins Loan.

(9) Use a written test and intensive additional counseling for those borrowers who fail the test to ensure the borrower's comprehension of the terms and conditions of the loan including those described in §§ 674.16 and 674.42(a) as part of the initial loan counseling and the exit interview.

(10) During the exit interview provided to a Federal Perkins Loan borrower—

(i) Explain the use by institutions of outside contractors to service and collect loans;

(ii) Provide general information on budgeting of living expenses and other aspects of personal financial management; and

(iii) Provide guidance on the preparation of correspondence to the borrower's institution or agent and completion of deferment and cancellation forms.

(11) Use available audio-visual materials such as videos and films to enhance the effectiveness of the initial and exit counseling.

(12) Conduct an annual comprehensive self-evaluation of its administration of the title IV programs to identify institutional practices that should be modified to reduce defaults, and then implement those modifications.

(13) Delay loan disbursements to first-time borrowers for 30 days after enrollment.

(14) Require first-time borrowers to endorse their loan check at the institution and to pick up at the institution any loan proceeds remaining after deduction of institutional charges.

(Approved by the Office of Management and Budget under control number 1840–0535)

(Authority: 20 U.S.C. 1087bb)

6. A new § 674.7 is added to read as follows:

§ 674.7 Expanded lending option (ELO).

(a) To participate in the expanded lending option in any award year, an eligible institution shall enter into a special ELO participation agreement with the Secretary. The agreement provides that the institution shall—

(1) Deposit ICC equal to 100 percent of the FCC described in § 674.8(a)(1) for that award year into the Fund;

(2) Maintain a cohort default rate that is equal to or less than 15 percent; and

(3) Have participated in the Federal Perkins Loan program for at least two years.

(b) The maximum annual amount of Federal Perkins Loans and Direct Loans an eligible student who attends an institution that participates in the ELO may borrow in any academic year is—

(1) $4,000 for a student who has not successfully completed a program of undergraduate education; and

(2) $6,000 for a graduate or professional student.

(c) The aggregate maximum amount of Federal Perkins and Direct Loans an eligible student who attends an institution that participates in the ELO may borrow is—

(1) $8,000 for a student who has not successfully completed two years of a program leading to a bachelor's degree;

(2) $20,000 for a student who has successfully completed two years of a program leading to a bachelor's degree but who has not received the degree; and

(3) $40,000 for a graduate or professional student.

(d) The maximum annual amounts described in paragraph (b) of this section and the aggregate maximum amounts described in paragraph (c) of this section may be exceeded by 20 percent if the student is engaged in a program of study abroad that is approved for credit by the home institution at which the student is enrolled and that has reasonable costs in excess of the home institution's cost of attendance.

(e) For each student, the maximum annual amounts described in paragraphs (b) and (d) of this section and the aggregate maximum amounts listed in paragraphs (c) and (d) of this section include any amount borrowed previously by that student under title IV, part E of the HEA at any institution, including any amounts that may have been repaid to the Fund at any institution.

(f) The institution shall deposit into its Fund an amount required under paragraph (a)(1) of this section whether or not the institution makes loans in the amount authorized under paragraphs (b) and (c) of this section.

(Authority: 20 U.S.C. 1087cc, 1087dd)

7. Section 674.8 is amended by revising paragraph (a)(2); by

redesignating paragraphs (a)(3) through (a)(6) as paragraphs (a)(4) through (a)(7) respectively; by adding a new paragraph (a)(3); by revising paragraph (c); and by republishing the OMB control number to read as follows:

§ 674.8 Program participation agreement.

* * * * *

(a) * * *

(2) Except as provided in paragraph (a)(1) of § 674.7—

(i) ICC equal to at least three-seventeenths of the FCC described in paragraph (a)(1) of this section in award year 1993–94; and

(ii) ICC equal to at least one-third of the FCC described in paragraph (a)(1) of this section in award year 1994–95 and succeeding award years;

(3) ICC equal to the amount of FCC described in paragraph (a)(1) of § 674.7 for an institution that has been granted permission by the Secretary to participate in the ELO under the Federal Perkins Loan program;

* * * * *

(c) The institution shall submit an annual report to the Secretary containing information that determines its cohort default rate that includes—

(1) For institutions in which 30 or more of its current or former students first entered repayment in an award year—

(i) The total number of borrowers who first entered repayment in the award year; and

(ii) The number of those borrowers in default by the end of the following award year; or

(2) For institutions in which less than 30 of its current or former students entered repayment in an award year—

(i) The total number of borrowers who first entered repayment in any of the three most recent award years; and

(ii) The number of those borrowers in default before the end of the award year immediately following the year in which they entered repayment.

* * * * *

(Approved by the Office of Management and Budget under control number 1840–0535)

8. Section 674.9 is amended by revising paragraph (b); by removing the word "and" after the semicolon in paragraph (d)(2); by removing the phrase ", including a loan discharged in bankruptcy," from paragraph (e); by removing the period at the end of paragraph (e) and adding, in its place, a semicolon; and by adding new paragraphs (f), (g), (h), and (i) to read as follows:

§ 674.9 Student eligibility.

* * * * *

(b) Is enrolled or accepted for enrollment as an undergraduate, graduate, or professional student at the institution, whether or not engaged in a program of study abroad approved for credit by the home institution;

* * * * *

(f) Provides to the institution a driver's license number, if any, at the time of application for the loan;

(g) Reaffirms any Federal Perkins, Direct, or Defense loan amount that previously was written off (if the amount of the write-off exceeded $25); and

(h)(1) In the case of a borrower whose previous loan was canceled due to total and permanent disability, obtains a certification from a physician that the borrower's condition has improved and that the borrower is able to engage in substantial gainful activity; and

(2) Signs a statement acknowledging that any new Federal Perkins or Direct loan the borrower received cannot be canceled in the future on the basis of any present impairment, unless that condition substantially deteriorates.

(i) For purposes of this section, reaffirmation means the acknowledgment of the loan by the borrower in a legally binding manner. The acknowledgement may include, but is not limited to, the borrower—

(1) Signing a new promissory note or new repayment agreement; or

(2) Making a payment on the loan.

(Authority: 20 U.S.C. 1087aa, 1087dd, and 1091)

9. Section 674.10 is amended by revising paragraph (b); and by republishing the OMB control number to read as follows:

§ 674.10 Selection of students for loans.

* * * * *

(b) If an institution's allocation of FCC is directly or indirectly based in part on the financial need demonstrated by students attending the institution as less-than-full-time or independent students, and if the total financial need of those students exceeds 5 percent of the total financial need of all students at the institution, the institution shall offer to those students at least 5 percent of the dollar amount of those loans made under this part.

* * * * *

(Approved by the Office of Management and Budget under control number 1840–0535)

10. Section 674.12 is revised to read as follows:

§ 674.12 Loan maximums.

(a) The maximum annual amount of Federal Perkins Loans and Direct Loans an eligible student who attends an institution that does not participate in the ELO may borrow in any academic year is—

(1) $3,000 for a student who has not successfully completed a program of undergraduate education; and

(2) $5,000 for a graduate or professional student.

(b) The aggregate maximum amount of Federal Perkins Loans and Direct Loans an eligible student who attends an institution that does not participate in the ELO may borrow is—

(1) $15,000 for a student who has not successfully completed a program of undergraduate education; and

(2) $30,000 for a graduate or professional student.

(c) The maximum annual amounts described in paragraph (a) of this section and the aggregate maximum amounts described in paragraph (b) of this section may be exceeded by 20 percent if the student is engaged in a program of study abroad that is approved for credit by the home institution at which the student is enrolled and that has reasonable costs in excess of the home institution's cost of attendance.

(d) For each student, the maximum annual amounts described in paragraphs (a) and (c) of this section and the aggregate maximum amounts described in paragraphs (b) and (c) of this section, include any amounts borrowed previously by the student under title IV, part E of the HEA at any institution, including any amounts that may have been repaid to the Fund at any institution.

(Authority: 20 U.S.C. 1087dd)

§ 674.13 [Amended]

11. Section 674.13 is amended by removing the words "or endorser" after the word "borrower" in paragraph (b)(1)(ii).

12. Section 674.14 is amended by removing the words "Guaranteed Student Loans" and adding, in its place, the words "Federal Family Education Loan" in paragraph (b)(1)(ii); by removing the words "and need-based ICLs" after the words "Direct Loans" in paragraph (b)(1)(x); by adding the words "or Federal" before the word "PLUS", by removing the comma after the words "PLUS loan", and by removing the words "or non-need-based ICL" before the word "as" in paragraph (b)(3); and by revising paragraphs (c) introductory text, (c)(1), (c)(2), and (c)(3) to read as follows:

§ 674.14 Overaward.

* * * * *

(c) *Treatment of resources in excess of need.* An institution shall take the

following steps if it learns that a student has received additional resources not included in the calculation of Direct or Federal Perkins Loan eligibility that would result in the student's total resources exceeding his or her financial need by more than $300:

(1) The institution shall decide whether the student has increased financial need that was unanticipated when it awarded financial aid to the student. If the student demonstrates increased financial need and the total resources do not exceed this increased need by more than $300, no further action is necessary.

(2) If no increased need is demonstrated, or the student's total resources still exceed his or her need by more than $300, as recalculated pursuant to paragraph (c)(1) of this section, the institution shall cancel any undisbursed loan or grant (other than a Federal Pell Grant).

(3) If the student's total resources still exceed his or her need by more than $300, after the institution takes the steps required in paragraphs (c)(1) and (2) of this section, the institution shall consider the amount by which the resources exceed the student's financial need by more than $300 as an overpayment.

* * * * *

13. Section 674.16 is amended by revising paragraph (a)(1)(ii); by revising paragraph (a)(1)(x); by revising paragraph (d); by redesignating paragraphs (g) and (h) as paragraphs (h) and (i) respectively; by adding a new paragraph (g); by adding the word "Federal" before the words "Perkins Loan program" in redesignated paragraph (h); by adding a new paragraph (j); and by republishing the OMB control number to read as follows:

§ 674.16 Making and disbursing loans.

(a)(1) * * *

(ii) The principal amount of the loan and a statement that the institution will report the amount of the loan to a national credit bureau at least annually.

* * * * *

(x) A definition of default and the consequences to the borrower, including a statement that the institution may report the default to a national credit bureau.

* * * * *

(d)(1) The institution may advance the loan proceeds to the borrower directly by check or by crediting his or her account with the institution. The institution shall notify the student of the amount he or she can expect to receive and of how and when that amount will be paid. In either case, the borrower must sign for each advance of funds on the promissory note, except as provided in paragraph (d)(2) of this section.

(2)(i) In the case of a borrower enrolled in a study-abroad program approved for credit by the home institution in which the borrower is enrolled, the borrower may not be required to sign for any advance of funds made while the borrower is studying abroad if obtaining the borrower's signature would pose an undue hardship on the institution.

(ii) The institution shall properly document the reason for not obtaining the borrower's signature.

* * * * *

(g)(1) An institution may disburse Federal Perkins Loan funds in accordance with paragraphs (g)(2) and (3) of this section after the student has ceased to be enrolled.

(2) A disbursement described in paragraph (g)(1) of this section may be made—

(i) Only if the loan is awarded to the student while he or she is still an eligible student; and

(ii) Only if the loan funds are used to cover documented educational costs to the student that are normally included in a borrower's cost of attendance under section 472 of the HEA for the payment period for which the loan was intended and the student was actually enrolled.

(3) The institution shall document in the student's file the reason for the late disbursement.

* * * * *

(j) An institution shall report to any one national credit bureau—

(1) The amount of each disbursement;

(2) The date the disbursement was made; and

(3) Information as specified in section 430A of the Act.

* * * * *

(Approved by the Office of Management and Budget under control number 1840–0535)

14. Section 674.18 is amended by adding a new paragraph (c) to read as follows:

§ 674.18 Use of funds.

* * * * *

(c) *Transfer of funds.* (1) An institution may transfer up to 25 percent of the sum of its initial and supplemental Federal Perkins Loan allocations for an award year to the Federal Work-Study program or Federal Supplemental Educational Opportunity Grant program, or to both.

(2) An institution may transfer up to the total of the sum of its initial and supplemental Federal Perkins Loan allocations for an award year to the Work-Colleges program.

(3) An institution shall use transferred funds according to the requirements of the program to which they are transferred.

(4) An institution shall report any transferred funds on the Fiscal Operations Report required under § 674.19(d).

(5) An institution shall transfer back to the Federal Perkins Loan program any funds unexpended at the end of the award year that it transferred to the FWS program, the FSEOG program, or the Work-Colleges program from the Federal Perkins Loan program.

* * * * *

15. Section 674.19 is amended by revising paragraph (e)(2)(ii) to read as follows:

§ 674.19 Fiscal procedures and records.

* * * * *

(e) * * *

(2) * * *

(ii) The history must also show the date, nature, and result of each contact with the borrower in the collection of an overdue loan. The institution shall include in the repayment history copies of all correspondence to or from the borrower, except bills, routine overdue notices, and routine form letters.

* * * * *

16. Section 674.31 is amended by removing paragraph (a)(2); by redesignating paragraph (a)(3) as paragraph (a)(2); by revising redesignated paragraph (a)(2)(ii)(A); by adding a new paragraph (a)(2)(iii); by revising paragraphs (b)(6) and (b)(10); and by republishing the OMB control number to read as follows:

§ 674.31 Promissory note.

(a) * * *

(2) * * *

(ii) * * *

(A) The note requires the signature of the borrower on each page; or

* * * * *

(iii) The promissory note must state the exact amount of the minimum monthly repayment amount if the institution chooses the option under § 674.33(b).

(b) * * *

(6) *Security and endorsement.* The promissory note must state that the loan shall be made without security and endorsement.

* * * * *

(10) *Disclosure of information.* The promissory note must state that—

(i) The institution shall disclose to any one national credit bureau the amount of the loan made to the borrower, along with other relevant information;

(ii) If the borrower defaults on the loan, the institution shall disclose that the borrower has defaulted on the loan, along with other relevant information, to the same national credit bureau to which it originally reported the loan; and

(iii) If the borrower defaults on the loan and the loan is assigned to the Secretary for collection, the Secretary may disclose to a national credit bureau that the borrower has defaulted on the loan, along with other relevant information.

* * * * *

(Approved by the Office of Management and Budget under control number 1840–0535)

17. Section 674.33 is amended by redesignating paragraph (a)(3) as paragraph (a)(4); by adding a new paragraph (a)(3); by revising paragraph (b); by revising paragraph (c)(1); and by adding new paragraphs (d) and (e) to read as follows:

§ 674.33 Repayment.

(a) * * *

(3) If the installment payment for all loans made to a borrower by an institution is not a multiple of $5, the institution may round that payment to the next highest dollar amount that is a multiple of $5.

* * * * *

(b) *Minimum monthly repayment*—(1) *Minimum monthly repayment option.* (i) An institution may require a borrower to pay a minimum monthly repayment if—

(A) The promissory note includes a minimum monthly repayment provision specifying the amount of the minimum monthly repayment; and

(B) The monthly repayment of principal and interest for a 10-year repayment period is less than the minimum monthly repayment; or

(ii) An institution may require a borrower to pay a minimum monthly repayment if the borrower has received loans with different interest rates at the same institution and the total monthly repayment would otherwise be less than the minimum monthly repayment.

(2) *Minimum monthly repayment of loans from more than one institution.* If a borrower has received loans from more than one institution, the following rules apply:

(i) If the total of the monthly repayments is equal to at least the minimum monthly repayment, no institution may exercise a minimum monthly repayment option.

(ii) If only one institution exercises the minimum monthly repayment option when the monthly repayment would otherwise be less than the minimum repayment option, that institution receives the difference between the minimum monthly repayment and the repayment owed to the other institution.

(iii) If each institution exercises the minimum repayment option, the minimum monthly repayment must be divided among the institutions in proportion to the amount of principal advanced by each institution.

(3) *Minimum monthly repayment of both Defense and Direct or Federal Perkins loans from one or more institutions.* If the total monthly repayment is less than $30 and the monthly repayment on a Defense loan is less than $15 a month, the amount attributed to the Defense loan may not exceed $15 a month.

(4) *Minimum monthly repayment of loans with differing grace periods and deferments.* If the borrower has received loans with different grace periods and deferments, the institution shall treat each note separately, and the borrower shall pay the applicable minimum monthly payment for a loan that is not in the grace or deferment period.

(5) *Hardship.* The institution may reduce the borrower's scheduled repayments for a period of not more than one year at a time if—

(i) It determines that the borrower is unable to make the scheduled repayments due to hardship (see § 674.33(c)); and

(ii) The borrower's scheduled repayment is the minimum monthly repayment described in paragraph (b) of this section.

(6) *Minimum monthly repayment rates.* For the purposes of this section, the minimum monthly repayment rate is—

(i) $15 for a Defense loan;

(ii) $30 for a Federal Perkins loan made before October 1, 1992, or for a Federal Perkins loan made on or after October 1, 1992, to a borrower who, on the date the loan is made, has an outstanding balance of principal or interest owing on any loan made under this part; or

(iii) $40 for a Federal Perkins loan made on or after October 1, 1992, to a borrower who, on the date the loan is made, has no outstanding balance of principal or interest owing on any loan made under this part.

(7) The institution shall determine the minimum repayment amount under paragraph (b) of this section for loans with repayment installment intervals greater than one month by multiplying the amounts in paragraph (b) of this section by the number of months in the installment interval.

(c) *Extension of repayment period*—(1) *Hardship.* The institution may extend a borrower's repayment period due to prolonged illness or unemployment.

* * * * *

(d) *Forbearance.* (1) Forbearance means the temporary cessation of payments, allowing an extension of time for making payments, or temporarily accepting smaller payments than previously were scheduled.

(2) Upon receipt of a written request and supporting documentation, the institution shall grant the borrower forbearance of principal and, unless otherwise indicated by the borrower, interest renewable at intervals of up to 12 months for periods that collectively do not exceed three years.

(3) The terms of forbearance must be agreed upon, in writing, by the borrower and the institution.

(4) In granting a forbearance under this section, an institution shall grant a temporary cessation of payments, unless the borrower chooses another form of forbearance subject to paragraph (d)(1) of this section.

(5) An institution shall grant forbearance if—

(i) The amount of the payments the borrower is obligated to make on title IV loans each month (or a proportional share if the payments are due less frequently than monthly) is collectively equal to or greater than 20 percent of the borrower's total monthly gross income;

(ii) The institution determines that the borrower should qualify for the forbearance due to poor health or for other acceptable reasons; or

(iii) The Secretary authorizes a period of forbearance due to a national military mobilization or other national emergency.

(3) Before granting a forbearance to a borrower under paragraph (d)(2)(i) of this section, the institution shall require the borrower to submit at least the following documentation:

(i) Evidence showing the amount of the most recent total monthly gross income received by the borrower; and

(ii) Evidence showing the amount of the monthly payments owed by the borrower for the most recent month for the borrower's title IV loans.

(4) Interest accrues during any period of forbearance.

(e) *Compromise of repayment.* (1) An institution may compromise on the repayment of a defaulted loan if—

(i) The institution has fully complied with all due diligence requirements specified in subpart C of this part; and

(ii) The student borrower pays in a single lump-sum payment—

(A) 90 percent of the outstanding principal balance on the loan under this part;

(B) The interest due on the loan; and

(C) Any collection fees due on the loan.

(2) The Federal share of the compromise repayment must bear the same relation to the institution's share of the compromise repayment as the Federal capital contribution to the institution's loan Fund under this part bears to the institution's capital contribution to the Fund.

* * * * *

§§ 674.34 through 674.39 [Redesignated as §§ 674.35 through 674.40]

18. Sections 674.34 through 674.39 are redesignated as §§ 674.35 through 674.40 respectively and a new § 674.34 is added to read as follows:

§ 674.34 Deferment of repayment—Federal Perkins loans and Direct loans made on or after July 1, 1993.

(a) The borrower may defer making scheduled installment repayment on a Federal Perkins loan or a Direct loan made on or after July 1, 1993, during the periods described in this section.

(b)(1) The borrower need not repay principal, and interest does not accrue, during a period after the commencement or resumption of the repayment period on a loan, when the borrower is—

(i) Enrolled and in attendance as a regular student in at least a half-time course of study at an eligible institution;

(ii) Enrolled and in attendance as a regular student in a course of study that is part of a graduate fellowship program approved by the Secretary;

(iii) Engaged in graduate or post-graduate fellowship-supported study (such as a Fulbright grant) outside the United States; or

(iv) Enrolled in a course of study that is part of a rehabilitation training program for disabled individuals approved by the Secretary as described in paragraph (g) of this section.

(2) No borrower is eligible for a deferment under paragraph (b)(1) of this section while serving in a medical internship or residency program, except for a residency program in dentistry.

(3) The institution of higher education at which the borrower is enrolled does not need to be participating in the Federal Perkins Loan program for the borrower to qualify for a deferment.

(4) If a borrower is attending an institution of higher education as at least a half-time regular student for a full academic year and intends to enroll as at least a half-time regular student in the next academic year, the borrower is entitled to a deferment for 12 months.

(5) If an institution no longer qualifies as an institution of higher education, the borrower's deferment ends on the date the institution ceases to qualify.

(c)(1) The borrower of a Federal Perkins loan need not repay principal, and interest does not accrue, for any period during which the borrower is engaged in service described in §§ 674.53, 674.54, 674.56, 674.57, 674.58, 674.59, and 674.60.

(2) The borrower of a Direct loan need not repay principal, and interest does not accrue, for any period during which the borrower is engaged in service described in §§ 674.53, 674.54, 674.56, 674.57, 674.58, and 674.59.

(d) The borrower need not repay principal, and interest does not accrue, for any period not to exceed 3 years during which the borrower is seeking and unable to find full-time employment.

(e) The borrower need not repay principal, and interest does not accrue, for any period not to exceed 3 years during which the borrower is suffering an economic hardship. To qualify for this deferment, the borrower must provide documentation satisfactory to the institution showing that the borrower—

(1) Has been granted an economic hardship deferment under either the FDSL or FFEL programs for the period of time for which the borrower has requested an economic hardship deferment for his or her Federal Perkins loan;

(2) Is receiving payment under a federal or state public assistance program, such as Aid to Families with Dependent Children, Supplemental Security Income, Food Stamps, or state general public assistance;

(3) Is working full-time and earning a total monthly gross income that does not exceed the greater of—

(i) The monthly earnings of an individual earning the minimum wage described in section 6 of the Fair Labor Standards Act of 1938; or

(ii) An amount equal to 100 percent of the poverty line for a family of two, as determined in accordance with section 673(2) of the Community Service Block Grant Act;

(4) Is not receiving total monthly gross income that exceeds twice the amount specified in paragraph (e)(3) of this section and, after deducting an amount equal to the borrower's monthly payments on federal postsecondary education loans, as determined under paragraph (e)(8) of this section, the remaining amount of that income does not exceed the amount specified in paragraph (e)(3) of this section; or

(5) Is working full-time and has a Federal educational debt burden that equals or exceeds 20 percent of the borrower's adjusted gross income and the difference between the borrower's adjusted gross income minus such burden is less than 220 percent of the greater of—

(i) The annual earnings of an individual earning the minimum wage under section 6 of the Fair Labor Standards Act of 1938; or

(ii) the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Community Services Block Grant Act) applicable to a family of two.

(6) For a deferment granted under paragraph (e)(4) of this section, the institution shall require the borrower to submit at least the following documentation to qualify for an initial period of deferment—

(i) Evidence showing the amount of the borrower's most recent total monthly gross income, as defined in section 674.2; and

(ii) Evidence that would enable the institution to determine the amount of the monthly payments that would have been owed by the borrower during the deferment period to other entities for federal postsecondary education loans in accordance with paragraph (e)(8) of this section.

(7) To qualify for a subsequent period of deferment that begins less than one year after the end of a period of deferment under paragraphs (e) (3) or (4) of this section, the institution shall require the borrower to submit a copy of the borrower's federal income tax return if the borrower filed a tax return within eight months prior to the date the deferment is requested.

(8) For purposes of paragraphs (e)(3) and (e)(5) of this section, a borrower is considered to be working full-time if the borrower is expected to be employed for at least three consecutive months at 30 hours per week.

(9) In determining a borrower's eligibility for an economic hardship deferment under paragraph (e) of this section, the institution shall count only the monthly payment amount (or a proportional share if the payments are due less frequently than monthly) that would have been owed on a federal postsecondary education loan if the loan had been scheduled to be repaid in 10 years from the date the borrower entered repayment, regardless of the length of the borrower's actual repayment schedule or the actual monthly payment amount (if any) that would be owed during the period that the borrower requested an economic hardship deferment.

(f) To qualify for a deferment for study as part of a graduate fellowship program

pursuant to paragraph (b)(1)(ii) of this section, a borrower must provide the institution certification that the borrower has been accepted for or is engaged in full-time study in the institution's graduate fellowship program.

(g) To qualify for a deferment for study in a rehabilitation training program, pursuant to paragraph (b)(1)(iv) of this section, the borrower must be receiving, or be scheduled to receive, services under a program designed to rehabilitate disabled individuals and must provide the institution with the following documentation:

(1) A certification from the rehabilitation agency that the borrower is either receiving or scheduled to receive rehabilitation training services from the agency.

(2) A certification from the rehabilitation agency that the rehabilitation program—

(i) Is licensed, approved, certified, or otherwise recognized by one of the following entities as providing rehabilitation training to disabled individuals—

(A) A State agency with responsibility for vocational rehabilitation programs;

(B) A State agency with responsibility for drug abuse treatment programs;

(C) A State agency with responsibility for mental health services programs;

(D) A State agency with responsibility for alcohol abuse treatment programs; or

(E) The Department of Veterans Affairs; and

(ii) Provides or will provide the borrower with rehabilitation services under a written plan that—

(A) Is individualized to meet the borrower's needs;

(B) Specifies the date on which the services to the borrower are expected to end; and

(C) Is structured in a way that requires a substantial commitment by the borrower to his or her rehabilitation. The Secretary considers a substantial commitment by the borrower to be a commitment of time and effort that would normally prevent an individual from engaging in full-time employment either because of the number of hours that must be devoted to rehabilitation or because of the nature of the rehabilitation.

(h) The institution may not include the deferment periods described in paragraphs (b), (c), (d), (e), (f) and (g) of this section when determining the 10-year repayment period.

(i) The borrower need not pay principal and interest does not accrue until six months after completion of any period during which the borrower is in deferment under paragraphs (b), (c), (d), (e), (f), and (g) of this section.

(Authority: 20 U.S.C. 1087dd)

19. Redesignated § 674.35 is amended by revising the heading of the section; by revising paragraph (a); by adding the word "Federal" before the words "Perkins Loan" in paragraph (b)(2); by revising paragraph (c)(5)(iii); and by republishing the OMB control number to read as follows:

§ 674.35 Deferment of repayment—Federal Perkins loans made before July 1, 1993.

(a) The borrower may defer repayment on a Federal Perkins Loan made before July 1, 1993, during the periods described in this section.

* * * * *

(c) * * *

(5) * * *

(iii) The borrower does not receive compensation that exceeds the rate prescribed under section 6 of the Fair Labor Standards Act of 1938 (the Federal minimum wage), except that the tax-exempt organization may provide health, retirement, and other fringe benefits to the volunteer that are substantially equivalent to the benefits offered to other employees of the organization.

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* * * * *

20. Redesignated § 674.36 is amended by revising the heading of the section; by revising paragraph (a); by adding the word "Federal" before the words "Perkins Loan program" in paragraph (b)(2); and by revising paragraph (c)(4)(iii) to read as follows:

§ 674.36 Deferment of repayment—Direct loans made on or after October 1, 1980, but before July 1, 1993.

(a) The borrower may defer repayment on a Direct Loan made on or after October 1, 1980, but before July 1, 1993, during the periods described in this section.

* * * * *

(c) * * *

(4) * * *

(iii) The borrower does not receive compensation that exceeds the rate prescribed under section 6 of the Fair Labor Standards Act of 1938 (the Federal minimum wage), except that the tax-exempt organization may provide health, retirement, and other fringe benefits to the volunteer that are substantially equivalent to the benefits offered to other employees of the organization.

* * * * *

21. Redesignated § 674.38 is amended by adding a new paragraph (d) to read as follows:

§ 674.38 Deferment procedures.

* * * * *

(d) The institution shall determine the continued eligibility of a borrower for a deferment at least annually.

22. Redesignated § 674.39 is amended by adding the word "Federal" before the word "Perkins" in paragraph (b) and by revising the heading of the section to read as follows:

§ 674.39 Postponement of loan repayments in anticipation of cancellation—loans made before July 1, 1993.

* * * * *

§ 674.41 [Amended]

23. Section 674.41 is amended by removing the words "or any endorser" after the words "the borrower" in paragraph (a)(2); by removing paragraph (b); and by redesignating paragraph (c) as (b).

24. Section 674.42 is amended by revising paragraph (a)(1)(ii); by redesignating paragraphs (a)(3) and (a)(4) as paragraphs (a)(4) and (a)(5) respectively; by adding a new paragraph (a)(3); and by republishing the OMB control number to read as follows:

§ 674.42 Contact with the borrower.

(a) * * *

(1) * * *

(ii) The borrower's rights to forbearance, deferment, cancellation, or postponement of repayment and the procedures for filing for those benefits.

* * * * *

(3) The institution shall require the borrower to provide to the institution during the exit interview—

(i) The borrower's expected permanent address after leaving the institution, regardless of the reason for leaving;

(ii) The name and address of the borrower's expected employer after leaving the institution;

(iii) The name and address of the borrower's next of kin; and

(iv) Any corrections in the institution's records relating to the borrower's name, address, social security number, personal references, and driver's license number.

* * * * *

(Approved under the Office of Management and Budget under control number 1840–0581)

25. Section 674.43 is amended by adding a new paragraph (a)(3) to read as follows:

§ 674.43 Billing procedures.

(a) * * *

(3) Notwithstanding paragraph (a)(2)(ii) of this section, if the borrower elects to make payment by means of an electronic transfer of funds from the borrower's bank account, the institution shall send to the borrower an annual statement of account.

* * * * *

26. Section 674.44 is amended by revising paragraph (a)(3) and by revising paragraph (d)(1) to read as follows:

§ 674.44 Address searches.

(a) * * *

(3) If, after following the procedures in paragraph (a) of this section, an institution is still unable to locate a borrower, the institution may use the Internal Revenue Service skip-tracing service.

* * * * * *

(d) * * *

(1) The loan is recovered through litigation;

* * * * * *

27. Section 674.45 is amended by revising paragraph (a)(1); by revising paragraph (b); by revising paragraph (d); by adding a new paragraph (g); and by republishing the OMB control number to read as follows:

§ 674.45 Collection procedures.

(a) * * *

(1) Report the defaulted account to any one national credit bureau; and

* * * * * *

(b) An institution shall report to the same national credit bureau to which it originally reported the default, according to the reporting procedures of the national credit bureau, any changes in account status and shall respond within one month of its receipt to any inquiry from any credit bureau regarding the information reported on the loan amount.

* * * * * *

(d) If the institution is unable to place the loan in repayment as described in paragraph (c)(1) of this section after following the procedures in paragraphs (a), (b), and (c) of this section, the institution shall continue to make annual attempts to collect from the borrower until—

(1) The loan is recovered through litigation;

(2) The account is assigned to the United States; or

(3) The account is written off under § 674.47(g).

* * * * * *

(g) *Preemption of State law.* The provisions of this section preempt any State law, including State statutes, regulations, or rules, that would conflict with or hinder satisfaction of the requirements or frustrate the purposes of this section.

* * * * * *

(Approved by the Office of Management and Budget under control number 1840–0581)

28. Section 674.46 is amended by revising paragraph (a)(1) introductory text to read as follows:

§ 674.46 Litigation procedures.

(a)(1) If the collection efforts described in § 674.45 do not result in the repayment of a loan, the institution shall determine at least annually whether—

* * * * * *

29. Section 674.47(g) is amended by revising paragraph (g) to read as follows:

§ 674.47 Costs Chargeable to the Fund.

* * * * * *

(g) *Write-offs of defaulted accounts.* (1) An institution may write off a defaulted account with a balance of less than $25.00, including outstanding principal, accrued interest, collection costs, and late charges.

(2) An institution that writes off a defaulted account under this paragraph may no longer include the amount of the account as an asset of the Fund.

30. Section 674.48 is amended by revising paragraph (c)(4)(iii); by revising paragraph (d)(1)(iii); and by republishing the OMB control number to read as follows:

§ 674.48 Use of contractors to perform billing and collection or other program activities.

* * * * * *

(c) * * *

(4) * * *

(iii) Deposits those funds received directly from the borrower immediately in an institutional trust account that must be an interest-bearing account if those funds will be held for longer than 45 days; and

* * * * * *

(d) * * *

(1) * * *

(iii) Deposits those funds received directly from the borrower immediately in an institutional trust account that must be an interest-bearing account if those funds will be held for longer than 45 days, after deducting its fees if authorized to do so by the institution; and

* * * * * *

(Approved by the Office of Management and Budget under control number 1840–0581)

31. Section 674.49 is amended by revising paragraph (a); by removing paragraph (g); by redesignating paragraph (h) as paragraph (g); by removing redesignated paragraph (g)(3); by revising redesignated paragraph (g)(1) introductory text; and by republishing the OMB control number to read as follows:

§ 674.49 Bankruptcy of borrower.

(a) *General.* If an institution receives notice that a borrower has filed a petition for relief in bankruptcy, usually by receiving a notice of meeting of creditors, the institution and its agents shall immediately suspend any collection efforts outside the bankruptcy proceeding against the borrower.

* * * * * *

(g) *Termination of collection and write-off.* (1) An institution shall terminate all collection action and write off a loan if it receives—

* * * * * *

(Approved by the Office of Management and Budget under control number 1840–0581)

32. Section 674.50 is amended by revising paragraph (c)(10), and the OMB control number to read as follows:

§ 674.50 Assignment of defaulted loans to the United States.

* * * * * *

(c) * * *

(10) Documentation that the institution has complied with all of the due diligence requirements described in paragraph (a)(1) of this section if the institution has a cohort default rate that is equal to or greater than 20 percent as of June 30 of the second year preceding the submission period.

* * * * * *

(Approved by the Office of Management and Budget under control number 1840–0535)

33. Section 674.51 is amended by revising paragraph (c); by redesignating paragraphs (g), (h), and (i) as paragraphs (o), (p), and (q) respectively; by redesignating paragraph (f) as paragraph (j); by redesignating paragraphs (d) and (e) as paragraphs (f) and (g) respectively; by revising redesignated paragraphs (q)(3)(i), (ii), (iii), and (iv); and by adding new paragraphs (d), (e), (h), (i), (k), (l), (m), (n), (q)(3)(v) and (r) to read as follows:

§ 674.51 Special definitions.

* * * * * *

(c) *Title I Children:* Children of ages 5 through 17 who are counted under section 1124(c)(1) of the Elementary and Secondary Education Act of 1965, as amended.

(d) *Children and youth with disabilities:* Children and youth from ages 3 through 21, inclusive, who require special education and related services because they have disabilities as defined in section 602(a)(1) of the Individuals with Disabilities Education Act.

(e) *Early intervention services.* Those services defined in section 672(2) of the Individuals with Disabilities Education Act that are provided to infants and toddlers with disabilities.

* * * * *

(h) *High-risk children:* Individuals under the age of 21 who are low-income or at risk of abuse or neglect, have been abused or neglected, have serious emotional, mental, or behavioral disturbances, reside in placements outside their homes, or are involved in the juvenile justice system.

(i) *Infants and toddlers with disabilities:* Infants and toddlers from birth to age 2, inclusive, who need early intervention services for specified reasons, as defined in section 672(1) of the Individuals with Disabilities Education Act.

* * * * *

(k) *Low-income communities:* Communities in which there is a high concentration of children eligible to be counted under title I of the Elementary and Secondary Education Act of 1965, as amended.

(l) *Medical technician:* An allied health professional (working in fields such as therapy, dental hygiene, medical technology, or nutrition) who is certified, registered, or licensed by the appropriate State agency in the State in which he or she provides health care services. An allied health professional is someone who assists, facilitates, or complements the work of physicians and other specialists in the health care system.

(m) *Nurse:* A licensed practical nurse, a registered nurse, or other individual who is licensed by the appropriate State agency to provide nursing services.

(n) *Qualified professional provider of early intervention services:* A provider of services as defined in section 672(2) of the Individuals with Disabilities Education Act.

* * * * *

(q) * * *

(3) * * *

(i) Speech and language pathology and audiology;

(ii) Physical therapy;

(iii) Occupational therapy;

(iv) Psychological and counseling services; or

(v) Recreational therapy.

(r) *Teaching in a field of expertise:* The majority of classes taught are in the borrower's field of expertise.

* * * * *

34. Section 674.52 is amended by adding a heading to paragraph (b); by redesignating paragraph (b)(1) as (b)(1)(i); by adding new paragraph (b)(1)(ii); by adding a heading to paragraph (c); by revising paragraph (d); and by adding new paragraph (e) to read as follows:

§ 674.52 Cancellation procedures.

* * * * *

(b) *Part-time employment.* (1)(i) * * *

(ii) An institution may refuse a request for cancellation based on a claim of simultaneous employment as a nurse or medical technician in two or more facilities if it cannot determine easily from the documentation supplied by the borrower that the combined employment is full-time. However, it shall grant the cancellation if one facility official certifies that a nurse or medical technician worked full-time for a full year.

(c) *Cancellation of a defaulted loan.* (1) * * *

* * * * *

(d) *Concurrent deferment period.* (1) For loans made prior to July 1, 1993, the Secretary considers a borrower's loan deferment under §§ 674.35, 674.36, and 674.37 to run concurrently with any period for which a cancellation for military, Peace Corps, or ACTION program service is granted.

(2) For loans made on or after July 1, 1993, the Secretary considers a borrower's loan deferment under § 674.34 to run concurrently with any period for which a cancellation under §§ 674.53, 674.56, or 674.57 is granted.

(e) *National community service.* No borrower who has received a benefit under subtitle D of title I of the National and Community Service Act of 1990 may receive a cancellation under this subpart.

§§ 674.53 and 674.54 [Redesignated as §§ 674.54 and 674.55]

§§ 674.55 through 674.60 [Redesignated as §§ 674.58 through 674.63]

35. Sections 674.55 through 674.60 are redesignated as §§ 674.58 through 674.63 respectively; §§ 674.53 and 674.54 are redesignated as §§ 674.54 and 674.55 respectively; and a new § 674.53 is added to read as follows:

§ 674.53 Teacher cancellation—Federal Perkins loans and Direct loans made on or after July 23, 1992.

(a) *Cancellation for full-time teaching in an elementary or secondary school serving low-income students.* (1) An institution shall cancel up to 100 percent of the outstanding loan balance on a Federal Perkins loan or a Direct loan made on or after July 23, 1992, for full-time teaching in a public or other nonprofit elementary or secondary school that—

(i) Is in a school district that qualified for funds, in that year, under title I of the Elementary and Secondary Education Act of 1965, as amended, and

(ii) Has been selected by the Secretary based on a determination that more than 30 percent of the school's total enrollment is made up of title I children.

(2) For each academic year, the Secretary notifies participating institutions of the schools selected under paragraph (a) of this section.

(3) (i) The Secretary selects schools under paragraph (a)(1) of this section based on a ranking by the State education agency.

(ii) The State education agency shall base its ranking of the schools on objective standards and methods. These standards must take into account the numbers and percentages of title I children attending those schools.

(iii) For each academic year, the Secretary notifies participating institutions of the schools selected under paragraph (a) of this section.

(4) The Secretary considers all elementary and secondary schools operated by the Bureau of Indian Affairs (BIA) or operated on Indian reservations by Indian tribal groups under contract with BIA to qualify as schools serving low-income students.

(5) A teacher, who performs service in a school that meets the requirement of paragraph (a)(1) of this section in any year and in a subsequent year fails to meet these requirements, may continue to teach in that school and will be eligible for loan cancellation pursuant to paragraph (a) of this section in subsequent years.

(6) If a list of eligible institutions in which a teacher performs services under paragraph (a)(1) of this section is not available before May 1 of any year, the Secretary may use the list for the year preceding the year for which the determination is made to make the service determination.

(b) *Cancellation for full-time teaching in special education.* An institution shall cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins loan or Direct loan made on or after July 23, 1992, for the borrower's service as a full-time special education teacher of infants, toddlers, children, or youth with disabilities, in a public or other nonprofit elementary or secondary school system.

(c) *Cancellation for full-time teaching in fields of expertise.* An institution shall cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins loan or Direct loan made on or after July 23, 1992, for full-time teaching in mathematics, science, foreign languages, bilingual education, or any other field of expertise where the

State education agency determines that there is a shortage of qualified teachers.

(d) *Cancellation rates.* (1) To qualify for cancellation under paragraph (a), (b), or (c) of this section, a borrower shall teach full-time for a complete academic year or its equivalent.

(2) Cancellation rates are—

(i) 15 percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the first and second years of full-time teaching;

(ii) 20 percent of the original principal loan amount, plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the third and fourth years of full-time teaching; and

(iii) 30 percent of the original principal loan amount, plus the interest on the unpaid balance accruing during the year of qualifying service, for the fifth year of full-time teaching.

(e) *Teaching in a school system.* The Secretary considers a borrower to be teaching in a public or other nonprofit elementary or secondary school system only if the borrower is directly employed by the school system.

(f) *Teaching children and adults.* A borrower who teaches both adults and children qualifies for cancellation for this service only if a majority of the students whom the borrower teaches are children.

(Authority: 20 U.S.C 1087ee)

36. Redesignated § 674.54 is amended by revising the heading of the section; by revising paragraph (a)(1); by removing paragraph (a)(2); by redesignating paragraphs (a)(3) and (a)(4) as paragraphs (a)(2) and (a)(3) respectively; by removing the term "Chapter 1" and adding in its place "title I" in redesignated paragraph (a)(2); by adding new paragraphs (a)(4) and (a)(5); by revising paragraph (b)(1); and by revising the authority citation to read as follows:

§ 674.54 Teacher cancellation—Federal Perkins loans and Direct loans made before July 23, 1992.

(a) *Cancellation for full-time teaching in an elementary or secondary school serving low-income students.* (1) An institution shall cancel up to 100 percent of the outstanding loan balance on a Federal Perkins loan or a Direct loan made before July 23, 1992, for full-time teaching in a public or other nonprofit elementary or secondary school that—

(i) Is in a school district that qualifies for funds, in that year, under title I of the Elementary and Secondary Education Act of 1965, as amended; and

(ii) Has been selected by the Secretary based on a determination that more than 30 percent of the school's total enrollment is made up of title I children.

* * * * *

(4) A teacher, who performs service in a school that meets the requirement of paragraph (a)(1) of this section in any year and in a subsequent year fails to meet these requirements, may continue to teach in that school and will be eligible for loan cancellation pursuant to paragraph (a) of this section, in subsequent years.

(5) If a list of eligible institutions in which a teacher performs services under paragraph (a)(1) of this section is not available before May 1 of any year, the Secretary may use the list for the year preceding the year for which the determination is made to make the service determination.

(b) *Cancellation for full-time teaching of the handicapped.* (1) An institution shall cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins loan or Direct loan made before July 23, 1992, for full-time teaching of handicapped children in a public or other nonprofit elementary or secondary school system.

* * * * *

(Authority: 20 U.S.C. 1087ee)

37. Redesignated section 674.55 is amended by revising paragraph (b)(1)(i); by removing paragraph (b)(2); by redesignating paragraphs (b)(3), (b)(4), (b)(5), and (b)(6) as paragraphs (b)(2), (b)(3), (b)(4), and (b)(5), respectively; and by removing the term "Chapter 1" and adding in its place "title I" in redesignated paragraph (b)(2)(ii) to read as follows:

(b) * * *

(1) * * *

(i) Is in a school district that qualifies for funds in that year under title I of the Elementary and Secondary Education Act of 1965, as amended; and

* * * * *

38. A new § 674.56 is added to read as follows:

§ 674.56 Employment cancellation—Federal Perkins loans and Direct loans made on or after July 23, 1992.

(a) *Cancellation for full-time employment as a nurse or medical technician.* An institution shall cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins or Direct loan made on or after July 23, 1992, for full-time employment as a nurse or medical technician providing health care services.

(b) *Cancellation for full-time employment in a public or private nonprofit child or family service agency.* An institution shall cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins loan or Direct loan made on or after July 23, 1992, for service as a full-time employee in a public or private nonprofit child or family service agency who is providing, or supervising the provision of, services to high-risk children who are from low-income communities and the families of such children.

(c) *Cancellation for service as a qualified professional provider of early intervention services.* An institution shall cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins loan or Direct loan made on or after July 23, 1992, for the borrower's service as a full-time qualified professional provider of early intervention services in a public or other nonprofit program under public supervision by the lead agency as authorized in section 676(b)(9) of the Individuals With Disabilities Education Act.

(d) *Cancellation rates.* (1) To qualify for cancellation under paragraphs (a), (b), and (c) of this section, a borrower must work full-time for 12 consecutive months.

(2) Cancellation rates are—

(i) 15 percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the first and second years of full-time employment;

(ii) 20 percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the third and fourth years of full-time employment; and

(iii) 30 percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for the fifth year of full-time employment.

(Authority: 20 U.S.C. 1087ee)

39. A new § 674.57 is added to read as follows:

§ 674.57 Cancellation for law enforcement or corrections officer service—Federal Perkins loans and Direct loans for loans made on or after November 29, 1990.

(a)(1) An institution shall cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins loan or Direct loan made on or after November 29, 1990, for full-time service as a law enforcement or corrections officer for an eligible employing agency.

(2) An eligible employing agency is an agency—

(i) That is a local, State, or Federal law enforcement or corrections agency;

(ii) That is public-funded; and

(iii) The principal activities of which pertain to crime prevention, control, or reduction or the enforcement of the criminal law.

(3) Agencies that are primarily responsible for enforcement of civil, regulatory, or administrative laws are ineligible employing agencies.

(4) A borrower qualifies for cancellation under this section only if the borrower is—

(i) A sworn law enforcement or corrections officer; or

(ii) A person whose principal responsibilities are unique to the criminal justice system.

(5) To qualify for a cancellation under this section, the borrower's service must be essential in the performance of the eligible employing agency's primary mission.

(6) The agency must be able to document the employee's functions.

(7) A borrower whose principal official responsibilities are administrative or supportive does not qualify for cancellation under this section.

(b)(1) To qualify for cancellation under paragraph (a) of this section, a borrower shall work full-time for 12 consecutive months.

(2) Cancellation rates are—

(i) 15 percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the first and second years of full-time employment;

(ii) 20 percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the third and fourth years of full-time employment; and

(iii) 30 percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for the fifth year of full-time employment.

(Authority: 20 U.S.C. 465)

40. Redesignated § 674.58 is amended by adding the word "Federal" before the words "Perkins loan" in paragraph (a) introductory text.

41. Redesignated § 674.61 is amended by revising paragraph (b)(2) to read as follows:

§ 674.61 Cancellation for death or disability.

* * * * *

(b) * * *

(2) Permanent and total disability is the inability to work and earn money or to attend an institution because of an impairment that is expected to continue indefinitely or result in death.

* * * * *

42. Redesignated § 674.63 is amended by revising paragraphs (a)(1) and (b) to read as follows:

§ 674.63 Reimbursement to institutions for loan cancellation.

(a) *Reimbursement for Defense loan cancellation.* (1) The Secretary pays an institution each award year its share of the principal and interest canceled under §§ 674.55 and 674.59(a).

* * * * *

(b) *Reimbursement for Direct and Federal Perkins loan cancellation.* The Secretary pays an institution each award year the principal and interest canceled from its student loan fund under §§ 674.53, 674.54, 674.56, 674.57, 674.58, 674.59(b), and 674.60. The institution shall deposit this amount in its Fund.

* * * * *

Appendices A through D [Removed]

43. Appendix A to Part 674—Promissory Note—Perkins Loan is removed.

44. Appendix B to Part 674—Promissory Note—Direct Loan is removed.

45. Appendix C to Part 674—Promissory Note—Perkins Loan—Less Than Half-Time Student Borrower is removed.

46. Appendix D to Part 674—Promissory Note—Direct Loan—Less Than Half-Time Student Borrower is removed.

47. In 34 CFR part 674 add the word "Federal" before the word "Perkins" in the following places:

§ 674.1 [Amended]

(a) Section 674.1 (a) and (b)(1).

§ 674.2 [Amended]

(b) Section 674.2(a) (two times) and in the definitions of "Fund", "Initial grace period", and "Student loan" in paragraph (b).

§ 674.3 [Amended]

(c) Section 674.3 (a) and (b).

§ 674.4 [Amended]

(d) Section 674.4(a).

§ 674.8 [Amended]

(e) Section 674.8 introductory text.

§ 674.9 [Amended]

(f) Section 674.9 introductory text.

§ 674.14 [Amended]

(g) Section 674.14 (a)(1), (a)(2) introductory text, (b)(1)(x).

§ 674.17 [Amended]

(h) Section 674.17 (a) and (b)(1) introductory text.

§ 674.18 [Amended]

(i) Section 674.18 (a), (b)(1) (two times), (b)(2)(i), (b)(3), and (b)(4).

§ 674.19 [Amended]

(j) Section 674.19 (a)(1), (a)(3)(i), (b) heading, (b)(1) introductory text, (b)(1)(ii), (b)(3), (b)(4) introductory text, (d)(4), and (e)(4)(iv).

§ 674.20 [Amended]

(k) Section 674.20(b).

§ 674.31 [Amended]

(l) Section 674.31 (b)(2)(i)(B), (b)(5)(ii)(A), and (b)(7)(ii).

§ 674.42 [Amended]

(m) Section 674.42(b)(1)(i).

§ 674.46 [Amended]

(n) Section 674.46(a)(1)(i).

§ 674.2 [Amended]

48. In § 674.2(a), remove the term "College Work-Study (CWS) Program" and add the term "Federal Work-Study (FWS) Program" in alphabetical order.

49. In 34 CFR part 674, remove the term "CWS" and add, in its place, the term "FWS" in the following places:

§ 674.18 [Amended]

(a) Section 674.18 (b)(2)(i), (b)(3), and (b)(4).

§ 674.19 [Amended]

(b) Section 674.19(d)(4).

§ 674.2 [Amended]

50. In § 674.2(a), remove the term "Supplemental Educational Opportunity Grant (SEOG) Program" and add the term "Federal Supplemental Educational Opportunity Grant (FSEOG) Program" in alphabetical order.

51. In 34 CFR part 674, remove the term "SEOG" and add, in its place, the term "FSEOG" in the following places:

§ 674.18 [Amended]

(a) Section 674.18 (b)(2)(i) and (b)(4).

§ 674.19 [Amended]

(b) Section 674.19(d)(4).

§ 674.14 [Amended]

52. In 34 CFR part 674, remove the term "SEOGs" and add, in its place, the term "FSEOGs" in § 674.14(b)(1)(iv).

§ 674.2 [Amended]

53. In § 674.2(a), remove the term "Guaranteed Student Loan (GSL) Program" and add the term "Federal Family Education Loan (FFEL) programs" in alphabetical order.

§ 674.2 [Amended]

54. In § 674.2(a), remove the term "Pell Grant" and add the term "Federal Pell Grant" in alphabetical order.

55. In 34 CFR part 674, add the term "Federal" before the term "Pell Grant" in the following places:

§ 674.9 [Amended]

(a) Section 674.9 (d)(1) and (d)(2).

§ 674.14 [Amended]

(b) Section 674.14(b)(1)(i) (two times).

§ 674.15 [Amended]

(c) Section 674.15(c)(2).

§ 674.2 [Amended]

56. In § 674.2(a), remove the term "Income Contingent Loan (ICL) Program".

§ 674.2 [Amended]

57. In § 674.2(a), remove the terms "PLUS Program" and "SLS Program" and add the terms "Federal PLUS Program" and "Federal SLS Program" in alphabetical order.

§ 674.14 [Amended]

58. In § 674.14(b)(3), add the term "Federal" before the term "Supplemental Loan for Students (SLS)".

PART 675—FEDERAL WORK-STUDY PROGRAMS

1. The authority citation for part 675 continues to read as follows:

Authority: 42 U.S.C. 2571–2756b, unless otherwise noted.

2. The title of part 675 is revised to read as follows:

3. The heading for subpart A is amended by removing the term "College Work-Study Program" and adding, in its place, the term "Federal Work-Study Program".

4. Section 675.1 is amended by revising paragraph (a) to read as follows:

§ 675.1 Purpose and identification of common provisions.

(a) The Federal Work-Study (FWS) program provides part-time employment to students attending institutions of higher education who need the earnings to help meet their costs of postsecondary education and encourages students receiving FWS assistance to participate in community service activities.

* * * * *

5. Section 675.2, paragraph (b) is amended by revising the definitions of *Community services* and *Undergraduate student* to read as follows:

§ 675.2 Definitions.

* * * * *

(b) * * *

Community services: Services which are identified by an institution of higher education, through formal or informal consultation with local nonprofit, governmental, and community-based organizations, as designed to improve the quality of life for community residents, particularly low-income individuals, or to solve particular problems related to their needs. These services include—

(1) Such fields as health care, child care, literacy training, education (including tutorial services), welfare, social services, transportation, housing and neighborhood improvement, public safety, crime prevention and control, recreation, rural development, and community improvement;

(2) Work in service opportunities or youth corps as defined in section 101 of the National and Community Service Act of 1990, and service in the agencies, institutions and activities designated in section 124(a) of that Act;

(3) Support services to students (other than an institution's own students) with disabilities; and

(4) Activities in which a student serves as a mentor for such purposes as—

(i) Tutoring;

(ii) Supporting educational and recreational activities; and

(iii) Counseling, including career counseling.

* * * * *

Undergraduate student: A student enrolled at an institution of higher education who is in an undergraduate course of study which usually does not exceed four academic years, or is enrolled in a four to five academic year program designed to lead to a first degree. A student enrolled in a program of any other length is considered an undergraduate student for only the first four academic years of that program.

6. Section 675.4 is amended by revising the introductory text of paragraph (d) and adding new paragraph (e) to read as follows:

§ 675.4 Allocation and reallocation.

* * * * *

(d) *Authority to expend funds.* Except as specifically provided in § 675.18, paragraphs (c), (d), and (g), an institution may not use funds allocated or reallocated for an award year—

* * * * *

(e) *Unexpended funds.* (1) If an institution returns more than 10 percent of its allocation for an award year, the Secretary will reduce the institution's allocation for the second succeeding award year by the dollar amount returned.

(2) The Secretary may waive the provision of paragraph (e)(1) of this section for a specific institution if the Secretary finds that enforcement would be contrary to the interests of the program.

(3) The Secretary considers enforcement of paragraph (e)(1) of this section to be contrary to the interest of the program only if the institution returns more than 10 percent of its allocation due to circumstances beyond the institution's control that are not expected to recur.

7. Section 675.8 is amended by removing the word "and" after paragraph (d); by removing the period after paragraph (e) and adding, in its place, a semicolon; and adding new paragraphs (f) and (g) to read as follows:

§ 675.8 Program participation agreement.

* * * * *

(f) Assure that employment under this part may be used to support programs for supportive services to students with disabilities; and

(g) Inform all eligible students of the opportunity to perform community services and consult with local nonprofit, governmental, and community-based organizations to identify those opportunities.

* * * * *

8. Section 675.10 is amended by revising the heading of the section; by revising paragraph (c); and by revising the OMB control number to read as follows:

§ 675.10 Selection of students for FWS employment.

* * * * *

(c) *Part-time and independent students.* If an institution's allocation of FWS funds is directly or indirectly based in part on the financial need demonstrated by students attending the institution as less-than-full-time or independent students, and if the total financial need of those students exceeds 5 percent of the total financial need of all students at the institution, the institution shall offer to those students at least 5 percent of its allocation under this part.

* * * * *

(Approved by the Office of Management and Budget under control number 1840–0535)

9. Section 675.14 is amended by removing the words "Guaranteed Students Loans" and adding, in its place, the words "Federal Family Education Loan" in paragraph (b)(1)(ii); by removing the words "and need-based ICLs" after the words "Direct Loans" in paragraph (b)(1)(x); by adding the words "or Federal" before the word "PLUS", by removing the comma after the words

"PLUS loan", and by removing the words "or non-need-based ICL" before the word "as" in paragraph (b)(3); by removing the dollar figure "$200" and adding, in its place, the dollar figure "$300" in paragraphs (c) introductory text, (c)(1), and (c)(2); and by revising paragraph (d)(2) to read as follows:

§ 675.14 Overaward.

* * * * *

(d) * * *

(2) Notwithstanding the provisions of paragraph (d)(1) of this section, an institution may provide additional FWS funding to a student whose need has been met until that student's cumulative earnings from all need-based employment occurring subsequent to the time his or her financial need has been met exceed $300.

* * * * *

10. Section 675.18 is amended by redesignating paragraphs (a)(3) and (a)(4) as paragraphs (a)(4) and (a)(5) respectively; by removing paragraph (f)(4); by adding a new paragraph (a)(3); by revising paragraphs (b)(3), (b)(5), and (f)(1); and by adding new paragraphs (g) and (h) to read as follows:

§ 675.18 Use of funds.

(a) * * *

(3) Meeting the cost of a Work-Colleges program under subpart C;

* * * * *

(b) * * *

(3) However, the institution shall not include, when calculating the allowance in paragraph (b)(1) of this section, the amount of loans made under the Federal Perkins Loan program it assigns to the Secretary under section 463(a)(6) of the HEA.

* * * * *

(5) An institution may use up to 10 percent of the allowance in paragraph (b) of this section, that is attributable to the institution's expenditures under the FWS program, to pay the administrative costs of conducting its program of community service. These costs may include the costs of—

(i) Developing mechanisms to assure the academic quality of a student's experience;

(ii) Assuring student access to educational resources, expertise, and supervision necessary to achieve community service objectives; and

(iii) Collaborating with public and private nonprofit agencies and programs assisted under the National and Community Service Act of 1990, in the planning, development, and administration of these programs.

* * * * *

(f) *Transfer funds to FSEOG.* (1) Beginning with the 1993–94 award year, an institution may transfer up to 25 percent of the sum of its initial and supplemental FWS allocations for an award year to its FSEOG program.

* * * * *

(g) *Carry back funds for summer employment.* An institution may carry back and expend in the previous award year any portion of its initial and supplemental FWS allocations for the current award year to pay student wages earned on or after May 15 of the previous award year but prior to the beginning of the current award year.

(h) *Community service.* (1) For the 1994–95 award year and subsequent award years, an institution shall use at least 5 percent of the sum of its initial and supplemental FWS allocations for an award year to compensate students employed in community service activities.

(2) An institution may request in writing from the Secretary a waiver of the requirement in paragraph (h)(1) of this section. The Secretary approves a waiver only if the Secretary determines that an institution has demonstrated that enforcing the requirement in paragraph (h)(1) of this section would cause a hardship for students at the institution.

11. Section 675.21 is amended by revising paragraph (b) to read as follows:

§ 675.21 Institutional employment.

* * * * *

(b) A proprietary institution may employ a student to work for the institution, but only in jobs that—

(1) Are in community services as defined in § 675.2; or

(2) Are on campus and that—

(i) Involve the provision of student services as defined in § 675.2

(ii) To the maximum extent possible, complement and reinforce the educational program or vocational goals of the student; and

(iii) Do not involve the solicitation of potential students to enroll at the proprietary institution.

12. Section 675.26 is amended by revising paragraphs (a)(1), (2), and (3) to read as follows:

§ 675.26 FWS Federal share limitations.

(a)(1) The Federal share of FWS compensation paid to a student employed other than by a private for-profit organization, as described in § 675.23, may not exceed 75 percent for the 1993–94 award year and subsequent award years unless the Secretary approves a higher share under paragraph (d) of this section.

(2) The Federal share of the compensation paid to a student employed by a private for-profit organization may not exceed 50 percent.

(3) An institution may not use FWS funds to pay a student after he or she has, in addition to other resources, earned $300 or more over his or her financial need.

* * * * *

§ 675.28 [Removed]

13. Section 675.28 is removed.

14. The heading for subpart B is amended by removing the "s" from the word "Programs".

15. Section 675.31 is revised to read as follows:

§ 675.31 Purpose.

The purpose of the Job Location and Development program is to expand off-campus job opportunities for students who are enrolled in eligible institutions of higher education and want jobs, regardless of their financial need, and to encourage students to participate in community service activities.

(Authority: 42 U.S.C. 2756)

16. Section 675.32 is revised to read as follows:

§ 675.32 Program description.

An institution may expend up to the lesser of $50,000 or 10 percent of its FWS allocation and reallocation for an award year to establish or expand a program under which the institution, separately or in combination with other eligible institutions, locates and develops jobs, including community service jobs, for currently enrolled students.

(Authority: 42 U.S.C. 2756)

17. Section 675.34 is amended by revising the heading of the section; by revising paragraph (a); by revising paragraph (c); and by republishing the OMB control number to read as follows:

§ 675.34 Multi-institutional job location and development programs.

(a) An institution participating in the FWS program may enter into a written agreement to establish and operate job location programs for its students with other participating institutions.

* * * * *

(c) Each institution shall retain responsibility for the proper disbursement of the Federal funds it contributes under an agreement with other eligible institutions.

* * * * *

(Approved by the Office of Management and Budget under control number 1840–0535)

18. Section 675.35 is amended by adding the word "in" before the word "accordance" in paragraph (b)(1); by revising paragraphs (b)(3)(i) and (b)(3)(v); and by republishing the OMB control number to read as follows:

§ 675.35 Agreement.

* * * * *

(b) * * *

(3) * * *

(i) The institution will not use program funds to locate and develop jobs at an eligible institution;

* * * * *

(v) If the institution uses Federal funds to contract with another institution, suitable performance standards will be part of that contract.

* * * * *

(Approved by the Office of Management and Budget under control number 1840–0535)

19. A new subpart C is added to part 675 to read as follows:

* * * * *

Subpart C—Work-Colleges Program

Sec.

675.41 Special definitions.
675.42 Allocation and reallocation.
675.43 Purpose.
675.44 Program description.
675.45 Allowable costs, Federal share, and institutional share.
675.46 Unallowable costs.
675.47 Multi-institutional work-colleges arrangements.
675.48 Agreement.
675.49 Procedures and records.
675.50 Termination and suspension.

* * * * *

Subpart C—Work-Colleges Program

§ 675.41 Special definitions.

The following definitions apply to this subpart:

(a) *Work-college:* The term "work-college" means an eligible institution that—

(1) Is a public or private nonprofit institution with a commitment to community service;

(2) Has operated a comprehensive work-learning program for at least two years;

(3) Requires—

(i) All resident students who reside on campus to participate in a comprehensive work-learning program; and

(ii) The provision of services as an integral part of the institution's educational program and as part of the institution's educational philosophy; and

(4) Provides students participating in the comprehensive work-learning program with the opportunity to contribute to their education and to the welfare of the community as a whole.

(b) *Comprehensive student work-learning program:* A student work/service program that—

(1) Is an integral and stated part of the institution's educational philosophy and program;

(2) Requires participation of all resident students for enrollment, participation, and graduation;

(3) Includes learning objectives, evaluation, and a record of work performance as part of the student's college record;

(4) Provides programmatic leadership by college personnel at levels comparable to traditional academic programs;

(5) Recognizes the educational role of work-learning supervisors; and

(6) Includes consequences for nonperformance or failure in the work-learning program similar to the consequences for failure in the regular academic program.

(Authority: 42 U.S.C. 2756b)

§ 675.42 Allocation and reallocation.

The Secretary allocates and reallocates funds based on each institution's approved request for Federal funds for the Work-Colleges program as a percent of the total of such approved requests for all applicant institutions.

(Authority: 42 U.S.C. 2756b)

§ 675.43 Purpose.

The purpose of the Work-Colleges program is to recognize, encourage, and promote the use of comprehensive work-learning programs as a valuable educational approach when it is an integral part of the institution's educational program and a part of a financial plan that decreases reliance on grants and loans and to encourage students to participate in community service activities.

(Authority: 42 U.S.C. 2756b)

§ 675.44 Program description.

(a) An institution that satisfies the definition of "work-college" in § 675.41(a) and wishes to participate in the Work-Colleges program must apply to the Secretary at the time and in the manner prescribed by the Secretary.

(b) An institution may expend funds separately, or in combination with other eligible institutions, to provide work-learning opportunities for currently enrolled students.

(c) For any given award year, Federal funds allocated and reallocated for that award year under sections 442 and 462 of the HEA may be transferred for the purpose of carrying out the Work-Colleges program to provide flexibility in strengthening the self-help-through-work element in financial aid packaging.

(Authority: 42 U.S.C. 2756b)

§ 675.45 Allowable costs, Federal share, and institutional share.

(a) *Allowable costs.* An institution participating in the Work-Colleges program may use its allocated and reallocated program funds to carry out the following activities:

(1) Support the educational costs of qualified students through self-help payments or credits provided under the work-learning program within the limits of part F of title IV of the HEA.

(2) Promote the work-learning-service experience as a tool of postsecondary education, financial self-help, and community service-learning opportunities.

(3) Carry out activities in sections 443 or 446 of the HEA.

(4) Administer, develop, and assess comprehensive work-learning programs including—

(i) Community-based work-learning alternatives that expand opportunities for community service and career-related work; and

(ii) Alternatives that develop sound citizenship, encourage student persistence, and make optimum use of assistance under the Work-Colleges program in education and student development.

(b) *Federal share of allowable costs.* An institution, in addition to the funds allocated and reallocated for this program, may use transferred funds provided under its Federal Perkins Loan or its FWS program to pay allowable costs.

(c) *Institutional share of allowable costs.* An institution must match Federal funds made available for this program on a dollar-for-dollar basis from non-Federal sources. The institution shall keep records documenting the amount and source of its share.

(Authority: 42 U.S.C. 2756b)

§ 675.46 Unallowable costs.

An institution participating in the Work-Colleges program may not use its allocated and reallocated program funds and transferred funds provided under its Federal Perkins Loan or its FWS program to pay costs related to the purchase, construction, or alteration of physical facilities or indirect administrative costs.

(Authority: 42 U.S.C. 2756b)

§ 675.47 Multi-institutional work-colleges arrangements.

(a) An institution participating in the Work-Colleges program may enter into a written agreement with another participating institution to promote the work-learning-service experience.

(b) The agreement described in paragraph (a) of this section must—

(1) Designate the administrator of the program; and

(2) Specify the terms, conditions, and performance standards of the program.

(c) Each institution shall retain responsibility for the proper disbursement of the Federal funds it contributes under an agreement with other eligible institutions.

(Approved by the Office of Management and Budget under control number 1840–0535)

(Authority: 42 U.S.C. 2756b)

§ 675.48 Agreement.

To participate in the Work-Colleges program, an institution shall enter into an agreement with the Secretary. The agreement provides that, among other things, the institution shall—

(a) Assure that it will comply with all the appropriate provisions of the HEA and the appropriate provisions of the regulations;

(b) Assure that it satisfies the definition of "work-college" in § 675.41(a);

(c) Assure that it will match the Federal funds according to the requirements in § 675.45(c); and

(d) Assure that it will use funds only to carry out the activities in § 675.45(a).

(Approved by the Office of Management and Budget under control number 1840–0535)

(Authority: 42 U.S.C. 2756b)

§ 675.49 Procedures and records.

In administering a Work-Colleges program under this subpart, an institution shall comply with the applicable provisions of this part 675.

(Authority: 42 U.S.C. 2756b)

§ 675.50 Termination and suspension.

Procedures for termination and suspension under this subpart are governed by applicable provisions found in 34 CFR part 668, subpart G of the Student Assistance General Provisions regulations.

(Authority: 42 U.S.C. 2756b)

§ 675.4 [Amended]

20. In 34 CFR part 675 remove the term "College Work-Study" before the word "program" and add, in its place, the term "FWS" in § 675.4(a).

21. In 34 CFR part 675 remove the term "CWS" and add, in its place, the term "FWS" in the following places:

§ 675.3 [Amended]

(a) Section 675.3(a) and (b).

§ 675.4 [Amended]

(b) Section 675.4(d)(1) (two times).

§ 675.8 [Amended]

(c) Section 675.8 introductory text, (b), (c), and (e).

§ 675.9 [Amended]

(d) Section 675.9 introductory text.

§ 675.10 [Amended]

(e) Section 675.10(a).

§ 675.14 [Amended]

(f) Section 675.14 (a)(1), (a)(2) introductory text, (a)(2)(i), (a)(3), (c) introductory text, and (d)(1) (three times).

§ 675.15 [Amended]

(g) Section 675.15(a) introductory text.

§ 675.16 [Amended]

(h) Section 675.16(a)(3), (a)(4), (b)(1), (b)(2), and (b)(3).

§ 675.17 [Amended]

(i) Section 675.17.

§ 675.18 [Amended]

(j) Section 675.18(a) introductory text, (a)(1), redesignated (a)(5), (b)(1), (b)(2)(i), (b)(4), (c)(1) and (2), and (d).

§ 675.19 [Amended]

(k) Section 675.19(a)(1), (a)(3)(i) introductory text, (a)(3)(ii), and (b)(4) (two times).

§ 675.20 [Amended]

(l) Section 675.20(a) heading and introductory text, (b)(1), (c) heading, and (c)(2) introductory text.

§ 675.22 [Amended]

(m) Section 675.22(b) heading.

§ 675.23 [Amended]

(n) Section 675.23(a) (two times), and (b)(2)(ii).

§ 675.24 [Amended]

(o) Section 675.24 heading, (a)(1), and (b).

§ 675.25 [Amended]

(p) Section 675.25(a)(1) and (2), and (b).

§ 675.26 [Amended]

(q) Section 675.26 heading and (d)(2)(ii).

§ 675.27 [Amended]

(r) Section 675.27(a)(1) (two times), (a)(3), and (b).

§ 675.33 [Amended]

(s) Section 675.33(b).

§ 675.35 [Amended]

(t) Section 675.35(a).

§ 675.37 [Amended]

(u) Section 675.37(a).

§ 675.14 [Amended]

22. In 34 CFR part 675 remove the term "SEOGs" and add, in its place, the term "FSEOGs" in § 675.14(b)(1)(iv).

23. In 34 CFR part 675 remove the term "SEOG" and add, in its place, the term "FSEOG" in the following places:

§ 675.18 [Amended]

(a) Section 675.18 redesignated (a)(5), (b)(2)(i), and (b)(4).

§ 675.19 [Amended]

(b) Section 675.19(b)(4).

§ 675.2 [Amended]

24. In § 675.2, paragraph (a) is amended by removing the term "Supplemental Educational Opportunity Grant (SEOG) program" and adding, the term "Federal Supplemental Educational Opportunity Grant (FSEOG) program" in alphabetical order.

Appendix B to Part 675 [Amended]

25. Appendix B to 34 CFR part 675 is amended by removing the term "College Work-Study program" and adding, in its place, "Federal Work-Study program", and removing the term "CWS" and adding, in its place, the term "FWS" each place these terms appear.

§ 675.2 [Amended]

26. In § 675.2(a) remove the term "Perkins Loan Program", and add the term "Federal Perkins Loan Program" in alphabetical order.

27. In 34 CFR part 675 add the word "Federal" before the word "Perkins" in the following places:

§ 675.14 [Amended]

(a) Section 675.14(b)(1)(x).

§ 675.18 [Amended]

(b) Section 675.18(b)(2)(i) and (b)(4).

§ 675.19 [Amended]

(c) Section 675.19(b)(4).

§ 675.2 [Amended]

28. In § 675.2(a) remove the term "Pell Grant Program" and add the term "Federal Pell Grant Program" in alphabetical order.

29. In 34 CFR part 675 add the word "Federal" before the word "Pell" in the following places:

§ 675.14 [Amended]

(a) Section 675.14(b)(1)(i) (two times) and (c)(2).

§ 675.15 [Amended]

(b) Section 675.15(c)(2).

§ 675.18 [Amended]

(c) Section 675.18(b)(4).

§ 675.2 [Amended]

30. In § 675.2(a) remove the term "Guaranteed Student Loan (GSL) Program" and add the term "Federal Family Education Loan (FFEL) programs" in alphabetical order.

§ 675.2 [Amended]

31. In § 675.2(a) remove the term "Income Contingent Loan Program".

§ 675.2 [Amended]

32. In § 675.2(a) add the term "Federal" before the terms "PLUS Program" and "SLS Program".

§ 675.14 [Amended]

33. In § 675.14(b)(3) add the term "Federal" before the term "Supplemental Loan for Students (SLS)".

§ 675.17 [Amended]

34. In § 675.17 remove the term "Programs" after the term "Development" and add the term "Program".

PART 676—FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

1. The authority citation for part 676 continues to read as follows:

Authority: 20 U.S.C. 1070b–1070b–3, unless otherwise noted.

§ 676.1 [Amended]

2. Section 676.1 is amended by removing the term "Supplemental Educational Opportunity Grant (SEOG) Program" and replacing it with the term "Federal Supplemental Educational Opportunity Grant (FSEOG) program" in paragraph (a).

3. Section 676.4 is amended by redesignating paragraphs (b), (c), and (d) as paragraphs (c), (d), and (e) respectively; by adding the words "Except as specifically provided in § 676.16(f), an" before the word "institution" in the introductory text of redesignated paragraph (e); revising paragraph (a); and by adding new paragraphs (b) and (f) to read as follows:

§ 676.4 Allocation and reallocation.

(a) The Secretary allocates funds to institutions participating in the FSEOG program in accordance with section 413D of the HEA.

(b) The Secretary reallocates funds to institutions participating in the FSEOG program in a manner that best carries out the purposes of the FSEOG program.

* * * * *

(f) *Unexpended funds.* (1) If an institution returns more than 10 percent of its allocation for an award year, the Secretary will reduce the institution's allocation for the second succeeding award year by the dollar amount returned.

(2) The Secretary may waive the provision of paragraph (f)(1) of this section for a specific institution if the Secretary finds that enforcement would be contrary to the interests of the program.

(3) The Secretary considers enforcement of paragraph (f)(1) of this section to be contrary to the interest of the program only if the institution returned more than 10 percent of its allocation due to circumstances beyond the institution's control that are not expected to recur.

* * * * *

4. Section 676.10 is amended by revising paragraph (b) to read as follows:

§ 676.10 Selection of students for FSEOG awards.

* * * * *

(b) *Part-time and independent students.* If an institution's allocation of FSEOG funds is directly or indirectly based in part on the financial need demonstrated by students attending the institution as less-than-full-time or independent students, and if the total financial need of those students exceeds 5 percent of the total financial need of all students at the institution, the institution shall offer to those students at least 5 percent of its allocation under this part.

* * * * *

5. Section 676.14 is amended by removing the words "Guaranteed Student Loans" and adding, in its place, the words "Federal Family Education Loan" in paragraph (b)(1)(ii); by removing the words "and need-based ICLs" after the words "Direct Loans" in paragraph (b)(1)(x); by adding the words "or Federal" before the word "PLUS", by removing the comma after the words "PLUS loan", and by removing the words "or non-need-based ICL" before the word "as" in paragraph (b)(3); by revising paragraph (c); and by republishing the OMB control number to read as follows:

§ 676.14 Overaward.

* * * * *

(c) *Treatment of resources in excess of need.* An institution shall take the following steps when it learns that a student has received additional resources not included in the calculation of FSEOG eligibility that would result in the student's total resources exceeding his or her financial need by more than $300:

(1) The institution shall decide whether the student has increased financial need that was unanticipated when it awarded financial aid to the student. If the student demonstrates increased financial need and the total resources do not exceed this increased need by more than $300, no further action is necessary.

(2) If no increased need is demonstrated, or the student's total resources still exceed his or her need by more than $300, as recalculated pursuant to paragraph (c)(1) of this section, the institution shall cancel any undisbursed loan or grant (other than a Federal Pell Grant).

(3) If the student's total resources still exceed his or her need by more than $300, after the institution takes the steps required in paragraphs (c)(1) and (2) of this section, the institution shall consider the amount by which the resources exceed the student's financial need by more than $300 as an overpayment.

* * * * *

(Approved by the Office of Management and Budget under control 1840–0535)

6. Section 676.16 is amended by redesignating paragraphs (f) and (g) as paragraphs (g) and (h) respectively; by adding a new paragraph (f); and by republishing the OMB control number to read as follows:

§ 676.16 Payment of an FSEOG.

* * * * *

(f)(1) An institution may disburse FSEOG funds after the student has ceased to be enrolled in accordance with paragraphs (f)(2) and (3) of this section.

(2) A disbursement described in paragraph (f)(1) of this section may be made—

(i) Only if the FSEOG is awarded to the student while he or she is still an eligible student; and

(ii) Only if the FSEOG funds is used to cover documented educational costs to the student that are normally included in a student's cost of attendance under section 472 of the HEA for the payment period for which the FSEOG was intended and the student was actually enrolled.

(3) The institution shall document in the student's file the reason for the late disbursement.

* * * * *

(Approved by the Office of Management and Budget under control number 1840–0535)

7. Section 676.18 is amended by removing paragraph (a)(3); by adding the word "and" after the semicolon in paragraph (a)(1); by removing the word "and" after the semicolon in paragraph (a)(2); by removing the semicolon in paragraph (a)(2) and adding, in its place,

a period; and by revising paragraph (c) to read as follows:

§ 676.18 Use of funds.

* * * * *

(c) *Transfer back of funds to FWS.* An institution shall transfer back to the FWS program any funds unexpended at the end of the award year that it transferred to the FSEOG program from the FWS program.

* * * * *

8. Section 676.20 is amended by revising paragraph (a) and by adding a new paragraph (c) to read as follows:

§ 676.20 Minimum and maximum FSEOG award.

(a) An institution may award an FSEOG for an academic year in an amount it determines a student needs to continue his or her studies. However, except as provided in paragraph (c) of this section, an FSEOG may not be awarded for a full academic year that is—

(1) Less than $100; or

(2) More than $4,000.

* * * * *

(c) The maximum amount of the FSEOG may be increased from $4,000 to as much as $4,400 for a student participating in a program of study abroad that is approved for credit by the home institution, if reasonable costs for the study abroad program exceed the cost of attendance at the home institution.

* * * * *

9. Section 676.21 is amended by removing the words "Beginning with the 1989–90 award year", by removing the comma before the words "the Secretary", and by capitalizing the letter "t" in the word "the" before the word "Secretary" in paragraph (b) introductory text and by revising paragraph (a) to read as follows:

§ 676.21 FSEOG Federal share limitations.

(a) Except as provided in paragraph (b) of this section, for the 1993–94 award year and subsequent award years, the Federal share of the FSEOG awards made by an institution may not exceed 75 percent of the amount of FSEOG awards made by that institution.

* * * * *

10. In 34 CFR part 676 remove the term "SEOG" and add, in its place, the term "FSEOG" in the following places:

§ 676.3 [Amended]

(a) Section 676.3(a) and (b).

§ 676.4 [Amended]

(b) Section 676.4 redesignated (e)(1).

§ 676.8 [Amended]

(c) Section 676.8 introductory text and (b).

§ 676.9 [Amended]

(d) Section 676.9 introductory text.

§ 676.10 [Amended]

(e) Section 676.10 heading, (a)(1), and (a)(2) (three times).

§ 676.14 [Amended]

(f) Section 676.14(a)(1) (two times), (a)(2) introductory text, (a)(2)(i), (a)(3) (two times), and (d)(1) and (2).

§ 676.15 [Amended]

(g) Section 676.15(a) introductory text.

§ 676.16 [Amended]

(h) Section 676.16 heading, paragraph (a)(1), (a)(2) (three times), (b), (d)(1), (e)(1) introductory text, redesignated paragraphs (g) and (h).

§ 676.17 [Amended]

(i) Section 676.17.

§ 676.18 [Amended]

(j) Section 676.18(a) introductory text, (b)(1), (b)(2)(i), and (b)(4).

§ 676.19 [Amended]

(k) Section 676.19(a)(1), (a)(2)(i) introductory text and (ii), and (b)(3).

§ 676.20 [Amended]

(l) Section 676.20 heading and (b).

§ 676.21 [Amended]

(m) Section 676.21 heading, (b)(2), and (c).

11. In 34 CFR part 676 remove the term "SEOGs" and add, in its place, the term "FSEOGs" in the following places:

§ 676.14 [Amended]

(a) Section 676.14 (b)(1)(iv).

§ 676.21 [Amended]

(b) Section 676.21(b) introductory text.

§ 676.2 [Amended]

12. In § 676.2(a) remove the term "Perkins Loan Program" and add the term "Federal Perkins Loan Program" in alphabetical order.

13. In 34 CFR part 676 add the term "Federal" before the term "Perkins" in the following places:

§ 676.14 [Amended]

(a) Section 676.14(b)(1)(x).

§ 676.18 [Amended]

(b) Section 676.18(b)(2)(i), (b)(3), and (b)(4).

§ 676.19 [Amended]

(c) Section 676.19(b)(3).

§ 676.2 [Amended]

14. In § 676.2(a) remove the term "Pell Grant Program" and add the term "Federal Pell Grant Program" in alphabetical order.

15. In 34 CFR part 676 add the term "Federal" before the term "Pell" in the following places:

§ 676.10 [Amended]

(a) Section 676.10(a)(1) and (2).

§ 676.14 [Amended]

(b) Section 676.14(b)(1)(i).

§ 676.15 [Amended]

(c) Section 676.15(c)(2).

§ 676.18 [Amended]

(d) Section 676.18(b)(4).

16. In 34 CFR part 676 remove the "CWS" and add, in its place, "FWS" in the following places:

§ 676.18 [Amended]

(a) Section 676.18(b)(2)(i), (b)(3), and (b)(4).

§ 676.19 [Amended]

(b) Section 676.19(b)(3).

§ 676.2 [Amended]

17. In § 676.2(a) remove the term "College Work-Study (CWS) Program" and add the term "Federal Work-Study (FWS) Program" in alphabetical order.

18. In § 676.2(a) remove the term "Guaranteed Student Loan (GSL) Program" and add the term "Federal Family Education Loan (FFEL) programs" in alphabetical order.

19. In § 676.2(a) remove the term "Income Contingent Loan Program".

20. In § 676.2(a) remove the terms "PLUS Program" and "SLS Program" and add the terms "Federal PLUS Program" and "Federal SLS Program" in alphabetical order.

§ 676.14 [Amended]

21. In § 676.14(b)(3) add the word "Federal" before the term "Supplemental Loan for Students (SLS)".

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Part IV

Department of Education

34 CFR Part 682
Federal Family Education Loan Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 682

RIN 1840–AC09

Federal Family Education Loan Program

AGENCY: Department of Education.

ACTION: Final Regulations.

SUMMARY: The Secretary amends the Federal Family Education Loan (FFEL) Program regulations. The FFEL Program consists of the Federal Stafford, Federal Supplemental Loans for Students (SLS), Federal PLUS, and the Federal Consolidation Loan Programs. These amendments are needed to implement certain changes made to the Higher Education Act of 1965, as amended (HEA), by the Omnibus Budget Reconciliation Act of 1993 (OBRA), enacted August 10, 1993, and by the Higher Education Technical Amendments of 1993, enacted December 20, 1993. These regulations also amend the FFEL Program regulations to permit a lender to issue a "master check" to an institution for purposes of disbursing Federal Stafford loan proceeds to an institution, to prohibit a subsequent holder of a loan to bill the Secretary for any applicable interest benefits or special allowance on a loan for which origination fees have not been paid, and to limit the collection charges that may be assessed a borrower with a defaulted loan that is paid off through loan consolidation. These regulations also clarify a change made to the HEA by the Improving America's Schools Act of 1994 (Pub. L. 103–382).

EFFECTIVE DATE: These regulations take effect July 1, 1995. However, affected parties do not have to comply with the information collection requirements in §§ 682.305, 682.401, 682.404, and 682.603 until the Department of Education publishes in the **Federal Register** the control number assigned by the Office of Management and Budget (OMB) to these information collection requirements. Publication of the control number notifies the public that OMB has approved these information collection requirements under the Paperwork Reduction Act of 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas D. Laine, Program Specialist, Federal Family Education Loan Program Section, Loans Branch, U.S. Department of Education, 600 Independence Avenue, SW., room 4310, Regional Office Building 3, Washington, DC 20202–5343, telephone: (202) 708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

The FFEL Program regulations (34 CFR Part 682) govern the Federal Stafford Loan Program, the Federal Unsubsidized Stafford Loan Program, the Federal SLS Program, the Federal PLUS Program, and the Federal Consolidation Loan Program (formerly the Guaranteed Student Loan programs).

The Secretary is amending 34 CFR Part 682 to implement changes made to the HEA by the Omnibus Budget Reconciliation Act of 1993 (OBRA) (Pub. L. 103–66) and the Higher Education Technical Amendments of 1993 (the Technical Amendments) (Pub. L. 103–208).

These amendments reflect changes made to the HEA by OBRA, such as the payment of lender referral fees to guaranty agencies, the reduction of the reinsurance coverage and reinsurance rates for a guaranty agency's losses on default claims and the reduction of insurance coverage a guaranty agency may pay on default claims.

These amendments also reflect changes to the HEA made by the Technical Amendments, such as a lender's obligation to rebate excess interest on certain Federal Stafford loans to either the borrower or the Secretary and require lenders to convert the interest rates on certain Federal Stafford loans to a variable interest rate.

These amendments also permit a lender to disburse Federal Stafford loan proceeds to a school via a master check, prohibit a subsequent holder of a loan to bill the Secretary for any applicable interest benefits or special allowance on a loan for which origination fees have not been paid, and limit the collection charges that may be assessed a borrower with a defaulted loan that is paid off through loan consolidation.

These amendments also exclude loans made under a guaranty agency's lender-of-last-resort program from the guaranty agency's reinsurance percentage determined under § 682.404.

On October 13, 1994, the Secretary published a notice of proposed rulemaking (NPRM) for the FFEL Program in the **Federal Register** (59 FR 52038). The NPRM included a discussion of the issues surrounding the proposed changes which will not be repeated here. The following list summarizes those issues and identifies the pages of the preamble to the NPRM on which a discussion may be found:

- Returning excess interest to certain Stafford loan borrowers or the Secretary and converting the interest rate on certain Federal Stafford loans to a variable interest rate (page 52038);
- Disbursement of a Federal Stafford loan via a master check (page 52038);
- The obligation of an originating lender to pay origination fees to the Secretary (page 52039);
- Payment of a lender referral fee to each guaranty agency with whom the Secretary has a lender referral agreement in an amount equal to 0.5 percent of the principal amount of a loan made as a result of the agency's referral services (page 52039);
- The limitation of a guaranty agency to paying 98 percent of the unpaid principal balance of each loan on default claims on loans disbursed on or after October 1, 1993 (page 52039);
- The limitation of collection charges and late fees a guaranty agency may guarantee when a defaulted loan is consolidated (page 52039); and
- The rates at which the Secretary will reinsure a guaranty agency's default claims (page 52039).

Substantive Revisions to the Notice of Proposed Rulemaking

The Secretary has decided not to issue proposed section 682.418 which would implement section 428(n) of the HEA (State Share of Default Costs). As discussed below, the Secretary has determined that further consideration of the regulations is necessary.

- The final regulations have been revised to clarify that a borrower's loan proceeds disbursed via a master check are treated, for operational purposes, the same way as loan proceeds are treated that are disbursed via electronic funds transfer. These technical changes are reflected throughout the regulations.
- The final regulations have been revised to provide that a loan made under a guaranty agency's lender-of-last-resort program are not included in the guaranty agency's reinsurance rate determined under § 682.404.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 129 parties submitted comments on the proposed regulations. An analysis of the comments and changes made to the regulations that differ from the NPRM follows.

Major issues are grouped according to subject, with the reference to the appropriate sections of the regulations. Other substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes, and suggested changes

the Secretary is not legally authorized to make under the applicable statutory authority are generally not addressed.

General

Comments: Some commenters noted that the proposed regulations did not reflect other changes made to the HEA as a result of OBRA and the Technical Amendments. The commenters expressed concern that the Department's decision not to reflect these statutory changes in the regulations would result in a delay in their implementation under the master calendar provisions of the HEA.

Discussion: The Secretary agrees that the statutory changes noted by the commenters should be incorporated into the FFEL regulations and is preparing a regulations package of technical corrections and self-implementing changes that the Department plans to publish shortly. As self-implementing provisions of the statute, these requirements are currently in effect.

Changes: None.

Comments: Many commenters asked the Secretary not to implement proposed section 682.418, which would implement the requirement in section 428(n) of the HEA, which requires States to pay a share of the costs of defaults in the FFEL Program. Many of the commenters raised concerns or questions about a number of the proposed regulatory provisions. In addition, some commenters informed the Secretary that the implementation of this rule in fiscal year 1995 would not give the States enough time to appropriate money to pay their fees and to enact laws under which they could pass a portion of their fees on to schools. Further, the commenters argued that the States would not be able to develop any criteria for exceptional mitigating circumstances that could be approved by the Secretary before the fee is due to the Secretary. In addition, many commenters argued that the formula prescribed by section 428(n) of the HEA would impose undue penalties on States and schools.

Discussion: Based on the comments received in response to the NPRM, the Secretary has determined that more time is needed to review and address the concerns raised by the commenters regarding implementation of section 428(n) of the HEA. Therefore, the Secretary has decided not to issue regulations implementing that provision at this time. The Secretary will further evaluate the statutory requirements and pursue further rulemaking during 1995 to implement section 428(n) of the HEA for fiscal year 1996. Moreover, the Secretary will exercise his authority under section 432(a)(5) and (6) of the HEA to waive any fee a State would be responsible to pay under section 428(n) of the HEA for fiscal year 1995.

Changes: The Secretary has decided that more time is needed to review the concerns raised by the commenters and, therefore, is not publishing the final rule to implement section 428(n) of the HEA in these regulations. The Secretary expects to fully implement this provision in fiscal year 1996 and will publish the final regulations at a later date.

Section 682.202 Permissible Charges by Lenders to Borrowers

Comments: Many commenters suggested that the Secretary calculate a borrower's refund of excess interest paid on a Federal Stafford loan based on the ending principal balance of the loan for the quarter instead of the daily principal balance. The commenter noted that using the average daily principal balance of the loan for the quarter would be more burdensome to a lender than using the ending principal balance. Other commenters noted that the guidance in the regulations was not consistent with guidance the Department has previously issued.

Discussion: The Secretary is aware that using the average daily principal balance of a loan for a quarter requires a lender to track more information than if the lender used the ending principal balance of the loan. The Secretary is also aware that the regulatory provisions differ from the guidance the Department has issued with respect to rebates of excess interest. However, these regulations reflect the provisions that are contained in section 427A(i) of the HEA. The Secretary does not have the authority to change these statutory requirements.

Changes: None.

Comments: Many commenters suggested that the Secretary extend the 30-day period to credit the refund to 45 or 60 days. The commenters believed that a lender with a large volume of loans for which a refund was required may not be able to make the appropriate refunds within 30 days from the last day of the calendar year in which the quarter falls.

Discussion: The Secretary realizes that a lender that has a large number of loans for which a rebate is required may have difficulty making the appropriate refunds within the 30-day period. However, the 30-day time period is expressly mandated by section 427(i)(5) of the HEA. The Secretary does not have the authority to change this statutory requirement.

Changes: None.

Section 682.207 Due Diligence in Disbursing a Loan

Comments: A commenter suggested that a school, when receiving FFEL proceeds via check, should be given the option to receive those proceeds via a master check or individual checks. The commenter pointed out that the disbursement of FFEL Program loan proceeds via a master check will place the extra administrative burden and costs associated with processing the master check and cutting individual checks to borrowers at a school in cases when a school would otherwise endorse an individual loan check and deliver it to the borrower.

Discussion: The Secretary agrees with the commenter that disbursement of a loan proceeds via a master could impose such a burden. The Secretary agrees with the commenter that a school should be provided the authority to choose if it wishes loan proceeds to be disbursed via a master check.

Changes: A change has been made. The final regulations provide that FFEL Program loan proceeds may be disbursed via a master check if both the lender and school agree to the use of a master check.

Comments: Many commenters suggested that the Secretary should require a school to obtain a borrower's written authorization to release FFEL Program loan proceeds that are disbursed via a master check. The commenters believed that this is a necessary control to ensure that the borrowers are aware they are receiving their loan proceeds.

Discussion: The Secretary agrees with the commenters that requiring the borrower's written authorization for the release of the initial and any subsequent disbursement of each FFEL loan to be made is a necessary control to ensure that a borrower is aware he or she is receiving the loan proceeds.

Changes: A change has been made. The final regulations have been amended in § 682.604 to require a borrower's written authorization for the release of his or her loan proceeds via a master check.

Section 682.305 Procedures for Payment of Interest Benefits and Special Allowance

Comments: Many commenters suggested that the Secretary notify a guaranty agency, or a new holder of a loan, that the originating lender has failed to pay the origination fees. The commenters argued that a guaranty agency or a new holder will not know if the origination fees have been paid on a loan.

Discussion: The Secretary does not agree with the commenters. The Secretary believes that the most practical way for a lender or guaranty agency to find out if the origination fees have been paid on a loan is through the lender selling the loan or the lender that is submitting the claim. It would not be practicable for the Secretary to verify if the origination fees have been paid on a loan every time a loan is sold or a default claim is filed. The Secretary is not informed by lenders when a loan is sold.

Changes: None.

Comments: Many commenters believed that a guaranty agency should not be penalized by loss of eligibility for reinsurance on a loan because a lender did not pay the origination fees. The commenters believed that the lender should be held responsible and be penalized for failing to pay the origination fees on loans that it has made.

Discussion: The Secretary does not agree with the commenters. It has been the longstanding policy of the Secretary that an FFEL Program loan is not eligible for reinsurance if the lender or agency has failed to comply with all Federal requirements with respect to the loan. However, the Secretary agrees with the commenters that a lender that fails to pay the origination fees should be penalized for failing to do so. The Secretary will take whatever action necessary against a lender to ensure that the origination fees are promptly being paid.

Changes: None.

Comments: Many commenters suggested that the Secretary amend this provision to permit a lender that purchases a loan to pay the origination fees to the Secretary. The commenters argued that many originating lenders sell their loans upon disbursement and have contractual agreements with the purchasing lenders that provide that the purchasing lender will pay the origination fees.

Discussion: The Secretary does not believe that such an amendment is necessary. The Secretary has promulgated this ruie because, in many cases, such origination fees are not being paid to the Secretary. The Secretary believes that it is necessary to hold an originating lender responsible for such fees because this will decrease the incidence of origination fees not being paid to the Secretary. A purchasing lender may reimburse the originating lender for the origination fees.

Changes: None.

Section 682.401 Basic Program Agreement

Comments: Many commenters suggested that the Secretary provide in the regulations that a guaranty agency may (generally) not insure less than 98 percent of the unpaid principal balance of loans insured under its program. The commenters suggested this change because they believed this reflected the language of the HEA.

Discussion: The Secretary does not agree with the commenters. The Secretary believes that Congress intended to bar a guaranty agency from paying lenders more than 98 percent of the unpaid principal and accrued interest on default claims filed on loans made on or after October 1, 1993. The Secretary believes therefore it would be a misuse of a guaranty agency's reserve fund to pay more than 98 percent of the unpaid principal and interest on a defaulted loan.

Changes: None.

Comments: Many commenters suggested that the Secretary's limitation of collection costs that may be included in a Federal Consolidation Loan to 18.5 percent was unreasonable. The commenters believed that 18.5 percent would not cover the collection costs incurred on some loans. The commenters also argued that this provision debilitates the deterring effect collection costs have with respect to a borrower repaying his or her loan.

Discussion: The Secretary does not agree with the commenters that limiting collection costs to 18.5 percent of the borrower's outstanding balance is unreasonable. The Secretary wishes to clarify that this provision is intended to encourage a borrower with a defaulted loan to consolidate the loan in order to get the loan out of default and reestablish his or her eligibility for student financial aid. The Secretary believes that limiting the collection costs that may be included in a Federal Consolidation loan will provide an incentive for a borrower to get out of default.

Changes: None.

Waiver of Proposed Rulemaking

In addition to the changes made to part 682 based on public comment on the notice of proposed rulemaking, the Secretary has revised the regulations to include changes made by the Improving America's Schools Act of 1994 (Pub. L. 103–382), enacted subsequent to publication of the notice of proposed rulemaking.

It is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations in accordance with the Administrative Procedure Act, 5 U.S.C. 553. However, since these changes merely incorporate statutory changes into the regulations, public comment could have no effect. Therefore, the Secretary has determined pursuant to 5 U.S.C. 553(b)(B) that public comment on the regulations is unnecessary and contrary to the public interest.

Executive Order 12866

These final regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action. The potential costs associated with these regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering the Title IV, HEA programs effectively and efficiently. In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, the Secretary has determined that the benefits of these regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Assessment of Educational Impact

In the NPRM, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by, or is available from, any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by, or is available from, any other agency or authority of the United States.

List of Subjects in 34 CFR Part 682

Administrative practice and procedure, Colleges and universities, Education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: November 22, 1994.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.032, Federal Family Education Loan Program)

The Secretary proposes to amend part 682 of title 34 of the Code of Federal Regulations as follows:

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAMS

1. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

2. Section 682.202 is amended by adding new paragraphs (a)(6) and (a)(7) to read as follows:

§ 682.202 Permissible charges by lenders to borrowers.

* * * * *

(a) * * *

(6) *Refund of excess interest paid on Stafford loans.*

(i) For a loan with an applicable interest rate of 10 percent made prior to July 23, 1992, and for a loan with an applicable interest rate of 10 percent made from July 23, 1992 through September 30, 1992, to a borrower with no outstanding FFEL Program loans—

(A) If during any calendar quarter, the sum of the average of the bond equivalent rates of the 91-day Treasury bills auctioned for that quarter, plus 3.25 percent, is less than 10 percent, the lender shall calculate an adjustment and credit the adjustment as specified under paragraph (a)(6)(i)(B) of this section if the borrower's account is not more than 30 days delinquent on December 31. The amount of the adjustment for a calendar quarter is equal to—

(*1*) 10 percent minus the sum of the average of the bond equivalent rates of the 91-day Treasury bills auctioned for the applicable quarter plus 3.25 percent;

(*2*) Multiplied by the average daily principal balance of the loan (not including unearned interest added to principal); and

(*3*) Divided by 4;

(B) No later than 30 calendar days after the end of the calendar year, the holder of the loan shall credit any amounts computed under paragraph (a)(6)(i)(A) of this section to—

(*1*) The Secretary, for amounts paid during any period in which the borrower is eligible for interest benefits;

(*2*) The borrower's account to reduce the outstanding principal balance as of the date the holder adjusts the borrower's account, provided that the borrower's account was not more than 30 days delinquent on that December 31; or

(*3*) The Secretary, for a borrower who on the last day of the calendar year is delinquent for more than 30 days.

(ii) For a fixed interest rate loan made on or after July 23, 1992 to a borrower with an outstanding FFEL Program loan—

(A) If during any calendar quarter, the sum of the average of the bond equivalent rates of the 91-day Treasury bills auctioned for that quarter, plus 3.10 percent, is less than the applicable interest rate, the lender shall calculate an adjustment and credit the adjustment to reduce the outstanding principal balance of the loan as specified under paragraph (a)(6)(ii)(C) of this section if the borrower's account is not more than 30 days delinquent on December 31. The amount of an adjustment for a calendar quarter is equal to—

(*1*) The applicable interest rate minus the sum of the average of the bond equivalent rates of the 91-day Treasury bills auctioned for the applicable quarter plus 3.10 percent;

(*2*) Multiplied by the average daily principal balance of the loan (not including unearned interest added to principal); and

(*3*) Divided by 4;

(B) For any quarter or portion thereof that the Secretary was obligated to pay interest subsidy on behalf of the borrower, the holder of the loan shall refund to the Secretary, no later than the end of the following quarter, any excess interest calculated in accordance with paragraph (a)(6)(ii)(A) of this section;

(C) For any other quarter, the holder of the loan shall, within 30 days of the end of the calendar year, reduce the borrower's outstanding principal by the amount of excess interest calculated under paragraph (a)(6)(ii)(A) of this section, provided that the borrower's account was not more than 30 days delinquent as of December 31;

(D) For a borrower who on the last day of the calendar year is delinquent for more than 30 days, any excess interest calculated shall be refunded to the Secretary; and

(E) Notwithstanding paragraphs (a)(6)(ii)(B), (C) and (D) of this section, if the loan was disbursed during a quarter, the amount of any adjustment refunded to the Secretary or credited to the borrower for that quarter shall be prorated accordingly.

(*7*) *Conversion to Variable Rate.*

(i) A lender or holder shall convert the interest rate on a loan under paragraphs (a)(6)(i) or (ii) of this section to a variable rate.

(ii) The applicable interest rate for each 12-month period beginning on July 1 and ending on June 30 preceding each 12-month period is equal to the sum of—

(A) The bond equivalent rate of the 91-day Treasury bills auctioned at the final auction prior to June 1; and

(B) 3.25 percent in the case of a loan described in paragraph (a)(6)(i) of this section or 3.10 percent in the case of a loan described in paragraph (a)(6)(ii) of this section.

(iii)(A) In connection with the conversion specified in paragraph (a)(6)(ii) of this section for any period prior to the conversion for which a rebate has not been provided under paragraph (a)(6) of this section, a lender or holder shall convert the interest rate to a variable rate.

(B) The interest rate for each period shall be reset quarterly and the applicable interest rate for the quarter or portion shall equal the sum of—

(*1*) The average of the bond equivalent rates of 91-day Treasury bills auctioned for the preceding 3-month period; and

(*2*) 3.25 percent in the case of loans as specified under paragraph (a)(6)(i) of this section or 3.10 percent in the case of loans as specified under paragraph (a)(6)(ii) of this section.

(iv)(A) The holder of a loan being converted under paragraph (a)(7)(iii)(A) of this section shall complete such conversion on or before January 1, 1995.

(B) The holder shall, not later than 30 days prior to the conversion, provide the borrower with—

(*1*) A notice informing the borrower that the loan is being converted to a variable interest rate;

(*2*) A description of the rate to the borrower;

(*3*) The current interest rate; and

(*4*) An explanation that the variable rate will provide a substantially equivalent benefit as the adjustment otherwise provided under paragraph (a)(6) of this section.

(v) The notice may be provided as part of the disclosure requirement as specified under § 682.205.

(vi) The interest rate as calculated under this paragraph may not exceed the maximum interest rate applicable to the loan prior to the conversion.

* * * * *

3. Section 682.207 is amended by removing the word "or" at the end of paragraph (b)(1)(ii)(A); removing the semicolon at the end of paragraph (b)(1)(ii)(B), and adding, in its place, a period and a new sentence; and removing the semicolon at the end of paragraph (b)(1)(v)(B)(*1*), and adding, in its place, a period and a new sentence; by adding a new paragraph (b)(1)(ii)(C) to read as follows:

§ 682.207 Due diligence in disbursing a loan.

* * * * *

(b)(1) * * *

(ii) * * *

(B) * * * A disbursement made by electronic funds transfer must be accompanied by a list of the names, social security numbers, and loan amounts of the borrowers who are receiving a portion of the disbursement; or

(C) If the school and the lender agree, a master check from the lender to the eligible institution to a separate account maintained by the school as trustee for the lender. A disbursement made by a master check must be accompanied by a list of the names, social security numbers, and loan amounts of the borrowers who are receiving a portion of the disbursement;

* * * * *

(v) * * *

(B) * * *

(1) * * * A disbursement made by electronic funds transfer or master check must be accompanied by a list of the names, social security numbers, and loan amounts of the borrowers who are receiving a portion of the disbursement and the names and social security numbers of the students on whose behalf the parents are borrowing.

4. Section 682.300 is amended by revising paragraph (b)(2)(ii)(B), paragraph (c)(3)(ii), and paragraphs (c)(4) (i) and (ii) to read as follows:

§ 682.300 Payment of interest benefits on Stafford and Consolidation Loans.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(B) The proceeds of the disbursement made by electronic funds transfer or master check in accordance with § 682.207(b)(1)(ii) (B) and (C) have not been released from the restricted account maintained by the school on or before that date;

* * * * *

(c) * * *

(3) * * *

(ii) In the case of a loan disbursed by electronic funds transfer or master check, 3 days prior to the first day of the period of enrollment or, if the loan is disbursed after the first day of the period of enrollment, 3 days after disbursement.

(4) * * *

(i) The disbursement check is returned uncashed to the lender or the lender is notified that the disbursement made by electronic funds transfer or master check will not be released from the restricted account maintained by the school; or

(ii) The check for the disbursement has not been negotiated before the 120th day after the date of disbursement or the disbursement made by electronic funds transfer or master check has not been released from the restricted account maintained by the school before that date.

5. Section 682.302 is amended by revising paragraphs (b)(3) (i) and (ii) and paragraph (d)(1)(vi)(B) to read as follows:

§ 682.302 Payment of special allowance on FFEL loans.

* * * * *

(b) * * *

(3) * * *

(i) The disbursement check is returned uncashed to the lender or the lender is notified that the disbursement made by electronic funds transfer or master check will not be released from the restricted account maintained by the school; or

(ii) The check for the disbursement has not been negotiated before the 120th day after the date of disbursement or the disbursement made by electronic funds transfer or master check has not been released from the restricted account maintained by the school before that date.

* * * * *

(d) * * *

(1) * * *

(vi) * * *

(B) the loan proceeds disbursed by electronic funds transfer or master check in accordance with § 682.207(b)(1)(ii) (B) and (C) have not been released from the restricted account maintained by the school on or before that date; or

6. Section 682.305 is amended by revising paragraph (a)(4) to read as follows:

§ 682.305 Procedures for payment of interest benefits and special allowance.

(a) * * *

(4) If an originating lender sells or otherwise transfers a loan to a new holder, the originating lender remains liable to the Secretary for payment of the origination fees. The Secretary will not pay interest benefits or special allowance to the new holder or pay reinsurance to the guaranty agency until the origination fees are paid to the Secretary.

* * * * *

7. Section 682.401 is amended by revising paragraph (b)(10)(vi)(B)*(3)*; adding new paragraphs (b)(10)(iii) and (b)(27); and by revising paragraph (b)(14) to read as follows:

§ 682.401 Basic program agreement.

* * * * *

(b) * * *

(10) * * *

(vi) * * *

(B) * * *

(3) The loan proceeds disbursed by electronic funds transfer or master check in accordance with § 682.207(b)(1)(ii) (B) and (C) have not been released from the restricted account maintained by the school.

(11) * * *

(iii) The Secretary will pay a lender referral fee to each guaranty agency with whom the Secretary has a lender referral agreement, an amount equal to 0.5 percent of the principal amount of a loan made as a result of the agency's referral service.

* * * * *

(14) *Guaranty liability.* The guaranty agency shall guarantee—

(i) 100 percent of the unpaid principal balance of each loan guaranteed for loans disbursed before October 1, 1993; and

(ii) Not more than 98 percent of the unpaid principal balance of each loan guaranteed for loans first disbursed on or after October 1, 1993.

* * * * *

(27) *Collection Charges and Late Fees on Defaulted FFEL loans being Consolidated.* A guaranty agency may not guarantee collection charges or late fees that exceed 18.5 percent of the outstanding principal and interest on a defaulted FFEL Program loan that is included in a Federal Consolidation loan.

* * * * *

8. Section 682.402 is amended by revising paragraphs (e)(3)(iv) introductory text, (e)(3)(iv)(A), the heading of paragraph (e)(8), paragraph (e)(8)(iii) introductory text, the heading of paragraph (e)(10) and paragraph (e)(10)(iii) introductory text to read as follows:

§ 682.402 Death, disability, closed school, false certification, and bankruptcy payments.

* * * * *

(e) * * *

(3) * * *

(iv) In the case of a borrower requesting a discharge because the school, without authorization of the borrower, endorsed the borrower's name on the loan check or signed the authorization for electronic funds transfer or master check, the borrower shall—

(A) Certify that he or she did not endorse the loan check or sign the authorization for electronic funds transfer or master check, or authorize the school to do so;

* * * * *

(8) *Guaranty agency responsibilities with respect to a claim filed by a lender based only on the borrower's assertion that he or she did not sign the loan check or the authorization for the release of loan funds via electronic funds transfer or master check.*

* * * * *

(iii) If the agency determines that a borrower who asserts that he or she did

not sign the electronic funds transfer or master check authorization satisfies the requirements for discharge under paragraph (e)(3)(iv) of this section, it shall, within 30 days after making that determination, pay the claim in accordance with § 682.402(h) and—

* * * * *

(10) *Guaranty agency responsibilities in the case of a loan held by the agency for which a discharge request is submitted by a borrower based only on the borrower's assertion that he or she did not sign the loan check or the authorization for the release of loan proceeds via electronic funds transfer or master check.*

* * * * *

(iii) In the case of a borrower who requests a discharge because he or she did not sign the electronic funds transfer or master check authorization, if the agency determines that the borrower meets the conditions for discharge, it shall immediately terminate any collection efforts against the borrower with respect to the discharged loan amount and any charges imposed or costs incurred by the agency related to the discharged loan amount that the borrower is, or was, otherwise obligated to pay, and within 30 days after making that determination—

* * * * *

9. Section 682.404 is amended by revising paragraphs (a)(1), (b)(1), and (b)(2), by removing paragraph (b)(4), by redesignating paragraph (b)(5) as paragraph (b)(4), by removing the period at the end of paragraph (b)(3)(iii) and adding a semi-colon in its place, and adding a new paragraph (b)(3)(iv).

§ 682.404 Federal reinsurance agreement.

(a) *General.* (1)(i) The Secretary may enter into a reinsurance agreement with a guaranty agency that has a basic program agreement. Except as provided in paragraph (b) of this section, under a reinsurance agreement the Secretary reimburses the guaranty agency for 98 percent of its losses on default claim payments to lenders.

(ii) Notwithstanding paragraph (a)(1)(i) of this section, the Secretary reimburses a guaranty agency for 100 percent of its losses on default claim payments—

(A) For loans made prior to October 1, 1993;

(B) For loans made under an approved lender-of-last-resort program;

(C) For loans transferred under a plan approved by the Secretary from an insolvent guaranty agency or a guaranty agency that withdraws its participation in the FFEL Program;

(D) For a guaranty agency that entered into a basic program agreement under section 428(b) of the Act after September 30, 1976, or was not actively carrying on a loan guarantee program covered by a basic program agreement on October 1, 1976 for five consecutive fiscal years beginning with the first year of its operation.

* * * * *

(b) * * *

(1) If the total of reinsurance claims paid by the Secretary to a guaranty agency during any fiscal year reaches 5 percent of the amount of loans in repayment at the end of the preceding fiscal year, the Secretary's reinsurance payment on a default claim subsequently paid by the guaranty agency during that fiscal year equals—

(i) 90 percent of its losses for loans made before October 1, 1993 or transferred under a plan approved by the Secretary from an insolvent guaranty agency or a guaranty agency that withdraws its participation in the FFEL Program; or

(ii) 88 percent of its losses for loans made on or after October 1, 1993.

(2) If the total of reinsurance claims paid by the Secretary to a guaranty agency during any fiscal year reaches 9 percent of the amount of loans in repayment at the end of the preceding fiscal year, the Secretary's reinsurance payment on a default claim subsequently paid by the guaranty agency during that fiscal year equals—

(i) 80 percent of its losses for loans made before October 1, 1993 or transferred under a plan approved by the Secretary from an insolvent guaranty agency or a guaranty agency that withdraws its participation in the FFEL Program; or

(ii) 78 percent of its losses for loans made on or after October 1, 1993.

(3) * * *

(iv) On loans made under a guaranty agency's approved lender-of-last-resort program.

* * * * *

10. Section 682.406 is amended by revising paragraph (a)(2)(ii) to read as follows:

§ 682.406 Conditions of reinsurance coverage.

(a) * * *

(2) * * *

(ii) The proceeds of the disbursement made by electronic funds transfer or master check in accordance with § 682.207(b)(1)(ii) (B) and (C) have been released from the restricted account maintained by the school within 120 days after disbursement;

11. Section 682.407 is removed and reserved.

12. Section 682.604 is amended by revising paragraph (c)(3) introductory text to read as follows.

§ 682.604 Processing the borrower's loan proceeds and counseling borrowers

* * * * *

(c) * * *

(3) If the loan proceeds are disbursed by electronic funds transfer to an account of the school in accordance with § 682.207(b)(1)(ii)(B), or by master check in accordance with § 682.207(b)(1)(ii)(C), the school must, unless authorization was provided in the loan application, not more than 30 days prior to the first day of classes of the period of enrollment for which the loan is intended, obtain the student's, or in the case of a Federal PLUS loan, the parent borrower's written authorization for the release of the initial and any subsequent disbursement of each FFEL loan to be made, and after the student has registered either—

* * * * *

(Authority: 20 U.S.C. 1078)

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Federal Register

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November 30, 1994

Part V

Environmental Protection Agency

40 CFR Part 372
Addition of Certain Chemicals; Toxic Chemical Release Reporting; Community Right-to-Know; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[OPPTS–400082B; FRL–4922–2]

RIN 2070–AC47

Addition of Certain Chemicals; Toxic Chemical Release Reporting; Community Right-to-Know

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is adding 286 chemicals and chemical categories, which include 39 chemicals as part of two delineated categories, to the list of toxic chemicals subject to reporting under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and section 6607 of the Pollution Prevention Act of 1990 (PPA). The additions of these chemicals and chemical categories are based on their acute human health effects, carcinogenicity or other chronic human health effects, and/or their adverse effects on the environment. EPA is taking this action pursuant to its authority to add to the list those chemicals and chemical categories that meet the EPCRA section 313(d)(2) criteria for addition to the list of toxic chemicals. EPCRA section 313 reporting for the newly listed chemicals and chemical categories will be required beginning with the 1995 calendar year. As such, the first reports for the added chemicals and chemical categories must be submitted to EPA and States by July 1, 1996.

EFFECTIVE DATE: This rule is effective November 22, 1994.

FOR FURTHER INFORMATION CONTACT: Maria J. Doa, Project Manager, 202–260–9592, for specific information regarding this final rule. For further information on EPCRA section 313, contact the Emergency Planning and Community Right-to-Know Information Hotline, Environmental Protection Agency, Mail Stop 5101, 401 M St., SW., Washington, DC 20460, Toll free: 800–535–0202, TDD: 800–553–7672.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Authority

This rule is issued under section 313(d) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. 11001 *et seq.*. EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act of 1986.

B. Background

Section 313 of EPCRA requires certain facilities manufacturing, processing, or otherwise using listed toxic chemicals to report their environmental releases of such chemicals annually. Beginning with the 1991 reporting year, such facilities also must report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the Pollution Prevention Act, 42 U.S.C. 13106. Section 313 established an initial list of toxic chemicals that was composed of more than 300 chemicals and 20 chemical categories. Section 313(d) authorizes EPA to add or delete chemicals from the list, and sets forth criteria for these actions. Under section 313(e), any person may petition EPA to add chemicals to or delete chemicals from the list. EPA issued a statement of petition policy and guidance in the **Federal Register** of February 4, 1987 (52 FR 3479), to provide guidance regarding the recommended content and format for petitions. On May 23, 1991 (56 FR 23703), EPA issued guidance regarding the recommended content of petitions to delete individual members of the section 313 metal compound categories.

II. Background

On January 12, 1994 (59 FR 1788), EPA issued a proposal in the **Federal Register** to add 313 chemicals and chemical categories to the list of toxic chemicals under EPCRA section 313 based on their acute human health effects, carcinogenicity or other chronic human health effects, and/or their environmental effects. EPA's decision to add the chemicals and chemical categories in today's rule to the section 313 list is based on a further assessment, in light of public comments of both the relative toxicity of the chemicals--the potency of the chemical's inherent toxicity--and a careful consideration of the type of adverse effect the chemical causes or can reasonably be anticipated to cause. Under section 313(d)(2)(A) (acute human toxicity), the effect must be "significant." Under section 313(d)(2)(B) the effect must either be cancer or teratogenicity, or some other "serious or irreversible" chronic health effect. Under section 313(d)(2)(C) (environmental toxicity) the effect must be "significant" and "of sufficient seriousness in the judgment of the Administrator" to warrant reporting.

The statute does not specify how serious or significant an effect must be in order for a chemical to be listed under any of the criteria. This determination is left to the EPA's discretion and scientific judgment. The Agency recognizes that not every adverse effect is sufficiently significant or serious to satisfy the criteria. For chemicals with effects that satisfy the criteria, Congress made it clear in section 313 that communities have a right to know about releases of such chemicals. The Agency's goal in implementing section 313 is to ensure that the communities are provided with that release information to allow them to further educate themselves and, if appropriate, take or recommend action.

A brief description of the selection process follows, however, a detailed description of EPA's methodology and rationale for the proposed addition of these chemicals and chemical categories can be found in the proposed rule.

1. Development of the chemical addition list. As a starting point for screening candidates for addition to the toxic chemical list under EPCRA section 313, EPA chose to examine the lists of chemicals regulated or identified, as of concern, under various environmental statutes including: Section 112(b) of the Clean Air Act (CAA) as amended in 1990 (Hazardous Air Pollutants); (2) section 602(b) of the CAA (Class II ozone depleting substances); (3) section 307(a) of the Clean Water Act (CWA) (Priority Pollutant List); (4) Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Active Ingredients, including Special Review, Canceled/Denied or Suspended, and Restricted Use Pesticides; (5) section 302 of EPCRA (Extremely Hazardous Substances); (6) section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); (7) section 3001 of the Resource Conservation and Recovery Act (RCRA) and chemicals listed at 40 CFR 261.33(e) and Appendix VIII; (8) section 1412 of the Safe Drinking Water Act as amended; (9) certain chemicals subject to the Toxics Substance Control Act (Existing Chemicals); and (10) the State of California Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65) (List of Chemicals Known to the State to Cause Reproductive Toxicity); and/or those chemicals designated as possible, probable, or known carcinogens in the Monographs of the International Agency for Research on Cancer (IARC) and the 6th Annual Report on Carcinogens of the National Toxicology Program (NTP), U.S. Department of Health and Human Services (DHHS).

2. *Screening of chemicals.* To prioritize chemicals for possible addition to EPCRA section 313, EPA applied a human health and ecotoxicity screen and a production volume screen, which are described below.

a. *Toxicity screen.* A toxicity screen is a limited review of readily available toxicity data that is used for a preliminary categorization of a chemical during the process of selecting candidates for possible listing under EPCRA section 313. The toxicity screen is used to identify chemicals for further consideration and does not reflect a final determination for listing a chemical under EPCRA section 313. Such a determination can only be made after a hazard assessment is conducted (See Unit II.3. of this preamble). The chemicals identified above were screened for four general effect categories: Acute human health effects, cancer, other chronic human health effects, and ecological effects.

The screening criteria associated with each of the effect areas used in the toxicity screen are discussed in detail in the *Revised Draft Hazard Assessment Guidelines for Listing Chemicals on the Toxic Release Inventory (Draft Hazard Assessment Guidelines)*, (Ref. 11). Based on the results of this screen, the chemicals were preliminarily placed in one of three screening categories defined in the *Draft Hazard Assessment Guidelines*: "high priority;" "medium priority;" or "low priority."

Chemicals that were categorized as "low priority" during the screening process were not considered further as candidates for addition to the EPCRA section 313 list in this rulemaking.

b. *Production volume screen.* EPCRA section 313(f) establishes reporting thresholds of either 25,000 or 10,000 pounds per facility per year related to the amount of a chemical that is manufactured, processed, or otherwise used. EPA anticipates that the addition of chemicals manufactured, imported, processed, or used in quantities less than the EPCRA section 313 activity thresholds would not result in the submission of Toxic Release Inventory (TRI) reports. Thus, EPA elected to focus its attention on chemicals likely to yield reports and also screened potential candidates for the likelihood of meeting the EPCRA section 313 volume thresholds. Chemicals for which there were no data to indicate that the chemical is likely to meet or exceed the EPCRA section 313 volume thresholds were not considered further as possible candidates for addition to the section 313 list at this time.

3. *Hazard evaluation.* After completing the screening phase, EPA conducted a thorough hazard assessment for each of the addition candidates that resulted from the above analyses and determined based on the weight-of-the evidence if there was sufficient evidence to establish that the candidate chemical met the statutory criteria for addition to EPCRA section 313. To make this determination, EPA senior scientists reviewed readily available toxicity information on each chemical for each of the following effect areas: acute human health effects; cancer; other chronic human effects; and environmental effects. In addition, EPA reviewed, where appropriate, information on the environmental fate of the chemical.

The hazard assessment was conducted in accordance with relevant EPA guidelines for each adverse human health or environmental effect (e.g., the appropriate guidelines for hazard evaluation of chemical carcinogens and for the type of evidence required to substantiate a determination of carcinogenicity are the *Assessment Guidelines for Carcinogen Risk* (Ref. 4)). During this assessment the number, severity, and significance of the effects induced by the chemical, the dose level causing the effect, and the quality and quantity of the available data, including the nature of the data (e.g., human epidemiological, laboratory animal, field or workplace studies) and confidence level in the existing data base, were all considered. Where a careful review of the scientific data for a particular chemical results in a high level of confidence that the chemical causes an adverse effect at relatively low dose levels, EPA believes that this evidence is sufficient for listing the chemical under section 313. EPA also believes that where a review of the scientific data indicates that the chemical will cause various adverse effects at moderate dose levels, the total weight-of-the-evidence indicates that there is sufficient evidence for listing the chemical under EPCRA section 313. EPA believes that both types of chemicals described above exhibit moderately high to high toxicity based on a hazard assessment.

EPA also conducted an analysis of exposure for each chemical or chemical category proposed for listing under EPCRA section 313(d)(2)(A) (i.e., based on adverse acute human health effects), and, where appropriate, under section 313(d)(2)(C) (i.e., based on adverse ecological effects). For chemicals listed under EPCRA section 313(d)(2)(A), this analysis included estimated concentrations of the chemical at or beyond the facility site boundary through the use of estimated releases and modelling techniques. EPA did not conduct an analysis of exposure for the chemicals proposed for listing under section 313(d)(2)(B) because these chemicals exhibit moderately high to high toxicity based on a hazard assessment (see Unit IV.B. for a discussion of the use of exposure). As discussed more thoroughly in Unit IV.B. of this preamble, EPA does not believe that it is appropriate to factor exposure into the listing decisions for the chemicals being listed pursuant to section 313(d)(2)(B) in this rulemaking.

Following a review and analysis of the information available about each chemical in this final rule (including information provided through public comment) by senior Agency scientists, the Agency concludes that for each of the chemicals listed one or more of the EPCRA section 313 listing criteria are met. Moreover, the adverse effects associated with each of the chemicals being listed today are serious and significant. In some cases the effects are extreme, such as cancer or death. In others, the effects are serious and lasting, including, for example, impairment of a fetus' or an offspring's physical development, neurological effects inhibiting motor abilities or mental processes or impairing the ability to reproduce, or the sustainability of a fragile ecosystem such as an estuary. For a number of chemicals in the final rule, there is more than one adverse effect.

It is important to understand that although an adverse effect is known or can be reasonably anticipated to be caused by a chemical on the section 313 list, a release of a chemical into a community does not necessarily mean that the effect will occur. Exposure and dose are also important factors in determining whether an adverse effect occurs and how serious the manifestation will be. The listing of a chemical on the section 313 list does not mean that a particular community will experience these adverse effects. Instead the purpose for listing a chemical is to ensure that the public gets information about releases of such chemicals. Thus, EPA believes that for chemicals that typically do not affect solely one or two species but rather affect changes across a whole ecosystem and for which there is well-documented evidence supporting the adverse effects, that their addition to the EPCRA section 313 list is warranted even though the severity of the adverse effects that they induce will be dependent upon site-specific characteristics. Once EPA makes release data available through TRI, the community may then make its own determination on the importance of these releases (and their potential adverse effects).

The expansion of the EPCRA section 313 toxic chemical list is the first phase of the expansion of the TRI program. EPA plans to issue a proposed rule in

early 1995 expanding the scope of industry sectors that would be subject to EPCRA section 313. EPA's initial analysis for this effort is focused on industrial sectors which have activities related to manufacturing that result in significant releases of chemicals listed on EPCRA section 313. EPA is also considering further expanding right-to-know by investigating the feasibility of adding data on exposure to and use of chemicals at TRI facilities. The Agency believes that the collection of this type of data would provide a greater understanding of risk reduction and pollution prevention opportunities.

In conjunction with these expansion activities, the Agency is also considering situations where data of lesser value can be removed from the TRI system. Elsewhere in this issue of the **Federal Register**, EPA is promulgating a rule establishing an alternate threshold for facilities with low annual reportable amounts of listed toxic chemicals. This alternate threshold will provide considerable relief for facilities which generate "small" amounts of EPCRA section 313 chemicals in reportable amounts. This relief will offset the increased burden that this expansion rule may impose. The alternate threshold for manufacture, or process, or otherwise use for each of the chemicals meeting the facility category will be an amount greater than one million pounds per year. If a facility meets the alternate threshold criteria, that facility will not be required to file a complete TRI report (Form R), but will be required to submit an annual certification statement for each chemical meeting these conditions for the reporting year for which these conditions were met and maintain records supporting calculations made to determine these conditions. EPA estimates that this alternate threshold provides the option to convert approximately 20,100 Form R reports to certification statements.

III. Summary of Final Rule

In this action, EPA is adding 286 chemicals and chemical categories, which includes 39 chemicals as part of two delineated categories, to the EPCRA section 313 list. EPA finds that each of these chemicals and chemical categories meets one or more of the EPCRA section 313(d)(2) criteria. Additionally, EPA believes that each of these chemicals can reasonably be anticipated to be manufactured or imported in quantities of at least 10,000 pounds (the EPCRA section 313 otherwise use reporting threshold) by at least one facility. Therefore, the Agency believes that the listing of these chemicals can reasonably be anticipated to generate EPCRA section 313 reports and that adding these chemicals to the toxic chemical list is appropriate.

The proposed rule and record supporting the rulemaking contain information on EPA's review of these chemicals, including the toxicity evaluation. This background information will not be repeated here in the final rule. However, to the extent that comments were received on these issues, those comments are addressed in this document. In addition to general comment and comment addressing a broad number of chemicals, EPA received specific technical comments on 110 of the chemicals and chemical categories. Detailed responses to comments are contained in *Response to Comments Received on the January 12, 1994 Proposed Rule to Expand the EPCRA Section 313 List* (*Response to Comment Document*, Ref. 14). Summaries of responses to comments on selected chemicals appear in units IV.F. and IV.G. of this preamble. Table 1 lists the chemicals that EPA has determined meet the statutory criteria of EPCRA section 313(d)(2) and are therefore being added to the toxic chemical list. Each of the chemicals and chemical categories listed below were found to meet the statutory criteria described in EPCRA section 313(d)(2)(A)-(C). This means that the Agency has made a finding that the chemical is known to cause an effect, *or* is reasonably anticipated to do so. It does not necessarily mean that the chemical is known to cause a given effect. The specific criterion or criteria that the chemical meets are also listed in Table 1 below.

TABLE 1.—CHEMICALS BEING ADDED TO THE EPCRA SECTION 313 LIST

Chemical Name	CAS No.	Section 313(d)(2)(A)	Section 313(d)(2)(B)	Section 313(d)(2)(C)
Abamectin (Avermectin B1)	071751-41-2		X	X
Acephate (Acetylphosphoramidothioic acid O,S-dimethyl ester)	030560-19-1		X	
Acifluorfen sodium salt (5-(2-Chloro-4-(trifluoromethyl)phenoxy)-2-nitro-benzoic acid, sodium salt)	062476-59-9		X	
Alachlor	015972-60-8		X	
Aldicarb	000116-06-3			X
d-trans-Allethrin [d-trans-Chrysanthemic acid of d-allethrone]	028057-48-9		X	
Allylamine	000107-11-9		X	
Aluminum phosphide	020859-73-8	X		
Ametryn (N-Ethyl-N'-(1-methylethyl)-6-(methylthio)-1,3,5,-triazine- 2,4 diamine)	000834-12-8		X	X
Amitraz	033089-61-1		X	
Anilazine (4,6-Dichloro-N-(2-chlorophenyl)-1,3,5-triazin-2-amine)	000101-05-3		X	X
Atrazine (6-Chloro-N-ethyl-N'-(1-methylethyl)-1,3,5,-triazine-2,4-diamine)	001912-24-9		X	
Bendiocarb (2,2-Dimethyl-1,3-benzodioxol-4-ol methylcarbamate)	022781-23-3		X	X
Benfluralin (N-Butyl-N-ethyl-2,6-dinitro-4-(trifluoromethyl) benzenamine)	001861-40-1		X	
Benomyl	017804-35-2		X	
Bifenthrin	082657-04-3		X	X
Bis(tributyltin) oxide	000056-35-9		X	X
Boron trichloride	010294-34-5	X		
Boron trifluoride	007637-07-2		X	
Bromacil (5-Bromo-6-methyl-3-(1-methylpropyl)-2,4(1H,3H)-pyrimidinedione)	000314-40-9		X	
Bromacil lithium salt (2,4(1H,3H)-Pyrimidinedione, 5-bromo-6-methyl-3 (1-methylpropyl), lithium salt)	053404-19-6		X	
Bromine	007726-95-6		X	
1-Bromo-1-(bromomethyl)-1,3-propanedicarbonitrile	035691-65-7		X	
2-Bromo-2-nitropropane-1,3-diol (Bronopol)	000052-51-7		X	
Bromoxynil (3,5-Dibromo-4-hydroxybenzonitrile)	001689-84-5		X	
Bromoxynil octanoate (Octanoic acid, 2,6-dibromo-4-cyanophenyl ester)	001689-99-2		X	

TABLE 1.—CHEMICALS BEING ADDED TO THE EPCRA SECTION 313 LIST—Continued

Chemical Name	CAS No.	Section 313(d)(2)(A)	Section 313(d)(2)(B)	Section 313(d)(2)(C)
Brucine	000357-57-3	X		
C.I. Acid Red 114	006459-94-5		X	
C.I. Direct Blue 218	028407-37-6		X	
Carbofuran	001563-66-2			X
Carboxin (5,6-Dihydro-2-methyl-N-phenyl-1,4-oxathiin-3-carboxamide)	005234-68-4		X	
Chinomethionat (6-Methyl-1,3-dithiolo[4,5-b]quinoxalin-2-one)	002439-01-2		X	
Chlorendic acid	000115-28-6		X	
Chlorimuron ethyl (Ethyl-2-[[[(4-chloro-6-methoxyprimidin-2-yl)-carbonyl]-amino]sulfonyl]benzoate)	090982-32-4		X	
1-(3-Chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride	004080-31-3		X	
p-Chloroaniline	000106-47-8		X	
3-Chloro-2-methyl-1-propene	000563-47-3		X	
p-Chlorophenyl isocyanate	000104-12-1	X		
Chloropicrin	000076-06-2			X
3-Chloropropionitrile	000542-76-7	X		
p-Chloro-o-toluidine	000095-69-2		X	
2-Chloro-1,1,1-trifluoroethane (HCFC-133a)	000075-88-7		X	X
Chlorotrifluoromethane (CFC-13)	000075-72-9		X	X
3-Chloro-1,1,1-trifluoropropane(HCFC-253fb)	000460-35-5		X	X
Chlorpyrifos methyl (O,O-Dimethyl-O-(3,5,6-trichloro-2- pyridyl)phosphorothioate)	005598-13-0		X	X
Chlorsulfuron (2-Chloro-N-[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl) amino]carbonyl]benzenesulfonamide)	064902-72-3		X	
Crotonaldehyde	004170-30-3		X	
Cyanazine	021725-46-2		X	
Cycloate	001134-23-2		X	
Cyclohexanol	000108-93-0		X	
Cyfluthrin (3-(2,2-Dichloroethenyl)-2,2-dimethylcyclopropanecarboxylic acid, cyano(4-fluoro-3-phenoxyphenyl)methylester)	068359-37-5		X	X
Cyhalothrin (3-(2-Chloro-3,3,3-trifluoro-1-propenyl)-2,2-Dimethylcyclopropanecarboxylic acid cyano(3-phenoxyphenyl)methyl ester)	068085-85-8		X	
Dazomet (Tetrahydro-3,5-dimethyl-2H-1,3,5-thiadiazine-2-thione)	000533-74-4		X	
Dazomet sodium salt (2H-1,3,5-Thiadiazine-2-thione, tetrahydro-3,5-dimethyl-, ion(1-), sodium)	053404-60-7		X	
2,4-DB	000094-82-6		X	
2,4-D butoxyethyl ester	001929-73-3		X	
2,4-D butyl ester	000094-80-4		X	
2,4-D chlorocrotyl ester	002971-38-2		X	
Desmedipham	013684-56-5		X	
2,4-D 2-ethylhexyl ester	001928-43-4		X	
2,4-D 2-ethyl-4-methylpentyl ester	053404-37-8		X	
Diazinon	000333-41-5		X	X
2,2-Dibromo-3-nitrilopropionamide	010222-01-2		X	
Dicamba (3,6-Dichloro-2-methyoxybenzoic acid)	001918-00-9		X	
Dichloran (2,6-Dichloro-4-nitroaniline)	000099-30-9		X	
3,3'-Dichlorobenzidine dihydrochloride	000612-83-9		X	
3,3'-Dichlorobenzidine sulfate	064969-34-2		X	
trans-1,4-Dichloro-2-butene	000110-57-6	X		
1,2-Dichloro-1,1-difluoroethane (HCFC-132b)	001649-08-7		X	X
Dichlorofluoromethane (HCFC-21)	000075-43-4		X	X
Dichloropentafluoropropane	127564-92-5		X	X
1,3-Dichloro-1,1,2,3,3-pentafluoropropane (HCFC-225ea)	136013-79-1		X	X
2,2-Dichloro-1,1,1,3,3-pentafluoropropane (HCFC-225aa)	128903-21-9		X	X
1,1-Dichloro-1,2,3,3,3-pentafluoropropane (HCFC-225eb)	111512-56-2		X	X
1,1-Dichloro-1,2,2,3,3-pentafluoropropane (HCFC-225cc)	013474-88-9		X	X
1,3-Dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb)	000507-55-1		X	X
1,2-Dichloro-1,1,3,3,3-pentafluoropropane (HCFC-225da)	000431-86-7		X	X
3,3-Dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca)	000422-56-0		X	X
2,3-Dichloro-1,1,1,2,3-pentafluoropropane (HCFC-225ba)	000422-48-0		X	X
1,2-Dichloro-1,1,2,3,3-pentafluoropropane (HCFC-225bb)	000422-44-6		X	X
Dichlorophene (2,2'-Methylenebis(4-chlorophenol)	000097-23-4		X	X
trans-1,3-Dichloropropene	010061-02-6		X	
Diclofop methyl (2-[4-(2,4-Dichlorophenoxy) phenoxy]propanoicacid, methyl ester)	051338-27-3		X	
Dicyclopentadiene	000077-73-6		X	
Diethatyl ethyl	038727-55-8		X	
Diflubenzuron	035367-38-5		X	X
Diglycidyl resorcinol ether	000101-90-6		X	
Diisocyanates, consisting of:	NA		X	
1,3-Bis(methylisocyanate) cyclohexane	038661-72-2			
1,4-Bis(methylisocyanate) cyclohexane	010347-54-3			
1,4-Cyclohexane diisocyanate	002556-36-7			
Diethyldiisocyanatobenzene	134190-37-7			

TABLE 1.—CHEMICALS BEING ADDED TO THE EPCRA SECTION 313 LIST—Continued

Chemical Name	CAS No.	Section 313(d)(2)(A)	Section 313(d)(2)(B)	Section 313(d)(2)(C)
4,4'-Diisocyanatodiphenyl ether	004128-73-8			
2,4'-Diisocyanatodiphenyl sulfide	075790-87-3			
3,3'-Dimethoxybenzidine-4,4'-diisocyanate	000091-93-0			
3,3'-Dimethyl-4,4'-diphenylene diisocyanate	000091-97-4			
3,3'-Dimethyl diphenylmethane-4,4'-diisocyanate	000139-25-3			
Hexamethylene-1,6-diisocyanate	000822-06-0			
Isophorone diisocyanate	004098-71-0			
Methylenebis(phenyl isocyanate)	000101-68-8			
4-Methyldiphenylmethane-3,4-diisocyanate	075790-84-0			
1,1-Methylene bis(4-isocyanatocyclohexane)	005124-30-1			
1,5-Naphthalene diisocyanate	003173-72-6			
1,3-Phenylene diisocyanate	000123-61-5			
1,4-Phenylene diisocyanate	000104-49-4			
Polymeric diphenylmethane diisocyanate	009016-87-9			
2,2,4-Trimethylhexamethylene diisocyanate	016938-22-0			
2,4,4-Trimethylhexamethylene diisocyanate 015646-96-5				
Dimethipin (2,3,-Dihydro-5,6-dimethyl-1,4-dithiin 1,1,4,4-tetraoxide)	055290-64-7		X	
Dimethoate	000060-51-5		X	
3,3'-Dimethoxybenzidine dihydrochloride (o-Dianisidine dihydrochloride)	020325-40-0		X	
3,3'-Dimethoxybenzidine hydrochloride (o-Dianisidine hydrochloride)	111984-09-9		X	
Dimethylamine	000124-40-3		X	
Dimethylamine dicamba	002300-66-5		X	
3,3'-Dimethylbenzidine dihydrochloride (o-Tolidine dihydrochloride)	000612-82-8		X	
3,3'-Dimethylbenzidine dihydrofluoride (o-Tolidine dihydrofluoride)	041766-75-0		X	
Dimethyl chlorothiophosphate	002524-03-0		X	
Dimethyldichlorosilane	000075-78-5	X		
N,N-Dimethylformamide	000068-12-2		X	
2,6-Dimethylphenol	000576-26-1		X	
Dinitrobutyl phenol (Dinoseb)	000088-85-7		X	X
Dinocap	039300-45-3		X	X
Diphenamid	000957-51-7		X	
Diphenylamine	000122-39-4		X	
Dipotassium endothall (7-Oxabicyclo(2.2.1)heptane-2,3-dicarboxylic acid, dipotassium salt)	002164-07-0		X	
Dipropyl isocinchomeronate	000136-45-8		X	
Disodium cyanodithioimidocarbonate	000138-93-2		X	
2,4-D isopropyl ester	000094-11-1		X	
2,4-Dithiobiuret	000541-53-7		X	
Diuron	000330-54-1		X	X
Dodine (Dodecylguanidine monoacetate)	002439-10-3			X
2,4-DP (Dichlorprop)	000120-36-5		X	
2,4-D propylene glycol butyl ether ester	001320-18-9		X	
2,4-D sodium salt	002702-72-9		X	
Ethoprop (Phosphorodithioic acid O-ethyl S,S-dipropyl ester)	013194-48-4		X	X
Ethyl dipropylthiocarbamate (EPTC)	000759-94-4		X	X
Famphur	000052-85-7		X	X
Fenarimol (.alpha.-(2-Chlorophenyl)-.alpha.-4-chlorophenyl)-5-pyrimidinemethanol)	060168-88-9		X	
Fenbutatin oxide (hexakis(2-methyl-2-phenylpropyl)distannoxane)	013356-08-6		X	X
Fenoxaprop ethyl (2-(4-((6-Chloro-2-benzoxazolylen)oxy)phenoxy)propanoic acid,ethyl ester)	066441-23-4		X	X
Fenoxycarb (2-(4-Phenoxyphenoxy)ethyl]carbamic acid ethyl ester)	072490-01-8		X	
Fenpropathrin (2,2,3,3-Tetramethylcyclopropane carboxylic acid cyano(3-phenoxyphenyl)methyl ester)	039515-41-8		X	X
Fenthion (O,O-Dimethyl O-[3-methyl-4-(methylthio) phenyl] ester, phosphorothioic acid)	000055-38-9		X	X
Fenvalerate (4-Chloro-alpha-(1-methylethyl)benzeneacetic acid cyano(3-phenoxyphenyl)methyl ester)	051630-58-1		X	X
Ferbam (Tris(dimethylcarbamodithioato-S,S')iron)	014484-64-1		X	X
Fluazifop butyl (2-[4-[[5-(Trifluoromethyl)-2-pyridinyl]oxy]-phenoxy]propanoic acid, butyl ester)	069806-50-4		X	
Fluorine	007782-41-4	X		
Fluorouracil (5-Fluorouracil)	000051-21-8		X	
Fluvalinate (N-[2-Chloro-4-(trifluoromethyl)phenyl]-DL-valine(+)-cyano (3-phenoxyphenyl)methyl ester)	069409-94-5		X	X
Folpet	000133-07-3		X	X
Fomesafen (5-(2-Chloro-4-(trifluoromethyl)phenoxy)-N methylsulfonyl)-2-nitrobenzamide)	072178-02-0		X	
alpha-Hexachlorocyclohexane	000319-84-6		X	X
n-Hexane	000110-54-3		X	
Hexazinone	051235-04-2		X	X

TABLE 1.—CHEMICALS BEING ADDED TO THE EPCRA SECTION 313 LIST—Continued

Chemical Name	CAS No.	Section 313(d)(2)(A)	Section 313(d)(2)(B)	Section 313(d)(2)(C)
Hydramethylnon (Tetrahydro-5,5-di-methyl-2(1H)-pyrimidinone[3-[4-(trifluoromethyl)phenyl]-1-[2-[4-(trifluoromethyl) phenyl]ethenyl]-2propenylidene]hydrazone)	067485-29-4		X	X
Imazalil (1-[2-(2,4-Dichlorophenyl)-2-(2-propenyloxy)ethyl]-1H-imidazole)	035554-44-0		X	
3-Iodo-2-propynyl butylcarbamate	055406-53-6		X	
Iron pentacarbonyl	013463-40-6	X		
Isodrin	000465-73-6			X
Isofenphos (2-[[Ethoxyl[(1-methylethyl)amino]phosphinothioyl]oxy] benzoic acid 1-methylethyl ester)	025311-71-1		X	X
Lactofen (5-(2-Chloro-4-(trifluoromethyl)phenoxy)-2-nitro-2-ethoxy-1-methyl-2-oxoethyl ester)	077501-63-4		X	
Linuron	000330-55-2		X	
Lithium carbonate	000554-13-2		X	
Malathion	000121-75-5		X	X
Mecoprop	000093-65-2		X	
2-Mercaptobenzothiazole (MBT)	000149-30-4			X
Merphos	000150-50-5		X	
Metham sodium (Sodium methyldithiocarbamate)	000137-42-8		X	
Methazole (2-(3,4-Dichlorophenyl)-4-methyl-1,2,4-oxadiazolidine-3,5-dione)	020354-26-1			X
Methiocarb	002032-65-7		X	
Methoxone ((4-Chloro-2-methylphenoxy) acetic acid) (MCPA)	000094-74-6		X	
Methoxone sodium salt ((4-Chloro-2-methylphenoxy) acetate sodium salt)	003653-48-3		X	
Methyl isothiocyanate	00556-61-6			X
2-Methyllactonitrile	000075-86-5		X	
N-Methylolacrylamide	000924-42-5		X	
Methyl parathion	000298-00-0		X	X
N-Methyl-2-pyrrolidone	000872-50-4		X	
Methyltrichlorosilane	000075-79-6	X		
Metiram	009006-42-2		X	
Metribuzin	021087-64-5		X	
Mevinphos	007786-34-7			X
Molinate (1H-Azepine-1 carbothioic acid, hexahydro-S-ethyl ester)	002212-67-1		X	
Monuron	000150-68-5			X
Myclobutanil (.alpha.-Butyl-.alpha.-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile)	088671-89-0		X	
Nabam	000142-59-6		X	
Naled	000300-76-5		X	X
Nicotine and salts	NA		X	
Nitrapyrin (2-Chloro-6-(trichloromethyl)pyridine)	001929-82-4		X	
Nitrate compounds (water dissociable)	NA		X	
p-Nitroaniline	000100-01-6		X	
Norflurazon (4-Chloro-5-(methylamino)-2-[3-(trifluoromethyl)phenyl]-3(2H)-pyridazinone)	027314-13-2		X	
Oryzalin (4-(Dipropylamino)-3,5-dinitrobenzenesulfonamide)	019044-88-3		X	
Oxydemeton methyl (S-(2-(Ethylsulfinyl)ethyl) O,O-dimethyl ester phosphorothioic acid)	000301-12-2		X	
Oxydiazon (3-[2,4-Dichloro-5-(1-methylethoxy)phenyl]-5-(1,1-dimethylethyl)-1,3,4-oxadiazol-2(3H)-one)	019666-30-9		X	
Oxyfluorfen	042874-03-3		X	X
Ozone	010028-15-6		X	X
Paraquat dichloride	001910-42-5		X	
Pebulate (Butylethylcarbamothioic acid S-propyl ester)	001114-71-2		X	
Pendimethalin (N-(1-Ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine)	040487-42-1		X	
Pentobarbital sodium	000057-33-0		X	
Perchloromethyl mercaptan	000594-42-3	X		
Permethrin (3-(2,2-Dichloroethenyl)-2,2-dimethylcyclopropanecarboxylic acid, (3-phenoxyphenyl)methyl ester)	052645-53-1		X	X
Phenanthrene	000085-01-8			X
Phenothrin (2,2-Dimethyl-3-(2-methyl-1-propenyl) cyclopropanecarboxylic acid (3-phenoxyphenyl)methyl ester)	026002-80-2		X	X
1,2-Phenylenediamine	000095-54-5		X	
1,3-Phenylenediamine	000108-45-2		X	
1,2-Phenylenediamine dihydrochloride	000615-28-1		X	
1,4-Phenylenediamine dihydrochloride	000624-18-0			X
Phenytoin	000057-41-0		X	
Phosphine	007803-51-2	X		
Picloram	001918-02-1		X	
Piperonyl butoxide	000051-03-6			X
Pirimiphos methyl (O-(2-(Diethylamino)-6-methyl-4-pyrimidinyl)-O,O-dimethyl phosphorothioate)	029232-93-7		X	
Polychlorinated alkanes	NA		X	X

TABLE 1.—CHEMICALS BEING ADDED TO THE EPCRA SECTION 313 LIST—Continued

Chemical Name	CAS No.	Section 313(d)(2)(A)	Section 313(d)(2)(B)	Section 313(d)(2)(C)
Polycyclic aromatic compounds (PACs) consisting of:	NA		X	
Benz(a)anthracene	000056-55-3			
Benzo(a)phenanthrene	000218-01-9			
Benzo(a)pyrene	000050-32-8			
Benzo(b)fluoranthene	000205-99-2			
Benzo(j)fluoranthene	000205-82-3			
Benzo(k)fluoranthene	000207-08-9			
Benzo(rst)pentaphene	000189-55-9			
Dibenz(a,h)acridine	000226-36-8			
Dibenz(a,j)acridine	000224-42-0			
Dibenzo(a,h)anthracene	000053-70-3			
Dibenzo(a,e)fluoranthene	005385-75-1			
Dibenzo(a,e)pyrene	000192-65-4			
Dibenzo(a,h)pyrene	000189-64-0			
Dibenzo(a,l)pyrene	000191-30-0			
7H-Dibenzo(c,g)carbazole	00194-59-2			
7,12-Dimethyl benz(a)anthracene	000057-97-6			
Indeno[1,2,3-cd]pyrene	000193-39-5			
5-Methylchrysene	003697-24-3			
1-Nitropyrene	005522-43-0			
Potassium bromate	007758-01-2		X	
Potassium dimethyldithiocarbamate	000128-03-0		X	
Potassium N-methyldithiocarbamate	000137-41-7		X	
Profenofos (O-(4-Bromo-2-chlorophenyl)-O-ethyl-S-propyl phosphorothioate)	041198-08-7		X	
Prometryn (N,N'-Bis(1-methylethyl)-6-methylthio-1,3,5-triazine-2,4-diamine)	007287-19-6		X	
Propachlor (2-Chloro-N-(1-methylethyl)-N-phenylacetamide)	001918-16-7		X	
Propanil (N-(3,4-Dichlorophenyl)propanamide)	000709-98-8		X	
Propargite	002312-35-8		X	X
Propargyl alcohol	000107-19-7		X	
Propetamphos (3-[(Ethylamino)methoxyphosphinothioyl]oxy]-2-butenoic acid, 1-methylethyl ester)	031218-83-4		X	
Propiconazole (1-[2-(2,4-Dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]-methyl-1H-1,2,4,-triazole)	060207-90-1		X	
Quizalofop-ethyl (2-[4-[(6-Chloro-2-quinoxalinyl)oxy]phenoxy] propanoic acid ethyl ester)	076578-14-8		X	
Resmethrin ([5-(Phenylmethyl)-3-furanyl]methyl 2,2-dimethyl-3-(2-methyl-1-propenyl)cyclopropanecarboxylate])	010453-86-8		X	X
Sethoxydim (2-[1-(Ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxyl-2-cyclohexen-1-one)	074051-80-2		X	
Simazine	000122-34-9		X	
Sodium azide	026628-22-8		X	
Sodium dicamba (3,6-Dichloro-2-methoxybenzoic acid, sodium salt)	001982-69-0		X	
Sodium dimethyldithiocarbamate	000128-04-1		X	
Sodium fluoroacetate	000062-74-8		X	X
Sodium nitrite	007632-00-0		X	
Sodium pentachlorophenate	000131-52-2		X	X
Sodium o-phenylphenoxide	000132-27-4		X	
Strychnine and salts	NA	X		
Sulfuryl fluoride (Vikane)	002699-79-8		X	
Sulprofos (O-Ethyl O-[4-(methylthio)phenyl]phosphorodithioic acid S propyl ester)	035400-43-2		X	X
Tebuthiuron (N-[5-(1,1-Dimethylethyl)-1,3,4-thiadiazol-2-yl)- N,N'-dimethylurea)	034014-18-1		X	
Temephos	003383-96-8		X	
Terbacil (5-Chloro-3-(1,1-dimethylethyl)-6-methyl- 2,4 (1H,3H)-pyrimidinedione)	005902-51-2		X	
1,1,1,2-Tetrachloro-2-fluoroethane (HCFC-121a)	000354-11-0		X	X
1,1,2,2-Tetrachloro-1-fluoroethane (HCFC-121)	000354-14-3		X	X
Tetracycline hydrochloride	000064-75-5		X	
Tetramethrin (2,2-Dimethyl-3-(2-methyl-1-propenyl) cyclopropanecarboxylic acid (1,3,4,5,6,7-hexahydro-1,3-dioxo-2H-isoindol-2-yl)methyl ester)	007696-12-0		X	X
Thiabendazole (2-(4-Thiazolyl)-1H-benzimidazole)	000148-79-8		X	X
Thiobencarb (Carbamic acid, diethylthio-, S-(p-chlorobenzyl))	028249-77-6			X
Thiodicarb	059669-26-0		X	X
Thiophanate ethyl ([1,2-Phenylenebis(iminocarbonothioyl)] biscarbamic acid diethyl ester)	023564-06-9		X	
Thiophanate-methyl	023564-05-8		X	
Thiosemicarbazide	000079-19-6	X		
Triadimefon (1-(4-Chlorophenoxy)-3,3-dimethyl-1-(1H-1,2,4-triazol-1-yl)-2-butanone)	043121-43-3		X	
Triallate	002303-17-5		X	
Tribenuron methyl (2-(4-Methoxy-6-methyl-1,3,5-triazin-2-yl)-methylamino)carbonyl)amino)sulfonyl)-, methyl ester)	101200-48-0		X	
Tributyltin fluoride	001983-10-4			X

TABLE 1.—CHEMICALS BEING ADDED TO THE EPCRA SECTION 313 LIST—Continued

Chemical Name	CAS No.	Section 313(d)(2)(A)	Section 313(d)(2)(B)	Section 313(d)(2)(C)
Tributyltin methacrylate	002155-70-6		X	
S,S,S-Tributyltrithiophosphate (DEF)	000078-48-8		X	X
Trichloroacetyl chloride	000076-02-8	X		
1,2,3-Trichloropropane	000096-18-4		X	
Triclopyr triethylammonium salt	057213-69-1		X	
Triethylamine	000121-44-8	X		
Triforine (N,N'-[1,4-Piperazinediylbis-2,2,2-trichloroethylidene)] bisformamide)	026644-46-2		X	
Trimethylchlorosilane	000075-77-4	X		
2,3,5-Trimethylphenyl methylcarbamate	002655-15-4		X	
Triphenyltin chloride	000639-58-7		X	X
Triphenyltin hydroxide	000076-87-9		X	X
Vinclozolin (3-(3,5-Dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione)	050471-44-8		X	

EPA is deferring final action on 40 chemicals and one chemical category until a later date. These chemicals and the comments received on them raised particularly difficult technical or policy issues which will require additional time to address. The Agency does not believe that it would be in the spirit of community right-to-know to delay final action on the remaining 286 chemicals and chemical categories, pending completion of work on the more limited group. In a future rulemaking, EPA will make a final determination as to whether these chemicals should be added to EPCRA section 313. The public comment that has been received specific to these deferred chemicals will be addressed as part of the future rulemaking discussed above. These chemicals follow:

o-benzyl-p-chlorophenol
butylate
butylated hydroxyanisole (BHA)
calcium hypochlorite
caprolactam
carbon monoxide
cyromazine
dichloromethylphenylsilane
dithiopyr
2,4-D 2-octyl ester
flumetralin
iprodione
isophorone
man made mineral fibers
methylene bis(thiocyanate)
nitric oxide
nitrogen dioxide
nine polycyclic aromatic compounds, specifically:
carbazole
cyclopenta(cd)pyrene
dibenz(a,c)anthracene
dibenz(a,j)anthracene
2-methylchrysene
3-methylchrysene
4-methylchrysene
6-methylchrysene
2-methylfluoranthene
phosphorus oxychloride
phosphorus pentachloride
phosphorus pentasulfide
phosphorus pentoxide
primsulfuron
sodium chlorite
sodium hypochlorite
sodium 2-pyridinethiol-1-oxide
sulfur dioxide
sulfur trioxide
tefluthrin
thiabendazole, hypophosphite salt
trichloroethylsilane
trichlorophenylsilane
vanadium pentoxide

Based on an evaluation of the public comments received and a reanalysis of the available data cited in the proposed rule, EPA has determined that three chemicals, clomazone, 5-chloro-2-(2,4-dichlorophenoxy)phenol, and tetrasodium ethylenediaminetetraacetate, that were proposed for listing do not have sufficient evidence of toxicity at this time to meet the statutory criteria of EPCRA section313(d)(2) and thus are not listed in this final rule. Summaries of responses to chemical-specific comments for these chemicals appear in unit IV.G. of this preamble.

IV. Summary of Public Comment

The public comment period for the proposed rule closed April 12, 1994. On March 9, 1994, EPA held a public meeting on the proposed addition of chemicals and chemical categories. Two hundred and sixty-six comments were received, including 136 from industry, 60 from trade associations, 32 from environmental groups, 15 from private citizens, 3 from Federal agencies, 7 from State agencies and 13 from other public interest groups, labor groups, universities, and associations. In addition to general comment and comment addressing a broad number of chemicals, EPA received specific technical comments on 110 of the chemicals and chemical categories. Detailed responses to all comments, except those comments specific to chemicals for which final action is being deferred, are contained in the *Response to Comment Document* (Ref. 14).

In addition to a number of comments supporting the concept of chemical expansion, EPA received comments in the following major areas: EPA's screening process used to identify potential candidates and the Agency's use of the *Draft Hazard Assessment Guidelines* (Ref. 11); the use of exposure in determining if a chemical meets the statutory criteria of EPCRA section 313; listing of categories; the addition of chemicals that are regulated by the Food and Drug Administration (FDA); the addition of chemicals that are regulated under FIFRA; duplicative reporting; general technical comments; and chemical-specific comments.

A. Comments on EPA's Screening Process Used to Identify Potential Candidates for Addition to EPCRA Section 313 and on EPA's Use of the Draft Hazard Assessment Guidelines

1. *Screening based on toxicity.* Monsanto, Zeneca Incorporated, and the National Oilseed Processors Association contend that the use of minimum effective doses (MEDs) to screen chemicals as potential candidates for addition to the EPCRA section 313 list was unrealistic and overly broad as a screening tool. One of these commenters also contended that EPA based its proposed addition on toxicity screening only.

EPA believes that the commenter may have misunderstood the use of the MED screening criteria. The MED screen is not intended, and is not used by EPA, as a surrogate for the actual statutory listing criteria. The MED was used as a screening tool during the preliminary review of several thousand candidate chemicals, because MED values were available and they are based on experimental values. MEDs are not equivalent to lowest-observed-adverse-effect levels (LOAELs). MEDs are

generally derived from LOAELs from chronic toxicity studies using a log transformation and as such a MED is a single value based upon the best available study. Satisfying the MED screening criteria, however, does not mean that a chemical will necessarily be added to the list. In every case, the Agency determines that at least one of the section 313(d)(2) criteria is met before a chemical is listed. For example, isoprene, 1,3-dichloropropane, and dichlorodimethylmethane passed the toxicity screen, but upon a more detailed review, were determined not to meet the criteria of EPCRA section 313(d)(2) and thus were not proposed for addition.

EPA believes that MEDs are useful as a screening tool and that the methodology has been adequately reviewed both internal and external to the Agency. The MED system was first presented in a peer reviewed article by DeRosa, et. al (Ref. 2). The MED methodology has been used by EPA in programs other than EPCRA section 313. For example, the MED methodology is integral to the reportable quantity (RQ) scoring system as utilized by EPA in CERCLA section 102. The RQ scoring system scheme is described in several **Federal Register** documents (April 4, 1985, 50 FR 13456; September 29, 1986, 51 FR 34535; and March 16, 1987, 52 FR 8140). Further, the Superfund Amendments and Reauthorization Act of 1986 (SARA) required EPA and the Agency for Toxic Substances and Disease Registry (ATSDR) to develop a list of 275 hazardous substances most commonly found at facilities on the National Priorities List (NPL) and considered to present the most significant threat to human health at those sites or at other facilities where releases may occur. During development of criteria to select the first list of 100, the RQ methodology (as discussed in the *Draft Hazard Assessment Guidelines*, Ref. 11) was selected as one of the evaluation tools used to develop the initial list, and the annual updates. When the initial list was published (April 17, 1987, 52 FR 12866) a summary of the methodology used to develop the list was provided.

Monsanto believes that the use of an MED of 500 mg/kg/day as the upper limit of the "may be sufficient" category of the screening criteria required an unrealistically high dose to have been used for toxicity testing.

EPA agrees that the upper bound for the medium priority category may warrant reconsideration. EPA will address this issue and other comments received on the *Draft Hazard Assessment Guidelines* (Ref. 11), when the Agency finalizes that document. However, none of the chemicals proposed for listing in the proposed rule had MEDs that approached this upper bound. Of the chemicals proposed for addition pursuant to EPCRA section 313(d)(2)(B), greater than 93 percent had MED values that were in the range for the high priority category; the remaining chemicals (less than 7 percent) had MEDs in the lowest fifth of the medium priority category range, i.e., MEDs only slightly greater than the high priority category range. EPA reiterates that the MED screen is not intended, and is not used by EPA, as a surrogate for the actual statutory listing criteria. Additions to EPCRA section 313 are based on a hazard assessment, and, where appropriate, an analysis of exposure, to determine whether the chemical meets one or more of the EPCRA section 313(d)(2) listing criteria.

The Natural Resources Defense Council supports the health and environmental effects screening criteria used by EPA as a reasonable basis to screen chemicals as candidates for possible addition to EPCRA section 313.

The Agency agrees with this commenter in its support of the use of the screening criteria and believes that the screening criteria provide a reasonable basis to make a preliminary evaluation of chemicals for possible addition to the EPCRA section 313 list. EPA also agrees with the commenter's statement that the specific screening values are consistent with established risk assessment procedures applied in other EPA programs.

2. *Screening based on production volume.* Eastman Chemical Company states that, in addition to the use of a production volume screen, the Agency should consider the number of TRI Form Rs that would likely be submitted subsequent to listing. If the number is considered to be minimal (perhaps 5, 10, 15 or more reports), then EPA should balance the public's right-to-know with the economic burden placed on an industry.

EPA adopted a production volume screen for the development of the proposed rule to screen out those chemicals for which no reports are expected to be submitted. The Agency believes that it has the discretion to not include such chemicals at this time. If chemicals that did not meet the production volume screen were listed, there would be an economic burden for firms that would have to determine that they did not exceed the reporting threshold, without providing any information to the public.

While the Agency has determined to not list chemicals for which no reports would be submitted, EPA believes that it is appropriate to add chemicals to EPCRA section 313 for which even a small number of reports are likely to be submitted nationally. In such cases, the reporting facilities will still provide important information to the surrounding communities. Even though a particular chemical may only be manufactured, processed, or otherwise used at a relatively small number of facilities, the data provided in the TRI Form R reports by these facilities could represent significant information in the communities in which the facilities are located. The Agency believes that it would be inconsistent with the public's right-to-know not to list chemicals even if only a low number of reports is expected.

3. *Use of the Draft Hazard Assessment Guidelines.* Six industry trade organizations and three companies contend that EPA's use of the *Draft Hazard Assessment Guidelines* (Ref. 11) was inappropriate. The commenters state that the use of the term "draft guidelines" indicates that the document requires additional review. Therefore, they believe that EPA should refrain from using the document to support this rulemaking.

It is appropriate for EPA to use the *Draft Hazard Assessment Guidelines* (Ref. 11), as it did in this rule, in considering whether to list a chemical on the section 313 list. The *Draft Hazard Assessment Guidelines* are an embodiment of internal EPA practices that have been used in listing determinations that have evolved since the inception of the TRI program. The *Draft Hazard Assessment Guidelines* do not constitute a set of rules for adding or deleting chemicals to or from the list: the *Draft Hazard Assessment Guidelines* are an explanation of the process and general standards for evaluating chemicals against the EPCRA section 313 listing criteria. These *Draft Hazard Assessment Guidelines* notwithstanding, EPA has evaluated every chemical proposed for addition directly against the EPCRA section 313 statutory criteria, and has taken into consideration comments submitted by the public specific to those chemicals (responses to those chemical-specific comments are found in the *Response to Comment Document*, (Ref. 14); summaries of most significant chemical-specific comments are found in units IV.F. and IV.G. of this preamble).

B. Use of Exposure Assessments

One of the most significant issues raised by commenters relates to the Agency's consideration of hazard, exposure, and risk in interpreting the

section 313(d)(2) criteria. Specifically, a number of commenters believe that EPA's interpretation of the EPCRA section 313(d)(2)(B) criterion, chronic human health effects, and the section 313(d)(2)(C) criterion, ecological effects, has been overly restrictive. The commenters contend that EPA should conduct risk assessments and make a formal determination that a chemical poses a risk (i.e., a combination of exposure and hazard) before adding it to the EPCRA section 313 list. The commenters argue that the following factors support their contention: (1) The statutory criteria include an implicit exposure and thus risk component; (2) the legislative history illustrates Congress' intent that exposure considerations were to be an integral part of determining whether a chemical should be listed on the EPCRA section 313 list; and (3) EPA should consider exposure in conjunction with section 313(d)(2)(B), chronic human health effects, and for all listings pursuant to section 313(d)(2)(C), ecological effects, because there is precedent for the use of exposure in previous listing and delisting actions.

In light of the many comments received on this issue, EPA has reviewed its positions in this area, and agrees with many of the commenters that there are limited circumstances under which it is appropriate for EPA to consider exposure factors for listing decisions under section 313(d)(2). The Agency believes that exposure considerations are appropriate in making determinations (1) under section 313(d)(2)(A), (2) under section 313(d)(2)(B) for chemicals that exhibit low to moderately low toxicity based on a hazard assessment (i.e., those chemicals for which the value of listing on the EPCRA section 313 list on hazard alone is marginal), and (3) under section 313(d)(2)(C) for chemicals that are low or moderately ecotoxic but do not induce well-documented serious adverse effects as described below. The Agency believes that exposure considerations are not appropriate in making determinations (1) under section 313(d)(2)(B) for chemicals that exhibit moderately high to high human toxicity (These terms, which do not directly correlate to the numerical screening values reflected in the *Draft Hazard Assessment Guidelines*, are defined in unit II.) based on a hazard assessment, and (2) under section 313(d)(2)(C) for chemicals that are highly ecotoxic or induce well-established adverse environmental effects. For chemicals which induce well-established serious adverse effects, e.g., chlorofluorocarbons, which cause stratospheric ozone depletion, EPA believes that an exposure assessment is unnecessary. EPA believes that these chemicals typically do not affect solely one or two species but rather cause changes across a whole ecosystem. EPA believes that these effects are sufficiently serious because of the scope of their impact and the well-documented evidence supporting the adverse effects.

EPA, however, disagrees with those commenters who suggest that EPA must include a risk assessment component to EPCRA section 313 determinations. Specifically, EPA does not agree with the commenters about the extent to which exposure must be considered in making determinations under sections 313(d)(2)(B) and (C). This is primarily because EPA does not agree with the commenters' understanding of EPCRA section 313. Risk assessment may be pertinent and appropriate for use under statutes that control the manufacture, use, and/or disposal of a chemical, such as the Clean Air Act or the Toxic Substances Control Act. However, EPCRA section 313 is an information collection provision that is fundamentally different from other environmental statutes that control or restrict chemical activities.

EPCRA section 313 charges EPA with collecting and disseminating information on releases, among other waste management data, so that communities can estimate local exposure and local risks; risks which can be significantly different than those which would be assessed using generic exposure considerations. The intent of EPCRA section 313 is to move the determination of what risks are acceptable from EPA to the communities in which the releases occur. This basic local empowerment is a cornerstone of the right-to-know program.

EPCRA section 313 establishes an information collection and dissemination program, the burden it imposes is significantly less than the burden imposed by a statute which controls the manufacture, use, and/or disposal of a chemical. EPCRA section 313 requires that a facility use the best available information to prepare each chemical-specific TRI report. However, the statute does not require that the facility conduct monitoring or emissions measurements to determine these quantities. A facility must only estimate, to the best of its ability, the quantitative information it reports. This is in contrast to other environmental statutes that may require a facility to monitor releases, change its manufacturing process, install specific waste treatment technology, or dispose of wastes in a certain manner. As such, the Agency believes that the standard that must be met to require information submission under EPCRA section 313 is less than that to regulate a chemical under a statute such as the Clean Air Act.

EPA believes that its position regarding the use of hazard, exposure, and risk in listing decisions is consistent with the purpose and legislative history of EPCRA section 313, as illustrated in the following passage from the Conference report:

> The Administrator, in determining to list a chemical under any of the above criteria, may, but is not required to conduct new studies or risk assessments or perform site-specific analyses to establish actual ambient concentrations or to document adverse effects at any particular location. (H. Rep. 99-962, 99th Cong., 2nd Sess., p. 295 (Oct. 3, 1986)).

This passage indicates Congress did not intend to require EPA to conduct new studies, such as exposure studies, or perform risk assessments, and therefore did not consider these activities to be mandatory components of all section 313 decisions. EPA believes that this statement combined with the plain language of the statutory criteria clearly indicate that Congress intended that the decision of whether and how to consider exposure under EPCRA section 313(d)(2)(B) and (C) should be left to the Agency's discretion. EPA has carefully considered when and how to use exposure to fully implement the right-to-know provisions of EPCRA. The Agency believes that in this final rule, EPA has appropriately used the discretion provided to it to assure the addition of chemicals that meet the right-to-know objectives of EPCRA section 313 while not unduly burdening the regulated community.

EPCRA section 313 specifically requires that exposure be considered for listing a chemical pursuant to section 313(d)(2)(A). The statute mandates that EPA consider whether "a chemical is known to cause or can reasonably be anticipated to cause significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries." EPA has, and will continue to look at exposures reasonably likely to exist beyond facility site boundaries when making a listing determination pursuant to EPCRA section 313(d)(2)(A).

The statute is silent on the issue of exposure considerations for the section 313(d)(2)(B) and (C) criteria. The language of section 313 does not prohibit EPA from considering exposure

factors when making a finding under either section 313(d)(2)(B) or section 313(d)(2)(C). However, the language of sections 313(d)(2)(B) and (C) does not require the type of exposure assessment and/or risk assessment argued by the commenters. EPA believes that it has the discretion under both section 313(d)(2)(B) and section 313(d)(2)(C) to consider, where appropriate, those exposure factors that may call into question the validity of listing of any specific chemical on TRI. In exercising this discretion, EPA considers it appropriate to employ exposure considerations to a limited extent in making determinations under EPCRA section 313(d)(2)(C) because this criterion requires the Agency to find a "significant adverse effect on the environment of sufficient seriousness, in the judgment of the Administrator to warrant reporting" under EPCRA section 313. This language recognizes the possibility that under certain circumstances, a chemical that could theoretically cause an adverse effect on the environment is unlikely to cause one of a magnitude sufficient to warrant listing. Moreover, because of the limitation on the number of chemicals listed pursuant to only section 313(d)(2)(C) that may be listed, EPA believes that it is appropriate to use both hazard and exposure factors as prioritizing considerations in these listing decisions. Therefore, to meet its obligation under section 313(d)(2)(C), in cases where a chemical is low or moderately ecotoxic, EPA may look at certain exposure factors (including pollution controls, the volume and pattern of production, use, and release, environmental fate, as well as other chemical specific factors, and the use of estimated releases and modeling techniques) to determine if listing is reasonable, i.e., could the chemical ever be present at high enough concentrations to cause a significant adverse effect upon the environment to warrant listing under section 313(d)(2)(C). Of the chemicals being added in today's action pursuant to section 313(d)(2)(C), all but one are highly ecotoxic. These highly ecotoxic chemicals are being added to the EPCRA section 313 list pursuant to section 313(d)(2)(C) based on their hazard. The other chemical, which is moderately ecotoxic, is being added to the EPCRA section 313 list pursuant to section 313(d)(2)(C) based on both its hazard and an exposure assessment for this chemical.

For listing determinations made pursuant to EPCRA section 313(d)(2)(B), in instances where the hazard assessment indicates that the value of listing on EPCRA section 313 on hazard alone is marginal (i.e., a chemical is of low toxicity and unrealistic exposures would be necessary for it to pose a risk to communities), EPA may use exposure considerations in its listing decisions. Only chemicals for which the hazard assessments indicate moderately high to high toxicity are being added in today's action to the EPCRA section 313 list pursuant to section 313(d)(2)(B). None of these chemicals are chemicals for which the consideration of exposure factors would be appropriate.

Through this rulemaking, EPA is clarifying its position regarding the use of hazard, exposure, and risk in listing decisions under EPCRA section 313. EPA will consider exposure factors when making determinations under section 313(d)(2)(A) (acute human toxicity). In addition, EPA has discretion to consider exposure factors where appropriate for determinations under sections 313(d)(2)(B) (chronic human toxicity) and (C) (environmental toxicity), and that there is a broader range of circumstances in which exposure will be considered under section 313(d)(2)(C) than under (B).

EPA has reviewed its past listing decisions in light of this clarification, and believes that its prior listing determinations have been consistent in the consideration of exposure in 31 of the 32 listing/delisting determinations previous to this action, including a number of deletions of low toxicity chemicals that Congress placed on the initial EPCRA section 313 list. EPA is currently reviewing the one exception, inorganic fluorides, to determine if additional action is warranted. EPA will continue to evaluate petitions according to this clarification and will delete chemicals that do not meet the statutory criteria.

C. Addition of Categories

Six industry trade organizations, 7 companies, and the Department of Energy contend that section 313 does not provide EPA the statutory authority to list chemical categories. Some of the commenters contend that the intent of Congress was for EPA to review individual chemicals. Therefore, the commenters believe that EPA should list all chemicals individually. General Electric, American Iron and Steel Institute, and Eastman Chemical Company further contend that, based on legal precedent (citing AFL-CIO vs. OSHA, 965 F.2d 9262 (11th Cir. 1992)), EPA does not have the authority to list chemical categories or specific groups of chemicals.

EPA believes that the statutory authority to add "a chemical" to the list may be reasonably interpreted to include the authority to list groups or categories of chemicals. Indeed, this interpretation is supported by the initial list of chemicals and chemical categories adopted by Congress in section 313(c). In that initial list, Congress included 20 chemical categories, mainly metal compounds, but also categories of organic chemicals such as chlorophenols. Nothing in section 313 or its legislative history indicates or even suggests that Congress intended to preclude EPA from adding chemical categories to the list where the appropriate findings can be made.

Where, as with the categories being added in this final rule, EPA determines that the primary purpose of TRI--providing information to the community about the release of chemicals--is most appropriately served by listing a category of chemicals, EPA has the discretion to list a category rather than individual chemicals. Of course, in adding a category to the list, EPA must comply with the statutory criteria. The Agency believes it satisfies the statutory criteria to add a category to the list by identifying the toxic effect of concern for at least one member of the category and then showing why that effect may reasonably be expected to be caused by all other members of the category. A specific justification for each of the categories included in the final rule has been provided in the preamble of the January 12, 1994 proposed rule, in the docket supporting this rulemaking, and in the *Response to Comment Document* (Ref. 14).

Several commenters raised policy concerns and suggested that there would be regulatory difficulties associated with adding chemical categories. These are addressed below.

One commenter suggested that the regulated community would face uncertainty in deciding which chemicals belong in the category. In this final rule, EPA has described the categories in sufficient detail to alleviate uncertainty regarding their membership. Of course, the Agency will work with the public and the regulated community to develop, as appropriate, any interpretations and guidance the Agency determines are necessary to facilitate accurate reporting for these categories.

One commenter questions how to properly report a chemical which could be considered part of a category and which is also specifically, individually listed. Threshold determinations should be made for the individually-listed chemical rather than for the category. The current EPCRA section 313 list

contains some individually-listed chemicals that also meet the definition of an EPCRA section 313 listed category. For example, pentachlorophenol is listed individually on EPCRA section 313 but also meets the definition of the chlorophenol category. In these situations, threshold determinations should be made for the chemical as an individual entity rather than as a member of the category. A facility would not count the quantities manufactured, processed, or otherwise used toward threshold determinations for both the individual listing and the category listing, but rather only toward the individual chemical threshold.

One commenter contends that categories will lead to inadvertent non-compliance with reporting requirements. EPA does not believe that this is a significant concern. Because the categories being added to the EPCRA section 313 list today each consist of chemicals that are similar chemically and in effect, EPA believes that these categories will not be difficult for the public or industry to understand or for the Agency to administer. In addition, there are already categories on the current list, and EPA has not experienced a significant problem of the sort suggested by the commenter. The Congressional objective of providing information is outweighed by any possible problems that some facilities might have with inadvertent noncompliance.

One commenter states that the use of categories will artificially lower the thresholds for reporting chemicals within the category. The Agency believes that calculating the thresholds based on the category (i.e., a sum of the activities for each individual category member) is appropriate and not "artificially lower." As described above, categories are placed on the EPCRA section 313 list where each of the members can be expected to cause similar effects because all members of the category have a similar functional group or exhibit a similar characteristic. For each of the categories added in today's rule, EPA believes that because each member of the category has this similar functional group or exhibits a similar characteristic, each member of the category can be reasonably anticipated to cause similar adverse effects. The members of the category are not randomly selected, but are closely related and warrant being reported as a category. These chemicals in aggregate can reasonably be anticipated to cause an aggregate impact of the adverse effect associated with each member of the category. Thus, it is appropriate to apply the reporting thresholds to the category regardless of whether the threshold amount is attributable to one member of the category or to individual members in aggregate.

One commenter believes that listing broad categories where the individual members have diverse properties and cause diverse effects does not constitute "good science." The Agency agrees that a category must be rationally constructed both in terms of similarity in the properties of the individual members and in terms of their effects. There is, of course, no requirement that the properties across category members be absolutely identical. EPA agrees that the members of a category be reasonably expected to elicit the same type of effect or related effects in order for a category to satisfy the statutory listing criteria. Furthermore, EPA agrees that determinations to list a category, as with listing an individual chemical are to be based on "good science." EPA has applied these principles to the categories being added in the final rule.

D. Policy Issues

There are several policy issues which were consistently raised in comments on specific chemicals and general comment on the entire proposed rule. For purposes of this final rule, EPA addresses these issues in this unit of the preamble and not in unit IV.F. of the preamble in the responses to chemical-specific comments. Detailed responses to comments on specific individual chemicals are available in the *Response to Comments Document* (Ref. 14).

1. *The addition of chemicals that may be released in small quantities.* Many commenters object to the addition of many of the chemicals to the EPCRA section 313 list because they do not believe that there will be significant releases of these chemicals. Therefore, they contend there will not be significant exposure to these chemicals and the associated risks will be low.

EPA believes that the chemicals added today meet the EPCRA section 313(d)(2) criteria and should be included on the EPCRA section 313 list. The quantity of a chemical released is not part of the statutory criteria. The purpose of EPCRA section 313 is to collect data on the quantity released so that local communities can make their own determinations about exposure.

Congress intended EPCRA section 313 to address the lack of information on toxic chemicals in communities by providing information on releases of toxic chemicals. The public can then use this release information with site-specific information and the appropriate attributes of a chemical to evaluate exposure. EPA considers it inappropriate under the right-to-know program to supplant the public's power to make risk determinations on a community level by the Agency's use of specified levels of potential releases, exposure, or risk as screening criteria to exclude chemicals from the EPCRA section 313 list. By listing chemicals that present a hazard and providing TRI data on these chemicals to the public, EPA allows the public to make the determination as to whether there is a risk in their community. Furthermore, any exposure assessment conducted by EPA would be conducted from a national perspective and may not truly represent the risks to a specific community. (For a more detailed discussion on the Agency's use of exposure see Unit IV.B. of this preamble).

2. *The addition of chemicals that are regulated by FDA.* Eli Lily and Company, National Agricultural Chemical Association, Pharmeceutical Manufacturers Association, and Hoffman-La Roche state that chemicals which are regulated by the FDA should not be added to EPCRA section 313. The commenters argue that the FDA approves a drug only after extensive testing and a determination that the benefits to the patients outweigh the risks. The commenters further state that access to these drugs is controlled because they can only be obtained through a medical doctor.

EPA agrees that the drug testing and approval process conducted by the FDA is extensive and necessary to protect the public health and well-being. However, as discussed above, the purpose of listing these chemicals under EPCRA section 313 is to provide information on the release, transfer, and waste management activities occurring in the community. This is a different function that addresses different issues than those addressed by FDA. Furthermore, while the main use of these chemicals is pharmaceutical in nature, that does not mean that they are not a hazard in other contexts. EPA agrees that in controlled situations (e.g., a doctor's prescription) ingestion of a drug is likely to have certain intended benefits. However, outside of this controlled situation, any adverse effects are not balanced by the benefits received from the use of the drug. Further, EPCRA section 313 will collect information on the release and disposal of these chemicals, which is not covered by the regulation of the use of a chemical as a drug.

3. *Chemicals regulated under FIFRA.* Several commenters do not support the addition of chemicals regulated under FIFRA to the EPCRA section 313 list of

toxic chemicals because, they contend, the major route of exposure, agricultural field use, has been addressed through FIFRA regulation which establishes safety factors and use directions allowing for safe use. They further contend that the use of these chemicals has been determined not to present an unreasonable risk and therefore, listing pesticides under EPCRA section 313 is unnecessary.

FIFRA regulations require that the Agency determine that pesticidal uses of a chemical do not cause "unreasonable adverse effects on the environment" which is defined in FIFRA section 2(bb) as "any unreasonable risk to man or the environment taking into account the economic, social, and environmental costs and benefits of the use of pesticides" (7 U.S.C. section 136(bb)). FIFRA is a regulatory statute, and the impacts of regulation can be immediate and direct (e.g., banning of a chemical), and as such EPA examines not only the hazards presented by the chemical, but also the specific exposure scenarios, and weighs the risks against the benefits of the chemical. The "unreasonable adverse effects" determination under FIFRA is specific to the intentional use of the chemical as a pesticide and does not address other uses or releases of the chemical that may result from manufacture, processing, or other use. Furthermore, a determination under FIFRA that the use of a chemical will not result in an "unreasonable adverse effect" is not a determination that the chemical is not hazardous or that the use of the chemical is without risk. Finally, EPCRA section 313 was not enacted to serve the same purpose as FIFRA. Listing on EPCRA section 313 provides communities with some of the information required to determine what risks may result from the manufacture, processing and non-pesticidal use of a chemical, information not generally provided through FIFRA.

4. *Duplicative reporting.* Many commenters believe that listing some of the chemicals proposed will result in duplicative regulation that will be unduly burdensome and of little benefit. One other commenter, Westinghouse Electric Corporation, states that EPA should utilize existing sources of information to avoid duplicative reporting.

Congress did not intend that the chemicals listed under EPCRA section 313 be limited to those that are *not* regulated under other environmental statutes and for which no information is collected pursuant to other requirements. The initial list of chemicals that Congress included in section 313 consisted of substances regulated under RCRA, CWA, SDWA, CERCLA, FIFRA, and CAA. Further, as Representative Edgar stated in the House of Representatives debate on the Conference bill:

> With respect to the contents of the toxic release form, estimates of releases into each environmental medium must be provided. This shall include any releases into the air, water, and land, as well as releases from waste treatment and storage facilities. This shall include all releases of toxic chemicals into surface waters whether or not such releases are pursuant to the Clean Water Act permits. (132 Cong. Rec. H9561, October 8, 1986)

EPA believes that the chemicals being added today meet the toxicity criteria of EPCRA section 313(d)(2) and, therefore, should be added to the EPCRA section 313 list. EPA further believes that the EPCRA section 313 requirements do not duplicate other regulatory program requirements. EPCRA was not enacted to serve the same purpose as other regulatory programs but to collect and disseminate information to the public. Nor is EPCRA section 313 intended to regulate how a chemical may be used, the amount of chemical a facility manufactures, processes, otherwise uses, and releases, what media the chemical is released to, or how the chemical is disposed. Therefore, TRI, as an information collection and dissemination program, is not designed to directly impose controls for the protection of human health or the environment in the same manner as other regulatory programs. The benefit of TRI is that it empowers the public, through access to release, transfer, and waste management data on toxic chemicals, to make determinations about risks in their communities based on TRI data, site-specific information, and the properties of the chemicals.

E. General Technical Comments

1. *Maternal toxicity.* A number of commenters argued that for certain chemicals in animal tests, the only evidence for developmental toxicity occurred at maternally toxic doses (that is, doses that were high enough to induce toxicity in the mother), and, therefore, developmental toxicity cannot be used as a basis for listing these chemicals under EPCRA section 313. EPA disagrees that fetal effects only in the presence of maternal toxicity demonstrate that a given substance does not present a developmental hazard. Although the developmental effects may have been seen in the presence of reversible maternal effects, the developmental effects may be more permanent and cannot be treated as only secondary to reversible maternal toxicity. With regard to adverse effects in the presence of maternal toxicity, EPA believes that developmental effects at maternal toxicity are ". . .toxic manifestations and as such are generally considered a reasonable basis for Agency regulation and/or risk assessment" (Ref 6). This approach has particular relevance in situations where reversible maternal toxicity may occur in the presence of irreversible adverse fetal effects. The Agency does not distinguish between fetal effects observed in the presence of maternal toxicity or those observed without concomitant maternal toxicity. Both maternal and fetal toxicity are of concern to the Agency, and are within the criteria of EPCRA section 313(d)(2). Thus, EPA will use the effect, maternal or fetal, which is most sensitive to set LOAELs and no-observed-adverse-effect levels (NOAELs). If both occur at the same level, the LOAELs and NOAELs for both are the same. When the LOAEL is the same for the adult and developing organisms, it may simply indicate that both are sensitive to that dose level, rather than that the developmental effects result only from maternal toxicity. Moreover, whether developmental effects are secondary to maternal toxicity or not, the maternal effects may be reversible while effects on offspring may be permanent. There are several agents known to produce adverse developmental effects at minimally toxic doses in adult humans (e.g., tobacco smoking, alcohol, isotretinoin).

2. *Use of IRIS and other secondary sources.* Several commenters object to EPA's use of the Agency's Integrated Risk Information System (IRIS) data base, the Agency's Office of Pesticide Programs' 1988 TOX-One-Liners data base, Registry of Toxic Effects of Chemical Substances (RTECS) data base, and the Aquatic Information Retrieval (AQUIRE) data base. The commenters contend that in relying on these sources the Agency ignores other pertinent data that may be in its possession. They contend that EPA should have examined the primary sources, rather than relying on data bases which are summaries of studies. Specifically, some commenters claim that there are many studies in EPA's possession, but not included in the 1988 TOX-One-Liner data base, that appear not to have been considered in the review process, because they have not yet been reviewed by EPA's Office of Pesticide Programs. The commenters contend that reliance on IRIS or the 1988 TOX-One-Liner data base does not constitute a detailed analysis and careful

examination of the available data on a chemical.

EPA disagrees with the commenters. EPA's use of the Agency's IRIS data base for EPCRA section 313 purposes does constitute a hazard evaluation. That data base generally provides information against which EPA can evaluate the section 313(d)(2) criteria. The information contained in the IRIS data base represents the Agency's weight-of-evidence hazard assessment for chemicals contained in the data base. The information was developed after the Agency's thorough scientific review of the available data. Therefore, by relying on information in the IRIS data base in the review of chemicals for listing on EPCRA section 313, EPA made statutory determinations based on hazard assessments conducted by the Agency.

Although the 1988 TOX-One-Liners were used as part of the Agency's evaluation of the toxicity of a candidate chemical, a number of other sources were also used. These include decision documents from a number of Agency and EPA internal peer review groups, deliberations of the FIFRA Scientific Advisory Panel, and reference to data evaluation records for studies used in support of listing. Therefore, evaluations of the toxicity of individual chemicals has been made on the entire data base and did not rely only on the 1988 TOX-One-Liners data base. Furthermore, inclusion of all of the detailed studies in the docket was not possible, because of the proprietary nature of some of the information. However, in cases where relevant information was used in support of the listing decision, but was not included in the 1988 TOX One-Liners data base (which is the most recent *sanitized* version of the data base), sanitized versions of the additional sources were included in the docket. In those cases where only the 1988 TOX-One-Liners data base or other similar sources were cited, no additional data not described in the 1988 TOX-One-Liners, RTECS, or the AQUIRE data bases was considered to be relevant to this listing. For a few chemicals it has become apparent based on comments received that EPA's analysis did not include studies which are in EPA's possession but which EPA has not reviewed. The Agency is deferring the final action on these chemicals until such studies can be reviewed.

3. *Testing at toxic doses.* A number of commenters stated that pesticides which are registered under FIFRA should not be listed under EPCRA section 313 because the testing conducted to obtain a pesticide registration under the FIFRA review process requires testing at dose levels "virtually guaranteed to produce a toxicological effect."

It is not EPA's position that chemicals registered as pesticides under FIFRA should be precluded from listing simply because these chemicals were tested at doses which are designed to produce toxic effects. The commenters are correct that the FIFRA standard study design attempts to set the doses at levels which bracket the minimal toxic dose, and, therefore, the high dose(s) by design produces an effect. The purpose of this study design under FIFRA is to determine the potential for toxicity of the chemical, whether the responses are dose-related and, depending on the effects produced, the *degree* of toxicity. Because virtually any chemical substance can elicit a toxicological response at some dose level, the mere presence of the toxic response is not used in isolation in listing decisions under EPCRA section 313. Rather, it is the relative severity of the effect, the presence of a dose/response relationship, and whether the effect is manifested at relatively low doses which are considered in determining the hazard of the chemical, and in making listing determinations under EPCRA section 313.

4. *Precursor chemicals.* CRF AG Products Company, Monsanto, FMC Corporation, Eastman Chemical Company, and the Chemical Manufacturers Association question EPA's authority to list precursor chemicals (i.e., a chemical that reacts in vivo or in the environment to generate another chemical that produces the toxic effect supporting the listing) on the EPCRA section 313 list. The commenters believe that a chemical should only be added to the list based on the toxicity of the chemical itself. Further they contend that nowhere in the legislative history is there any indication that post-release transformation products, degradation products, or products of chemical reactions are legitimate bases for adding chemicals to the EPCRA section 313 list.

The EPCRA section 313(d)(2) listing criteria each state that EPA may list a chemical that it determines "causes or may reasonably be anticipated to cause" the relevant adverse human health or environmental effects. EPA believes that this language allows EPA to consider the effects caused by the degradation products of a listed chemical. Where it may reasonably be anticipated, based on available data, that the listed chemical would readily degrade into another chemical that would cause the adverse effect, EPA is acting reasonably and within its grant of authority in listing the precursor to the toxic degradation product.

Furthermore, one could also view the effects caused by the degradation product as effects indirectly caused by the listed chemical. EPA believes it is within its authority to consider both the direct and indirect adverse human health and environmental effects of a chemical in making a listing determination. Based on the statutory language and legislative history, EPA interprets EPCRA section 313(d)(2) to include toxic effects indirectly caused by a listed chemical. The statute and the legislative history do not specifically preclude EPA from considering indirect effects in deciding whether a chemical meets the toxicity criteria under section 313. In the absence of specific congressional intent on the issue, it is reasonable for EPA to consider indirect effects in light of the broad statutory purpose to inform the public about releases of toxic chemicals to the environment. Were EPA to exclude indirect effects from consideration it would ill-serve the purpose of the statute by precluding public access to information about chemicals that, albeit, indirectly cause a wide range of adverse health and environmental effects.

There is precedent for the Agency to consider the "indirect" toxicity of a chemical being considered for listing. Indirect toxicity was the basis for the granting of two petitions, one to add seven chlorofluorocarbons and halons (August 30, 1990, 55 FR 31594) and a second to add hydrochlorofluorocarbons to the EPCRA section 313 list (December 1, 1993, 58 FR 64936). EPA also used indirect toxicity in support of its denial of petitions to delete certain volatile organic chemicals from the section 313 list, specifically, the ethylene and propylene petition (January 27, 1989, 54 FR 4072) and the cyclohexane petition (March 15, 1989, 54 FR 10668).

5. *Use of studies conducted by routes other than oral, inhalation, or dermal.* Several commenters maintain that intraperitoneal, intravenous, or subcutaneous injection (injection into the abdomen, a vein, or under the skin, respectively) has minimal relevance for evaluating potential human exposure from industrial situations and should not be used to support an EPCRA section 313 listing decision. One commenter contends that, if considered at all, intraperitoneal injection is a form of exposure that should be considered in establishing a section 313(d)(2)(A) finding of acute effects, not a section 313(d)(2)(B) finding of chronic effects.

EPA disagrees with the commenters. In making section 313 listing decisions,

the Agency cannot ignore the possible significance of any existing data, including data from intraperitoneal, intravenous, or subcutaneous injection studies. Although it is preferable to have toxicity data from the common routes of human exposure, EPA believes that for hazard assessment under EPCRA section 313, the Agency should use all available information to identify the hazard associated with a chemical. This comment relates to five chemicals (bromacil lithium salt, fluorouracil, pentobarbital sodium, tetracycline hydrochloride, and sodium nitrite) that are being added to the section 313 list today. For three of these chemicals, bromacil lithium salt, fluorouracil, and sodium nitrite, any data from intraperitoneal or other injection routes of exposure are supplemented by data from other, non-injection exposure routes. For example, in addition to chronic dog and rat injection studies to support the chronic hematological concerns of sodium nitrite, there are human oral data. For bromacil lithium salt, intraperitoneal injection studies in rats are supplemented by gavage studies in mice to support the developmental concerns for this chemical. In addition to the developmental effects observed in the offspring of women receiving fluorouracil intravenously, developmental abnormalities in mice, rats and hamsters receiving fluorouracil orally were used to support the developmental toxicity finding. For both pentobarbital sodium and tetracycline hydrochloride, the studies cited in the proposed rule in support of the developmental effects of these chemicals are either studies in which the chemical was administered via injection or studies in which the chemical was administered via another route. However, because both of these chemicals are commonly administered orally, and are efficacious by this route (orally), there is reason to extrapolate the effects observed in injection studies to effects by other routes. The proposed rule and the *Response to Comment Document* (Ref. 14) contain information on EPA's review of these chemicals, including the toxicity evaluation. This background information will not be repeated here in the final rule. Based on EPA's reanalysis of the available information in the proposed rule for these five chemicals, EPA has sufficient evidence to determine that bromacil lithium salt, fluorouracil, pentobarbital sodium, tetracycline hydrochloride, and sodium nitrite have sufficient evidence to meet the statutory listing criteria under EPCRA section 313(d)(2)(B).

6. *Use of acute studies to support a chronic finding.* Several commenters object to the use of data from acute studies to support a finding of chronic toxicity. The commenters contend that there is no correlation between transient acute impact and chronic toxicity that is appropriate to industrial chemicals as a whole. The commenters contend that, if a chemical exhibits transient acute but not chronic effects, it should not be listed based on chronic toxicity, unless additional data on chronic effects are also used in the determination to list the chemical.

EPA agrees with the commenter that if a chemical exhibits acute toxic effects, it should be listed based on acute effects unless additional data on adverse effects after long-term exposure are available. This comment relates to three of the chemicals (bromine, 2-bromo-2-nitropropane-1,3-diol, and sodium nitrite) that are being added to the section 313 list today. For these chemicals, any data from acute studies are supplemented by chronic toxicity information. In chronic toxicity studies, bromine produced upper respiratory irritation and neurological symptoms. In chronic toxicity studies, 2-bromo-2-nitropropane-1,3-diol produced various effects including lesions of the stomach mucosa, ulceration, raised areas and excrescences, inflammation, epithelial hyperplasia and hyperkeratosis, and congested vessels of the mucosa of the gastrointestinal (G.I.) tract. Sodium nitrite induced, in a chronic study in mice, reduced motor activity and major electroencephalogram (EEG) changes in treated animals. The proposed rule and the *Response to Comment Document* (Ref. 14) contain information on EPA's review of these chemicals, including the toxicity evaluation. This background information will not be repeated here in the final rule. A summary of the response to comments for these chemicals is provided in Unit IV.F. of this preamble.

7. *Use of cholinesterase inhibition as a measure of neurotoxicity.* Several commenters expressed concern that the Agency has used a chemical's effect of inhibiting plasma, red blood cell (RBC) or brain cholinesterase activity as a basis for listing chemicals on the EPCRA section 313 list. These commenters feel that this effect is not an adequate indicator of neurotoxicity.

The Agency believes that inhibition of plasma, RBC, or brain cholinesterase activity is an appropriate indicator to assess the toxicity of potential neurotoxicants (Ref. 7). In order for the normal activity of the nervous system to be altered by a toxic chemical, the chemical must enter the body, reach the tissue target site(s), and be maintained at a sufficient concentration for a period of time in order for an adverse effect to occur. Biochemical changes precede the more overt, physiological changes associated with neurotoxicity, and are more easily detectable. Acetylcholinesterase (AChE) is the enzyme that inactivates or terminates the effect of the neurotransmitter (acetylcholine) on its target. When this enzyme is inhibited, acetylcholine is built up in the body, and may result in loss of appetite, anxiety, muscle twitching, paralysis, or other neurotoxic effects. Thus, one can assess the signs and symptoms of systemic poisoning by many neurotoxins from their biochemical mechanism of action, such as the inhibition of AChE. Because of the severity of these effects, EPA takes a cautious approach by using a measure of cholinesterase activity as an indicator of neurotoxicity.

The comments concerning cholinesterase inhibition relate to six of the chemicals that are being added to the section 313 list today. The proposed rule and the *Response to Comment Document* (Ref. 14) contain information on EPA's review of these chemicals, including the toxicity evaluation. This background information will not be repeated here. Based on comments received and EPA's reanalysis of the available information in the proposed rule for these six chemicals, EPA has sufficient evidence to determine that acephate, cycloate, diazinon, ethyl dipropylthiocarbamate, pirimphos methyl, and profenofos meet the statutory listing criteria under EPCRA section 313(d)(2)(B) based on available neurotoxicity data for these chemicals.

8. *Use of certain studies for hazard assessment.* Several commenters argue that EPA should not use studies in support of listing a chemical on the EPCRA section 313 list, if these studies have been determined to be insufficient for use in risk assessments under FIFRA or TSCA. For example, the commenters point to studies EPA considered in this rulemaking in conducting hazard assessments even though the studies when submitted for use under FIFRA or TSCA were determined by EPA to be of "low confidence." EPA believes its use of these studies for section 313 purposes is appropriate. The "low confidence" determination under FIFRA or TSCA applies to the use of the studies for purposes of risk assessment associated with regulations that impose controls. The data base for a chemical may be rated low confidence because of shortcomings such as lack of experimental detail. Although these studies may be of limited value for

purposes of risk assessment in support of regulatory controls, when considered together, they present a sufficient weight-of-evidence as to the hazard associated with the chemical. As additions to EPCRA section 313 made pursuant to EPCRA section 313(d)(2)(B) are not based on the kind of risk assessment needed for regulatory controls, EPA believes that such studies can be used to support listing.

9. *Docket was incomplete for certain chemicals.* Several commenters contend that the docket information supporting the listing of certain chemicals is incomplete. Other commenters contend that, overall, the docket is too general and limited. Responses to comments about the evidence provided in the docket for specific chemicals are provided in the *Response to Comment Document* (Ref. 14).

In the public docket supporting this rulemaking, EPA included copies of EPA's support documents (Refs. 9, 12, and 13) for the proposed rule and copies of the main references cited in those documents. The primary references that are cited in these main reference documents were not themselves included. However, these reference documents are published material, readily accessible, and are in the public domain. EPA believes that the docket material for both the proposed and final rules contains the appropriate information to support the addition of these chemicals to the EPCRA section 313 list and to have provided the public an adequate basis on which to comment on the proposed rule.

F. Chemical-Specific Comments for Chemicals that Are Being Finalized in Today's Action

The Agency received comments on 110 of the 313 specific chemicals included in the proposed rule. This unit of the preamble summarizes the most significant of those comments and the Agency's responses. More detailed responses are included in the *Response to Comment Document* (Ref. 14). Neither this unit of the preamble nor the *Response to Comment Document* addresses comments specific to chemicals that have been deferred for final action. These comments will be addressed in a separate rulemaking specific to those chemicals.

1. *Abamectin.* One commenter, Merck, states that primates are less sensitive to the acute effects of abamectin and its analog, ivermectin, than rodents. The commenter implies that because humans are primates, abamectin should be less toxic in humans than in rodents. The commenter further contends that ivermectin and abamectin have been used safely in animals and humans.

Abamectin interferes with gamma-aminobutyric acid (GABA) transmission and, as such, produces neurotoxic clinical signs such as tremors, ataxia, convulsions, or coma that are more severe in rodents and dogs than primates. EPA agrees that the available studies indicate that the sensitivity as well as doses required to produce neurotoxic effects vary from rodents to primates by a 20-fold factor. However, abamectin was proposed for addition to the EPCRA section 313 list based on developmental effects rather than neurotoxicity. There are no developmental studies with abamectin in primates. Therefore, EPA believes that the rodent studies cited in the proposed rule provide sufficient evidence that abamectin can reasonably be anticipated to cause developmental toxicity in humans.

When administered in therapeutic doses, the Agency does not dispute the animal and human safety and efficacy of ivermectin and abamectin, but the safety of a 0.2 to 0.3 mg/kg single therapeutic dose does not diminish the findings of the developmental, reproductive, neurotoxic, chronic, and carcinogenic animal studies with abamectin which in some cases demonstrate serious compound-related effects at higher than therapeutic doses in all species tested.

The same commenter states that although the aquatic toxicity data cited for the proposed listing of abamectin under EPCRA section 313 are accurate and valid, it may be inappropriate to list abamectin under EPCRA section 313 based on the environmental fate of this chemical, because of environmental fate factors which were not presented by EPA in the proposed rule.

EPA agrees with the commenter that the aquatic toxicity values presented in the proposed rule are accurate and valid. EPA disagrees that the environmental fate of abamectin will negate the chemical's ecological toxicity. EPA believes that the environmental fate factors presented by the commenter may reduce, but do not eliminate, the potential for adverse effects on aquatic organisms because the chemical is extremely acutely toxic to aquatic organisms.

EPA reaffirms that there is sufficient evidence for listing abamectin on the EPCRA section 313 list pursuant to EPCRA section 313(d)(2)(B) based on the available developmental toxicity data and pursuant to EPCRA section 313(d)(2)(C) based on the available ecotoxicity data. Therefore, EPA is finalizing the addition of abamectin on the EPCRA section 313 list.

2. *Alachlor.* Monsanto states that at the highest dose tested in the chronic mouse study cited in the proposed rule, EPA concluded there was an increase in lung tumors in females. Monsanto believes that other regulatory agencies have disagreed with this conclusion. The commenter contends that these tumors occur spontaneously in mice with a fairly high and variable frequency and a possible slight increase in a common rodent tumor at the highest dose tested does not represent a risk to humans receiving, at most, trace level exposure.

The Agency has concluded that there was statistically significant increase (the increase was greater than that which would be expected to occur spontaneously) in lung tumors in female CD-1 mice at 2 dose levels which were relevant to potential carcinogenicity to humans. The commenter provides no specifics to support its contention that "other regulatory agencies have disagreed with this conclusion" nor is the Agency aware of any.

The commenter further states that the *Support Document for the Health and Ecological Toxicity Review of TRI Expansion Chemicals* (Ref. 13) also incorrectly listed the dose levels ("[greater than] 42 mg/kg/day") producing tumors in rats in the 2-year rat feeding study cited in the proposed rule. The commenter argues that significant increases in thyroid and stomach tumors were observed only at 126 mg/kg/day, the highest dose tested; this dose level also produced severe, excessive toxicity. Thus, the commenter concludes that the dose-response curves for the stomach and thyroid tumors are exceptionally steep, with increased incidences observed only at a dose which exceeded the Maximum Tolerated Dose (MTD).

EPA believes that the *Support Document for the Health and Ecological Toxicity Review of TRI Expansion Chemicals* (Ref. 13) correctly states the toxic dose levels in the 2–year rat feeding study as being greater than or equal to 42 mg/kg/day. In this study, nasal tumors were significantly increased at 42 mg/kg/day and above and the stomach and thyroid follicular cell tumors at 126 mg/kg/day. The Agency agrees that the 126 mg/kg/day dose level probably exceeded the MTD; however, upon reconsideration of the carcinogenicity data, the Agency determined that the MTD is between 42 mg/kg/day and 126 mg/kg/day. Although the MTD was exceeded by the highest dose (126 mg/kg/day), significant effects were seen at 42 mg/kg/day, which does *not* exceed the MTD. Therefore, EPA believes that the

2–year chronic dog study cited in the proposed rule is a valid measure of the oncogenic potential of alachlor.

The commenter cites a chronic rat feeding study, not cited by EPA in the proposed rule, in which 5 to 6 months of alachlor administration followed by 19 months on control diet did not produce a significant increase in stomach or thyroid tumors in rats. The commenter believes that this information is consistent with the results of a study, not cited by EPA in the proposed rule, in which a close structural chloroacetanilide analog of alachlor has been shown to be a promoter but not an initiator of stomach tumors. The commenter did not further identify this study.

Although in the chronic rat feeding study referred to by Monsanto, the specific group which received alachlor in the diet for 5 to 6 months in this study, and then control diet as a recovery period did not develop stomach or thyroid tumors, the other groups on study which continued to receive alachlor in the diet developed both stomach and thyroid tumors as well as nasal turbinate tumors. Therefore, the failure to develop stomach tumors after 5 to 6 months treatment reflects the time frame required for tumor development rather than indicating a lack of carcinogenic response.

The commenter also discusses the mechanism of carcinogenicity for alachlor. The commenter states that the mechanism is nongenotoxic and hormonally mediated. The commenter argues that the mechanism exhibits a threshold and that nasal turbinate tumors in particular are not relevant to humans.

The Agency acknowledges the mechanism of carcinogenicity may be hormonally mediated. However, the mechanism does not alter the fact that the tumors are relevant to potential carcinogenesis in man. Mechanism of tumor development relates to the appropriate model by which cancer risk is calculated. However, mechanism has no impact on the determination of carcinogenicity hazard. In determining cancer classification, EPA does not assume that the specific types of tumors seen in animals will develop in humans. However, EPA believes that the development of tumors, such as nasal turbinates, in animals demonstrates the potential for tumor development in humans.

The same commenter states that two epidemiology studies, not cited by EPA in the proposed rule, have been conducted on alachlor manufacturing workers. The commenter contends that neither study indicates an increase in tumors in humans due to exposure to alachlor. The commenter believes that these studies provide important additional evidence indicating that the tumors produced in rats by alachlor are not produced in humans and should have been considered by the Agency.

Epidemiological studies are used by the Agency in the overall evaluation of the carcinogenic potential of a chemical, along with other evidence. However, the studies cited by the commenter are based on a small sample size. Studies of this type cannot verify the levels and duration of exposure and represent results from a heterogeneous population. In addition, one of the two studies apparently only focused on tumors resulting in death of the study subjects and may reflect an under estimation of tumor incidence. Therefore, in the face of evidence of carcinogenicity in two adequately performed bioassays in two species, the epidemiology data, although pertinent, do not negate the importance of the animal data in the studies relied upon in the proposed rule.

EPA reaffirms that there is sufficient evidence for listing alachlor on the EPCRA section 313 list pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical. Therefore, EPA is finalizing the addition of alachlor on the EPCRA section 313 list.

3. *Ametryn.* Ciba-Geigy Corporation objects to listing ametryn under EPCRA section 313 on the basis of liver effects, stating that hepatotoxicity was observed only at high dose levels (100 and 500 mg/kg/day) in subchronic studies.

The Agency believes that the LOEL of 100 mg/kg/day is sufficiently low given the seriousness of the effect (hepatic toxicity) to justify listing on the EPCRA section 313 list. Thus, EPA reaffirms that there is sufficient evidence for listing ametryn on the EPCRA section 313 list pursuant to EPCRA section 313(d)(2)(B) based on the available hepatotoxicity data for this chemical, and pursuant to EPCRA section 313(d)(2)(C) based on the available environmental toxicity data. Therefore, EPA is finalizing the addition of ametryn on the EPCRA section 313 list.

4. *Amitraz.* Nor-Am Chemical Company states that in the 2-year beagle dog feeding study cited in the proposed rule, contrary to EPA's conclusions, the only effects seen in the high dose (1.0 mg/kg/day) group were a small but insignificant increase in blood glucose and in one animal slight hypothermia during weeks 52 and 79.

EPA disagrees with the commenter. EPA has re-evaluated this study, and determined that in this study amitraz induced significant changes in blood chemistry (increased blood glucose). Hypothermia occurred not only at the times noted by the commenter, but also on days 1 and 2, and in one dog 3 hours after dosing, which returned to normal within 24 hours, at the 1.0 mg/kg/day level, the LOEL. As noted in the proposed rule, these findings were supported by similar results obtained in a 90-day feeding study in dogs cited in the proposed rule.

Nor-Am disagrees with the Agency's conclusion that the NOAEL for fetotoxicity was 5 mg/kg/day in the 3-generation rat reproduction study cited in the proposed rule. The commenter believes that while there was a slight decrease in the mean litter size at birth in the 20 mg/kg/day dose group and decreased pup viability in the 5 and 20 mg/kg/day dose groups post partum, there was no direct evidence of fetotoxicity. Nor-Am states that the effect on litter size was only significant in the third generation animals at 5 mg/kg/day, and may have been due to an effect on lactation.

EPA's reanalysis of this data indicates that there was a decrease in litter size and pup survival at 5 mg/kg/day in *all 3 generations* and a slight reduction in pup weight in the F_1 and F_2 generations. Thus, there was direct evidence of fetotoxicity.

The commenter contends that the rabbit teratology study reported by the Agency in the proposed rule was considered by EPA to be invalid (i.e., significantly flawed) due to high abortion rates in all groups, inadequately small group sizes, and lack of assessment of fetuses. The commenter argues that the low incidence of anomalies upon which the NOAEL of 1 mg/kg/day was based were within historical control ranges and failed to show any clear dose-related effect. The commenter claims that a subsequent study, not cited by EPA in the proposed rule, revealed no effects on fetal morphology at doses up to 12 mg/kg/day while maternal toxicity was found at 3 mg/kg/day and above; no NOEL could be established. The commenter claims that this subsequent study, not cited by EPA in the proposed rule, should have been considered by EPA.

EPA disagrees. The rabbit teratology study cited by EPA in the proposed rule was never declared by EPA to be invalid (i.e., seriously flawed). Upon reanalysis of the rabbit teratology study, EPA determined that although this study does not fully satisfy the guidelines for study conduct under FIFRA, it is sufficient for the purposes of hazard assessment, with a NOEL and LOEL for

maternal and developmental toxicity of 5 and 25 mg/kg/day, respectively. As described in the proposed rule, at 25 mg/kg/day, the following effects were seen: Decreased litter size and increased pre and post-implantation losses, decreased maternal body weight gain, and increased abortions. The high abortion rate is indicative of maternal toxicity. Although the abortion rates were higher than the control, enough animals remained at sacrifice to evaluate the toxicity potential of this chemical, and to support the finding that amitraz can reasonably be anticipated to cause developmental toxicity.

The subsequent study cited by the commenter was also considered by EPA. This study also does not fully satisfy the guidelines for study conduct under FIFRA. Although the fetotoxic effects observed in the initial study (cited in the proposed rule) were not reproduced in the subsequent study referred to by the commenter and not cited in the proposed rule, this does not invalidate the results obtained in the initial study. Both studies were considered by EPA in determining the developmental toxicity of amitraz.

EPA reaffirms that there is sufficient evidence for listing amitraz on the EPCRA section 313 list pursuant to EPCRA section 313(d)(2)(B) based on the chronic toxicity and developmental toxicity data for this chemical. Therefore, EPA is finalizing the addition of amitraz on the EPCRA section 313 list.

5. *Atrazine.* Ciba-Geigy Corporation objects to the listing of atrazine under EPCRA section 313 based on increased incidence of mammary tumors in female Sprague-Dawley rats because the commenter contends that this tumor type is not indicative of potential carcinogenicity in humans. The commenter states that the effect is species (rat) and strain (Sprague-Dawley) specific. Further, the commenter states epidemiology data from Ciba-Geigy manufacturing and use indicate no evidence of carcinogenicity in a human population exposed for up to 30 years. Ciba-Geigy did not provide EPA with a copy of this study but did discuss the results in their comments.

While epidemiology data are considered in the weight of the evidence for carcinogenicity, the current classification is based upon a positive finding in a well conducted animal study as described in the *Risk Assessment Guidelines of 1986* (Ref. 5). Atrazine has been classified as a category C chemical by EPA's OPP Carcinogenicity Peer Review Committee and the Scientific Advisory Panel (EPA, 1988). The use of mammary tumor data for hazard assessment purposes, even when only one strain of test animal has been demonstrated to be positive, is consistent with current Agency policy. The Agency considers the cancer classification to be sufficient basis for listing of atrazine.

EPA reaffirms that there is sufficient evidence for listing atrazine on the EPCRA section 313 list pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data. Therefore, EPA is finalizing the addition of atrazine on the EPCRA section 313 list.

6. *Bendiocarb.* Nor-Am Chemical Company states that bendiocarb does not meet the criteria of EPCRA section 313(d)(2)(C) due to its environmental fate. The commenter alleges that it has been shown not to accumulate in soil, water, or plants and has a relatively short half-life (a few days). Nor-Am Chemical Company also contends that bendiocarb is rapidly broken down by hydrolysis to a biologically inactive product. As a result, the commenter states that there is no clear evidence of adverse effects on the environment associated with bendiocarb.

EPA disagrees that the environmental fate of bendiocarb will negate the chemical's ecological toxicity. EPA believes that the environmental fate factors presented by the commenter may reduce but do not eliminate the potential for adverse effects on aquatic organisms and birds because the chemical induces environmental toxicity at low dose levels. Thus, EPA believes that the chemical can reasonably be anticipated to cause a significant adverse effect on the environment.

EPA reaffirms that there is sufficient evidence for listing bendiocarb on the EPCRA section 313 list pursuant to EPCRA section 313(d)(2)(B) based on neurological toxicity data for this chemical, and pursuant to EPCRA section 313(d)(2)(C) based on the available environmental toxicity data. Therefore, EPA is finalizing the addition of bendiocarb on the EPCRA section 313 list.

7. *Bifenthrin.* FMC Corporation does not support the addition of bifenthrin under EPCRA section 313 because "EPA overstates the neurological and [developmental effects] of bifenthrin. The neurological effects to which EPA referred were tremors or twitching, neurological signs that did not persist for the entire duration of the studies." EPA agrees with the commenter regarding the developmental toxicity potential or lack thereof, but disagrees with the commenter regarding the neurological hazards. In addition to the tremors or twitching effects cited by the commenter, more severe symptoms, including clonic convulsions and death, occur in the studies referred to by the commenters that are cited in the proposed rule, at dose levels only slightly higher than those causing slight or occasional tremors and/or twitching. In a rat developmental toxicity study by gavage, cited in the proposed rule, the maternal LOEL based on tremors was 2 mg/kg/day; the NOEL was 1 mg/kg/day. The MTD of 2 mg/kg/day was established on the basis of findings in a rat pilot study (included as part of the chronic rat study cited in the proposed rule) in which there were 3 deaths out of 10 animals at 2.5 mg/kg/day. With regard to the comment concerning the transitory nature of the effects, although they may be transitory in nature, this does not diminish the significance of the adverse effects. In particular, neurotoxic effects leading to convulsion may result in more permanent, underlying damage which is not reversible upon cessation of immediate signs and symptoms. Therefore, the Agency concludes that the neurological effects due to bifenthrin are of sufficient seriousness to warrant listing.

EPA reaffirms that there is sufficient evidence for listing bifenthrin on the EPCRA section 313 list pursuant to EPCRA section 313(d)(2)(B) based on the available neurological toxicity data, and pursuant to EPCRA section 313(d)(2)(C) based on the available environmental toxicity data. Therefore, EPA is finalizing the addition of bifenthrin on the EPCRA section 313 list.

8. *Bromine.* Great Lakes Chemical Corporation and Albemarle Corporation believe that bromine does not meet the listing criteria of EPCRA section 313. They contend that the Agency has failed to show that chronic exposure to bromine causes serious or irreversible effects. They also contend that the time-weighted average (TWA) of 0.1 part per million (ppm) established by the National Institute of Occupational Safety and Health (NIOSH) will protect against the acute effects of exposure. They believe, therefore, that the addition of bromine to the EPCRA section 313 list should not be finalized.

NIOSH established the TWA for bromine for acute effects. However, the Agency is not listing bromine on the EPCRA section 313 list on the basis of its acute effects but on the basis of the adverse effects it induces after chronic exposure. These effects include functional neurologic effects and abnormalities in respiratory and endocrine systems. In humans, chronic

exposure to bromine can cause severe irritation of the skin, mucous membranes and respiratory tract, gastroenteritis, and death. This severe irritation which can lead to death through either, or both, respiratory or gastroenteric irritation is the primary endpoint of concern although neurologic signs and symptoms which include dizziness, headache, and "feelings of oppression" along with other functional disturbances of the central nervous system (CNS) may also occur after exposure to bromine.

EPA reaffirms that there is sufficient evidence for listing bromine on the EPCRA section 313 list pursuant to EPCRA section 313(d)(2)(B) based on the available chronic toxicity data for this chemical. Therefore, EPA is finalizing the addition of bromine on the EPCRA section 313 list.

9. *2-Bromo-2-nitropropane-1,3-diol (Bronopol).* Boots Microcheck contends that 2-bromo-2-nitropropane-1,3-diol presents only a moderate acute hazard, but does not present a chronic hazard. Therefore, the commenter concludes that the compound should not be listed under EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B).

Although the Agency agrees with the commenter that 2-bromo-2-nitropropane-1,3-diol presents a moderate acute hazard, EPA does not agree that the chemical is not a chronic toxicant. The effects noted in both acute and chronic studies, cited in the proposed rule, indicate irritation due to exposure to the compound. However, differing expressions of irritation are obtained depending upon the level of material to which the test animals were exposed and the duration of exposure. In the acute studies cited in the proposed rule, the acute gastric effects were seen at relatively high doses. In the chronic studies, cited in the proposed rule, the effects, described below, were noted following repeated oral exposure to lower doses of 2-bromo-2-nitropropane-1,3-diol. The NOEL for chronic oral exposure in rats was 10 mg/kg/day, with effects including lesions of the stomach mucosa, ulceration, raised areas and excrescences. In a 13–week study in rats cited in the proposed rule, effects included inflammation, epithelial hyperplasia and hyperkeratosis, and congested vessels of the mucosa of the G.I. tract. The chronic studies cited in the proposed rule show that irritation was caused by a repeated number of low doses. In these chronic studies multiple doses were required before irritation occurred. Further, the type of irritation caused by acute and chronic exposure are different. Therefore, the irritation due to chronic exposure to 2-bromo-2-nitropropane-1,3-diol is distinguishable from that caused by acute exposure. EPA believes that the effects observed in the longer term studies are serious and potentially irreversible.

EPA reaffirms that there is sufficient evidence for listing 2-bromo-2-nitropropane-1,3-diol on the EPCRA section 313 list pursuant to EPCRA section 313(d)(2)(B) based on the available chronic toxicity data for this chemical. Therefore, EPA is finalizing the listing of 2-bromo-2-nitropropane-1,3-diol on the EPCRA section 313 list.

10. *Carboxin.* Zeneca Incorporated and Uniroyal Chemical oppose the listing of carboxin. The commenters claim that the effect of renal toxicity noted by EPA in the proposed rule was seen only in rat feeding studies and not in a chronic dog feeding study. Thus, they claim it appears to be a species-specific effect that may not be relevant to man.

EPA disagrees with the conclusions of the commenters. Because direct human testing is generally unavailable, animals are commonly accepted as surrogates for toxicity testing to predict potential hazard(s) to humans. Exceptions occur only in a few rare cases where effects have been determined to be species-specific (e.g., $\alpha 2\mu$-globulin). It should be noted that the actual number of species tested with carboxin is limited and, therefore, it is premature to state that the renal toxicity of carboxin is species-specific. Significantly, the commenters did not provide any additional evidence to support their contention that the renal toxicity is species-specific. EPA uses information from the most sensitive species to evaluate potential human hazard(s), as a conservative assumption.

EPA reaffirms that there is sufficient evidence for adding carboxin on the EPCRA section 313 list pursuant to EPCRA section 313(d)(2)(B) based on the available renal toxicity data for this chemical. Therefore, EPA is finalizing the listing of carboxin on the EPCRA section 313 list.

11. *1-(3-Chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride.* Dow Chemical Company notes that, in the dog study cited in the proposed rule, the test material was administered in gelatin capsules due to problems with palatability. They argue that this mode of administration is unusual and introduces the confounding factor of what is in essence a bolus administration (given all at one time) of the chemical, and results in an artificially lowered NOEL.

The Agency does not agree that this mode of administration is unusual. EPA frequently reviews dog studies in which the test material is administered by capsule. In addition, dog studies rarely permit ad libitum feeding as used in rat studies, even when dietary incorporation is the means of dose administration. Dogs generally receive a measured amount of food that they rapidly consume. Therefore, bolus administration closely approximates actual behavior in dogs. The concern that capsule administration produces an apparently altered response is not a confounding factor in the study cited in the proposed rule, and therefore the reported NOEL does not need to be raised as suggested by the commenter.

The same commenter contends that the effects used as a basis for listing occurred only in dogs and only in a single study, and, therefore, are not relevant to humans.

Because direct human testing is generally unavailable, animals are commonly accepted in the scientific and regulatory communities as surrogates for toxicity testing to predict potential hazard to humans, except in a few rare cases where effects have been determined to be species-specific (e.g., $\alpha 2\mu$-globulin). In the interest of being protective, EPA uses information from the most sensitive species to evaluate potential human hazard. In addition, results demonstrated in a single well-conducted study are sufficient and can serve as a basis for listing on the section 313 list.

The same commenter states that the LOEL in the study was based upon a slight, reversible effect in the liver of a single animal. The study, the commenter argues, should have been considered in toto rather than relying on a single effect. The commenter implies that EPA should have set the LOEL at a higher dose.

The commenter is incorrect. The LOEL of 15 mg/kg/day is correct. This LOEL was based upon obliterative vasculitis and perivasculitis in one animal. However, these effects are not commonly seen in dogs, yet in the study cited in the proposed rule, they occurred in seven of eight dogs at 30 mg/kg/day, the dose next highest to the LOEL. EPA considers the effects seen in this study to be serious effects.

EPA reaffirms that there is sufficient evidence for listing 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride on the EPCRA section 313 list pursuant to EPCRA section 313(d)(2)(B) based on the available chronic toxicity data for this chemical. Therefore, EPA is finalizing the addition of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride on the EPCRA section 313 list.

12. *Chlorosilanes.* Silicones Environmental Health and Safety Council and General Electric oppose the listing of the six chlorosilanes that were proposed for addition (dichloromethylphenylsilane, dimethyldichlorosilane, methyltrichlorosilane, trichloroethylsilane, trichlorophenylsilane, and trimethylchlorosilane) arguing that they undergo rapid hydrolysis and are not expected to be found in the atmosphere in appreciable concentrations. The commenters further state that EPA estimated conditions in its exposure assessment that greatly exceed actual conditions.

Based on these comments, EPA conducted revised exposure assessments for each of the chlorosilanes. These revisions support EPA's initial finding that dimethyldichlorosilane, methyltrichlorosilane, and trimethylchlorosilane can reasonably be anticipated to be present at facility boundaries in concentration levels that would cause a significant adverse effect. EPA believes that the exposure assessments were based on reasonable release estimates and reasonable worst-case concentration modeling. Details of this analysis are provided in the *Response to Comment Document* (Ref. 14). Thus EPA reaffirms that there is sufficient evidence to list dimethyldichlorosilane, methyltrichlorosilane, and trimethylchlorosilane on the EPCRA section 313 list pursuant to EPCRAsection 313(d)(2)(A). Therefore, EPA is finalizing the listings for dimethyldichlorosilane, methyltrichlorosilane, and trimethylchlorosilane on the EPCRA section 313 list.

The revised exposure assessments for dichloromethylphenylsilane, trichloroethylsilane, and trichlorophenylsilane, however, indicate that these chemicals are not individually present at facility boundaries in concentration levels that would cause a significant adverse effect. However, two or more of these chemicals are usually produced together and as a category are reasonably anticipated to be present at facility boundaries in concentration levels that would cause a significant adverse effect. Therefore, EPA is deferring the individual listings of these three chemicals for consideration as a category possibly to be added at a later date.

13. *Crotonaldehyde.* Eastman Chemical and Monsanto believe that crotonaldehyde should not be added to the EPCRA section 313 list because of inadequate data on human health. Furthermore, they contend that crotonaldehyde does not meet the criteria for listing as a carcinogen as put forth in the *Risk Assessment Guidelines for Carcinogen Risk* (Ref. 4) because it was tested in a single sex, single species experiment. The commenters further believe that EPA's statement that crotonaldehyde did not induce tumors at the high dose, because at that high dose crotonaldehyde is cytotoxic, is a contention which is not supported by scientific evidence. They believe that overall the weight of evidence for carcinogenicity, including reactivity and mutagenicity, is insufficient to support listing.

EPA agrees that the human carcinogenicity data are inadequate but feels that the available animal data are adequate to support a concern for carcinogenicity. The Agency accepts the single-sex, single species testing of crotonaldehyde as being sufficient for listing because these data are supported by strong evidence of mutagenicity in *Salmonella typhimurium*; a statistically significant increase in the number of both benign and malignant tumors in low dose animals and induced altered liver foci but not tumor formation in the high dose group. Crotonaldehyde is known to be severely cytotoxic with the capacity to induce cell death and alter cellular macromolecules. It caused gross degeneration, chromosome breakage and reciprocal translocations in *Drosophila melanogaster* and gross degeneration and polyploidy in all stages of spermatogenesis in mouse seminiferous tubules thus showing that is has ample ability to interact with cellular DNA and cause severe disruption in chromosome structure and cellular integrity. It is logical to assume that if crotonaldehyde is capable of such damage in the mammalian testis which is protected by the blood/testis barrier, it can also cause severe toxicity and cell death in the liver which has no such protection from toxic agents. Absent evidence to the contrary, which the commenter did not provide, EPA continues to believe that failure to observe tumor formation is due to cell death before tumors could develop. Based on these findings, the Agency believes that the weight of evidence for crotonaldehyde is sufficient for listing. EPA reaffirms that there is sufficient evidence for listing crotonaldehyde on the EPCRA section 313 list pursuant to EPCRA section 313(d)(2)(B) based on available carcinogenicity and mutagenicity data for this chemical. Therefore, EPA is finalizing the addition of crotonaldehyde on the EPCRA section 313 list.

14. *Cycloate.* Zeneca Incorporated contends that in the 3–generation rat feeding study, cited in the proposed rule as being of unknown duration, the distended myelin sheath demyelination and nerve fiber loss at the LOEL of 3.0 mg/kg/day occurred only after extensive exposure and as such would not be relevant to a toxic release type of short exposure.

The effects described in this study are considered to be both serious and irreversible. Adverse effects that are induced by a chemical after repeated long-term exposures and are a valid basis for listing under EPCRA section 313.

The same commenter states that the 3-generation rat reproduction study cited in the proposed rule was replaced by a more recent (1990) 2-generation rat reproduction study, also cited in the proposed rule, in which the toxic effects on pup survival (LOEL of 50 mg/kg/day) and pup body weight (LOEL of 20 mg/kg/day) occurred at doses which were maternally toxic as well.

EPA considered both studies in its evaluation of cycloate. As described in unit IV.E. of this preamble, developmental effects seen in developing organisms are considered to be adverse whether or not they occur at doses that are also maternally toxic.

EPA reaffirms that there is sufficient evidence for listing cycloate on the EPCRA section 313 list pursuant to EPCRA section 313(d)(2)(B) based on the available neurological and developmental toxicity data. Therefore, EPA is finalizing the addition of cycloate on the EPCRA section 313 list.

15. *Cyclohexanol.* Monsanto opposes the listing of cyclohexanol because concentrations that led to tremors, central nervous system depression, lethargy, or hypothermia in rabbits, as cited in the proposed rule, are above the level of MED that EPA identified in the *Draft Hazard Assessment Guidelines* (Ref. 11) as high priority or moderate priority. Furthermore, the concentrations that led to reproductive impacts in rats were above the MED level of high priority. In addition, Monsanto states that the Industrial Health Foundation submitted to EPA's TSCA office the results of a 2-generation reproduction study demonstrating a NOEL of 500 ppm in air which should have been considered. The commenter claims that EPA has also not demonstrated that the effects mentioned, or concentrations at which they occurred, were serious or irreversible.

EPA agrees that the concentrations that led to tremors, central nervous system depression, lethargy, or hypothermia in rabbits are above the level of MED that EPA identifies in the *Draft Hazard Assessment Guidelines* (Ref. 11) as high priority for listing. However, while the 2,500 mg/kg/day dermal exposure is above the moderate priority MED guideline, the 997 ppm (438 mg/kg/day) is within this category. In addition to the neurotoxicity effects, as cited in the proposed rule, cyclohexanol also induces renal, hepatic, and myocardial effects at moderate dose levels (for example, inhalation of 0.59 mg/L of cyclohexanol induced degenerative changes in the livers and kidneys of rabbits). EPA considers these effects to be serious. In this case, based on a weight-of-evidence approach, EPA believes that cyclohexanol presents a sufficient hazard to warrant listing under EPCRA section 313 even though the reported values for neurotoxicity effects are in excess of the MEDs placing a chemical in the high priority grouping.

EPA disagrees that the concentrations that led to reproductive impacts in rats and gerbils (15 mg/kg) as described in the proposed rule are above the MED range for high priority listing. EPA reiterates the overall reproductive toxicity of this chemical, based on a weight-of-evidence, supports the addition of cyclohexanol to the EPCRA section 313 list.

The chemical tested in the 2-generation reproduction study submitted to the Agency by the Industrial Health Foundation, cited by the commenter, was cyclohexanone not cyclohexanol as claimed by the commenter.

EPA reaffirms that there is sufficient evidence for listing cyclohexanol pursuant to EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available chronic neurological, hepatic, renal, myocardial, and reproductive toxicity data for this chemical. Therefore, EPA is finalizing the addition of cyclohexanol on the EPCRA section 313 list.

16. *Cyhalothrin.* Zeneca Incorporated contends that the neurotoxicity signs observed in the 6-month and 1-year dog studies cited in the proposed rule occurred at doses that were "otherwise toxic as well" and do not provide any evidence of a specific neurotoxicity. Zeneca Incorporated implies that the presence of "otherwise toxic" signs reduces the significance of the neurotoxicity observed in the cited study.

The phrase "otherwise toxic as well" was not defined by the commenter. The clinical signs of neurotoxicity observed in the dogs at 3.5 mg/kg/day (ataxia, muscle tremors, and convulsions in the 1–year study cited in the proposed rule) and at 10 mg/kg/day (unsteadiness and trembling in the 6–month study cited in the proposed rule) are considered by EPA to be evidence of physiological neurotoxicity. Although there were no pathologic changes in the nervous tissue, EPA considers these effects to be serious because they often precede pathologic neurotoxicity. With the exception of liquid feces, there were no reported toxic findings other than those related to neurotoxicity.

EPA reaffirms that there is sufficient evidence for listing cyhalothrin on the EPCRA section 313 list pursuant to EPCRA section 313(d)(2)(B) based on the available neurological toxicity data. Therefore, EPA is finalizing the addition of cyhalothrin on the EPCRA section 313 list.

17. *Desmedipham.* Nor-Am Chemical states that methemoglobin formation, which is cited by EPA as the basis for listing, is an entirely reversible effect which occurs only after prolonged and consistent exposure. Therefore, the commenter concludes that this finding, by itself, should not be used.

Based on the 90–day dog study, cited in the proposed rule, EPA considers 150 ppm to be a NOAEL. Methemoglobin values were only minimally higher than control levels and were not associated with an increase in Heinz bodies. In the 1-year dog feeding study, after 13 weeks treatment at 300 ppm, methemoglobin was seen associated with histopathological changes (hemosiderin and hemopoiesis). While methemoglobinemia may be a reversible effect, it is nevertheless a serious effect, and in some cases irreversible damage may occur as a result of methemoglobinemia. Methemoglobinemia interfers with the oxygenating capacity of blood resulting in an undersupply of oxygen to the tissues. Therefore, methemoglobinemia is a toxic effect and not simply an indicator of exposure to desmedipham as concluded by the commenter.

Therefore, EPA reaffirms that there is sufficient evidence for listing desmedipham on the EPCRA section 313 list pursuant to EPCRA section 313(d)(2)(B) based on the available hematological toxicity data. Therefore, EPA is finalizing the addition of desmedipham on the EPCRA section 313 list.

18. *2,2-Dibromo-3-nitrilopropionamide.* Dow Chemical Company and Rohm Haas state that the corrosivity and irritancy of the 2,2-dibromo-3-nitrilopropionamide (DBNPA) solutions to the esophagus, pharynx, trachea, and lungs led to development of dyspnea in rats. The commenters imply that the dyspnea in rats should be discounted because it was caused by the method of administration rather than the toxicity of the chemical.

The Agency agrees that the dyspnea observed in the 4–week and 13–week rat gavage studies cited in the proposed rule may have been due to severe irritation of the trachea and lungs from accidental or incidental delivery of small amounts of the DBNPA dosing solutions into the larynx, pharynx, trachea, and/or lungs during the procedure. However, this suggestion of possible cause can be neither refuted nor confirmed based upon the available data. Dyspnea is the basis for the LOEL in the study. One of the commenters agrees that DBNPA is corrosive, particularly to the eyes and, at the least, is severely irritating to the respiratory tract. This is consistent with the effects observed in the two subject studies. The Agency considers the finding of dyspnea in the 4- and 13–week studies to be of sufficient seriousness to warrant listing on the EPCRA section 313 list.

EPA reaffirms that there is sufficient evidence for listing 2,2-dibromo-3-nitrilopropionamide on the EPCRA section 313 list pursuant to EPCRA section 313(d)(2)(B) based on the available chronic respiratory toxicity data. Therefore, EPA is finalizing the addition of 2,2-dibromo-3-nitriloproprionamide on the EPCRA section 313 list.

19. *Diclofop-methyl.* Nor-Am Chemical and Hoechst-Celanese contend that EPA interpreted the doses administered by gavage as diet concentrations (ppm) in the rat teratology study cited in the proposed rule. One commenter states the Agency should provide clarifications concerning "mortality" of the pups and the calculation of the actual test substance intake at different stages during the in-life phases during development in the 3-generation rat reproduction study.

The commenter is correct in stating that the Agency erred in interpreting gavage doses as ppm in the rat teratology study. However, EPA still believes that the doses at which adverse effects occur are sufficiently low and the adverse effects reported are of sufficient seriousness to warrant listing. The developmental NOEL is 10 mg/kg/day and the LOEL is 32 mg/kg/day based on an increased incidence of a number of variations and malformations, as described in the proposed rule. While the maternal effects on body weight and food consumption at 32 mg/kg/day are

transient and reversible, some of the developmental effects at this dose are irreversible. In the 3–generation rat reproduction study cited in the proposed rule, a decrease in pups born alive in the F_{1a}, reduced pup weights (F_{1a} and $_{2a}$) and general retardation of physical development (F_{1a} and $_{2a}$) was noted in offspring at 100 ppm (5 mg/kg/day). The commenter considers the LOEL for this study to be 6.7 mg/kg/day. This dose resulted in decreased parental food consumption and body weight and there were no post partum pup mortalities. Additionally, there were no effects on fertility at the LOEL at any time during the three generations.

The commenters further stated that EPA should "consider the validity" of the 30–day rat study cited in the proposed rule because heart, kidney, and adrenal weights were increased only at doses with no histopathological correlates and were due to the pharmacodynamic lipid metabolism of the test material by the liver.

The increased relative heart, liver, and kidney weights at 80 ppm (4 mg/kg/day) in the 30–day rat feeding study is further substantiated by a recent 90–day rat feeding study cited in the proposed rule with a LOEL of 80 ppm and a NOEL of 20 ppm (1 mg/kg/day). In the recent 90–day study cited in the proposed rule, absolute and relative liver and kidney weight was increased in males and relative liver and kidney weight was increased in females at 80 ppm. These increased organ weights are evidence of a compound-related effect. The Agency interprets Hoechst-Celanese's own statements regarding the 30–day rat feeding study that "increased liver weights and centrilobular enlargement of hepatic cells at dietary concentrations of 80 ppm and higher" as evidence of toxicity.

Hoechst-Celanese also contends that the effects in the renal cortex observed in the 90–day dog study cited in the proposed rule at 250 ppm (15 and 13.4 mg/kg/day in males and females, respectively) did not occur at the highest concentration tested in the 1-year dog study (80 ppm, 4-5mg/kg/day) indicating that the finding in the 90–day study was not test substance related.

EPA believes that the effects occurring in the renal cortex in the 90–day dog study at 13 to 15 mg/kg/day may not have appeared in the 1–year dog study, since the highest dose tested was 4-5 mg/kg/day. If higher doses were employed in the 1–year study, then renal effects could possibly have occurred. However, the results of the 1–year study do not negate the 90–day results, since the dose levels used in the 90–day study were so much higher.

Hoechst-Celanese also states that the Agency used an invalid (flawed) reproductive toxicity study to support the listing. The commenter indicates that the study was compromised by infection of the rat colony with RCV/SDA virus. They further state that another reproductive toxicity study, which EPA did not cite in the proposed rule, should have been evaluated in which the fetotoxic NOEL was 30 mg/kg/day instead of greater than 5 mg/kg/day as in the original study.

The Agency does not find the original study to be invalid. The data were considered to be valid for regulatory purposes. In addition, the Agency found the fetotoxic NOEL in the study referred to by the commenter, not cited by EPA in the proposed rule, to be 5 mg/kg/day, not 30 mg/kg/day as stated by the commenter.

EPA reaffirms that there is sufficient evidence for listing diclofop-methyl on the EPCRA section 313 list pursuant to EPCRA section 313(d)(2)(B) based on the available developmental, hepatic, and renal toxicity data. Therefore, EPA is finalizing the addition of diclofop-methyl on the EPCRA section 313 list.

20. *Diisocyanates.* EPA originally proposed to list three diisocyanates (hexamethylene-1,6-diisocyanate, isophorone diisocyanate, and 1,1-methylene bis(4-isocyanatocyclohexane) on the basis of acute toxicity pursuant to EPCRA section 313(d)(2)(A). As an alternative, EPA proposed to create a delimited diisocyanates category containing these 3 diisocyanates and 17 other diisocyanates based on chronic pulmonary irritation pursuant to EPCRA section 313(d)(2)(B). EPA is finalizing addition of the delimited diisocyanate category based on chronic pulmonary toxicity and therefore has not addressed comments concerning the acute toxicity of any of the diisocyanates. EPA believes that diisocyanates are best added as a category because the members of this category are structurally similar (i.e., each contains the diisocyanate functionality), they induce a similar toxic effect (chronic pulmonary irritation), and their toxicity is due to the diisocyanate portion of the molecule common to all members.

Chemical Manufacturers Association Hexamethylene-1,6-Diisocyanate Panel, Dow Chemical Company, Monsanto, Olin Chemicals, Sealed Air Corporation, Huls America Incorporated, and the Diisocyanates Panel of the Chemical Manufacturers Association oppose EPA's alternative proposal to create a diisocyanate category and believe that individual diisocyanates should be evaluated and included on the EPCRA section 313 list only if the diisocyanate independently satisfies the statutory listing criteria. The commenters state that in adding a broad category of diisocyanates, EPA ignores its statutory mandate to evaluate the individual toxicity of each chemical and to evaluate the exposure potential to the EPCRA community by each individual chemical. The commenters contend that the category would mislead the public as to the amount and type of toxic chemicals to which communities may be exposed. The commenters contend that data collected in aggregate is confusing and difficult to use or interpret. Commenters state that adding a category of diisocyanates based upon the isocyanate functionality is based on the chronic effects associated with exposures to a limited number of diisocyanates and that this method unjustifiably equates toxicity across an entire class of chemicals that have different properties and effects. Commenters state that diisocyanates encompass a diverse group of chemicals which vary significantly in physical and chemical properties and in potential toxicity. Commenters state that the available evidence on the pulmonary effects or toxicity of individual diisocyanates (toluene diisocyanate, methylenebis(phenylisocyanate), and isophorone diisocyanate) does not support the addition of a diisocyanates category. The commenters also state that EPA has not cited any data to support the assertions that diisocyanates cause these effects. Commenters state that individual diisocyanates have been shown to respond differently in mutagenicity studies and that other toxicological differences would be expected among individual diisocyanates, because of differences in their ability to penetrate membranes, the capacity of organisms to metabolize them, the specific reactivity of the diisocyanate groups, etc. Commenters state that in the proposed rule EPA recognized these differences by stating that some diisocyanates are classified as probable carcinogens and others are not. The Wisconsin Department of Natural Resources supports EPA's alternative proposal to create a diisocyanate category and would prefer this manner of listing to listing each diisocyanate separately.

As discussed in unit IV.C. of the preamble, EPA believes that it is acting reasonably within its discretion in listing a category of chemicals by showing that at least one member of the category meets the listing criteria of EPCRA section 313 and that the other members can reasonably be expected to exhibit the same or similar toxic effect.

EPA believes that the available data on the chronic pulmonary toxicity for several members of the diisocyanates category are sufficient for listing under EPCRA section 313(d)(2)(B). EPA also believes that the diisocyanate moiety, common to all members of the category, is responsible for the observed chronic pulmonary toxicity. Therefore, EPA believes that it is reasonable to anticipate that all members of the diisocyanate category will exhibit chronic pulmonary toxicity and that creating a category of diisocyanates is the most appropriate way to list this class of chemicals. As stated in Unit IV.B. of the preamble, EPA does not believe that it is required to consider exposure for chemicals that are moderately high to highly toxic based on a hazard assessment when determining if a chemical can be added for chronic effects pursuant to EPCRA section 313(d)(2)(B); therefore, EPA is not required to evaluate the exposure potential for the members of the diisocyanates category. EPA believes that, because each member of the diisocyanates category has the same functional groups and can reasonably be anticipated to cause similar toxic effects, the diisocyanates category will not mislead the public as to the amounts and type of chemicals released and will not be confusing to use or interpret.

EPA agrees that the diisocyanates are a diverse group of chemicals which vary in physical and chemical properties. However, EPA also believes that the reactive portion of diisocyanate chemicals is the diisocyanate moiety itself and that the rest of the molecule does not affect the reactivity of this portion of the molecule. EPA stands by its interpretation of the literature, as cited in the proposed rule and background material, on the adverse pulmonary effects of diisocyanates and believes that this information supports the addition of a diisocyanates category. The Agency agrees that structural differences among individual diisocyanates may indeed affect their absorption and metabolism. However, since absorption and metabolism are not necessary for chronic pulmonary irritation to occur, the effect of structural differences upon either absorption or metabolism is not an issue in this case. The Agency agrees with the commenter that there are differences in the carcinogenicity/mutagenicity of toluene diisocyanate, methylenebis(phenylisocyanate), and isophorone diisocyanate and that these differences are most likely the result of the differences in absorption and metabolism. However, since neither of these endpoints is the basis for listing diisocyanates as a category and since chronic pulmonary irritation can occur without absorption and metabolism taking place, these issues do not affect the Agency's overall concern for diisocyanates or its decision to list them as a category on the EPCRA section 313.

As EPA discussed in the proposed rule, there currently are four other diisocyanates listed on the EPCRA section 313 list, these are:

Toluene-2,4-diisocyanate (000584-84-9)

Toluene-2,6-diisocyanate (000091–08-7)

Toluene diisocyanate (mixed isomers) (026471–62-5)

Methylenebis(phenylisocyanate) (000101–68-8)

EPA is leaving the toluene diisocyanate compounds listed individually. In addition to the effects discussed above, these compounds have been shown to be carcinogenic. EPA believes it is appropriate to continue to individually list carcinogenic diisocyanates because they exhibit a different toxic endpoint than other members of the category. Methylenebis(phenylisocyanate) has not been shown to be a carcinogen and as EPA discussed in the proposed rule it is being moved into the diisocyanate category.

EPA reaffirms its determination that diisocyanates meet the criteria of EPCRA section 313(d)(2)(B). Therefore, EPA is finalizing the addition of the diisocyanates category that consists of the following chemicals:

1,3-Bis(methylisocyanate)cyclohexane (CAS No. 038661–72-2)

1,4-Bis(methylisocyanate)cyclohexane (CAS No. 010347-54-3)

1,4-Cyclohexane diisocyanate (CAS No. 002556-36-7)

Diethyldiisocyanatobenzene (CAS No. 134190–37-7)

4,4'-Diisocyanatodiphenyl ether (CAS No. 004128-73-8)

2,4'-Diisocyanatodiphenyl sulfide (CAS No. 075790–87-3)

3,3'-Dimethoxybenzidine-4,4'-diisocyanate (CAS No. 000091–93-0)

3,3'-Dimethyl-4,4'-diphenylene diisocyanate (CAS No. 000091–97-4)

3,3'-Dimethyldiphenylmethane-4,4'-diisocyanate (CAS No. 000139-25-3)

Hexamethylene-1,6-diisocyanate (CAS No. 000822-06-0)

Isophorone diisocyanate (CAS No. 004098-71–0)

Methylenebis(phenylisocyanate) (CAS No. 000101–68-8)

4-Methyldiphenylmethane-3,4-diisocyanate (CAS No. 075790–84-0)

1,1–Methylene bis(4-isocyanatocyclohexane) (CAS No. 005124-30–1)

1,5-Naphthalene diisocyanate (CAS No. 003173-72-6)

1,3-Phenylene diisocyanate (CAS No. 000123-61–5)

1,4-Phenylene diisocyanate (CAS No. 000104-49-4)

Polymeric diphenylmethane diisocyanate (CAS No. 009016-87-9)

2,2,4-Trimethylhexamethylene diisocyanate (CAS No. 016938-22-0)

2,4,4-Trimethylhexamethylene diisocyanate (CAS No. 015646-96-5)

In reassessing the Agency's proposal in light of comments received and other information, it has become clear to EPA that the effect of concern (chronic pulmonary toxicity) is related to the diisocyanate moiety and therefore common to all diisocyanate compounds not just those included in the delimited category finalized in this rule. EPA believes that many other diisocyanates not covered by the category may meet the EPCRA section 313 criteria. Therefore, EPA believes that it may be more appropriate to create a diisocyanates category based on a molecular formula description rather than a more limited category comprised of certain named diisocyanates. However, EPA did not include a molecular formula category option in its proposal and therefore has not given the public an opportunity to comment on such a category. Accordingly, in this action EPA is finalizing the addition of a delimited category consisting of the 20 diisocyanates on which the Agency has received comment and for which the Agency has made a final determination that the chemicals meet the EPCRA section 313 criteria for listing. EPA believes that the chemicals covered by this category represent the majority of diisocyanates in production and that listing the delimited category will provide meaningful data to the public. At a later date, EPA will consider whether a more broad diisocyanates category is warranted and appropriate.

21. *Dimethylamine.* Olin Chemicals does not believe that the data cited by EPA are sufficient to prove that dimethylamine causes ". . . significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries. . . ." The commenter did not substantiate this contention. The commenter requests a more rigorous review of the available data before adding dimethylamine to the EPCRA section 313 list.

The Agency is not proposing to list dimethylamine pursuant to section 313(d)(2)(A), therefore the Agency does not have to show that the chemical causes ". . .significant adverse acute

human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries. . . ." EPA disagrees that the data cited are insufficient to prove that dimethylamine is likely to cause significant human health effects. As articulated in the proposed rule, dimethylamine is corrosive to mucous membranes, the eyes and respiratory tract. Chronic exposure results in dose-related lesions in the respiratory and olfactory epithelium and is associated with centrilobular fatty degeneration and necrosis of parenchymal cells after inhalation exposure for 18 to 20 weeks. Rats exposed to oral doses as low as 0.035 mg/kg for 8 months showed neurological effects including changes in conditioned reflexes while single doses of 240 to 260 mg/kg caused excitement and muscle weakness in mice, rats, guinea pigs, and rabbits. Dimethylamine is corrosive to the respiratory tract, exhibits hepatotoxicity and is neurotoxic. EPA reaffirms that there is sufficient evidence to list dimethylamine on the EPCRA section 313 list pursuant to EPCRA section 313(d)(2)(B) based on the available chronic respiratory, hepatic, and neurological toxicity data for this chemical. Therefore, EPA is finalizing the addition of dimethylamine on the EPCRA section 313 list.

22. *2,6-Dimethylphenol.* One commenter, General Electric, states that the proposed addition of 2,6-dimethylphenol to EPCRA section 313 is based upon a "low confidence" study and a 10-week subchronic study which the ITC found insufficient to evaluate.

The commenter is concerned that EPA is using the same data set in two rule makings; TSCA section 4 and the decision to list on the EPCRA section 313 list. The commenter quotes the ITC finding that the studies are of "low confidence." The Agency used these data to derive an oral RfD of 0.0006 mg/kg/day. IRIS confidence in the studies is low because of lack of experimental detail. EPA also concedes that the ITC had low confidence in these studies for its purposes which are *risk assessment.* However, EPA believes that these data are sufficient for the purposes of hazard assessment and concludes that these studies when considered together present a sufficient weight of the evidence determination for listing 2,6-dimethylphenol on EPCRA section 313 because 2,6-dimethylphenol causes hepatotoxicity and nephrotoxicity at relatively low dose levels. EPA reaffirms that there is sufficient evidence to list 2,6-dimethylphenol on the EPCRA section 313 list pursuant to EPCRA section 313(d)(2)(B) based on the available hepatotoxicity and nephrotoxicity data for this chemical. Therefore, EPA is finalizing the addition of 2,6-dimethylphenol on the EPCRA section 313 list.

23. *Dinoseb.* Uniroyal Chemical Company objects to the listing of dinoseb (dinoseb is the trade name for dinitrobutyl phenol) because the sale of dinoseb as a herbicide or insecticide is prohibited and remaining inventories have been used up or disposed. However, the commenter notes that dinitrobutyl phenol continues to be produced and sold for uses not subject to FIFRA (e.g. as an inhibitor in the polymer industry).

EPA believes that the chemical is more properly listed by its common chemical name, dinitrobutyl phenol, rather than its trade name. However, EPA also recognizes that this chemical is well known as dinoseb. Therefore, EPA is finalizing the addition of this chemical as dinitrobutyl phenol (dinoseb).

24. *Disodium cyanodithiomidocarbamate.* Buckman Laboratories International, Incorporated contends that the compound was not teratogenic in either the rat or rabbit studies cited in the proposed rule. Specifically, they contend that skeletal variations and increased resorptions should be considered an artifact (i.e., occurring by chance rather than as a result of treatment), and should not be considered as evidence of developmental toxicity.

EPA disagrees with the commenter. In both the rabbit and rat teratology studies cited in the proposed rule, developmental effects were observed at levels that were above the maternally toxic level (greater than 3 mg/kg for rabbits and greater than 6 mg/kg for rats). Furthermore, the effects observed cannot be considered an artifact, because in rabbits receiving 30 mg/kg, there is a continuation of the effects observed at 10 mg/kg, with an accompanying increase in the severity of the developmental findings. This shows that the effects are related to the dose received and do not occur by chance.

EPA reaffirms that there is sufficient evidence for listing disodium cyanodithioimidocarbonate on the EPCRA section 313 list pursuant to EPCRA section 313(d)(2)(B) based on the available developmental toxicity data. Therefore, EPA is finalizing the listing of disodium cyanodithiomidocarbamate on the EPCRA section 313 list.

25. *Ethyl dipropylthiocarbamate (EPTC).* Zeneca Incorporated states that in the study cited by EPA in the proposed rule in which rats were orally administered the test compound for 2 years, brain cholinesterase reductions were slight and only occurred at 120 mg/kg/day, not 15 mg/kg/day. The commenter claims that neuromuscular changes occurred only after extended exposure, and are not relevant to listing on the EPCRA section 313 list.

The commenter is referring to two studies cited in the proposed rule. A 2-year rat feeding study established a NOEL of 5 mg/kg/day and a systemic LOEL of 25 mg/kg/day with neuromuscular atrophy/degeneration and decreased body weight gains as the findings. At 125 mg/kg/day, the effects included chronic myocarditis, cataracts, increased SGOT and decreased RBC cholinesterase (ChE) activity. The neuromuscular and cardiac changes are serious and potentially irreversible effects. The second study is a 3–month feeding study in Sprague-Dawley rats. Although this study was not identified in the proposed rule, the results of the study were described. The systemic NOEL in this study was 3 mg/kg/day, and the LOEL was 15 mg/kg/day. The effects seen included increase in cardiomyopathy and decreased weight gain and food consumption. As noted by the commenter, brain ChE depression in this study in females was slight and occurred at 120 mg/kg/day and, taken by itself, is not sufficient for listing, however, when considered with other effects in a weight-of-evidence approach, this endpoint is supportive of listing. The commenter further states that the 2–year dietary rat study is old and has been superseded by another study (Ref. 8), in which the NOEL was 25 mg/kg/day.

The Agency agrees with the commenter's comment regarding the replacement of the older study with a newer study, but disagrees with the commenter's NOEL. The Agency's NOEL for this study is 5 mg/kg/day and not 25 mg/kg/day. However, the results of the older study demonstrate that heart effects of EPTC are seen in more than one study.

The commenter further states that in the 2-generation rat reproduction study, cardiomyopathy was observed only in the F_{1A} females and was incidental to treatment. EPA disagrees with this contention. The investigators did not look for this effect in other generations. Thus, there is no reason to conclude that this effect was not manifested in other generations. In addition, this type of adverse effect has been seen in other studies, such as the 2–year rat study and the 3-month rat study discussed above and cited in the proposed rule.

The Agency believes that the cardiopathic finding at 10 mg/kg/day, degenerative cardiomyopathy, is the pivotal finding of toxicological significance for EPTC. EPA believes that this is a serious effect. Therefore, this effect cannot be considered incidental to treatment.

The commenter further states that the neurological effects seen in the study are not relevant to the EPCRA section 313 due to prolonged exposure and the cardiovascular observations occurred at the highest dose tested in the studies cited.

The cardiovascular effects occur after relatively short exposures at doses of 9 mg/kg/day in male rats and 18 mg/kg/day in female rats. These dose levels are sufficiently low and the adverse effects are serious and potentially irreversible. The Agency considers the neurotoxicity due to prolonged exposure to be relevant for purposes of listing on the EPCRA section 313 list. Releases of chemicals that induce adverse effects after prolonged exposure is among the type of information that Congress intended TRI to include.

EPA reaffirms that there is sufficient evidence for listing EPTC on the EPCRA section 313 list pursuant to EPCRA section 313(d)(2)(B) based on the available neurological, cardiovascular, and reproductive toxicity data for this chemical. Therefore, EPA is finalizing the addition of EPTC on the EPCRA section 313 list.

26. *Fenoxaprop-ethyl.* Hoechst-Celanese and Nor-Am Chemical indicate that the chronic interstitial nephritis reported at 80 ppm in the 3–month dog study cited in the proposed rule "was [a] non substance-related, incidental finding since 12/24–months chronic treatment produced no comparable pathogenesis" and that "liver and kidney were not the target organs in dogs; effects were confined to reduced body weight gains at the highest concentration (75 ppm)."

EPA disagrees with the commenters. The dietary levels of fenoxaprop-ethyl in the studies compared by the commenter were 0, 16, 80, and 400 ppm and 0, 3, 15, and 75 ppm for the 3–month and 24–month studies, respectively; both studies are cited in the proposed rule. The microscopic findings in the 3–month study indicated that there was a dose response for chronic interstitial nephritis with inflammatory changes in the medulla and inner cortex. One half of the dogs were affected at 400 ppm, which is much higher than the highest dietary level in the 24–month study (75 ppm). Therefore, the inflammatory changes in the kidneys of treated dogs at 80 and 400 ppm in the 3–month study appear to be related to the ingestion of fenoxaprop-ethyl and, therefore, the kidney appears to be a target organ. The Agency did not cite liver effects in dogs as a basis for listing.

EPA reaffirms that there is sufficient evidence for listing fenoxaprop-ethyl on the EPCRA section 313 list pursuant to EPCRA section 313(d)(2)(B) based on the available renal and developmental toxicity data for this chemical, and pursuant to EPCRA section 313(d)(2)(C) based on the available environmental toxicity data. Therefore, EPA is finalizing the addition of fenoxaprop-ethyl on the EPCRA section 313 list.

27. *Fenoxycarb.* Ciba-Geigy Corporation and Miles Incorporated disagree with the listing of fenoxycarb on the EPCRA section 313 list because they believe that the adverse hepatic effects observed in mice and rats (3-month dietary study and 2-year oncogenicity study, both cited in the proposed rule) are not sufficiently serious to support listing. They note that no evidence of neoplastic lesions was reported in the chronic studies. They further state that delayed pinna unfolding in the reproductive toxicity study in rats cited in the proposed rule is a reflection of slower growth only, and therefore should not be used to support listing.

The Agency disagrees that the evidence does not support a finding that section 313(d)(2)(B) are satisfied. The effects in the chronic studies include focal necrosis, changes which are considered by the Agency to be serious and potentially irreversible in nature. The liver effects in the subchronic study demonstrate the progression of changes leading to necrosis in the chronic study. The Agency considers these to be serious adverse effects.

The developmental effects (slight delays in pinna unfolding) were said by the commenter not to reflect developmental effects since development was complete and function apparently unaffected, and that these effects were considered a reflection of slower growth (reduced body weights) as were the differences in relative organ weights. The Agency considers reduced rat pup body weight and slower growth with resulting differences in organ weight to be effects that are indicators of potential hazard. The Agency's *Developmental Risk Assessment Guidelines* (Ref. 6) state "A change in offspring body weight is a sensitive indicator of developmental toxicity, in part because it is a continuous variable. In some cases, offspring weight reduction may be the only indicator of developmental toxicity. While there is always a question as to whether weight reduction is a permanent or transitory effect, little is known about the long-term consequences of short-term fetal or neonatal weight changes. Therefore, when significant weight reduction effects are noted, they are used as a basis to establish the NOAEL." EPA, therefore, considers evidence of delayed development, including delayed pinna unfolding and reduced body weight gain, to be significant signs of developmental toxicity.

EPA reaffirms that there is sufficient evidence for listing fenoxycarb on the EPCRA section 313 list pursuant to EPCRA section 313(d)(2)(B) based on the available hepatic and developmental toxicity data for this chemical. Therefore, EPA is finalizing the addition of fenoxycarb on the EPCRA section 313 list.

28. *Fomesafen.* Zeneca Incorporated states that clear species differences are evident which would suggest that peroxisome proliferation and consequential liver toxicity is not relevant to man.

Zeneca Incorporated did not provide any new evidence which supports the lack of relevance of these effects to man. In the absence of evidence to the contrary, the Agency believes that liver toxicity, which is associated with peroxisome proliferation is relevant to the assessment of potential human health effects. As there is evidence of hepatic toxicity in three different rat studies at varying dosages and durations and one dog study, EPA reaffirms that there is sufficient evidence for listing fomesafen on the EPCRA section 313 list pursuant to EPCRA section 313(d)(2)(B) based on the available hepatic toxicity data for this chemical. Therefore, EPA is finalizing the addition of fomesafen on the EPCRA section 313 list.

29. *n-Hexane.* The National Oilseed Processors Association and The National Cotton Council of America contend that EPA failed to perform a detailed hazard evaluation that culminated in a weight-of-evidence determination regarding the toxicity of n-hexane as required under the Agency's *Draft Hazard Assessment Guidelines* (Ref. 11). Commenters state that portions of EPA's support document were taken almost verbatim from the Agency's IRIS data base and that the Agency appears to have relied extensively on the IRIS summary previously prepared for n-hexane. Commenters state that EPA should have evaluated the merits and conclusions of each study separately.

The IRIS data base that EPA cited in support of the listing of n-hexane

represents the Agency's weight-of-evidence hazard determination for chemicals contained in the data base. The information contained in the IRIS data base was developed after the Agency's thorough review of the available data on n-hexane. Therefore, by relying on the IRIS data base EPA did not fail to perform a detailed hazard evaluation of n-hexane as required by the *Draft Hazard Assessment Guidelines* (Ref. 11).

The same commenters state that based on EPA's screening criteria included in the *Draft Hazard Assessment Guidelines* (Ref. 11) if a substance produces neurotoxic effects at doses that are greater than 500 mg/kg/day (i.e., if the lowest observable adverse effect level is 500 mg/kg/day), then the substance would be placed in the "insufficient for listing" category. Commenters went on to state that most of the studies that EPA-cited in support of the listing of n-hexane indicated that n-hexane produces neurotoxic effects only at very high dose levels and in many cases significant effects are only seen at doses that exceed 500 mg/kg/day.

EPA believes that the commenters have misinterpreted the screening criteria contained in the *Draft Hazard Assessment Guidelines* (Ref. 11). The criteria are based on the MED levels which are not LOAELs. These MED values are derived from the LOAELs and, therefore, the direct comparison of the screening criteria with LOAELs is inappropriate. However, EPA notes that significant effects from n-hexane are seen in quantities significantly less than 500 mg/kg/day, for example, a LOAEL of 204 mg/m^3 (58 ppm, LOAEL(ADJ) of 73 mg/m^3) was established for certain electrophysiological alterations in humans.

These commenters made numerous specific comments concerning the adequacy of the studies summarized in IRIS used to support a chronic neurotoxicity finding for n-hexane. Commenters state that n-hexane is only toxic at very high levels if at all and that the data are not sufficient to support listing under EPCRA section 313. The commenters state that EPA failed to show how the data contained in the *Support Document for the Addition of Chemicals from Section 112(b) of the Clean Air Act Amendments and Chlorinated Paraffins to EPCRA Section 313* (Ref. 12) and the IRIS data base compare with the criteria for adding substances to the EPCRA section 313 list and how the Agency evaluated these studies in light of such criteria.

In the *Response to Comment Document* (Ref. 14), EPA has addressed the specific comments concerning the adequacy of the studies used to support a chronic neurotoxicity finding for n-hexane. EPA agrees with the commenters that some of the studies included in the data base for n-hexane have limitations. However, the review of the comments and data have not changed EPA's position that the weight-of-evidence supports a finding of chronic neurotoxicity for n-hexane. The weight-of-evidence determination contained in the Agency's IRIS data base is the basis for determining that n-hexane can reasonably be anticipated to cause neurotoxicity in humans. EPA reaffirms that there is sufficient evidence for listing n-hexane on the EPCRA section 313 list pursuant to EPCRA section 313(d)(2)(B) based on the available neurotoxicity data for this chemical. Therefore, EPA reaffirms its determination that n-hexane meets the listing requirements of EPCRA section 313.

DuPont states that if EPA adds n-hexane (CAS No. 110–54–3) to the EPCRA section 313 list the Agency should clarify that isomers of n-hexane are not included in the addition of n-hexane.

EPA notes that the listing of n-hexane is for the straight chain (i.e., "n") isomer of hexane only as the chemical name and CAS number indicate. EPA does not believe that any special qualifier is needed to make the distinction between n-hexane and other isomers of hexane that are not included in this listing.

30. *3-Iodo-2-propynyl butylcarbamate.* Troy Corporation disagrees with the Agency's conclusion that no NOEL was achieved in the rat chronic toxicity/carcinogenicity study cited in the proposed rule. The commenter states that the non-neoplastic changes observed at the 40 mg/kg/day and 80 mg/kg/day dose levels, while also present at the 20 mg/kg/day dose level (lowest dose tested), were not statistically significant and therefore a NOEL was clearly established at this dose. The commenter also contends that non-neoplastic lesions of the stomach in rats are not relevant to humans.

The Agency agrees with the commenter that the increases in nonneoplastic changes reported at 20 mg/kg/day were not statistically significant. However, the lack of a study NOEL was based upon decreased body-weight gain in males at 20 mg/kg/day (the lowest dose tested), not the nonneoplastic lesions. The non-neoplastic lesions reported at 40 and 80 mg/kg/day are still considered serious enough to support a listing on the EPCRA section 313 list.

The same commenter states that the simple findings of increased liver-to-body weight ratio found in the subchronic oral toxicity study in rats cited in the proposed rule as well as the incidence of non-neoplastic stomach irritation found in the chronic toxicity/carcinogenicity study cited in the proposed rule in rats is not of sufficient seriousness to warrant EPCRA section 313 listing. The commenter claims that neither study cited demonstrates a sufficiently known or reasonably anticipated adverse health effect in humans to warrant section 313 listing.

EPA disagrees. The commenter provides no basis for the contention that the nonneoplastic lesions of the stomach in rats are not relevant to humans. The incidence of these lesions was dose dependent, and was apparent at both sacrifices. Moreover, incidence increased with duration of treatment. The Agency considers this effect to be serious in nature and not readily reversible, and therefore the chemical warrants listing. The liver-to-body weight ratio from the subchronic study is not in itself sufficient to warrant listing on the EPCRA section 313 list but is provided as corroborating information.

EPA reaffirms that there is sufficient evidence for listing 3-iodo-2-propynyl butylcarbamate on the EPCRA section 313 list pursuant to EPCRA section 313(d)(2)(B) based on the available chronic toxicity data for this chemical. Therefore, EPA is finalizing the addition of 3-iodo-2-propynyl butylcarbamate on the EPCRA section 313 list.

31. *Iron pentacarbonyl.* International Specialty Products contends that iron pentacarbonyl cannot reasonably be anticipated to cause significant adverse human health effects at concentration levels that are likely to exist beyond facility site boundaries because it rapidly decomposes.

EPA disagrees. The Agency considered the instability of iron pentacarbonyl under certain conditions, such as high temparature and/or prolonged exposure to direct sunlight, in its original modeling of exposure to iron pentacarbonyl cited in the proposed rule. EPA believes that its modeling was based on reasonable reactivity data. EPA reiterates that its exposure assessment indicates that iron pentacarbonyl can reasonably be anticipated to be present at facility boundaries at concentration levels that would cause an adverse effect. EPA reaffirms that iron pentacarbonyl is sufficient for listing on the EPCRA section 313 list pursuant to EPCRA section 313(d)(2)(A) based on available acute toxicity and exposure data for this

chemical. Therefore, EPA is finalizing the addition of iron pentacarbonyl on the EPCRA section 313 list.

32. *Lithium carbonate.* FMC Corporation contends that although lithium is toxic at therapeutic levels, naturally occurring levels are below the toxic range and therefore, lithium carbonate poses no threat to the general population. The commenter also contends that there is no evidence that lithium carbonate is "known to cause or can reasonably be anticipated to cause significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring, releases." Thus, the commenter feels that there is no basis for the listing of lithium carbonate on the EPCRA section 313 list.

The Agency is not proposing to list lithium carbonate on the basis of acute effects but on the basis of developmental effects. Therefore, the Agency does not need to determine that lithium carbonate is "known to cause or can reasonably be anticipated to cause significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring, releases," but rather must satisfy the section 313(d)(2)(B) criteria.

As the commenter noted, lithium carbonate is a well-known developmental toxicant in both animals and humans at therapeutic levels and can cause life-threatening cardiac abnormalities in the developing human fetus. The commenter argues that lithium is toxic at therapeutic levels but not at naturally "occurring levels." The Agency agrees that lithium may be toxic at therapeutic levels but also recognizes that use of lithium in a therapeutic setting is carefully controlled. Levels observed in a therapeutic setting may have little or no relationship to levels seen in an uncontrolled release setting. Furthermore, both the efficacy of lithium and its associated toxicity in humans is dependent upon individual sensitivity and can vary widely from individual to individual making uncontrolled release even more problematic. EPA reaffirms that there is sufficient evidence to list lithium carbonate under EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available developmental toxicity data for this chemical. Therefore, EPA is finalizing the addition of lithium carbonate on the EPCRA section 313 list.

33. *Metam sodium.* Buckman Laboratories International, Incorporated and Zeneca Incorporated state that the developmental toxicity studies cited in support of listing for metam sodium were rejected by the Agency to support the registration of a pesticide under FIFRA, and therefore should not be used. Further, they state that these data have been superseded by two new studies that have been accepted by the Agency, and that only the new studies should be considered for listing of metam sodium.

The two earlier studies referred to by the commenters and cited in the proposed rule were submitted to the Agency under FIFRA. EPA's evaluation of those studies for purposes of FIFRA indicated that they did not fully satisfy the guidelines for developmental toxicity studies (Ref. 6); however, EPA did not reject these studies. EPA considers them sufficient as part of a weight-of-evidence evaluation, in determining the developmental toxicity of this chemical. The two new studies cited by the commenter have been reviewed by the Agency. The Agency found these studies to fully satisfy the guidelines (Ref. 6). However, these new studies do not supersede the previous studies nor did the Agency ignore them. Rather, all four studies were used together as part of the Agency's weight-of-evidence to evaluate the chemical. EPA does not ignore indications of potential toxicity simply because of study design flaws. A full discussion of these studies is contained in the *Response to Comment Document* (Ref. 14).

Zeneca Incorporated further stated that the rat teratology study was a gavage study and not a dietary study. The commenter claims that this is an unrealistic route of human exposure.

The commenter is correct in stating that the rat teratology study was a gavage study and not a dietary study. This does not diminish its appropriateness for consideration in the hazard assessment for listing. In fact, EPA requests that developmental toxicity studies be conducted by gavage, because this route allows for a more accurate assessment of the dose the animal actually receives.

EPA reaffirms that there is sufficient evidence for listing metam sodium on the EPCRA section 313 list pursuant to EPCRA section 313(d)(2)(B) based on the available developmental toxicity data for this chemical and its metabolite, carbon disulfide. Therefore, EPA is finalizing the addition of metam sodium on the EPCRA section 313 list.

34. *N-Methyl-2-pyrrolidone.* IBM, American Automobile Manufacturers Association, and N-Methylpyrrolidone Producers Group object to the listing of N-methyl-2-pyrrolidone (NMP) on the EPCRA section 313 list. NMP Producers Group contends that the 2-generation reproductive study and the rabbit gavage developmental study cited in the proposed rule are flawed. NMP Producers Group further contends that the author of the 2-generation rat reproductive study and an independent reviewer have reached similar conclusions.

In reviewing the material submitted by the commenter, EPA failed to find a statement from the author that the study was flawed. The review of the 2-generation rat reproductive study by an independent reviewer did not find fault with the entire study but stated that it should not be used for *risk assessment* purposes. EPA agrees with this judgement but is not using this study for risk assessment purposes but rather as an indication of human health hazard. The Agency believes that the adverse effects seen in these studies are of sufficient seriousness to warrant listing under EPCRA section 313(d)(2)(B).

NMP Producers Group also states that when the 2-generation reproductive study is evaluated taking into account the genetic fertility problem in the strain of male rats, the study establishes a NOAEL of 160 mg/kg rather than the NOAEL of 50 mg/kg cited in the proposed rule. The commenters also believe the study should not be considered because the variability in male fertility was not dose-dependent.

EPA does not agree that the NOAEL should be adjusted for the fertility problem of the strain of male rats used in the study. During the first mating on which EPA based its concern level (F_{2a}) the high-dose male group exhibited a 24 percent reduction in the mating index. In addition, there was a statistically significant, dose-related reduction in the male fertility index; thus, the index was 93.1, 72.4, 72.4, and 46.7 in the control, low-, mid-, and high-dose groups, respectively. The control value in this study is 93.1 percent, well within acceptable limits for any reproductive effects study and as seen the reduction in mating index is dose-related being 72.4 percent in the low- and mid-dose groups and 46.7 percent in the high-dose group. With a control value of 93.1 percent and using the concurrent controls as an index of mating performance for the males in this study, the Agency feels that there is no reason to adjust the NOAEL of 50 mg/kg to account for reduced fertility in the test animals. During the second mating (F_{2b}), the male high-dose group exhibited a 31 percent reduction in the mating index, and again, there was a statistically significant, dose-related reduction in the

male fertility index (83.3, 69.0, 60.0, and 34.5 in the control, low-, mid-, and high-dose groups, respectively). The female high-dose group exhibited a 28 percent reduction in the fertility index, and again, there was a statistically significant, dose-related reduction in the fecundity index (92.6, 74.1, 64.3, and 50.0 in the control, low-, mid-, and high-dose groups, respectively). Again, the Agency does not feel that a control value of 83.3 percent fertility index in the control animals is abnormal and is more concerned with the dose-related decrease in fertility as an indication that NMP is a reproductive toxicant. EPA is also concerned with the decrease in fecundity index in the females and does not feel that the control value of 92.6 percent warrants any adjustment of NOAEL for reduced fertility or mating ability among males in the study.

The Agency also disagrees with NMP Producers Group's contention that decreases in male fertility observed are not dose dependent. The data presented above clearly show a correlation between dose and decreased fertility.

NMP Producers Group claims that the effects of NMP administration manifested only in the second generation of animals.

EPA disagrees and believes that effects were manifested in the first generation. There was a reduction in fertility in the F1 generation, histological evidence of reproductive effects including hypospermia and significant systemic toxicity in the F1 generation. In addition, EPA does not believe that it is unusual to see increased severity in the second generation since animals have either been treated for 2 generations or are the offspring of treated animals and cumulative effects or effects on the reproductive system of the first generation animals may manifest in the second generation.

NMP Producers Group further believes that NMP is not a developmental hazard because EPA's conclusion is based on observations from what the commenter claims is a flawed reproductive study. The commenter adds that a considerable body of evidence supports the conclusion that NMP is not uniquely toxic to a developing fetus.

EPA's conclusions about the developmental toxicity of NMP are based upon a rabbit gavage study and the developmental portion of the 2-generation reproductive study referred to above and cited in the proposed rule. The rabbit gavage study showed a significant increase in resorptions and malformations (misshapen skull bone and cardiovascular malformations). The LOAEL for developmental toxicity in this study was 540 mg/kg and the NOAEL was 175 mg/kg. The developmental portion of the 2-generation reproductive effects study showed evidence of developmental toxicity in both generations after exposure to 500 mg/kg as demonstrated by reduced litter size, reduced postnatal survival, and reduced pup body weight. The Agency believes that despite the flaws in the study, the data described above clearly show evidence of developmental toxicity. In addition, EPA believes that the body of evidence supports the finding that NMP is uniquely toxic to the developing fetus and the information available to the Agency both from the rat developmental study and rabbit gavage study is sufficient to list NMP on the EPCRA section 313 list.

EPA reaffirms that there is sufficient evidence to list N-methyl-2-pyrrolidone under EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on available developmental and reproductive toxicity data for this chemical. Therefore, EPA is finalizing the addition of N-methyl-2-pyrrolidone on the EPCRA section 313 list.

35. *Molinate.* Zeneca Incorporated contends that the observations attributed to the 35 mg/kg/day dose level in the rat developmental toxicity study "in fact occurred at 140 mg/kg/day, the highest dose tested and were thus a consequence of maternal toxicity." The commenter states that the NOEL for that study was 35 mg/kg/day.

The Agency does not agree that the NOEL for this study was 35 mg/kg/day. The NOEL for developmental toxicity was 2.2 mg/kg/day based on an increase in runting at the next highest doses, 35 and 140 mg/kg/day. The other adverse effects listed in the comments for this study occurred only at the highest dose tested (140 mg/kg/day). The NOEL for maternal toxicity was 35 mg/kg/day and that the effects on the pups (runting) occurred at a dose level lower than the dose level found to be maternally toxic.

The same commenter stated that the issue of whether molinate is a reproductive toxin on the basis of its adverse effect on fertility in rodents has been very extensively investigated with studies in rabbits, dogs, monkeys, and man, and these studies have shown "conclusively that the effects seen in rodents is [sic] not relevant to man."

While EPA agrees that there has been extensive testing of molinate with respect to fertility, the data on the rabbit and dog do not support the commenter's contention that the effects seen in rodents are specific only to rodents. For example, in each of the fertility studies in rabbits, both an increase in pre-implantation loss and abnormal sperm were observed. These two consistent [reproducible] observations are suggestive of fertility effects, are two of the same observations found in rats and, although not as dramatic as observed in rats, cannot be negated. In the chronic dog study, lesions in male reproduction organs and effects on sperm were observed, which demonstrate that, at least in the males, the gonads are target organs for molinate. The lack of any effect on the limited parameters assessed in the male monkey studies lends little credence to the argument since only male monkeys were exposed to molinate, and no reproduction studies have been performed to assess reproductive performance. Since molinate is reaching the gonads in all species, not only in rodents as the commenter claims, molinate can reasonably be anticipated to cause fertility/reproductive effects in humans. Further, animals are accepted as surrogates for toxicity testing to predict potential hazard to humans, except in a few rare cases where effects have been determined to be species-specific [e.g., $\alpha 2\mu$-globulin].

The same commenter further contends that a NOEL of 2 mg/kg/day was established in the rat 2–year study, and that this study should not be used to evaluate the neurotoxicity of molinate because the study was not designed to evaluate that effect. Rather, the commenter contends that the "definitive position on neurotoxicity has been determined by specific [neurotoxicity] studies." Zeneca Incorporated did not provide a reference for these "specific studies."

EPA agrees that the NOEL for effects other than neurotoxic effects is 2 mg/kg/day in the chronic rat study. No NOEL for neurotoxic effects was established in that study. The LOEL for neurotoxicity in this study is 0.35 mg/kg/day. Although this study was not specifically designed to evaluate the neurotoxic effects of molinate, adverse neurological effects were reported. Further, they were substantiated by the findings from a 1–year study in dogs.

The same commenter stated that the effects observed in the dog study were found at the highest dose administered for 1–year and were "largely a consequence of extended exposure" and as such should not form a part of the EPCRA listing. The commenter implies that because this is a chronic adverse effect, the effect is not relevant to the EPCRA section 313 criteria.

As specified in section 313(d)(2)(B), a chemical may be listed if it causes

chronic toxicity. Thus, the comment is not relevant.

EPA reaffirms that there is sufficient evidence for listing molinate on the EPCRA section 313 list pursuant to EPCRA section 313(d)(2)(B) based on the available developmental, reproductive, and neurological toxicity data for this chemical. Therefore, EPA is finalizing the addition of molinate on the EPCRA section 313 list.

36. *Nitrate compounds (proposed as nitrate ion).* American Automobile Manufacturers Association, Merck, and the Department of Energy disagree with EPA's proposal to list nitrate ion because an ion is not a chemical. Merck further states that nitrate ion "exists only in aqueous media." The Chevron Companies, the Department of Energy, Chemical Manufacturers Association, and Air Products and Chemicals, Incorporated contend that in proposing to add nitrate ion to EPCRA section 313 the Agency actually proposed to add a category of chemicals that dissociate to generate nitrate ion. EPA agrees with the commenters that an ion does not meet the definition of a chemical for purposes of listing on the EPCRA section 313 list and that by proposing nitrate ion the Agency had, in effect, proposed the addition of a category of nitrate compounds that dissociate in water that are reportable only when in aqueous solution. Thus based on the comments provided by the commenters, the Agency is finalizing the addition of the following category: water dissociable nitrate compounds (reportable only when in aqueous solution). Qualifiers of this sort have been used to define the form of a chemical for which reports should be submitted, e.g., zinc (fume or dust). The qualifier following this listing indicates that only water dissociable nitrate compounds that are manufactured, processed, or otherwise used as an aqueous solution at a facility are subject to reporting. As with all other aspects of EPCRA section 313 reporting, only the weight of the listed chemical is subject to threshold determinations. That determination does not include, for example the weight of the water or any other constituent in the solution other than the nitrate compound. Beyond the threshold determination, the amounts reportable on Form R should only include the mass of the nitrate portion of the compound in solution. This approach is consistent with guidance given for determining threshold and release amounts for metal compounds. EPA recognizes that most monitoring data available measure only the dissociated nitrate ion released and not the amount of total nitrate compounds from which the nitrate ion dissociated. Reporting of the amount of the total water dissociable nitrate compound in wastes would be complicated when more than one substance contributes to the nitrate ion content of the waste and when the nitrate compound is converted to a different substance due to waste treatment or other processes. It is therefore reasonable to require reporting of only the nitrate ion released in order to avoid confusion over the meaning of total compound released.

EPCRA section 313 requires threshold determinations for chemical categories to be based on the total of all chemicals in the category manufactured, processed, or otherwise used. For example, a facility that manufactures three members of a chemical category would count the total amount of all three chemicals manufactured towards the manufacturing threshold for that category. One report is filed for the category and all releases are reported on this form.

In the proposed rule, EPA discussed both the human health and environmental adverse effects attributable to nitrates. EPA continues to be concerned about the potential environmental impacts of nitrates. In today's action, EPA is adding nitrate compounds based on the adverse human health effects that the nitrate moiety causes. Nitrate causes methemoglobinemia. Methemoglobinemia, like carbon monoxide, interferes with the oxygenating capacity of the blood resulting in an under supply of oxygen to the tissues. In adults, cyanosis to lips and mucous membranes occurs at a level of 1.5 g/dL (10 percent saturation in an adult with normal hemoglobin levels). Levels between 30 percent and 50 percent saturation in adults produce depression of the cardiovascular and central nervous systems; levels between 50 percent and 70 percent cause stupor, convulsions and respiratory depression and levels above 70 percent are usually fatal. Because of increased requirement for oxygen in growing tissue and because of decreased blood volume in infants, they are much more sensitive to nitrate ion toxicity than adults. Infants have a lower activity of methemoglobin reductase and thus are more susceptible. Consequently adverse effects are seen at much lower levels in infants than in adults. Irreversible damage to organs such as the heart or brain, and the development of coronary artery disease or pulmonary disease are more likely to develop in infants because the anoxia caused by methemoglobinemia can occur more rapidly and have more devastating effects in growing tissue than in the "static" tissue of the adult body. EPA believes that these are serious adverse effects that satisfy the criteria of EPCRA section 313(d)(2)(B).

37. *Ozone.* Many commenters opposed the addition of the CAA criteria pollutants (sulfur dioxide, sulfur trioxide (SO_x), nitric oxide and nitrogen dioxide (NO_x), carbon monoxide (CO), and ozone) to the EPCRA section 313 list since extensive data on these chemicals is already collected under the CAA.

EPA agrees with the commenters that there are many complex issues associated with the extensive collection of data on these chemicals under the Clean Air Act. Therefore, EPA is deferring the listing of these chemicals for possible addition at a later time to address some of the issues involving the availability of data collected under the CAA. The Agency does not believe, however, that the listing of ozone should also be deferred. Emissions of ozone, also a criteria pollutant, are not captured under the CAA. The CAA mandates the collection of data on the releases of VOCs (VOCs react in the troposphere to generate ozone and other air pollutants), which are regulated to maintain the ambient air quality standard for ozone. EPA believes there are many other significant uses of ozone (e.g., wastewater treatment, bottled water purification, and chemical intermediate) that would be captured by EPCRA section 313 reporting. Accordingly, EPA does not believe that the finalization of ozone should be deferred. EPA reaffirms that ozone meets the EPCRA section 313(d)(2) criteria pursuant to EPCRA section 313(d)(2)(B) and 313(d)(2)(C) based on the available toxicity data for this chemical. Therefore, EPA is finalizing the addition of ozone on the EPCRA section 313 list.

38. *Pebulate.* Zeneca Incorporated comments that the neurological effects noted in the 1–year feeding study in dogs cited in the proposed rule occurred at the highest dose level (100 mg/kg/day), which was, by design, a toxic dose. Thus, the commenter claims that there is no reasonable hazard.

The Agency disagrees. Although the highest dose tested is designed to elicit toxicity in the dogs, the presence of Wallerian type degeneration of the white matter of the spinal cord at the 100 mg/kg/day dose level in dogs of both sexes is of considerable seriousness and cannot be dismissed only because it occurred at the highest dose tested. Although the dose eliciting degeneration of the spinal cord was the highest dose tested, 100 mg/kg/day, these adverse effects are of sufficient

seriousness to warrant listing based upon the potential for similar effects in humans.

In this study, the NOEL for the Wallerian type neurological lesions is 50 mg/kg/day. However, the NOEL in males is less than 5 mg/kg/day (LOEL based on findings of abnormal behavior, ataxia, severe convulsions, and congestion in both kidneys in one dog). In females, the NOEL was 5 mg/kg/day and the LOEL was 25 mg/kg/day with occurrence of blood in feces, increased absolute and relative liver weight, increase in severity of lipofuscin deposition in kidneys, and hemosiderin deposition in liver and spleen.

EPA reaffirms that there is sufficient evidence for listing pebulate on the EPCRA section 313 list pursuant to EPCRA section 313(d)(2)(B) based on the available neurological toxicity data for this chemical. Therefore, EPA is finalizing the addition of pebulate on the EPCRA section 313 list.

39. *Permethrin.* Zeneca Incorporated states that the hepatic effects noted in the liver of rats and dogs are adaptive rather than toxic responses to the pyrethroid. The commenter further claims that there were no changes in liver weight relative to body weight.

EPA does not agree that the incidence of liver weight increase is not a significant effect, or that there were no changes in liver weight relative to body weight. The liver weights, relative to bodyweight, were increased in all treated groups in the 2–year rat study. EPA believes that the hepatic changes noted in these studies represent a significant adverse effect.

The same commenter contends that in the 2-year rat study cited in the proposed rule, "the NOEL is also incorrectly stated as 5 mg/kg/day, where EPA states a LOEL of 100 mg/kg/day."

The Agency disagrees with the commenter. The NOEL and LOEL should be 5 and 100 mg/kg/day, respectively. At 100 mg/kg/day there was an increase in alkaline phosphatase, liver weight and cellular swelling of the liver (indicative of typical smooth endoplasmic reticulum proliferation), and one male in the low dose group was affected, focal inflammation with degenerative change in the zona fasciculate and swelling and vacuolation ofcells in the zona reticularis of the adrenals and reduced body weight in females. EPA considers these to be serious adverse effects.

EPA reaffirms that there is sufficient evidence for listing permethrin on the EPCRA section 313 list pursuant to EPCRA section 313(d)(2)(B) based on the available hepatic toxicity data for this chemical, and pursuant to EPCRA section 313(d)(2)(C) based on the available environmental toxicity data. Therefore, EPA is finalizing the addition of permethrin on the EPCRA section 313 list.

40. *Phosphine.* Coors Brewing Company states that only *liquid* phosphine can cause the health effects necessary to support a listing on the EPCRA section 313 list.

Phosphine is a gas (the boiling point is negative 87.4 °C); it only occurs as a liquid when placed under reduced temperature and/or pressure. The acute toxicity data used to support the listing of phosphine is based on exposure to phosphine in the air (i.e., phosphine gas). Thus, EPA does not agree that only liquid phosphine could cause the health effects necessary to support listing under EPCRA section 313. EPA reaffirms that there is sufficient evidence for listing phosphine on the EPCRA section 313 list pursuant to EPCRA section 313(d)(2)(A). Therefore, EPA is finalizing the addition of phosphine on the EPCRA section 313 list.

41. *Polychlorinated alkanes (proposed as chlorinated paraffins).* EPA proposed the addition of clorinated paraffins that consisted of polychlorinated alkanes. Occidental Chemical Corporation and the Chlorinated Paraffins Industry Association state that the proposed chlorinated paraffins category is really a category of chlorinated hydrocarbons since it covers a broad range of chlorinated hydrocarbons including chlorinated paraffins and chlorinated α-olefins.

EPA believes that there may be confusion over what is covered by the chlorinated paraffins category, as named, because the name chlorinated paraffins identifies a particular feedstock used to make this class of compounds. However, as discussed below, EPA believes that the chlorination of paraffins and α-olefins results in products that do not differ significantly structurally, physically, or toxicologically. EPA believes that, rather than name the category based on one of the feedstocks used to make these compounds, a more appropriate name for the category is one that describes the actual members of the category. Therefore, because the members of this category are alkanes containing three or more chlorines, EPA is renaming this category polychlorinated alkanes. The new category name will not expand the scope of the category. EPA believes that the toxicity data for chlorinated paraffins is sufficient for all polychlorinated alkanes that fall within the same carbon number and chlorine content regardless of what materials where used to manufacture them.

Courtlands Aerospace, ELF Lubricants North America, Incorporated, Tower Oil & Technology Company, National Oil Products, Incorporated, OxyChem, the American Automobile Manufacturers Association, the Association of International Automobile Manufacturers, Incorporated, the Specialty Steel Industry of the United States, the Independent Lubricant Manufacturers Association, Engineered Lubricants, Sealed Air Corporation, American Federation of Labor and Congress of Industrial Organizations, Chlorinated Paraffins Industry Association, and Far West Oil Company, Incorporated contend that the available toxicity data is insufficient to support the addition of chlorinated paraffins to EPCRA section 313. Some of these commenters state that they do not believe that EPA should create chemical categories such as that proposed for chlorinated paraffins on the EPCRA section 313 list. Some of these commenters state that the long-chain chlorinated paraffins have not been classified as "probable human carcinogens" by NTP or IARC. Some of these commenters made numerous specific comments concerning the adequacy of the studies used to support EPA's listing of chlorinated paraffins and pointed out flaws in the data for both long and short-chain chlorinated paraffins. Some of the flaws that the commenters allege concern the studies used to support the listing of the short-chain species and included: (1) Kidney tumors in male rats may be due to binding to α2μ-globin, a male rat-specific protein; (2) route of administration (forced gavage feeding); (3) corn oil as a vehicle; (4) use of the B6C3F1 mouse; (5) short-chain chlorinated paraffins are non-genotoxic in a variety of short-term assays; (6) peroxisome proliferation, liver growth in male and female rats and mice and stimulation of replicative DNA in rodents have not been shown to occur in guinea pigs indicating that they are mouse and rat specific and have no relation to tumor formation in humans; and (7) thyroid tumors may be a consequence of a perturbation in the metabolism of thyroxine. Some of the commenters contend that only the data on short-chain chlorinated paraffins are sufficient to justify a listing on the EPCRA section 313 list and that EPA should limit the category to just the short-chain species.

a. *Long-chain chlorinated paraffins.* IARC has not classified the long-chain chlorinated paraffins because there is insufficient evidence that they cause

cancer in treated animals. The NTP found no evidence of cancer in male rats treated with 1,875 or 3,750 mg/kg/day for 24 months with long-chain chlorinated paraffins. Female rats treated with 900 mg/kg/day showed marginal increases in adrenal gland tumors; female rats treated with 5,000 mg/kg/day had marginal increases in liver tumors. The only significant increase in tumor formation occurred in male mice which had a significant increase in malignant lymphomas. After further evaluation of the available data and considering the available statistics, the high background rate of lymphoma in the strain of mice used in the NTP bioassay and the statements made by the NTP Working Group and the Quality Assessment Narrative, which was submitted by the commenters, EPA agrees that there is insufficient evidence to conclude that the malignant lymphomas observed in male mice were treatment related and that long-chain chlorinated paraffins should not be classified as potential carcinogens. Therefore, the Agency concludes that there is insufficient evidence to list long-chain chlorinated paraffins on the EPCRA section 313 list.

b. *Short-chain chlorinated paraffins.* IARC has classified the short-chain chlorinated paraffins as Group 2B, i.e., sufficient evidence for carcinogenicity in animals and probably carcinogenic in humans. Detailed responses to all of the comments concerning the toxicity of the short-chain species are contained in the *Response to Comment Document* (Ref. 14). Summaries of the responses to the most significant comments concerning flaws in the studies used to support the listing of the short-chain species are provided below.

(1) The Agency agrees that the kidney tumors observed in rats are most likely not relevant to tumor formation in man because the male rat kidney possess a unique protein, α2μ-globulin which has been shown to be responsible for the development of rat liver kidney tumors, not only after administration of short-chain chlorinated paraffins but after administration of many other chemicals also. However, to state that chlorinated paraffins bind to a protein which is similar to α2μ-globulin and that this binding is not seen in guinea pigs as evidence that kidney tumor formation is not relevant to human tumor formation in this instance is not a convincing argument.

(2) The Agency agrees that forced gavage feeding may not be a relevant route of administration when one is using the data for human risk assessment. In this instance, the data are being used as an indication of potential human hazard and EPA accepts the data as being indicative of such potential.

(3) EPA believes that corn oil is an accepted vehicle of administration for many *in vivo* studies because it is relatively inert and has not been shown to interact with test agents.

(4) The B6C3F1 mouse is the accepted test species of the NTP and EPA has no reason to question the NTPs choice of test species nor to discount results of cancer bioassays using this species.

(5) EPA does not believe that non-genotoxicity is a sufficient reason to dismiss the relevance to man of tumor formation by the short-chain chlorinated paraffins. Non-genotoxicity may be a factor in selecting a model to use for dose response estimation, once tumor formation has been established, but it is not a reason to disregard the significance of tumors which are formed by agents which are non-genotoxic in short-term tests.

(6) The Agency is not convinced that failure to observe liver growth, peroxisome proliferation in hepatocytes and stimulation of replicative DNA in guinea pigs is proof that these effects are specific to rats and mice and have no bearing on tumor formation in humans.

(7) The Agency agrees that there was a perturbation of thyroxine levels in treated animals but does not agree that the observed tumors are therefore irrelevant.

Therefore, the Agency finds that there is sufficient evidence for listing short-chain chlorinated paraffins on the EPCRA section 313 list pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for these chemicals.

i. *Ecotoxicity data.* Courtaulds Aerospace, Occidental Chemical Corporation, and the American Automobile Manufactures Association contend that ecotoxicity data are only available for the short-chain (10 to 13 carbons, 59 percent chlorine) chlorinated paraffins. The commenters object to EPA assuming the same ecotoxicity for all members of the chlorinated paraffin category because of the potential difference in effects related to chain length and chlorine content.

Although it was stated as such in the proposed rule, EPA did not intend to equate the ecotoxicity of the short-chain chlorinated paraffins with the ecotoxicity of other members of the category. The ecotoxicity data on the short-chain chemicals was provided as further support for the listing of the short-chain chemicals. However, as EPA is not finalizing the addition of the long-chained species, this issue is no longer relevant.

ii. *Chlorinated paraffins versus chlorinated* α-olefins. OxyChem, the American Automobile Manufacturers Association, the Association of International Automobile Manufacturers, the Independent Lubricant Manufacturers Association, and the Chlorinated Paraffins Industry Association correctly state that EPA's proposed definition of chlorinated paraffins does not exclude chlorinated α-olefins. The commenters further contend that chlorinated paraffins and chlorinated α-olefins are distinctly different chemicals with different physical, chemical, and biological properties.

The information provided by the commenters does not substantiate their claim that chlorinated paraffins and chlorinated α-olefins are distinctly different chemicals with different physical/chemical properties. The main difference between chlorinated paraffins and chlorinated α-olefins that EPA is aware of is that chlorinated paraffins, typically manufactured from paraffin mixtures, are also mixtures whereas individual chlorinated α-olefins can be manufactured in moderate to high purity. The issue is whether a pure chlorinated α-olefin falls within the range of structural characteristics that vary in a chlorinated paraffin mixture. In this case, EPA believes that there are no significant structural differences between chlorinated paraffins and chlorinated α-olefins. Both are primarily linear hydrochlorocarbons, and the degree of chlorination of both groups of substances can be controlled. Sixty percent chlorination of 1–dodecene, for example, would yield a product with the formula $C_{12}H_{19}Cl_7$ and a molecular weight of approximately 411. Sixty percent chlorination of the short-chain grade paraffin mixture would yield a mixture of products with an average formula of $C_{12}H_{19}Cl_7$ and an average molecular weight of approximately 411.

The commenters claim that the chlorine positions in chlorinated α-olefins differ significantly compared to the chlorine positions in chlorinated paraffins. EPA does not believe that chlorination at carbons 1 and 2 of the α-olefins makes a significant difference in the majority of the isomers formed by both reactions and even if it did, there are no data that indicate that having two of the chlorines at carbons 1 and 2 is significant from a toxicity standpoint. The commenters do not substantiate their claim (mass spectral data submitted by one commenter is inconclusive and cannot be used in support, for or against, the commenter's position); EPA is not aware of experimental evidence that suggests that

the possible variations in chlorine positions between the chlorinated paraffins and the chlorinated α-olefins differ significantly from the variations possible within these two groups of substances. Since for the α-olefins the first two chlorines are added at carbons 1 and 2, the relative amounts rather than type of each isomer formed may differ between the chlorination of paraffins and α-olefins, especially as the degree of chlorination decreases.

The commenters' claim that chlorinated α-olefins are distinctly different from chlorinated paraffins because their physical properties are very different is unjustifiable. As discussed in detail in the *Response to Comment Document* (Ref. 14), the physical properties of discreet chemicals cannot be compared to those of chemical mixtures. The commenters do not discuss specific differences between chlorinated paraffins and chlorinated α-olefins and therefore do not substantiate their claim. They do, however, elaborate on the differences between structures within the chlorinated paraffins group, particularly those structures that represent the extremes in the C_{10} to C_{30} range. This discussion is therefore more relevant to the issue of listing categories versus individual chemicals discussed subsequently and does not address the issue of differences in the physical properties between chlorinated paraffins and chlorinated α-olefins, discussed previously. Furthermore, EPA believes that the specific differences between structural extremes within the chlorinated paraffins group that the commenters elaborate on are trends that are also observed between structural extremes within the chlorinated α-olefins group.

A valid comparison of physical property data can only be made between two discreet substances of known purity or, in some cases, between two mixtures of chemicals with well defined compositions. EPA believes that an α-olefin and a paraffin, both with the same chain length and both with the same degree of chlorination, are essentially identical structurally (especially if the degree of chlorination is high); the same isomers can be predicted for the chlorination of an α-olefin and a paraffin of the same chain length. The physical properties of chlorinated α-olefins and the corresponding chlorinated paraffins are therefore expected to be very similar. The differences in the chemical and physical properties that the commenters refer to are largely or completely due to the fact that the chlorinated paraffins are mixtures of different chain lengths while the chlorinated α-olefins typically are composed of a single chain length.

iii. *Category definition.* Since EPA has determined that only the short-chain species meet the listing requirements of EPCRA section 313, the polychlorinated alkanes category will be defined by the following formula and description: $C_xH_{2x-y}Cl_y$; where x = 10 to 13 and y = 3 to 12 and where the average chlorine content ranges from 40 to 70 percent with the limiting molecular formulas set at $C_{10}H_{19}Cl_3$ and $C_{13}H_{16}Cl_{12}$.

EPCRA section 313 requires threshold determinations for chemical categories to be based on the total of all chemicals in the category manufactured, processed, or otherwise used. For example, a facility that manufactures three members of a chemical category would count the total amount of all three chemicals manufactured towards the manufacturing threshold for that category. One report is filed for the category and all releases are reported on this form.

42. *Polycyclic aromatic compounds.* In the proposed rule, EPA proposed the addition of a delineated polycyclic aromatic compounds (PAC) category that consisted of 28 polycyclic aromatic compounds. Alternatively, EPA proposed the addition of a PAC category based on the following broad definition: "includes all chemical species from the polycyclic aromatic hydrocarbon, aza-polycyclic, thio-polycyclic, or nitroarene families where polycyclic means three or more fused rings. More specifically, it means any combination of three or more fused six or five membered hydrocarbon rings with at least two or more rings being aromatic. The structure may contain fused non-aromatic 5-membered rings, a ring nitrogen, a ring sulfur, one or more attached nitro groups, or one or more attached alkyl groups" (January 12, 1994, 59 FR 1832).

Monsanto, The Chevron Companies, Amoco Corporation, Armco Steel Company, Mobil Oil Corporation, UNOCAL, Pennzoil, Phillips Petroleum Company, American Petroleum Institute, and the Department of Energy object to listing polycyclic aromatic compounds as a category and recommend that EPA list them separately as individual chemicals. American Coke and Coal Chemicals Institute and Mobil Oil Corporation state that if the chemicals are not individually listed then the proposed delineated category should be used. Koch Industries Incorporated, Texaco Incorporated, and the Wisconsin Department of Natural Resources object to the alternative proposal for a PAC category with the broad definition and recommend that EPA implement the delineated category approach. The Natural Resources Defense Council recommends that EPA use the broad category definition.

EPA believes that polycyclic aromatic compounds should be listed as a delineated category rather than listed individually or defined under the broad category definition. Most if not all of the polycyclic aromatic compounds included in the category are not intentionally manufactured, they are byproducts and impurities from various industrial processes. As such, they occur as complex mixtures that are typically released or transferred together. EPA believes that for this class of compounds a category listing is the most appropriate way to track releases and transfers under EPCRA section 313 because members of this category are structurally similar and induce a similar toxic effect.

The American Petroleum Institute, Mobil Oil Corporation, American Coke and Coal Chemicals Institute, Koch Industries Incorporated, Monsanto, The Chevron Companies, and Amoco Corporation state that analytical methodologies do exist to identify specific chemicals such as those proposed for the delimited PAC category; however, these analytical methodologies require a chemical-by-chemical analysis. They add that since a chemical-by-chemical analysis is required, there would be no reduction in the reporting burden for either a category based on the broad definition or for the proposed delimited category.

EPA proposed the broad category definition approach as a possible way to reduce the reporting burden for a PAC category. However, the majority of the industries that would have to report do not agree that this will result in a reduction of their reporting burden, they believe that it will cause confusion over what chemicals are covered by this category, and do not believe that analytical methodologies exist to identify all of the thousands of chemicals that would be covered by a PAC category based on the alternative broad definition. EPA is therefore not finalizing the alternative proposal to create a PAC category based on the broad definition but is finalizing the proposed delimited PAC category as explained above.

EPA believes that although it may be necessary to perform a chemical- by-chemical analysis for members of this delimited category, the most appropriate way to track releases and transfers under EPCRA section 313 is by creating this category as explained above.

The Chevron Companies, Amoco Corporation, Mobil Oil, UNOCAL, Pennzoil, and the American Petroleum Institute state that polycyclic aromatic compounds share some physical and chemical properties but that this does not necessarily imply similar toxicities. These commenters state that the toxicity potentials vary widely among the polycyclic aromatic compounds but that the public tends to associate all members of a category with the most toxic chemical in the category.

EPA recognizes that similarities in physical and chemical properties do not necessarily indicate that the ability to induce carcinogenic effect among the members of the polycyclic aromatic compounds category are identical. However, these compounds are chemically similar, induce the same toxicological effect (carcinogenicity), and typically are produced, released, and transferred as complex mixtures rather than individual chemicals. EPA therefore believes that it is appropriate to consider these compounds as a category.

Mobil Oil Corporation contends that 11 of the PACs proposed for listing have been reviewed by IARC and found to have insufficient data in animals and no data in humans making the overall evaluation IARC-3 or inadequate evidence of carcinogenicity.

The 11 chemicals the commenter cites as being classified by IARC as a group 3 chemical, i.e., the chemical is not classifiable as to its carcinogenicity, are: carbazole (CAS No. 86–74–8); cyclopenta(cd)pyrene (CAS No. 27208–37–3); dibenz(a,c)anthracene (CAS No. 215–58–7); dibenz(a,j)anthracene (CAS No. 224–41–9); dibenzo(a,e)fluoranthene (CAS No. 5385–75–1); 2-methylchrysene (CAS No. 3351–32–4); 3-methylchrysene (CAS No. 3351–31–3); 4-methylchrysene (CAS No. 3351–30–2); 6-methylchrysene (CAS No. 1705–85–7); 2-methylfluoranthene (CAS No. 33543–31–6); and 1-nitropyrene (CAS No. 5522–43–0). The commenter is correct in that 10 of these 11 compounds have been classified as IARC group 3 chemicals. The 11th compound, 1-nitropyrene (CAS No. 5522–43–0), was classified by IARC as a Group 2B chemical, i.e., a possible human carcinogen. The IARC classification and a review of the data indicate that the data is sufficient to support the listing of this chemical on the EPCRA section 313 list pursuant to EPCRA section 313(d)(2)(B). A second compound, dibenzo(a,e)fluoranthene (CAS No. 5385–75–1) was classified by EPA as a B2 category chemical, the chemical is a probable human carcinogen, which justifies its addition to EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B). Upon further review of the other 9 IARC group C chemicals, the Agency believes that a more detailed review of their relationship to the 19 PACs for which cancer data is available and is sufficient is necessary before they can be placed on the list on the basis of structure alone. Therefore, EPA will not add these 9 chemicals to the EPCRA section 313 list at this time and the delineated category will consist of the other 19 chemicals proposed for this category.

EPCRA section 313 requires threshold determinations for chemical categories to be based on the total of all chemicals in the category manufactured, processed, or otherwise used. For example, a facility that manufactures three members of a chemical category would count the total amount of all three chemicals manufactured towards the manufacturing threshold for that category. One report is filed for the category and all releases are reported on this form.

43. *Potassium dimethyldithiocarbamate.* Buckman Laboratories International, Incorporated states that the proposed listing of the chemical was based on the results of the rat and rabbit teratology studies, cited in the proposed rule, although neither study demonstrates evidence of developmental toxicity. They contend that the findings in the developmental studies should be considered an artifact.

The findings in rabbits cannot be considered artifacts because there is a dose-related increase in the severity of developmental effects at 38 and 77 mg/kg. At 38 mg/kg, developmental toxicity was characterized by increased post implantation loss, malformations, and sternebral malalignments. At 77 mg/kg, there were reports of severe fetal and embryo lethality. EPA did not cite a rat study in the proposed rule as the commenter claims.

EPA reaffirms that there is sufficient evidence for listing potassium dimethyldithiocarbamate on the EPCRA section 313 list pursuant to EPCRA section 313(d)(2)(B) based on the available neurological toxicity data for this chemical. Therefore, EPA is finalizing the addition of potassium dimethyldithiocarbamate on the EPCRA section 313 list.

44. *Prometryn.* Ciba-Geigy Corporation states that marked renal and hepatic degenerative changes were noted in the high-dose dogs only in the 2-year dog study cited in the proposed rule. The commenter further claims that although minor liver effects were seen in rats in the 28–day study cited in the proposed rule, there were no liver effects in rats after 90 days at dose levels up to 5,000 ppm. This 90–day study that the commenter cited was not cited by EPA in the proposed rule. Thus, the commenter does not believe that the data support the addition of this chemical to the EPCRA section 313 list.

EPA disagrees with the commenter. In the 2–year dog feeding study, prometryn induced degenerative changes in liver and kidney and bone marrow atrophy at 37.5 mg/kg/day (LOEL, the NOEL is 3.75 mg/kg/day). Although the dose eliciting degenerative changes in liver and kidney and bone marrow atrophy was the highest dose tested, these adverse effects are of sufficient seriousness to warrant listing based upon the potential for similar effects in humans. Further, the findings of the 2–year dog study and the 28–day rat study, cannot be discounted based solely on of the results of the 90–day study referred to by the commenter. Rather EPA has considered all of the data in concluding that prometryn meets the criteria for addition to the EPCRA section 313 list.

The commenter questions the use of the rabbit developmental toxicity study because only a slight effect (if real) was noted at the highest dose tested, and was not statistically significant. Although the use of the rabbit developmental toxicity study may not be justified, and the potential for developmental effects therefore not supported, EPA reaffirms that there is sufficient evidence for listing prometryn on the EPCRA section 313 list pursuant to EPCRA section 313(d)(2)(B) based on available hepatic, renal, and bone marrow toxicity data. Therefore, EPA is finalizing the addition of prometryn on the EPCRA section 313 list.

45. *Propachlor.* Monsanto contends that the developmental toxicity study in rabbits cited in the proposed rule was a study that was rejected by the Agency. Monsanto further stated that in this study "a slight decrease in viable fetuses, slight increase in post-implantation loss, and slight decrease in mean fetal weight was noted at the highest dose tested (116.7 mg/kg/day) which caused severe treatment-related maternal toxicity including death. An equivocal increase in post-implantation loss on a percent basis was noted in the mid-dose (58.3 mg/kg/day) level. Marginal developmental effects that were seen were not statistically significant and were within the historical control limits. Propachlor does not produce any observable maternal or fetal toxicity at 5.8 or 58.3 mg/kg/day. In addition, propachlor does not cause developmental toxicity in rats." Monsanto concluded that, based on the "weight of evidence from the rat

and rabbit studies, there does not appear to be any developmental risk to humans."

The Agency does not concur with the commenter's statement that "propachlor does not produce any observable maternal or fetal toxicity at 5.8 or 58.3 mg/kg/day dose levels," nor with the statement that "the marginal developmental effects that were seen were .... within the historical control limits." The Agency's rationale for the disagreements are as follows:

In a developmental toxicity study in rabbits, oral administration of propachlor at 116.7 mg/kg/day caused maternal toxicity as evidenced by death, clinical signs [salivation and reduced defecation], decreased body weight gain and food consumption, and gross pathological lesions of the stomach. Developmental toxicity at 58.3 and 116.7 mg/kg/day included dose-related increases in the total number of resorptions/litter and post-implantation losses compared to concurrent and/or historical controls.

Based on these findings, it is apparent that the developmental effects seen at 58.3 and 116.7 mg/kg/day levels are attributable to propachlor; the NOEL was 5.8 mg/kg/day.

EPA reaffirms that there is sufficient evidence for listing propachlor on the EPCRA section 313 list pursuant to EPCRA section 313(d)(2)(B) based on the available developmental toxicity data for this chemical. Therefore, EPA is finalizing the addition of propachlor on the EPCRA section 313 list.

46. *Propargyl alcohol.* International Specialty Products is opposed to the listing of propargyl alcohol apparently because an uncertainty factor of 3,000 was used by EPA in setting the RfD. The commenter feels that an uncertainty factor of 100 would have been more appropriate and cites instances where such an uncertainty factor has been used by IRIS in setting reference doses. The commenter does not question the renal or hepatotoxicity cited in IRIS as a basis of its concern.

The commenter is correct in stating that EPA has used uncertainty factors of 100 for other chemicals. However, that was not deemed appropriate in this instance for reasons which are set out by EPA in the IRIS data base. EPA continues to support the listing of propargyl alcohol under EPCRA section 313 on the basis of chronic toxicity which may pose a significant health hazard as manifested by renal and hepatic effects. The uncertainty factor plays no part in this decision. EPA reaffirms that there is sufficient evidence for listing propargyl alcohol on the EPCRA section 313 list pursuant to EPCRA section 313(d)(2)(B) based on the available hepatotoxicity and nephrotoxicity data for this chemical. Therefore, EPA is finalizing the addition of propargyl alcohol on the EPCRA section 313 list.

47. *Propiconazole.* Ciba-Geigy Corporation states that the increased incidence of liver tumors in the oncogenicity study on propiconazole was noted only in male mice in the high dose (2,500 ppm), which exceeded the MTD, based on decreased survival and body weight gain.

EPA believes that the study high dose (2,500 ppm, equivalent to 325 mg/kg/day) was excessively toxic; however, the Agency also determined that the mid dose (500 ppm, equivalent to 65 mg/kg/day) was not considered sufficiently high to evaluate the carcinogenic potential of propiconazole. The Agency believes that a supplementary study should be conducted in male mice at doses selected to sufficiently evaluate carcinogenic potential without excessive toxicity. At this time however, based on the currently available evidence, propiconazole remains classified as a Group C, possible human carcinogen, with the RfD approach recommended for quantification of human risk.

The commenter further states that relatively minor gastrointestinal effects were noted in dogs at the high dose only (250 ppm).

EPA believes that the data in both the 3-month and 1–year dog studies demonstrate gastrointestinal effects at the high-dose (250 ppm, equivalent to 6.25 mg/kg/day). These effects are considered severe, and, therefore, are of sufficient seriousness to warrant listing propiconazole on the EPCRA section 313 list.

EPA reaffirms that there is sufficient evidence for listing propiconazole on the EPCRA section 313 list pursuant to EPCRA section 313(d)(2)(B) based on the available hepatic and gastrointestinal toxicity data for this chemical. Therefore, EPA is finalizing the addition of propiconazole on the EPCRA section 313 list.

48. *Simazine.* Ciba-Geigy Corporation objects to the listing of simazine under EPCRA section 313 based on reports of liver, kidney, testicular and neural pathology in sheep and increases in liver enzymes in a dog 2-year study. The commenter maintains that the sheep study was conducted to investigate the possible effects that would result if large amounts of simazine were ingested by this species. The commenter also states that in a 1–year study there were some indications of effects on the hematopoietic system but not the hepatic system at the high dose of 1,500 ppm.

In a 1–year study, NOEL and LOELs of 0.68 and 3.41 mg/kg/day, respectively, were established based on decreased body weight gain, and decreased RBC, HGB, HCT in females. Although the sheep study was conducted for a purpose other than to investigate the overall toxicity of simazine, this does not negate the relevance of its results. EPA reaffirms that there is sufficient evidence for listing simazine on the EPCRA section 313 list pursuant to EPCRA section 313(d)(2)(B) based on the available hepatic, renal, neurological, and reproductive toxicity data for this chemical. Therefore, EPA is finalizing the addition of simazine on the EPCRA section 313 list.

49. *Sodium nitrite.* American Automobile Manufacturers Association contends that EPA has proposed listing on the basis of chronic toxicity but the support document cites studies based on high dose, acute exposures. High dose gestational studies in rats and mice were also cited as the basis for developmental (fetal) toxicity.

EPA agrees that the human studies cited in the proposed rule are acute studies. However, these studies in conjunction with the chronic study in mice, which showed reduced motor activity and major EEG changes in treated animals, support the basis for concern for chronic neurological effects. EPA thus considers sufficient indication of a potential chronic neurologic hazard to list this chemical on the EPCRA section 313.

There were two developmental studies in mice and one reproductive study in rats cited in the proposed rule which showed effects on the fetal development whether sodium nitrite was administered during gestation or lactation. The doses used in the studies with mice, 30 and 80 mg/kg/day, respectively, are not abnormally high for this type of study; the dose range reported for the rat reproductive study, 26 to 256 mg/kg/day is also not abnormally high. The results from all three studies indicate that sodium nitrite induces developmental effects in animals and are sufficient to make a determination that the chemical is a potential health hazard in man.

EPA reaffirms that there is sufficient evidence for listing sodium nitrite on the EPCRA section 313 list pursuant to section 313(d)(2)(B) based on the chronic hematological and developmental toxicity data for this chemical. Therefore, EPA is finalizing the addition of sodium nitrite on the EPCRA section 313 list.

50. *Triallate.* Monsanto contends that the hepatic health effects listed in the proposed rule for triallate are trivial effects that do not provide sufficient evidence that triallate causes hepatic toxicity. In addition, Monsanto claims that pregnant rats exhibited abnormal behavioral signs at 90 but not at 30 mg/kg/day.

Although the Agency agrees that there is not sufficient evidence for hepatotoxic potential of triallate, the Agency does not concur with the commenter that "pregnant rats exhibited abnormal behavioral signs at 90 but not at 30 mg/kg/day." Head bobbing and circling, clear signs of neurotoxicity, were observed in pregnant females at 30 mg/kg/day. Males and non-pregnant females did not exhibit these clinical signs. These data suggest that pregnant rats are more susceptible to the neurologic potential of triallate than the general population.

The commenter noted the existence of a subchronic neurotoxicity study in rats and indicated that this study provides a better estimation of the neurotoxic potential of triallate than the 2-generation reproduction study.

The Agency agrees that the subchronic neurotoxicity study in rats (Ref. 10) provides a clearer picture of the neurotoxic potential of triallate. The Agency has reviewed this study and concludes that the results indicate the neurotoxic potential of triallate and further corroborates the findings cited by EPA in the proposed rule.

Thus, the Agency reaffirms that there is sufficient evidence for listing triallate on the EPCRA section 313 list pursuant to EPCRA section 313(d)(2)(B) based on the available chronic neurotoxicity data for this chemical. Therefore, EPA is finalizing the addition of triallate on the EPCRA section 313 list.

G. Chemicals Not Being Added to EPCRA Section 313

1. *5-Chloro-2-(2,4-dichlorophenoxy)phenol.* Ciba-Geigy Corporation and The Dial Corporation contend that insufficient evidence is available to support the conclusion that 5-chloro-2-(2,4-dichlorophenoxy)phenol poses a risk of hematological toxicity to humans based on handling and uses of the product.

Based on these comments and EPA's reanalysis of the data, the Agency has concluded that the information presented in the proposed rule is not sufficient to justify adding 5-chloro-2-(2,4-dichlorophenoxy)phenol to the EPCRA section 313 list based upon potential human hazard. Therefore, EPA is not finalizing the addition of this chemical on the EPCRA section 313 list.

2. *Clomazone.* FMC Corporation claims that clomazone induces adverse effects only at high dose levels.

The Agency agrees with the commenter. Based on these comments and EPA's reanalysis of the data, the Agency has concluded that the information presented in the proposed rule is not sufficient to justify adding clomazone to the EPCRA section 313 list based upon potential human hazard. Therefore, EPA is not finalizing the addition of this chemical to EPCRA section 313.

3. *Tetrasodium ethylenediaminetetraacetate.* Eight commenters contend that the proposed listing for this chemical was based solely on a single, unreliable developmental toxicity study which used a mixture that contained tetrasodium ethylenediaminetetraacetate along with several other chemicals.

EPA concedes that the effects cannot be attributed solely to tetrasodium ethylenediaminetetraacetate. Therefore, the Agency is not finalizing the addition of tetrasodium ethylenediaminetetraacetate on the EPCRA section 313 list.

H. Miscellaneous Comments

1. *Year-to-year comparisons of the TRI data.* BP America, Texaco, and American Automobile Manufacturers Association contend that the proposed expansion of the EPCRA section 313 list will eliminate any consistency with earlier TRI data and make tracking environmental progress impossible. American Automobile Manufacturers Association further states that EPA needs to ensure that the "total TRI releases and transfers" measurement system allows accurate interpretation of the data, allowing the public to realistically assess progress in pollution prevention. Also, the commenters add that considerable confusion results in trying to explain the different data sets to the public. Mobil Oil Corporation states that EPA should divide the list into three sub-groups so that a facility's history can be tracked on a more common basis.

EPA recognizes that changes in the EPCRA section 313 list and in the reporting requirements have an effect on the characterization of the TRI data. In fact, some change has occurred for every reporting year. In an attempt to provide useful year-to-year comparisons, EPA has presented the TRI data annually on a normalized list of chemicals, i.e., the list of chemicals used for year-to-year comparisons is the same for every year in the comparison. EPA further recognizes the effect that expansion of the EPCRA section 313 list will have on the TRI data and will continue to work to find ways to make the data useable for cross-year comparisons. EPA will use the 1995 reporting year as the base year for comparisons that include the chemicals added today. Facilities should still be able to track pollution prevention progress for those chemicals previously listed (using 1988 as the base year) and have a new base year for the additional chemicals which can be used to track future pollution prevention progress.

2. *Public perceptions.* Roussell Uclaf Corporation, National Paint and Coatings Association, Association of International Automobile Manufacturers, and American Frozen Food Institute oppose the listing of these chemicals under EPCRA section 313 because of the public's misperception of the associated dangers. American Automobile Manufacturers Association (AAMA) states that since the public considers all chemicals on the EPCRA section 313 list to be toxic, any chemical on the list is subject to adverse scrutiny, regardless of the actual risks associated with the chemical. While recognizing past efforts by EPA towards public education, AAMA believes that misunderstanding and misinterpretation of the data still exists which makes it more critical that EPA not expand the list with low risk chemicals. Texaco and AAMA believe that before the Agency expands the EPCRA section 313 list, resources should be committed to provide public education on actual risks portrayed by the data and educate the public on viable means of chemical risk reduction and chemical management.

The chemicals that are listed under EPCRA section 313 exhibit a wide range of effects at various dose levels. While EPA attempts to communicate the TRI data in the most accurate manner, the Agency recognizes that there exists the perception that the TRI data may sometimes be mischaracterized, but that does not justify not adding a chemical for which the statutory criteria are clearly met. EPA agrees that the better approach to such a problem is improving public information on the chemical, which, combined with the release, transfer, and waste management data will enable the public to participate in informed environmental decision-making. EPA continues to attempt to provide the public with means for interpreting the TRI data.

3. *Persistent bioaccumulative chemicals.* In the proposed rule, EPA requested comment on whether chemicals that are manufactured in trace amounts in waste streams, are

highly toxic at very low dose levels and have physical, chemical, or biological properties that make the chemicals persist for extended periods in the environment, and bioaccumulate through the food chain should be listed on the EPCRA section 313 list (January 12, 1994, 59 FR 1791). EPA noted that persistent bioaccumulative toxic chemicals, such as dioxins, are of particular concern in ecosystems such as the Great Lakes Basin due to the long retention time of the individual lakes and the cycling of the chemical from one component of the ecosystem to another. EPA also requested comment on the following: If EPA were to add this type of chemical to EPCRA section 313, what modifications to EPCRA section 313, such as lowering the reporting thresholds and modifying the *de minimis* in mixture exemption (40 CFR 372.38), would be required to ensure that release and transfer information would be collected? In addition to two comments opposed to the addition of this type of chemical, EPA received 35 comments supporting the addition of toxic persistent bioaccumulative chemicals. The majority of these commenters also supported lowering the reporting thresholds for this type of chemical.

Monsanto and Dow Chemical Company object to the addition of persistent bioaccumulative chemicals that are produced in quantities less than the EPCRA section 313 reporting thresholds. The commenters state that many of the persistent, bioaccumulative toxic compounds which are of concern are no longer manufactured in the United States, and are merely present in the environment due to historical activities and not current activities.

EPA disagrees with this contention. EPA's request for comment focused on chemicals that are generated in small quantities. This is not limited to chemicals produced as a product, but includes chemicals that are generated in waste streams. Many persistent, bioaccumulative toxic chemicals are produced in waste streams. Further, EPCRA section 313 requires the reporting of chemicals manufactured in waste streams if the quantity produced exceeds the appropriate reporting threshold.

Monsanto further claims that "the amounts of these particularly dangerous substances coming from industrial facilities are so small that they can have no measurable impact on health or the environment."

EPA disagrees that releases of these chemicals are so low that they will not have an adverse effect upon human health or the environment. The persistent bioaccumulative aspects of these toxic chemicals are such that even very small quantities released can reasonably be anticipated to cause adverse effects upon human health and the environment.

Monsanto also states that the concept of different reporting thresholds suggests that this threshold would be proportional to the relative hazard. Thresholds for practically non-toxic chemicals may be very high using this concept.

EPA requested comment on lowering the thresholds for these chemicals not so that the reporting thresholds for chemicals listed on the EPCRA section 313 list would be proportional to the relative hazard of the chemicals. Rather, EPA requested comment on lowering the threshold for persistent bioaccumulative chemicals because even minimal releases of these chemicals may result in elevated concentrations in the environment or in an organism that can reasonably be anticipated to result in significant adverse effects. This reflects the increased likelihood that there will be exposure to a chemical that persists due to its longer residence time in the environment. Repeated minimal releases of a persistent chemical may result in elevated concentrations in the environment. For a chemical that bioaccumulates, even low levels of the chemical in the environment may result in increased concentrations in an organism. Thus, lower thresholds for these substances would be considered due to the persistent and bioaccumulative nature of the substances, rather than the direct hazard.

In its next action to add chemicals to the EPCRA section 313 list, the Agency intends to consider the addition of chemicals that are persistent and bioaccumulate. EPA also intends to consider lowering the reporting thresholds for these additional chemicals and those chemicals that are persistent and bioaccumulate that are now on the EPCRA section 313 list. Accordingly, comments received in response to EPA's request for comment on the potential addition of persistent bioaccumulators will be addressed in the future rulemaking if these chemicals are proposed for addition.

4. *Additional chemicals.* The Wisconsin Department of Natural Resources states that the EPCRA section 313 chemical list should be expanded to include the six chemicals listed in section 112(b) of the CAA not currently included on the EPCRA section 313 list or as part of the January 12, 1994 proposal.

EPA has reviewed all of the chemicals listed under section 112(b) of the CAA not currently on the EPCRA section 313 list and has determined that the remaining chemicals either do not meet the current listing criteria or no reports would be received since their production volumes are below reporting thresholds.

5. *Hormone mimics.* The National Wildlife Federation recommends that EPA add to the section 313 list all chemicals with estrogenic or other hormone-mimicking qualities, and the reporting thresholds and *de minimis* exemption for mixtures eliminated for these chemicals.

EPA agrees that the deleterious effects of hormone mimicking chemicals may warrant their future review for listing on the EPCRA section 313 list. Although the effects of these chemicals are difficult to predict, and it is often impossible to establish a clear cause/effect relationship, still it is clear from the available evidence that these chemicals warrant consideration. Wide scale changes in wildlife and human populations have been noted by some researchers. Population decreases and reproductive effects have been linked to these chemicals in a number of wildlife species, including but not limited to bears, Florida panthers, songbirds, and bald eagles, to list just a few. Possibly of greater concern are the effects of these chemicals in humans. In addition to the carcinogenic potential of many of these chemicals, effects on fertility, immune system damages, and many childhood problems have been attributed to hormone-mimics. A number of the chemicals with widespread distribution in the environment reported to have reproductive and endocrine-disrupting effects (Ref. 1) are either already on the EPCRA section 313 list, or are being added as a result of this action. EPA may consider reviewing the remaining chemicals on this list as part of a future action.

As to removing the reporting thresholds and *de minimis* exemption for the hormone-mimicking chemicals already on the section 313 list, these possibilities will be examined at the time that modifying the reporting thresholds and *de minimis* exemption for persistent and bioaccumulative chemicals is addressed. As many of the hormone mimicking chemicals are also either persistent or bioaccumulative they could be included as part of such a review.

I. Comment on EPA's Regulatory Impact Assessment

Comments that are specific to individual chemicals or chemical

categories are addressed in the *Response to Comments Document* (Ref. 14).

Many commenters state that EPA's Regulatory Impact Analysis (RIA) failed to meet the requirements of Executive Order 12866, which mandates regulatory planning and review. The commenters state that: (1) The RIA for the proposed rule did not analyze any alternatives other than adding the 313 chemicals and chemical categories to the EPCRA section 313 list, (2) that it excluded the economic effects due to complying with state, local and other federal requirements that are triggered when a chemical is listed under EPCRA section 313, and (3) that it did not analyze the benefits of the rule. Many commenters also contend that small business impacts were understated in the RIA, and that the time required for compliance is higher than estimated in the RIA. These comments and the Agency's responses are discussed below.

1. *Alternatives.* The commenters believe that the RIA should have included alternatives to adding all of the proposed chemicals and chemical categories to the EPCRA section 313 list. In response to these comments, EPA has revised the RIA to include a variety of alternatives, such as adding the CAA criteria air pollutants, not adding chemicals regulated under FIFRA, not adding the water dissociable nitrate compounds category, and adding the proposed chemicals in conjunction with an alternate reporting threshold for facilities with low-levels of TRI chemicals in wastes. The commenters requested that EPA present the costs for adding each individual chemical. EPA cannot provide the costs on an individual chemical basis because the estimates for most of the chemicals were derived from confidential business information. Displaying the costs for each chemical could disclose this confidential information.

2. *Linked requirements.* Numerous commenters state that the RIA excludes the costs of compliance with state, local and other federal requirements that are triggered when a chemical is listed under EPCRA section 313. The linked requirements that the commenters raise include state taxes and fees, state pollution prevention planning requirements, special requirements for certain National Pollutant Discharge Elimination System (NPDES) storm water permits, and requirements for federal facilities under Executive Order 12856. EPA has revised the RIA to discuss state and federal requirements that are linked to reporting under EPCRA section 313. However, EPA has not quantified the costs of such requirements. In some cases, this is because there is insufficient data to make a reasonable estimate. In other cases, EPA does not believe that the requirements represent a social cost. The requirements that may be linked to listing under EPCRA section 313 are discussed below.

a. *State fees.* Thirteen states place a tax or fee on facilities filing TRI Form R reports. These states are Colorado, Florida, Iowa, Kansas, Maine, Massachusetts, Minnesota, Mississippi, Nevada, Ohio, Pennsylvania, South Dakota, and Texas. Many commenters estimate that the costs resulting from state fees and taxes linked to EPCRA section 313 reporting are up to 50 percent of the direct cost of filing the forms, and state that any tax is likely to induce a reduction in economic welfare. EPA has revised the RIA to discuss state fees and taxes that are linked to reporting under EPCRA section 313. However, the taxes and fees are not direct social costs, and EPA does not believe that there is sufficient information to estimate the net social costs or benefits of these requirements.

The commenters treat state taxes and fees on the EPCRA section 313 reports as costs, but these are transfer payments and not economic costs to society. Specifically, the standard definition of a cost in economics is the consumption of a resource (e.g., labor, equipment, natural resources, etc.). A tax or fee is a transfer payment from one party to another. While the fee is a cost to the firm (and/or its customers), it is income to the state. No resources are consumed, except for transaction costs, so the amount of the fee is not a cost to society.

EPA disagrees with the commenters' contention that any tax or fee is likely to induce a reduction in economic welfare. EPA believes that taxes or fees on toxic chemicals may resolve a market failure and increase social welfare. The use of toxic chemicals often creates a negative externality. For instance, releases of a chemical may cause health and environmental effects in the surrounding community. In such cases, it is likely that private costs are below true social costs, because private markets do not provide an adequate incentive for firms to internalize these externalities. In such cases, taxes may be the optimal method to correct the market failure. EPA believes that if the commenters feel that the fees are not set at the level that optimizes social welfare, their remedy lies with the appropriate state agency, and not EPA.

EPA does not feel that it is feasible to estimate the size of the transfer payment resulting from state fees and taxes linked to EPCRA section 313, or the net social costs or benefits of these payments. The commenters made their estimates by applying the maximum state fees to all facilities nation-wide. EPA does not feel that such a calculation is appropriate. Most states have no fees or taxes linked to EPCRA section 313 reporting, and the level of the fees or taxes (and how they are assessed) is different in each of the rest of the states, varying from $25 to $50,000. Many of the state requirements are not flat fees, but are graduated depending on the level of releases that a facility reports. An accurate representation of the size of the transfer payments would require estimating the geographic distribution of new reports, and the level of releases and transfers for each report. EPA feels that it is not possible to predict with a reasonable degree of accuracy the location and level of releases for facilities that will report on the chemicals being added to the EPCRA section 313 list.

Nor is it feasible to accurately estimate the net social costs or benefits of the state fees and taxes. To do so would require knowing not only the size of the transfer payments, but the damages caused by the use and release of the chemicals, and the change in behavior that would result from the fees and taxes. EPA does not have adequate information on the facilities that would be affected by the rule to make such estimates. As a result, the RIA has been revised to qualitatively discuss state fees and taxes linked to EPCRA section 313 reporting, but does not estimate the size of the resulting transfer payments, or the net social costs or benefits.

b. *State pollution prevention programs.* Seven states (Arizona, Maine, Massachusetts, Minnesota, Mississippi, New Jersey, and Texas) mandate pollution prevention plans from facilities reporting under EPCRA section 313. Facilities in these states that are reporting to TRI for the first time because of the additions to the chemical list will have to prepare pollution prevention plans. Although the development of pollution prevention plans imposes a cost on facilities, the RIA did not analyze the costs of these requirements. Many commenters contend that there are significant costs for preparing such plans, and that the RIA should have included these costs.

Quantifying the impacts of state pollution prevention requirements would require predicting which facilities reporting for the additional chemicals would be located in these seven states. As stated above, it is not possible to accurately predict the geographic location of new reporters.

Thus, no costs are estimated for state pollution prevention plans in the RIA.

Nor does the RIA quantify the benefits derived from these pollution prevention planning requirements. None of the commenters submitted any evidence comparing the social benefits of such requirements to the costs. Therefore, EPA has no information from which to conclude that the linked requirements for state pollution prevention plans would reduce the net social benefits of adding chemicals to EPCRA section 313.

EPA has not quantitatively estimated either the costs of state pollution prevention planning requirements or the benefits of such programs in the RIA. However, the RIA has been revised to qualitatively discuss requirements that are linked to EPCRA section 313 reporting, including pollution prevention plan preparation.

c. *NPDES storm water permits.* EPA issued National Pollutant Discharge Elimination System (NPDES) "baseline" general permits for storm water discharges associated with industrial activity on September 9, 1992 (57 FR 41236). EPA subsequently proposed a multi-sector storm water industrial permit covering 29 industrial sectors (November 19, 1993, 58 FR 61147). The "baseline" general and multi-sector general permits have special pollution prevention requirements for certain EPCRA section 313 facilities, and the "baseline" permits also contain special monitoring requirements. Many commenters assert that the RIA underestimates the costs of the rule by a factor of up to 5.6 by not including the costs of NPDES storm water permit requirements that are triggered by adding chemicals to the EPCRA section 313 list.

EPA believes that the commenters' estimates are based on a cost scenario that is not applicable to the typical facility affected by the proposal to add chemicals under EPCRA section 313. There are four reasons that the commenters' estimates are not generally appropriate. Any of these reasons alone demonstrate that the commenters have overestimated the number of facilities that are affected and the the size of the impact. Because there may also be a significant overlap among the four, the commenters' estimates are likely to apply to few, if any, facilities. The commenters' estimates would not apply to all facilities affected by the rule, as the commenters contend.

First, only a fraction of the facilities that would report under EPCRA section 313 for the additional chemicals would be affected by the NPDES storm water permits. A facility that submits TRI Form R is only subject to storm water permitting requirements if industrial materials or activities are exposed to storm water, and if the facility is reporting to TRI for one of the section 313 water priority chemicals. Only about two dozen of the chemicals being added to the EPCRA section 313 list qualify as section 313 water priority chemicals, and thus would be covered by the NPDES requirements. About half of these are pesticides, which would not be manufactured or processed at many facilities.

Second, EPA expects the majority of facilities to have existing containment systems that meet most of the requirements of the NPDES permits. Third, many of the costs for the storm water requirements are likely to apply at the facility level. In such cases, facilities that installed systems for the current EPCRA section 313 chemicals will not face incremental costs for the additional chemicals. Fourth, the special requirements of the NPDES storm water permits are based on the coverage of EPCRA section 313 at the time the permits were issued. The NPDES requirements do not apply to chemicals that are added to the EPCRA section 313 list until the time of permit renewal (which occurs every 5 years), and may not apply in subsequent permits, depending on the Agency's decisions at the time those permits are issued.

In addition, the commenters based their estimates solely on the upper bound of EPA's estimates for the NPDES permits, and have ignored the mix of low-cost and high-cost facilities that is likely to exist. EPA believes that the commenters' estimate is a hypothetical "worst-case" scenario that does not apply to the typical facility and may not apply to any facilities. EPA believes that the costs of the storm water requirements for the proposed chemicals will be relatively minor. Again, EPA has revised the RIA to qualitatively discuss the linkage between EPCRA section 313 reporting and the NPDES storm water, but it has not made any quantitative estimates of these costs.

d. *Executive order 12856.* Executive Order 12856, signed by the President in August 1993, extends the coverage of EPCRA to federal facilities. In addition, section 3-303(a) of the Executive Order states that "Each federal agency shall establish a plan and goals for eliminating or reducing the unnecessary acquisition by that agency of products containing extremely hazardous substances or toxic chemicals" (emphasis added). The Executive Order defines "toxic chemical" as a substance on the list described in section 313 of EPCRA. Many commenters contend that the cost to the federal government and the private sector of complying with Executive Order 12856 for the chemicals being added to EPCRA section 313 will be $1.5 billion per year.

EPA does not believe that the effects of Executive Order 12856 should have a bearing on the decision-making regarding the addition of toxic chemicals to EPCRA section 313. EPA believes that following the commenters line of reasoning would discourage the federal government from ever making any changes in procurement, for whatever reason, because doing so might have an impact on a supplier. Furthermore, EPA believes that there is insufficient data to make any estimate of the effects of the Executive Order, and that the resources required to make such an estimate would exceed the value of the information.

EPA notes that section 3-303(a) of the Executive Order does not require the elimination of toxic chemicals in federal procurement. If the performance characteristics of a toxic chemical or product containing a toxic chemical are critical in the required tasks, federal agencies may continue to purchase it. Each federal agency must make its own determination whether a particular toxic chemical is necessary in a particular use.

The Executive Order requires that federal agencies eliminate or reduce the unnecessary procurement of extremely hazardous substances or toxic chemicals. None of the commenters identify which toxic chemicals are being unnecessarily purchased by the federal government, and which federal agencies are making these unnecessary purchases. Without such information, EPA cannot verify the commenters' claim that the addition of chemicals to EPCRA section 313 will create significant impacts as a result of the Executive Order. If these chemicals are not being purchased by the federal government, or are not being purchased unnecessarily, there will not be an impact.

The commenters' estimate of $1.5 billion in costs is based solely on a series of assumptions, which are not supported by data. EPA does not believe that the commenter's analysis was based on a careful analysis of any factual information. EPA has no data with which to replace these assumptions. Given EPA's belief that effect of the Executive Order should not have a bearing on the rulemaking (as well as the limitations of the Executive Order, the small amount of procurement that would be affected, and the ability of producers to sell to private sector clients or manufacture substitutes), EPA does

not believe that there is a need to develop any data on these factors.

The Executive Order states that "the environmental, energy and economic benefits of energy and water use reductions are very significant," and that "the federal government has the opportunity to realize significant economic as well as environmental benefits of pollution prevention." The Executive Order provided a mandate for the federal government to reduce its unnecessary use of toxic chemicals. EPA believes that the proposal to add chemicals to the section 313 list complements this mandate. Furthermore, EPA hopes that federal agencies will comply with the spirit of the Order, and reduce their unnecessary use of toxic and hazardous chemicals, whether or not these chemicals are listed on the EPCRA section 313 list. EPA believes that, by definition, the social benefits cannot exceed the social costs for an unnecessary toxic chemical, and social welfare can be improved by switching to a substitute product. Therefore, EPA believes that any actions federal agencies take to meet their obligations under Executive Order 12856 will have a positive net benefit.

3. *Benefits.* Many commenters assert that the RIA did not show any benefits to adding chemicals to the EPCRA section 313 list of chemicals. The commenters appear to have made these statements because EPA did not make a quantitative estimate of the benefits associated with the rule.

There are two types of benefits associated with EPCRA section 313. The first type of benefit is due to improvements in understanding, awareness, and decision-making related to the provision and distribution of information. The second type of benefits derive from changes in behavior that result from the information reported to TRI. These benefits include reduced environmental and health risks, and reduced treatment and disposal costs: These changes in behavior come at some cost to society. Because the current state of knowledge about the economics of information is not highly developed, EPA has not attempted to quantify the pure information benefits of adding chemicals to the EPCRA section 313 list. Because of the inherent uncertainty in the chain of events, EPA has also not attempted to quantify the benefits or the costs of the changes in behavior that result from the information. EPA does not believe that there are adequate methodologies to make reasonable quantitative estimates of either type of benefits. However, EPA believes that its qualitative discussion of the effects of the current TRI program show that such benefits do exist. The information on the additional chemicals is expected to improve scientific understanding of the environment and health risks, foster greater community awareness of industrial activities, and allow Federal, state, and local authorities to make better informed decisions on acceptable levels of toxic chemicals in communities.

Instead, EPA has drawn its conclusions about the net benefits of adding chemicals to EPCRA section 313 by inference. In enacting EPCRA and the PPA, Congress implicitly determined that the net benefits of reporting was positive for the original list of 320 chemicals and categories. EPA's interpretation of the statutory toxicity criteria is more stringent than Congress' original determination because EPA has deleted 12 chemicals from the original list of 320 chemicals and categories developed by Congress. EPA believes that all of the chemicals being finalized meet the statutory toxicity criteria of section 313, and are at least as toxic as some of the chemicals for which Congress believed there were net benefits due to reporting. Thus, by inference, the net benefits of reporting for the chemicals added in this rulemaking should be positive as well.

EPA believes that the experience of the past 5 years shows that reporting under EPCRA section 313 has produced real gains in understanding about exposure to toxic chemicals. EPA sees no reason why the information on the additional chemicals will provide less understanding than the currently reported chemicals have provided.

4. *Small business.* Under the Regulatory Flexibility Act (5 U.S.C. sections 601 - 612), agencies must prepare an analysis of small business impacts for proposed rules. Many commenters contend that small business impacts were understated in the RIA, and they question EPA's conclusion that the rule will not have a significant impact on a substantial number of small entities. EPA believes that the commenters have significantly overestimated the costs of the rule, and that the commenters' estimates of small business impacts are not valid. EPA has provided additional analysis in the RIA for the final rule that demonstrates that the rule will not have significant cost impacts on small entities.

EPA believes that, whether or not the proposed rule would have had significant cost impacts on small entities, the Agency has subsequently met its obligations under the Regulatory Flexibility Act. Where a proposed rule would have significant impacts on small entities, the Act requires EPA to identify and consider (but not necessarily adopt) alternatives that minimize the impact on these entities, while accomplishing the stated objectives of the applicable statute.

Elsewhere in this issue of the **Federal Register**, EPA is finalizing a rule establishing an alternate threshold for low-levels of TRI chemicals in waste that would otherwise meet the reporting requirements under EPCRA section 313. Such facilities can submit an annual certification statement in lieu of a TRI Form R. EPA estimates that facilities will require an average of 34 hours to comply with the requirements for a certification statement, compared to 53 hours for a TRI Form R. The alternate reporting threshold will apply to the chemicals being added under EPCRA section 313 by this rule as well as chemicals currently listed under EPCRA section 313.

EPA's guidelines for implementing the Regulatory Flexibility Act state that "The alternatives considered for the purpose of fulfilling the Act's requirements need not be restricted in applicability to small entities. Regulatory alternatives that prove to be more cost-effective for small entities often will be more cost-effective for larger entities as well. For example, alternatives that place lesser burden on facilities with lower emission levels, lower production levels, etc., should be analyzed in conjunction with fulfilling the Act's requirements even though such alternatives may not ease the burden on all (or even most) small entities and may benefit large entities as well as small ones."

Because EPA has considered, and adopted, an alternative that places lesser burden on facilities with lower emission levels, EPA believes that it has met the requirements of the Regulatory Flexibility Act. The alternate threshold will provide significant relief for small businesses that will report for the proposed chemicals, which is the intent of the Act.

5. *Reporting burden.* Many commenters report that the time required for compliance with EPCRA section 313 is higher than that estimated in the RIA. Commenters estimates of the time required to prepare a TRI Form R and perform the necessary recordkeeping vary from 91 to 2,000 hours, compared with EPA's estimate of 53 hours.

The unit time estimates used by EPA are average values. EPA recognizes that large multi-divisional, multi-departmental facilities may require more than the average time to comply. As with any average, some facilities will be above the average and others will be

below it. However, there are many other facilities subject to the rule that are not large, multi-divisional or multi-departmental. These facilities will typically have a simpler compliance process.

The variability among facilities is evident in comments on the rule submitted by a large chemical manufacturing company, that provided estimates showing that it spends an average of 28 hours for each TRI Form R that is submitted to compile information, perform calculations, prepare the TRI Form R and maintain records. This includes the time spent on compliance determination for chemicals that are below threshold levels. This is less than EPA's estimate of 53 hours for the same activities.

While some of the commenters may require more time than average to comply with the rule, other companies require less time than average. EPA believes that its time estimates are a reasonable average for the manufacturing sector as a whole.

V. Rulemaking Record

The record supporting this final rule is contained in the docket number OPPTS–400082B. All documents, including an index of the docket, are available in the TSCA Nonconfidential Information Center (NCIC), also known as the TSCA Public Document Office, from noon to 4 p.m., Monday through Friday, excluding legal holidays. TSCA NCIC is located at EPA Headquarters, Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

VI. References

(1) Colborn, T., F.S. fom Saal A.M. Soto. *Developmental Effects of Endocrine-Disrupting Chemicals in Wildlife and Humans.* Environmental Health Perspectives 101:378-384.

(2) DeRosa, Stara and Durkin *Ranking Chemicals Based on Chronic Toxicity Data, Tox. and Ind. Health*, Vol. 1, No.4, (1985)

(3) NAS/NRC. *Risk Assessment in the Federal Government: Managing the Process.* National Academy Press, Washington, DC (1983)

(4) USEPA/OHEA. *Risk Assessment Guidelines for Carcinogen Risk.* U.S. Environmental Protection Agency, Cincinnati, OH. (1987).

(5) USEPA/OHEA. *The Risk Assessment Guidelines of 1986.* U.S. Environmental Protection Agency, Washington, DC (1987)

(6) USEPA/OHEA. *Guidelines for Developmental Toxicity Risk Assessment.* U.S. Environmental Protection Agency, Washington, DC (1991) [56 FR 63805]

(7) USEPA/OHEA. *Draft Report: Principles of Neurotoxicity Risk Assessment; Notice.* U.S. Environmental Protection Agency, Washington, DC (1993) [58 FR 41556]

(8) USEPA/OPP. *EPTC-RS-DCI. Evaluation of Two-Year Chronic Rat Study (Accession Nos. 254335, 254336, 254337, 254338, and Addendum to Final Report (Accession Nos. 258076, 260057).* U. S. Environmental Protection Agency, Washington, DC (1986)

(9) USEPA/OPP. *Support Document for the Addition of Chemicals from Federal Insecticide, Fungicide, Rodenticide Act (FIFRA) Active Ingredients to EPCRA Section 313.* U. S. Environmental Protection Agency, Washington, DC (1993).

(10) USEPA/OPP. *Triallate: Subchronic Neurotoxicity Study in Rats.* U.S. Environmental Protection Agency, Washington, DC (1994).

(11) USEPA/OPPT. *Revised Draft Hazard Assessment Guidelines for Listing Chemicals on the Toxic Release Inventory.* U. S. Environmental Protection Agency, Washington, DC (1992).

(12) USEPA/OPPT. *Support Document for the Addition of Chemicals from Section 112(b) of the Clean Air Act Amendments and Chlorinated Paraffins to EPCRA section 313.* U. S. Environmental Protection Agency, Washington, DC (1993).

(13) USEPA/OPPT. *Support Document for the Health and Ecological Toxicity Review of TRI Expansion Chemicals.* U. S. Environmental Protection Agency, Washington, DC (1993).

(14) USEPA/OPPT. *Response to Comments Received on the January 12, 1994 Proposed Rule to Expand the EPCRA Section 313 List.* U. S. Environmental Protection Agency, Washington, DC (1994).

VII. Regulatory Assessment Requirements

A. 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 review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines as "significant" those regulatory actions likely to lead to a rule (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlements, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

EPA has prepared a Regulatory Impact Analysis (RIA) in conjunction with this rulemaking. A copy of this document (titled "Regulatory Impact Analysis of the Final Rule to Add Various Chemicals and Chemical Categories to the EPCRA Section 313 List of Toxic Chemicals") is available in the TSCA NCIC (See Unit V. of this preamble), for review and copying.

EPA has estimated that the total costs to industry of adding the new chemicals to the EPCRA section 313 list is approximately $99 million in the first year and $49 million each year thereafter. Costs to EPA are approximately $1 million per year.

TABLE 2.-SUMMARY OF COST COMPARISON BETWEEN PROPOSED AND FINAL RULE

	Proposed Rule	Final Rule	Final Rule with Alternate Threshold
Number of chemicals and chemical categories	313	286[1]	286
Number of new facilities	2,404	1,225	1,225
Total number of facilities	7,049	3,509	3,509
Number of TRI Form Rs submitted	28,196	14,036	10,548
Number of annual certifications submitted	0	0	3,488
First year industry costs	$160.4 million	$99 million	$92.8 million

TABLE 2.-SUMMARY OF COST COMPARISON BETWEEN PROPOSED AND FINAL RULE—Continued

	Proposed Rule	Final Rule	Final Rule with Alternate Threshold
Subsequent year industry costs	$88.5 million	$48.8 million	$44.3 million
EPA Costs	$2.1 million	$1.1 million	$0.9 million

Source-RIA. The results for the alternate threshold are based on a 500 pound level of total waste.

[1]This includes 39 chemicals as part of two delineated categories.

The costs for the final rule are different from the costs for the proposed rule, as shown in Table 2. There are two reasons for this change. First, the number of chemicals and chemical categories added has decreased from 313 to 286, which reduced the number of reports that would be submitted. Second, the number of reports estimated for one chemical, water dissociable nitrate compounds (reportable only when in aqueous solution), was increased from 2,146 to 3,066 to account for facilities that create water dissociable nitrate compounds in aqueous solution through on-site biological treatment of wastewater.

Elsewhere in this issue of the **Federal Register**, EPA is finalizing a rule establishing an alternate threshold for facilities with low amounts of a listed toxic chemical in waste (see Unit II. of this preamble). Qualifying facilities would be eligible to submit an annual certification statement instead of a TRI Form R. Because the time required for the alternate threshold is less than the time required for a TRI Form R, the cost of compliance with this rule will be lowered as a result. The effect of the alternate threshold on the chemicals being added by this rule is demonstrated in Table 2. Further information on the effect of the alternate threshold is presented elsewhere in this issue of the **Federal Register**.

The costs described in Table 2 represent only those actions that are required by this rule. There are other requirements that are linked to reporting under EPCRA section 313, but which are not required by this rule. There are 13 states that place a fee or tax on facilities that file a TRI Form R or report to EPA under EPCRA section 313, and 7 states that mandate pollution prevention plans from such facilities. EPA has also created special requirements for certain facilities with NPDES storm water permits that report under EPCRA section 313.

Adding chemicals and chemical categories to the EPCRA section 313 list may cause some facilities to incur additional costs through these linked requirements. These costs have not been monetized, but they should not be significant. The linked fees and taxes are transfers, and not social costs, and many of the reporting facilities will not be located in the 13 states with fees and taxes. Also, the NPDES and pollution prevention planning requirements are most likely to create costs for facilities that are new reporters. There will be approximately 1,225 new reporters as a result of this rule, although not all of these will be subject to the NPDES requirements, or be located in states with pollution prevention planning requirements. The linkage to the NPDES requirements is limited to about two dozen of the new chemicals, not all 286 chemicals and chemical categories being added.

The market failure that this rule is intended to correct is the externality created by the lack of information available to citizens about the releases and transfers of toxic chemicals in their communities. Taking no action would allow this externality (and the resultant social costs) to continue. It is expected that this rulemaking will generate benefits by providing citizens with access to information that otherwise would not be available to them. The benefits of the rule itself are limited to improvements in understanding, awareness and decision-making related to the provision and distribution of information.

EPA believes that the rulemaking can reasonably be anticipated to indirectly yield health and environmental benefits by leading to reductions in the releases and transfers of toxic chemicals. These changes in behavior come at some cost to industry. The net benefits of the follow-on activities are the difference between the benefits of decreased chemical releases and transfers, and the costs of the actions needed to achieve them. As noted above, EPA has not quantified the benefits of this rule or the follow-on activities.

This action was submitted to OMB for review, as required by Executive Order 12866, and any comments or changes made in response to OMB suggestions or recommendations have been documented in the public record.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires each Federal agency to perform a Regulatory Flexibility Analysis for all rules that are likely to have a "significant impact on a substantial number of small entities." EPA investigated the potential impact of the proposed rule on small businesses, and has prepared a Final Regulatory Flexibility Analysis (FRFA). This assessment has been included as part of the RIA and is summarized below.

In assessing small business impacts, EPA calculated the costs incurred by two hypothetical facilities that are supplier notification facilities reporting to the TRI for the first time. Facilities were assumed to file only Form Rs, instead of any annual certification statements. Thus, the results are based on conservative assumptions. The first facility files a report for a single new chemical, while the other files reports for four new chemicals. For each hypothetical facility, annual regulatory costs were calculated and compared to average annual sales.

The cost impact ratios were calculated based on the average annual sales of those facilities currently reporting under EPCRA section 313 for which annual sales and employee figures could be obtained from Dun Bradstreet. The Dun Bradstreet data base was used instead of Census data on the assumption that facilities that report under EPCRA section 313 are not uniformly distributed throughout the entire population of facilities in each size category. EPA believes that it is reasonable to assume that facilities reporting under EPCRA section 313 have, on average, larger annual sales than the typical facility in an industry. Therefore, the annual sales of current reporters should be a more appropriate measure than the sales of all facilities in an industry.

A small business was defined as having fewer than 50 employees. Although a more detailed break-down of size categories would have allowed for a closer examination of the potential impact on even smaller facilities, the total number of observations in the matched data base was too small to allow for additional categories.

EPA often uses a cost impact percentage of one percent as a threshold

measure below which facilities are not considered to be significantly impacted as a result of a regulation. Under the scenario in which facilities are assumed to submit one TRI Form R, the cost impact percentages are well below one percent for all employee size classes in all SICs. The highest cost impact percentage is 0.4 percent for small facilities in Standard Industrial Classification (SIC) codes 25 (Furniture) and 31 (Leather) in the first year of reporting.

Under the scenario in which facilities are assumed to submit four TRI Form Rs, cost impact percentages in the first year of reporting are above one percent only for small facilities in SIC codes 25 (1.2 percent) and 31 (1.1 percent). Cost impact percentages are below 0.8 percent for all industries in subsequent years.

The higher impact rates for the hypothetical facilities occur in industry sectors where there have historically been a relatively small number of establishments reporting. Approximately 8 percent of all facilities in SIC code 25 (Furniture) and 10 percent of all facilities in SIC code 31 (Leather) currently report to EPCRA section 313 (compared to 57 percent of all facilities in the chemical industry). It is reasonable that large and medium businesses are more highly represented in these percentages than small businesses, because they would be more likely to exceed the EPCRA section 313 thresholds. In addition, facilities in SIC 25 and 31 have typically submitted fewer than four reports each, and would be less likely to submit four reports for the new chemicals than facilities in other industries.

Thus, cost impacts for facilities potentially affected by the rule were not found to be of sufficient magnitude to cause significant impacts. Although EPA has found that the rule does not result in significant impacts on small facilities, EPA has separately developed alternatives to meet the goals of the Regulatory Flexibility Act (i.e., to accomplish the objectives of EPCRA section 313 while minimizing the economic impact on small entities). EPA proposed a rule establishing an alternative reporting threshold for low-level releases and transfers (July 28, 1994, 59 FR 38524). The proposal requested comment on five different levels for the alternate reporting threshold. This rule is being finalized elsewhere in today's issue of the **Federal Register**.

C. Paperwork Reduction Act

The collection of information and other requirements under section 313 of EPCRA and section 6607 of the PPA are covered under OMB approval number 2070–0093, which was issued on May 14, 1992. While this approval normally would have expired on November 30, 1992, it remains in effect pursuant to the 1993 Department of Veteran Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, Pub. L. 102-389, signed October 6, 1992, which states that:

Notwithstanding the Paperwork Reduction Act of 1980 or any requirements thereunder the Environmental Protection Agency Toxic Chemical Release Inventory TRI Form R and instructions, revised 1991 version issued May 19, 1992, and related requirements (OMB No. 2070-0093), shall be effective for reporting under section 6607 of the Pollution Prevention Act of 1990 (Public Law 101–508) and section 313 of the Superfund Amendments and Reauthorization Act of 1986 (Public Law 99-499) until such time as revisions are promulgated pursuant to law.

This final rule adds chemicals to the list of toxic chemicals subject to reporting under section 313 of EPCRA and section 6607 of the PPA and does not change the elements of the TRI reporting form, its instructions, or related requirements. Accordingly, the TRI Form R and instructions and related requirements remain in effect, as provided by Pub. L. 102-389.

The industry reporting burden for collecting this information is estimated to average 53 hours per respondent annually, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The actual burden to a specific facility may deviate from this estimate depending on the complexity of the facility's operations and the profile of the release.

List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: November 22, 1994.

Carol M. Browner,

Administrator.

Therefore, 40 CFR part 372 is amended to read as follows:

Part 372—[AMENDED]

1. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11013 and 11028.

2. In § 372.65 by adding chemicals to paragraph (a) alphabetically, to paragraph (b) by CAS no. sequence, and to paragraph (c) by alphabetically adding six categories to read as follows:

§ 372.65 Chemicals and chemical categories to which the part applies.

* * * * *

(a) * * *

Chemical Name	CAS No.	Effective Date
Abamectin [Avermectin B1]	71751-41-2	1/1/95
Acephate (Acetylphosphoramidothioic acid O,S-dimethyl ester)	30560-19-1	1/1/95
* * * * * * *		
Acifluorfen, sodium salt [5-(2-Chloro-4-(triflouromethyl)phenoxy)-2-nitro-benzoic acid, sodium salt]	62476-59-9	1/1/95
* * * * * * *		
Alachlor	15972-60-8	1/1/95
Aldicarb	116-06-3	1/1/95
* * * * * * *		
d-trans-Allethrin [d-trans-Chrysanthemic acid of d-allethrone]	28057-48-9	1/1/95
Allylamine	107-11-9	1/1/95
* * * * * * *		
Aluminum phosphide	20859-73-8	1/1/95
Ametryn (N-Ethyl-N'-(1-methylethyl)-6-(methylthio)-1,3,5,-triazine-2,4-diamine)	834-12-8	1/1/95
* * * * * * *		
Amitraz	33089-61-1	1/1/95

Chemical Name	CAS No.	Effective Date
* * * * * * *		
Anilazine [4,6-dichloro-N-(2-chlorophenyl)-1,3,5-triazin-2-amine]	101-05-3	1/1/95
* * * * * * *		
Atrazine (6-Chloro-N-ethyl-N'-(1-methylethyl)-1,3,5,-triazine-2,4-diamine)	1912-24-9	1/1/95
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Bendiocarb [2,2-Dimethyl-1,3-benzodioxol-4-ol methylcarbamate]	22781-23-3	1/1/95
Benfluralin (N-Butyl-N-ethyl-2,6-dinitro-4-(trifluoromethyl)benzenamine)	1861-40-1	1/1/95
Benomyl	17804-35-2	1/1/95
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Bifenthrin	82657-04-3	1/1/95
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Bis(tributylin) oxide	56-35-9	1/1/95
Boron trichloride	10294-34-5	1/1/95
Boron trifluoride	7637-07-2	1/1/95
Bromacil (5-Bromo-6-methyl-3-(1-methylpropyl)-2,4-(1H,3H)-pyrimidinedione)	314-40-9	1/1/95
Bromacil, lithium salt [2,4-(1H,3H)-Pyrimidinedione, 5-bromo-6-methyl-3-(1-methylpropyl), lithium salt]	53404-19-6	1/1/95
Bromine	7726-95-6	1/1/95
1-Bromo-1-(bromomethyl)-1,3-propanedicarbonitrile	35691-65-7	1/1/95
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2-Bromo-2-nitropropane-1,3-diol (Bronopol)	52-51-7	1/1/95
* * * * * * *		
Bromoxynil (3,5-Dibromo-4-hydroxybenzonitrile)	1689-84-5	1/1/95
Bromoxynil octanoate (Octanoic acid, 2,6-dibromo-4-cyanophenyl ester)	1689-99-2	1/1/95
Brucine	357-57-3	1/1/95
* * * * * * *		
C.I. Acid Red 114	6459-94-5	1/1/95
* * * * * * *		
C.I. Direct Blue 218	28407-37-6	1/1/95
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Carbofuran	1563-66-2	1/1/95
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Carboxin (5,6-Dihydro-2-methyl-N-phenyl-1,4-oxathiin-3-carboxamide)	5234-68-4	1/1/95
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Chinomethionat [6-Methyl-1,3-dithiolo[4,5-b]quinoxalin-2-one]	2439-01-2	1/1/95
* * * * * * *		
Chlorendic acid	115-28-6	1/1/95
Chlorimuron ethyl [Ethyl-2-[[[(4-chloro-6-methoxyprimidin-2-yl)-carbonyl]-amino]sulfonyl]benzoate]	90982-32-4	1/1/95
* * * * * * *		
1-(3-Chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride	4080-31-3	1/1/95
p-Chloroaniline	106-47-8	1/1/95
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3-Chloro-2-methyl-1-propene	563-47-3	1/1/95
p-Chlorophenyl isocyanate	104-12-1	1/1/95
Chloropicrin	76-06-2	1/1/95
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3-Chloropropionitrile	542-76-7	1/1/95
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p-Chloro-o-toluidine	95-69-2	1/1/95
2-Chloro-1,1,1-trifluoro-ethane (HCFC-133a)	75-88-7	1/1/95
Chlorotrifluoromethane (CFC-13)	75-72-9	1/1/95
3-Chloro-1,1,1-trifluoro-propane (HCFC-253fb)	460-35-5	1/1/95
Chlorpyrifos methyl [O,O-dimethyl-O-(3,5,6-trichloro-2-pyridyl)phosphorothioate	5598-13-0	1/1/95
Chlorsulfuron [2-chloro-N-[[4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino]carbonyl]benzenesulfonamide]	64902-72-3	1/1/95
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Crotonaldehyde	4170-30-3	1/1/95
Cyanazine	21725-46-2	1/1/95
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Cycloate	1134-23-2	1/1/95
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Cyclohexanol	108-93-0	1/1/95
Cyfluthrin [3-(2,2-Dichloroethenyl)-2,2-dimethylcyclopropanecarboxylic acid, cyano(4-fluoro-3-phenoxyphenyl)methyl ester]	68359-37-5	1/1/95
Cyhalothrin [3-(2-Chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylic acid cyano(3-phenoxyphenyl)methyl ester]	68085-85-8	1/1/95

Chemical Name	CAS No.	Effective Date
* * * * * * *		
Dazomet(Tetrahydro-3,5-dimethyl-2H-1,3,5-thiadiazine-2-thione)	533-74-4	1/1/95
Dazomet, sodium salt [Tetrahydro-3,5-dimethyl-2H-1,3,5-thiadiazine-2-thione, ion(1-), sodium]	53404-60-7	1/1/95
2,4,-DB	94-82-6	1/1/95
2,4-D butoxyethyl ester	1929-73-3	1/1/95
2,4-D butyl ester	94-80-4	1/1/95
2,4-D chlorocrotyl ester	2971-38-2	1/1/95
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Desmedipham	13684-56-5	1/1/95
2,4-D 2-ethylhexyl ester	1928-43-4	1/1/95
2,4-D 2-ethyl-4-methylpentyl ester	53404-37-8	1/1/95
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Diazinon	333-41-5	1/1/95
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2,2-Dibromo-3-nitrilopropionamide	10222-01-2	1/1/95
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Dicamba (3,6-Dichloro-2-methyoxybenzoic acid)	1918-00-9	1/1/95
Dichloran [2,6-Dichloro-4-nitroaniline]	99-30-9	1/1/95
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3,3'-Dichlorobenzidine dihydrochloride	612-83-9	1/1/95
3,3'-Dichlorobenzidine sulfate	64969-34-2	1/1/95
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trans-1,4-Dichloro-2-butene	110-57-6	1/1/95
1,2-Dichloro-1,1-difluoroethane (HCFC-132b)	1649-08-7	1/1/95
* * * * * * *		
Dichlorofluoromethane (HCFC-21)	75-43-4	1/1/95
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Dichloropentafluoropropane	127564-92-5	1/1/95
1,1-dichloro-1,2,2,3,3-pentafluoropropane (HCFC-225cc)	13474-88-9	1/1/95
1,1-dichloro-1,2,3,3,3-pentafluoropropane (HCFC-225eb)	111512-56-2	1/1/95
1,2-dichloro-1,1,2,3,3-pentafluoropropane (HCFC-225bb)	422-44-6	1/1/95
1,2-dichloro-1,1,3,3,3-pentafluoropropane (HCFC-225da)	431-86-7	1/1/95
1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb)	507-55-1	1/1/95
1,3-dichloro-1,1,2,3,3-pentafluoropropane (HCFC-225ea)	136013-79-1	1/1/95
2,2-dichloro-1,1,1,3,3-pentafluoropropane (HCFC-225aa)	128903-21-9	1/1/95
2,3-dichloro-1,1,1,2,3-pentafluoropropane (HCFC-225ba)	422-48-0	1/1/95
3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca)	422-56-0	1/1/95
Dichlorophene [2,2'-Methylene-bis(4-chlorophenol)]	97-23-4	1/1/95
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trans-1,3-Dichloropropene	10061-02-6	1/1/95
* * * * * * *		
Diclofop methyl [2-[4-(2,4-Dichlorophenoxy)phenoxy]propanoic acid, methyl ester]	51338-27-3	1/1/95
* * * * * * *		
Dicyclopentadiene	77-73-6	1/1/95
* * * * * * *		
Diethatyl ethyl	38727-55-8	1/1/95
* * * * * * *		
Diflubenzuron	35367-38-5	1/1/95
Diglycidyl resorcinol ether	101-90-6	1/1/95
Dimethipin [2,3,-Dihydro-5,6-dimethyl-1,4-dithiin-1,1,4,4-tetraoxide]	55290-64-7	1/1/95
Dimethoate	60-51-5	1/1/95
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3,3'-Dimethoxybenzidine dihydrochloride (o-Dianisidine dihydrochloride)	20325-40-0	1/1/95
3,3'-Dimethoxybenzidine hydrochloride (o-Dianisidine hydrochloride)	111984-09-9	1/1/95
Dimethylamine	124-40-3	1/1/95
Dimethylamine dicamba	2300-66-5	1/1/95
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3,3'-Dimethylbenzidine dihydrochloride (o-Tolidine dihydrochloride)	612-82-8	1/1/95
3,3'-Dimethylbenzidine dihydrofluoride (o-Tolidine dihydrofluoride)	41766-75-0	1/1/95
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Dimethyl chlorothiophosphate	2524-03-0	1/1/95
Dimethyldichlorosilane	75-78-5	1/1/95
N,N-Dimethylformamide	68-12-2	1/1/95
* * * * * * *		
2,6-Dimethylphenol	576-26-1	1/1/95

Chemical Name	CAS No.	Effective Date
* * * * * * *		
Dinitrobutyl phenol (Dinoseb)	88-85-7	1/1/95
Dinocap	39300-45-3	1/1/95
* * * * * * *		
Diphenamid	957-51-7	1/1/95
Diphenylamine	122-39-4	1/1/95
* * * * * * *		
Dipotassium endothall [7-Oxabicyclo(2.2.1)heptane-2,3-dicarboxylic acid, dipotassium salt]	2164-07-0	1/1/95
Dipropyl isocinchomeronate	136-45-8	1/1/95
Disodium cyanodithioimidocarbonate	138-93-2	1/1/95
2,4-D isopropyl ester	94-11-1	1/1/95
2,4-Dithiobiuret	541-53-7	1/1/95
Diuron	330-54-1	1/1/95
Dodine [Dodecylguanidine monoacetate]	2439-10-3	1/1/95
2,4,-DP	120-36-5	1/1/95
2,4-D propylene glycol butyl ether ester	1320-18-9	1/1/95
2,4-D sodium salt	2702-72-9	1/1/95
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Ethoprop [Phosphorodithioic acid O-ethyl S,S-dipropyl ester]	13194-48-4	1/1/95
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Ethyl dipropylthiocarbamate [EPTC]	759-94-4	1/1/95
* * * * * * *		
Famphur	52-85-7	1/1/95
Fenarimol [.alpha.-(2-Chlorophenyl)-.alpha.-4-chlorophenyl)-5-pyrimidinemethanol]	60168-88-9	1/1/95
Fenbutatin oxide (Hexakis(2-methyl-2-phenyl-propyl)distannoxane)	13356-08-6	1/1/95
Fenoxaprop ethyl [2-(4-((6-Chloro-2-benzoxazolylen)oxy)phenoxy)propanoic acid,ethyl ester]	66441-23-4	1/1/95
Fenoxycarb [2-(4-Phenoxyphenoxy)ethyl]carbamic acid ethyl ester]	72490-01-8	1/1/95
Fenpropathrin [2,2,3,3-Tetramethylcyclopropane carboxylic acid cyano(3-phenoxy-phenyl)methyl ester]	39515-41-8	1/1/95
Fenthion [O,O-Dimethyl O-[3-methyl-4-(methylthio)phenyl]ester, phosphorothioic acid]	55-38-9	1/1/95
Fenvalerate [4-Chloro-alpha-(1-methylethyl)benzeneacetic acid cyano(3-phenoxyphenyl)methyl ester]	51630-58-1	1/1/95
Ferbam [Tris(dimethylcarbamo-dithioato-S,S')iron]	14484-64-1	1/1/95
Fluazifop-butyl [2-[4-[[5-(Trifluoromethyl)-2-pyridinyl]oxy]-phenoxy]propanoic acid, butyl ester]	69806-50-4	1/1/95
Fluorine	7782-41-4	1/1/95
Fluorouracil (5-Fluorouracil)	51-21-8	1/1/95
Fluvalinate [N-[2-Chloro-4-(trifluoromethyl)phenyl]-DL-valine(+)-cyano (3-phenoxyphenyl)methyl ester]	69409-94-5	1/1/95
Folpet	133-07-3	1/1/95
Fomesafen [5-(2-Chloro-4-(trifluoromethyl)phenoxy)-N-methylsulfonyl)-2-nitrobenzamide]	72178-02-0	1/1/95
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alpha-Hexachlorocyclohexane	319-84-6	1/1/95
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n-Hexane	110-54-3	1/1/95
Hexazinone	51235-04-2	1/1/95
Hydramethylnon [Tetrahydro-5,5-dimethyl-2(1H)-pyrimidinone[3-[4-(trifluoromethyl)phenyl]-1-[2-[4-(trifluoromethyl)phenyl]ethenyl]-2-propenylidene]hydrazone]	67485-29-4	1/1/95
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Imazalil [1-[2-(2,4-Dichlorophenyl)-2-(2-propenyloxy)ethyl]-1H-imidazole]	35554-44-0	1/1/95
3-Iodo-2-propynyl butylcarbamate	55406-53-6	1/1/95
Iron pentacarbonyl	13463-40-6	1/1/95
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Isodrin	465-73-6	1/1/95
Isofenphos [2-[[Ethoxyl[(1-methylethyl)amino]phosphinothioyl]oxy]benzoic acid 1-methylethyl ester]	25311-71-1	1/1/95
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Lactofen [5-(2-Chloro-4-(trifluoromethyl)phenoxy)-2-nitro-2-ethoxy-1- methyl-2-oxoethyl ester]	77501-63-4	1/1/95
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Linuron	330-55-2	1/1/95
Lithium carbonate	554-13-2	1/1/95
Malathion	121-75-5	1/1/95
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Mecoprop	93-65-2	1/1/95
2-Mercaptobenzothiazole (MBT)	149-30-4	1/1/95
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Merphos	150-50-5	1/1/95
Metham sodium (Sodium methyldithiocarbamate)	137-42-8	1/1/95
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Methazole [2-(3,4-Dichlorophenyl)-4-methyl-1,2,4-oxadiazolidine-3,5-dione]	20354-26-1	1/1/95
Methiocarb	2032-65-7	1/1/95
Methoxone (4-Chloro-2-methylphenoxy) acetic acid (MCPA))	94-74-6	1/1/95

Chemical Name	CAS No.	Effective Date
Methoxone-sodium salt ((4-chloro-2-methylphenoxy) acetate sodium salt)	3653-48-3	1/1/95
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Methyl isothiocyanate [Isothiocyanatomethane]	556-61-6	1/1/95
2-Methyllactonitrile	75-86-5	1/1/95
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N-Methylolacrylamide	924-42-5	1/1/95
Methyl parathion	298-00-0	1/1/95
N-Methyl-2-pyrrolidone	872-50-4	1/1/95
Methyltrichlorosilane	75-79-6	1/1/95
Metiram	9006-42-2	1/1/95
Metribuzin	21087-64-5	1/1/95
Mevinphos	7786-34-7	1/1/95
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Molinate (1H-Azepine-1-carbothioic acid, hexahydro-S-ethyl ester)	2212-67-1	1/1/95
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Monuron	150-68-5	1/1/95
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Myclobutanil [.alpha.-Butyl-.alpha.-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile]	88671-89-0	1/1/95
Nabam	142-59-6	1/1/95
Naled	300-76-5	1/1/95
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Nitrapyrin (2-Chloro-6-(trichloromethyl) pyridine)	1929-82-4	1/1/95
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p-Nitroaniline	100-01-6	1/1/95
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Norflurazon [4-Chloro-5-(methylamino)-2-[3-(trifluoromethyl)phenyl]-3(2H)-pyridazinone]	27314-13-2	1/1/95
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Oryzalin [4-(Dipropylamino)-3,5-dinitrobenzenesulfonamide]	19044-88-3	1/1/95
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Oxydemeton methyl [S-(2-(ethylsulfinyl)ethyl) o,o-dimethyl ester phosphorothioic acid]	301-12-2	1/1/95
Oxydiazon [3-[2,4-Dichloro-5-(1-methylethoxy)phenyl]-5-(1,1-dimethylethyl)-1,3,4-oxadiazol-2(3H)-one]	19666-30-9	1/1/95
Oxyfluorfen	42874-03-3	1/1/95
Ozone	10028-15-6	1/1/95
Paraquat dichloride	1910-42-5	1/1/95
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Pebulate [Butylethylcarbamothioic acid S-propyl ester]	1114-71-2	1/1/95
Pendimethalin [N-(1-Ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine]	40487-42-1	1/1/95
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Pentobarbital sodium	57-33-0	1/1/95
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Perchloromethyl mercaptan	594-42-3	1/1/95
Permethrin [3-(2,2-Dichloroethenyl)-2,2-dimethylcyclopropanecarboxylic acid, (3-phenoxyphenyl)methyl ester]	52645-53-1	1/1/95
Phenanthrene	85-01-8	1/1/95
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Phenothrin [2,2-Dimethyl-3-(2-methyl-1-propenyl)cyclopropanecarboxylic acid (3-phenoxyphenyl)methyl ester]	26002-80-2	1/1/95
1,2-Phenylenediamine	95-54-5	1/1/95
1,3-Phenylenediamine	108-45-2	1/1/95
1,2-Phenylenediamine dihydrochloride	615-28-1	1/1/95
1,4-Phenylenediamine dihydrochloride	624-18-0	1/1/95
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Phenytoin	57-41-0	1/1/95
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Phosphine	7803-51-2	1/1/95
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Picloram	1918-02-1	1/1/95
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Piperonyl butoxide	51-03-6	1/1/95
Pirimiphos methyl [O-(2-(Diethylamino)-6-methyl-4-pyrimidinyl)-O,O-dimethylphosphorothioate]	29232-93-7	1/1/95
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Potassium bromate	7758-01-2	1/1/95
Potassium dimethyldithiocarbamate	128-03-0	1/1/95

Chemical Name	CAS No.	Effective Date
Potassium N-methyldithiocarbamate	137-41-7	1/1/95
Profenofos [O-(4-Bromo-2-chlorophenyl)-O-ethyl-S-propyl phosphorothioate]	41198-08-7	1/1/95
Prometryn [N,N'-Bis(1-methylethyl)-6-methylthio-1,3,5-triazine-2,4- diamine]	7287-19-6	1/1/95
Propachlor [2-Chloro-N-(1-methylethyl)-N-phenylacetamide]	1918-16-7	1/1/95
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Propanil [N-(3,4-Dichlorophenyl)propanamide]	709-98-8	1/1/95
Propargite	2312-35-8	1/1/95
Propargyl alcohol	107-19-7	1/1/95
Propetamphos [3-[[(Ethylamino)methoxyphosphinothioyl]oxy]-2-butenoic acid, 1-methylethyl ester]	31218-83-4	1/1/95
Propiconazole [1-[2-(2,4-Dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]- methyl-1H-1,2,4,-triazole]	60207-90-1	1/1/95
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Quizalofop-ethyl [2-[4-[(6-Chloro-2-quinoxalinyl)oxy]phenoxy]propanoic acid ethyl ester]	76578-14-8	1/1/95
Resmethrin [[5-(Phenylmethyl)-3-furanyl]methyl 2,2-dimethyl-3-(2-methyl-1-propenyl)cyclopropanecarboxylate]]	10453-86-8	1/1/95
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Sethoxydim [2-[1-(Ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one]	74051-80-2	1/1/95
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Simazine	122-34-9	1/1/95
Sodium azide	26628-22-8	1/1/95
Sodium dicamba [3,6-Dichloro-2-methoxybenzoic acid, sodium salt]	1982-69-0	1/1/95
Sodium dimethyldithiocarbamate	128-04-1	1/1/95
Sodium fluoroacetate	62-74-8	1/1/95
Sodium nitrite	7632-00-0	1/1/95
Sodium pentachlorophenate	131-52-2	
Sodium o-phenylphenoxide	132-27-4	1/1/95
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Sulfuryl fluoride [Vikane]	2699-79-8	1/1/95
Sulprofos [O-Ethyl O-[4-(methylthio)phenyl]phosphorodithioic acid S-propyl ester]	35400-43-2	1/1/95
Tebuthiuron [N-[5-(1,1-Dimethylethyl)-1,3,4-thiadiazol-2-yl)-N,N'-dimethylurea]	34014-18-1	1/1/95
Temephos	3383-96-8	1/1/95
Terbacil [5-Chloro-3-(1,1-dimethylethyl)-6-methyl-2,4(1H,3H)-pyrimidinedione]	5902-51-2	1/1/95
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1,1,1,2-Tetrachloro-2-fluoroethane (HCFC-121a)	354-11-0	1/1/95
1,1,2,2-Tetrachloro-1-fluoroethane (HCFC-121)	354-14-3	1/1/95
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Tetracycline hydrochloride	64-75-5	1/1/95
Tetramethrin [2,2-Dimethyl-3-(2-methyl-1-propenyl)cyclopropanecarboxylic acid (1,3,4,5,6,7-hexahydro-1,3-dioxo-2H-isoindol-2-yl)methyl ester]	7696-12-0	1/1/95
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Thiabendazole [2-(4-Thiazolyl)-1H-benzimidazole]	148-79-8	1/1/95
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Thiobencarb [Carbamic acid, diethylthio-, s-(p-chlorobenzyl)]	28249-77-6	1/1/95
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Thiodicarb	59669-26-0	1/1/95
Thiophanate ethyl [[1,2-Phenylenebis(iminocarbonothioyl)]biscarbamic acid diethyl ester]	23564-06-9	1/1/95
Thiophanate-methyl	23564-05-8	1/1/95
Thiosemicarbazide	79-19-6	1/1/95
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Triadimefon [1-(4-Chlorophenoxy)-3,3-dimethyl-1-(1H-1,2,4-triazol-1-yl)-2-butanone]	43121-43-3	1/1/95
Triallate	2303-17-5	1/1/95
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Tribenuron methyl [2-(((((4-Methoxy-6-methyl-1,3,5-triazin-2-yl)- methylamino)carbonyl)amino)sulfonyl)-, methyl ester]	101200-48-0	1/1/95
Tributyltin fluoride	1983-10-4	1/1/95
Tributyltin methacrylate	2155-70-6	1/1/95
S,S,S-Tributyltrithiophosphate (DEF)	78-48-8	1/1/95
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Trichloroacetyl chloride	76-02-8	1/1/95
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1,2,3-Trichloropropane	96-18-4	1/1/95
Triclopyr, triethylammonium salt	57213-69-1	1/1/95
Triethylamine	121-44-8	1/1/95
Triforine [N,N'-[1,4-Piperazinediyl-bis(2,2,2-trichloroethylidene)] bisformamide]	26644-46-2	1/1/95
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Trimethylchlorosilane	75-77-4	1/1/95
2,3,5-Trimethylphenyl methylcarbamate	2655-15-4	1/1/95
Triphenyltin chloride	639-58-7	1/1/95

Chemical Name	CAS No.	Effective Date
Triphenyltin hydroxide	76-87-9	1/1/95
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Vinclozolin [3-(3,5-Dichlorophenyl)-5-ethenyl-5-methyl-2,4- oxazolidinedione]	50471-44-8	1/1/95
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CAS No.	Chemical Name	Effective Date
* * * * * * *		
51-03-6	Piperonyl butoxide	1/1/95
51-21-8	Fluorouracil (5-Fluorouracil)	1/1/95
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52-51-7	2-Bromo-2-nitropropane-1,3-diol (Bronopol)	1/1/95
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52-85-7	Famphur	1/1/95
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55-38-9	Fenthion [O,O-Dimethyl O-[3-methyl-4-(methylthio)phenyl] ester, phosphorothioic acid]	1/1/95
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56-35-9	Bis(tributyltin) oxide	1/1/95
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57-33-0	Pentobarbital sodium	1/1/95
57-41-0	Phenytoin	1/1/95
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60-51-5	Dimethoate	1/1/95
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62-74-8	Sodium fluoroacetate	1/1/95
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64-75-5	Tetracycline hydrochloride	1/1/95
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68-12-2	N,N-Dimethylformamide	1/1/95
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75-43-4	Dichlorofluoromethane (HCFC-21)	1/1/95
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75-72-9	Chlorotrifluoromethane (CFC-13)	1/1/95
75-77-4	Trimethylchlorosilane	1/1/95
75-78-5	Dimethyldichlorosilane	1/1/95
75-79-6	Methyltrichlorosilane	1/1/95
75-86-5	2-Methyllactonitrile	1/1/95
75-88-7	2-Chloro-1,1,1-trifluoroethane (HCFC-133a)	1/1/95
76-02-8	Trichloroacetyl chloride	1/1/95
76-06-2	Chloropicrin	1/1/95
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76-87-9	Triphenyltin hydroxide	1/1/95
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77-73-6	Dicyclopentadiene	1/1/95
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78-48-8	S,S,S-Tributyltrithiophosphate (DEF)	1/1/95
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79-19-6	Thiosemicarbazide	1/1/95
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85-01-8	Phenanthrene	1/1/95
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88-85-7	Dinitrobutyl phenol (Dinoseb)	1/1/95
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93-65-2	Mecoprop	1/1/95
94-11-1	2,4-D isopropyl ester	1/1/95

CAS No.	Chemical Name	Effective Date
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94-74-6	Methoxone (4-Chloro-2-methylphenoxy) acetic acid (MCPA)	1/1/95
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94-80-4	2,4-D butyl ester	1/1/95
94-82-6	2,4-DB	1/1/95
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95-54-5	1,2-Phenylenediamine	1/1/95
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95-69-2	p-Chloro-o-toluidine	1/1/95
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96-18-4	1,2,3-Trichloropropane	1/1/95
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97-23-4	Dichlorophene [2,2'-Methylene-bis(4-chlorophenol)]	1/1/95
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99-30-9	Dichloran [2,6-Dichloro-4-nitroaniline]	1/1/95
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100-01-6	p-Nitroaniline	1/1/95
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101-05-3	Anilazine [4,6-dichloro-N-(2-chlorophenyl)-1,3,5-triazin-2-amine]	1/1/95
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101-90-6	Diglycidyl resorcinol ether	1/1/95
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104-12-1	p-Chlorophenyl isocyanate	1/1/95
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106-47-8	p-Chloroaniline	1/1/95
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107-11-9	Allylamine	1/1/95
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107-19-7	Propargyl alcohol	1/1/95
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108-45-2	1,3-Phenylenediamine	1/1/95
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108-93-0	Cyclohexanol	1/1/95
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110-54-3	n-Hexane	1/1/95
110-57-6	trans-1,4-Dichloro-2-butene	1/1/95
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115-28-6	Chlorendic acid	1/1/95
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116-06-3	Aldicarb	1/1/95
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120-36-5	2,4-DP	1/1/95
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121-44-8	Triethylamine	1/1/95
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121-75-5	Malathion	1/1/95
122-34-9	Simazine	1/1/95
122-39-4	Diphenylamine	1/1/95
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124-40-3	Dimethylamine	1/1/95
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128-03-0	Potassium dimethyldithiocarbamate	1/1/95
128-04-1	Sodium dimethyldithiocarbamate	1/1/95
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131-52-2	Sodium pentachlorophenate	1/1/95
132-27-4	Sodium o-phenylphenoxide	1/1/95
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133-07-3	Folpet	1/1/95

CAS No.	Chemical Name	Effective Date
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136-45-8	Dipropyl isocinchomeronate	1/1/95
137-41-7	Potassium n-methyldithiocarbamate	1/1/95
137-42-8	Metham Sodium	1/1/95
138-93-2	Disodium cyanodithioimidocarbonate	1/1/95
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142-59-6	Nabam	1/1/95
148-79-8	Thiabendazole [2-(4-Thiazolyl)-1H-benzimidazole]	1/1/95
149-30-4	2-Mercaptobenzothiazole	1/1/95
150-50-5	Merphos	1/1/95
150-68-5	Monuron	1/1/95
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298-00-0	Methyl parathion	1/1/95
300-76-5	Naled	1/1/95
301-12-2	Oxydemeton methyl [s-(2-(Ethylsulfinyl)ethyl)o,o-dimethyl ester phosphorothioic acid]	1/1/95
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314-40-9	Bromacil (5-Bromo-6-methyl-3-(1-methylpropyl)-2,4-(1H,3H)-pyrimidinedione)	1/1/95
319-84-6	alpha-Hexachlorocyclohexane	1/1/95
330-54-1	Diuron	1/1/95
330-55-2	Linuron	1/1/95
333-41-5	Diazinon	1/1/95
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354-11-0	1,1,1,2-Tetrachloro-2-fluoroethane (HCFC-121a)	1/1/95
354-14-3	1,1,2,2-Tetrachloro-1-fluoroethane (HCFC-121)	1/1/95
357-57-3	Brucine	1/1/95
422-44-6	1,2-dichloro-1,1,2,3,3-pentafluoropropane (HCFC-225bb)	1/1/95
422-48-0	2,3-dichloro-1,1,1,2,3-pentafluoropropane (HCFC-225ba)	1/1/95
422-56-0	3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca)	1/1/95
431-86-7	1,2-dichloro-1,1,3,3,3-pentafluoropropane (HCFC-225da)	1/1/95
460-35-5	3-chloro-1,1,1-trifluoropropane (HCFC-253fb)	1/1/95
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465-73-6	Isodrin	1/1/95
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507-55-1	1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb)	1/1/95
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533-74-4	Dazomet (Tetrahydro-3,5-dimethyl-2H-1,3,5-thiadiazine-2-thione)	1/1/95
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541-53-7	2,4-Dithiobiuret	1/1/95
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542-76-7	3-Chloropropionitrile	1/1/95
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554-13-2	Lithium carbonate	1/1/95
556-61-6	Methyl isothiocyanate [Isothiocyanatomethane]	1/1/95
563-47-3	3-Chloro-2-methyl-1-propene	1/1/95
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576-26-1	2,6-Dimethylphenol	1/1/95
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594-42-3	Perchloromethyl mercaptan	1/1/95
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612-82-8	3,3'-Dimethylbenzidine dihydrochloride (o-Tolidine dihydrochloride)	1/1/95
612-83-9	3,3'-Dichlorobenzidine dihydrochloride	1/1/95
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615-28-1	1,2-Phenylenediamine dihydrochloride	1/1/95
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624-18-0	1,4-Phenylenediamine dihydrochloride	1/1/95
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639-58-7	Triphenyltin chloride	1/1/95
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709-98-8	Propanil [N-(3,4-Dichlorophenyl)propanamide]	1/1/95
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759-94-4	Ethyl dipropylthiocarbamate (EPTC)	1/1/95
834-12-8	Ametryn (N-Ethyl-N'-(1-methylethyl)-6-(methylthio)-1,3,5,-triazine-2,4-diamine)	1/1/95
872-50-4	N-Methyl-2-pyrrolidone	1/1/95

CAS No.	Chemical Name	Effective Date
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924-42-5	N-Methylolacrylamide	1/1/95
957-51-7	Diphenamid	1/1/95
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1114-71-2	Pebulate [Butylethylcarbamo-thioic acid S-propyl ester]	1/1/95
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1134-23-2	Cycloate	1/1/95
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1320-18-9	2,4-D propylene glycol butyl ether ester	1/1/95
	* * * * * * *	
1563-66-2	Carbofuran	1/1/95
1649-08-7	1,2-dichloro-1,1-difluoroethane (HCFC-132b)	1/1/95
1689-84-5	Bromoxynil (3,5-Dibromo-4-hydroxybenzonitrile)	1/1/95
1689-99-2	Bromoxynil octanoate (Octanoic acid, 2,6-dibromo-4-cyanophenyl ester)	1/1/95
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1861-40-1	Benfluralin(N-Butyl-N-ethyl-2,6-dinitro-4-(trifluoromethyl)benzenamine)	1/1/95
	* * * * * * *	
1910-42-5	Paraquat dichloride	1/1/95
1912-24-9	Atrazine (6-Chloro-N-ethyl-N'-(1-methylethyl)-1,3,5,-triazine-2,4-diamine)	1/1/95
1918-00-9	Dicamba (3,6-Dichloro-2-methyoxybenzoic acid)	1/1/95
1918-02-1	Picloram	1/1/95
1918-16-7	Propachlor [2-Chloro-N-(1-methylethyl)-N-phenylacetamide]	1/1/95
1928-43-4	2,4-D 2-ethylhexyl ester	1/1/95
1929-73-3	2,4-D butoxyethyl ester	1/1/95
1929-82-4	Nitrapyrin (2-Chloro-6-(trichloromethyl)pyridine)	1/1/95
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1982-69-0	Sodium dicamba [3,6-Dichloro-2-methoxybenzoic acid, sodium salt]	1/1/95
1983-10-4	Tributyltin fluoride	1/1/95
2032-65-7	Methiocarb	1/1/95
2155-70-6	Tributyltin methacrylate	1/1/95
2164-07-0	Dipotassium endothall [7-Oxabicyclo(2.2.1)heptane-2,3-dicarboxylic acid, dipotassium salt]	1/1/95
	* * * * * * *	
2212-67-1	Molinate (1H-Azepine-1-carbothioic acid, hexahydro-S-ethyl ester)	1/1/95
	* * * * * * *	
2300-66-5	Dimethylamine dicamba	1/1/95
	* * * * * * *	
2303-17-5	Triallate	1/1/95
2312-35-8	Propargite	1/1/95
2439-01-2	Chinomethionat [6-Methyl-1,3-dithiolo[4,5-b]quinoxalin-2-one]	1/1/95
2439-10-3	Dodine [Dodecylguanidine monoacetate]	1/1/95
2524-03-0	Dimethyl chlorothiophosphate	1/1/95
	* * * * * * *	
2655-15-4	2,3,5-Trimethylphenyl methylcarbamate	1/1/95
2699-79-8	Sulfuryl Fluoride [Vikane]	1/1/95
2702-72-9	2,4-D sodium salt	1/1/95
	* * * * * * *	
2971-38-2	2,4-D chlorocrotyl ester	1/1/95
	* * * * * * *	
3383-96-8	Temephos	1/1/95
3653-48-3	Methoxone - sodium salt (4-Chloro-2-methylphenoxy acetate sodium salt)	1/1/95
	* * * * * * *	
4080-31-3	1-(3-Chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride	1/1/95
4170-30-3	Crotonaldehyde	1/1/95
	* * * * * * *	
5234-68-4	Carboxin (5,6-Dihydro-2-methyl-N-phenyl-1,4-oxathiin-3-carboxamide)	1/1/95
5598-13-0	Chlorpyrifos methyl [O,O-dimethyl-O-(3,5,6-trichloro-2-pyridyl)phosphorothioate]	1/1/95
5902-51-2	Terbacil [5-Chloro-3-(1,1-dimethylethyl)-6-methyl-2,4-(1H,3H)-pyrimidinedione]	1/1/95
6459-94-5	C.I. Acid Red 114	1/1/95
	* * * * * * *	
7287-19-6	Prometryn [N,N'-Bis(1-methylethyl)-6-methylthio-1,3,5-triazine-2,4-diamine]	1/1/95
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7632-00-0	Sodium nitrite	1/1/95
7637-07-2	Boron trifluoride	1/1/95

CAS No.	Chemical Name	Effective Date
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7696-12-0	Tetramethrin [2,2-Dimethyl-3-(2-methyl-1-propenyl)cyclopropane-carboxylic acid (1,3,4,5,6,7-hexahydro-1,3-dioxo-2H-isoindol-2-yl)methyl ester]	1/1/95
	* * * * * * *	
7726-95-6	Bromine	1/1/95
7758-01-2	Potassium bromate	1/1/95
7782-41-4	Fluorine	1/1/95
	* * * * * * *	
7786-34-7	Mevinphos	1/1/95
7803-51-2	Phosphine	1/1/95
	* * * * * * *	
9006-42-2	Metiram	1/1/95
10028-15-6	Ozone	1/1/95
	* * * * * * *	
10061-02-6	trans-1,3-Dichloropropene	1/1/95
10222-01-2	2,2-Dibromo-3-nitrilopropionamide	1/1/95
10294-34-5	Boron trichloride	1/1/95
10453-86-8	Resmethrin [[5-(Phenylmethyl)-3-furanyl]methyl 2,2-dimethyl-3-(2-methyl-1-propenyl)cyclopropanecarboxylate]	1/1/95
	* * * * * * *	
13194-48-4	Ethoprop [Phosphorodithioic acid O-ethyl S,S-dipropyl ester]	1/1/95
13356-08-6	Fenbutatin oxide (hexakis(2-methyl-2-phenylpropyl)distannoxane)	1/1/95
13463-40-6	Iron pentacarbonyl	1/1/95
13474-88-9	1,1-Dichloro-1,2,2,3,3-pentafluoropropane (HCFC-225cc)	1/1/95
13684-56-5	Desmedipham	1/1/95
14484-64-1	Ferbam [Tris(dimethylcarbamo-dithioato-S,S')iron]	1/1/95
15972-60-8	Alachlor	1/1/95
	* * * * * * *	
17804-35-2	Benomyl	1/1/95
19044-88-3	Oryzalin [4-(Dipropylamino)-3,5-dinitrobenzene-sulfonamide]	1/1/95
19666-30-9	Oxydiazon [3-[2,4-Dichloro-5-(1-methylethoxy)phenyl]-5-(1,1-dimethylethyl)-1,3,4-oxadiazol-2(3H)-one]	1/1/95
20325-40-0	3,3'-Dimethoxybenzidine dihydrochloride (Dianisidine dihydrochloride)	1/1/95
20354-26-1	Methazole [2-(3,4-Dichlorophenyl)-4-methyl-1,2,4-oxadiazolidine-3,5-dione]	1/1/95
	* * * * * * *	
20859-73-8	Aluminum phosphide	1/1/95
21087-64-5	Metribuzin	1/1/95
21725-46-2	Cyanazine	1/1/95
22781-23-3	Bendiocarb [2,2-Dimethyl-1,3-benzodioxol-4-ol methylcarbamate]	1/1/95
23564-05-8	Thiophanate methyl	1/1/95
23564-06-9	Thiophanate ethyl [[1,2-Phenylenebis(iminocarbonothioyl)]biscarbamic acid diethyl ester]	1/1/95
25311-71-1	Isofenphos [2-[[Ethoxyl[(1-methylethyl)amino]phosphinothioyl]oxy]benzoic acid 1-methylethyl ester]	1/1/95
26002-80-2	Phenothrin [2,2-Dimethyl-3-(2-methyl-1-propenyl)cyclopropanecarboxylic acid (3-phenoxyphenyl)methyl ester]	1/1/95
	* * * * * * *	
26628-22-8	Sodium azide	1/1/95
26644-46-2	Triforine [N,N'-[1,4-Piperazinediylbis(2,2,2-trichloroethylidene)] bisformamide]	1/1/95
27314-13-2	Norflurazon [4-Chloro-5-(methylamino)-2-[3-(trifluoromethyl)phenyl]- 3(2H)-pyridazinone]	1/1/95
28057-48-9	d-trans-Allethrin [d-trans-Chrysanthemic acid of d-allethrone]	1/1/95
28249-77-6	Thiobencarb [Carbamic acid, diethylthio-, s-(p-chlorobenzyl)]	1/1/95
28407-37-6	C.I. Direct Blue 218	1/1/95
29232-93-7	Pirimiphos methyl [O-(2-(Diethylamino)-6-methyl-4-pyrimidinyl)-O,O-dimethyl phosphorothioate]	1/1/95
30560-19-1	Acephate (Acetylphosphoramidothioic acid O,S-dimethyl ester)	1/1/95
31218-83-4	Propetamphos [3-[[(Ethylamino)methoxyphosphino-thioyl]oxy]-2-butenoic acid, 1-methylethyl ester]	1/1/95
33089-61-1	Amitraz	1/1/95
34014-18-1	Terbuthiuron [N-[5-(1,1-Dimethylethyl)-1,3,4-thiadiazol-2-yl)-N,N'- dimethylurea]	1/1/95
	* * * * * * *	
35367-38-5	Diflubenzuron	1/1/95
35400-43-2	Sulprofos [O-Ethyl O-[4-(methylthio)phenyl]phosphorodithioic acid S-propyl ester]	1/1/95
35554-44-0	Imazalil [1-[2-(2,4-Dichlorophenyl)-2-(2-propenyloxy)ethyl]-1H-imidazole]	1/1/95
35691-65-7	1-Bromo-1-(bromomethyl)-1,3-propanedicarbonitrile	1/1/95
38727-55-8	Diethatyl ethyl	1/1/95
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39300-45-3	Dinocap	1/1/95
39515-41-8	Fenpropathrin [2,2,3,3-Tetramethylcyclopropane carboxylic acid cyano(3-phenoxyphenyl)methyl ester]	1/1/95
40487-42-1	Pendimethalin [N-(1-Ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzen-amine]	1/1/95
41198-08-7	Profenofos [O-(4-Bromo-2-chlorophenyl)-O-ethyl-S-propyl phosphorothioate]	1/1/95
41766-75-0	3,3'-Dimethylbenzidine dihydrofluoride (ortho-Tolidine dihydrofluoride)	1/1/95
42874-03-3	Oxyfluorfen	1/1/95
43121-43-3	Triadimefon [1-(4-Chlorophenoxy)-3,3-dimethyl-1-(1H-1,2,4-triazol-1-yl)-2-butanone]	1/1/95
50471-44-8	Vinclozolin [3-(3,5-Dichlorophenyl)-5-ethenyl-5-methyl-2,4- oxazolidinedione]	1/1/95
51235-04-2	Hexazinone	1/1/95
51338-27-3	Diclofop methyl [2-[4-(2,4-Dichlorophenoxy)phenoxy]propanoic acid, methyl ester]	1/1/95

CAS No.	Chemical Name	Effective Date
51630-58-1	Fenvalerate	1/1/95
52645-53-1	Permethrin [3-(2,2-Dichloroethenyl)-2,2-dimethylcyclopropanecarboxylic acid, (3-phenoxyphenyl)methyl ester]	1/1/95
53404-19-6	Bromacil, lithium salt [2,4-(1H,3H)-Pyrimidinedione, 5-bromo-6-methyl-3- (1-methylpropyl), lithium salt]	1/1/95
53404-37-8	2,4-D 2-ethyl-4-methylpentyl ester	1/1/95
53404-60-7	Dazomet, sodium salt [Tetrahydro-3,5-dimethyl-2H-1,3,5-thiadiazine-2-thione, ion(1-), sodium]	1/1/95
55290-64-7	Dimethipin [2,3,-Dihydro-5,6-dimethyl-1,4-dithiin 1,1,4,4-tetraoxide]	1/1/95
55406-53-6	3-Iodo-2-propynyl butylcarbamate	1/1/95
57213-69-1	Triclopyr, triethylammonium salt	1/1/95
59669-26-0	Thiodicarb	1/1/95
60168-88-9	Fenarimol [.alpha.-(2-Chlorophenyl)-.alpha.-4-chlorophenyl)-5-pyrimidine- methanol]	1/1/95
60207-90-1	Propiconazole [1-[2-(2,4-Dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]-methyl-1H-1,2,4,-triazole]	1/1/95
62476-59-9	Acifluorfen, sodium salt [5-(2-Chloro-4-(triflouromethyl)phenoxy)-2-nitro-benzoic acid, sodium salt]	1/1/95
62924-70-3	Flumetralin [2-Chloro-N-(2,6-dinitro-4-(trifluoromethyl)-phenyl)-N-ethyl-6-fluorobenzenemethanamine]	1/1/95
	* * * * * * *	
64902-72-3	Chlorsulfuron [2-chloro-N-[[4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino] carbonyl]benzenesulfonamide]	1/1/95
64969-34-2	3,3'-Dichlorobenzidine.sulfate	1/1/95
66441-23-4	Fenoxaprop ethyl [2-(4-((6-Chloro-2-benzoxazolylen)oxy)phenoxy) propanoic acid, ethyl ester]	1/1/95
67485-29-4	Hydramethylnon [Tetrahydro-5,5-dimethyl-2(1H)-pyrimidinone[3-[4- (trifluoromethyl)phenyl]-1-[2-[4-(trifluoromethyl)phenyl]ethenyl]-2- propenylidene]hydrazone]	1/1/95
68085-85-8	Cyhalothrin [3-(2-Chloro-3,3,3-trifluoro-1-propenyl)-2,2- dimethylcyclopropanecarboxylic acid cyano(3-phenoxyphenyl)methyl ester]	1/1/95
68359-37-5	Cyfluthrin [3-(2,2-Dichloro-ethenyl)-2,2-dimethylcyclo-propanecarboxylic acid, cyano(4-fluoro-3-phenoxyphenyl)methyl ester]	1/1/95
69409-94-5	Fluvalinate [N-[2-Chloro-4-(trifluoromethyl)phenyl]-DL-valine(+)-cyano(3-phenoxyphenyl)methylester]	1/1/95
69806-50-4	Fluazifop-butyl [2-[4-[[5-(Trifluoromethyl)-2-pyridinyl]oxy]-phenoxy]propanoic acid, butyl ester]	1/1/95
71751-41-2	Abamectin [Avermectin B1]	1/1/95
72178-02-0	Fomesafen [5-(2-Chloro-4-(trifluoromethyl)phenoxy)-N-methylsulfonyl)-2- nitrobenzamide]	1/1/95
72490-01-8	Fenoxycarb [2-(4-Phenoxyphenoxy)ethyl]carbamic acid ethyl ester]	1/1/95
74051-80-2	Sethoxydim [2-[1-(Ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one]	1/1/95
76578-14-8	Quizalofop-ethyl [2-[4-[(6-Chloro-2-quinoxalinyl)oxy]phenoxy] propanoic acid ethyl ester]	1/1/95
77501-63-4	Lactofen [5-(2-Chloro-4-(trifluoromethyl)phenoxy)-2-nitro-2-ethoxy-1-methyl-2-oxoethyl ester]	1/1/95
82657-04-3	Bifenthrin	1/1/95
88671-89-0	Myclobutanil [.alpha.-Butyl-.alpha.-(4-chlorophenyl)-1H-1,2,4-triazole- 1-propanenitrile]	1/1/95
	* * * * * * *	
90982-32-4	Chlorimuron ethyl [Ethyl-2-[[[(4-chloro-6-methoxyprimidin-2-yl)-carbonyl]-amino]sulfonyl]benzoate]	1/1/95
101200-48-0	Tribenuron methyl [2-((((((4-Methoxy-6-methyl-1,3,5-triazin-2-yl)- methylamino)carbonyl)amino)sulfonyl)-, methyl ester]	1/1/95
111512-56-2	1,1-dichloro-1,2,3,3,3-pentafluoropropane (HCFC-225eb)	1/1/95
111984-09-9	3,3'-Dimethoxybenzidine hydrochloride (Dianisidine dihydrochloride)	1/1/95
127564-92-5	Dichloropentafluoropropane	1/1/95
128903-21-9	2,2-Dichloro-1,1,1,3,3-pentafluoropropane (HCFC-225aa)	1/1/95
136013-79-1	1,3-Dichloro-1,1,2,3,3-pentafluoropropane (HCFC-225ea)	1/1/95

(c) * * *

Category Name	Effective Date
* * * * * * *	
Diisocyanates (This category includes only those chemicals listed below)	1/1/95
038661-72-2 1,3-Bis(methylisocyanate)cyclohexane	
010347-54-3 1,4-Bis(methylisocyanate)cyclohexane	
002556-36-7 1,4-Cyclohexane diisocyanate	
134190-37-7 Diethyldiisocyanatobenzene	
004128-73-8 4,4'-Diisocyanatodiphenyl ether	
075790-87-3 2,4'-Diisocyanatodiphenyl sulfide	
000091-93-0 3,3'-Dimethoxybenzidine-4,4'-diisocyanate	
000091-97-4 3,3'-Dimethyl-4,4'-diphenylene diisocyanate	
000139-25-3 3,3'-Dimethyldiphenylmethane-4,4'-diisocyanate	
000822-06-0 Hexamethylene-1,6-diisocyanate	
004098-71-0 Isophorone diisocyanate	
075790-84-0 4-Methyldiphenylmethane-3,4-diisocyante	
005124-30-1 1,1-Methylene bis(4-isocyanatocyclohexane)	
000101-68-8 Methylenebis(phenylisocyanate) (MDI)	
003173-72-6 1,5-Naphthalene diisocyanate	
000123-61-5 1,3-Phenylene diisocyanate	
000104-49-4 1,4-Phenylene diisocyanate	
009016-87-9 Polymeric diphenylmethane diisocyanate	
016938-22-0 2,2,4-Trimethylhexamethylene diisocyanate	
015646-96-5 2,4,4-Trimethylhexamethylene diisocyanate	
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Nicotine and salts	1/1/95
Nitrate compounds (water dissociable; reportable only when in aqueous solution)	1/1/95

Category Name	Effective Date
* * * * * * *	
Polychlorinated alkanes: Includes those chemicals defined by the following formula: $C_xH_{2x-y}Cl_y$ where x = 10 to 13; y = 3 to 12; and where the average chlorine content ranges from 40–70% with the limiting molecular formulas $C_{10}H_{19}Cl_3$ and $C_{13}H_{16}Cl_{12}$.	1/1/95
* * * * * * *	
Polycyclic aromatic compounds (PACs): (This category includes only those chemicals listed below)	1/1/95
00056-55-3 Benz(a)anthracene	
00218-01-9 Benzo(a)phenanthrene	
00050-32-8 Benzo(a)pyrene	
00205-99-2 Benzo(b)fluoranthene	
00205-82-3 Benzo(j)fluoranthene	
00207-08-9 Benzo(k)fluoranthene	
00189-55-9 Benzo(rst)pentaphene	
00226-36-8 Dibenz(a,h)acridine	
00224-42-0 Dibenz(a,j)acridine	
00053-70-3 Dibenzo(a,h)anthracene	
05385-75-1 Dibenzo(a,e)fluoranthene	
00192-65-4 Dibenzo(a,e)pyrene	
00189-64-0 Dibenzo(a,h)pyrene	
00191-30-0 Dibenzo(a,l)pyrene	
00194-59-2 7H-Dibenzo(c,g)carbazole	
00057-97-6 7,12-Dimethylbenz(a)anthracene	
00193-39-5 Indeno[1,2,3-cd]pyrene	
03697-24-3 5-Methylchrysene	
05522-43-0 1-Nitropyrene	
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Strychnine and salts	1/1/95
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federal register

Wednesday
November 30, 1994

Part VI

Environmental Protection Agency

40 CFR Part 372

Alternate Threshold for Facilities With Low Annual Reportable Amounts; Toxic Chemical Release Reporting; Community Right-To-Know; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[OPPTS–400087A; FRL–4920–5]

RIN 2070–AC70

Alternate Threshold for Facilities With Low Annual Reportable Amounts; Toxic Chemical Release Reporting; Community Right-To-Know

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is establishing an alternate threshold for those facilities with low annual reportable amounts of a listed toxic chemical. These are facilities that would otherwise meet reporting requirements under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). A facility that meets the current section 313 reporting thresholds, but estimates that the total annual reportable amount of the chemical does not exceed 500 pounds per year, can take advantage of an alternate manufacture, process, or otherwise use threshold of 1 million pounds per year, for that chemical, provided that certain conditions are adhered to. EPA is establishing this alternate threshold in response to petitions received from the Small Business Administration and the American Feed Industry Association, and in consideration of the future management of the Toxic Release Inventory (TRI).

DATES: This rule is effective November 22, 1994, except for 40 CFR 372.27 and 372.95 which have not been approved by the Office of Management and Budget (OMB) and are not effective until OMB has approved them. When approval is received, EPA will publish notice of the effective date.

FOR FURTHER INFORMATION CONTACT: Tim Crawford, Project Manager, Mail Code 7408, 401 M St., SW., Washington, DC 20460 for specific information on this rule, or for more information on EPCRA section 313, the Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Code 5101, 401 M St., SW., Washington, DC 20460, Toll free: 1–800–535–0202, in Virginia and Alaska: 703–412–9877 or Toll free TDD: 1–800–553–7672.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Authority

This rule is issued under section 313(f)(2) and section 328 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. 11023(f)(2) and 11048. EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA).

Section 313 of EPCRA, 42 U.S.C. 11023, requires certain facilities which manufacture, process, or otherwise use listed toxic chemicals in excess of the applicable threshold quantities to report their environmental releases of such chemicals annually. The threshold quantities are established in section 313(f)(1). EPA has authority to revise these threshold amounts pursuant to section 313(f)(2); however, such revised threshold amounts must obtain reporting on a substantial majority of total releases of the chemical at all facilities subject to section 313. A revised threshold may be based on classes of chemicals or categories of facilities.

Beginning with the 1991 reporting year, such facilities also began reporting source reduction and recycling data for listed chemicals, pursuant to section 6607 of the Pollution Prevention Act, 42 U.S.C. 13106. This information is submitted on EPA Form 9350–1 (Form R) and compiled in an annual Toxic Release Inventory (TRI). Each covered facility must file a separate Form R for each listed chemical manufactured, processed, or otherwise used in excess of the reporting thresholds established in section 313(f)(1). Section 328, 42 U.S.C. 11048, provides EPA with general rulemaking authority to develop regulations necessary to carry out the purposes of the Act.

B. Background

On August 8, 1991, the Small Business Administration (SBA) petitioned EPA to exempt from TRI reporting requirements, facilities reporting relatively low volumes of chemicals released and transferred off-site. The petition proposed that EPA establish a tiering system within the list of reportable chemicals under EPCRA section 313. The petition suggested a division of the list to be based on a combination of chemical toxicity and amounts reported to TRI. Those chemicals deemed to have high toxicity concerns and/or are reported in relatively low volumes nationally, would have a lower "exemption" threshold (such as 10 pounds for the sum of releases and transfers) or would be reported on a much more simplified form. Those chemicals with lower toxicity concerns and are reported in relatively high volumes would be subject to a much higher "exemption" level, such as 5,000 pounds for the sum of releases and transfers.

EPA published this petition as a notice in the **Federal Register** of October 27, 1992, (57 FR 48706), and received a substantial number of comments. Copies of these comments are available in the TSCA docket, OPPTS docket number 400072.

EPA received a similar request in a petition from the American Feed Industry Association (AFIA) on February 14, 1992. AFIA requested an exemption of Standard Industrial Classification (SIC) code 2048 from TRI reporting. The general basis of this request is that facilities in SIC code 2048, "Prepared Feeds and Feed Ingredients for Animals and Fowls, Except Dogs and Cats," have such small releases of the listed chemicals (primarily feed additives) that the industry as a whole does not contribute information that furthers the purposes of EPCRA, therefore, the imposition of TRI reporting on the feed industry is unfair. The AFIA petition suggested, as an alternative to their request of an SIC code deletion, that EPA adopt the approach proposed in the SBA petition.

EPA published the AFIA petition as a notice in the **Federal Register** of April 13, 1993 (58 FR 19308), and again received a substantial number of comments. These comments are available in the TSCA docket, OPPTS docket number 400077.

EPA decided to focus on a revision of current reporting requirements that would be applied to all industries subject to section 313, as opposed to a revision restricted to target industrial sectors or SIC codes. EPA therefore considers this rule as a response to both the AFIA and SBA petitions.

As part of the pre-proposal process, which included consideration of the comments received, EPA held a public meeting on February 16, 1994, to present its analytical findings and open discussions regarding reduced reporting for facilities with low volumes of releases and transfers. Comment was taken on a variety of positions. Results from EPA's preliminary analysis are presented in an issues paper, *Toxic Release Inventory—Small Source Exemption* (January 27, 1994) (Issues paper), which can be obtained in the TSCA docket, OPPTS docket number 400072, along with copies of the testimony presented at the public meeting. A copy of the *Issues Paper* can also be found in OPPTS docket number 400087.

C. Summary of the Proposed Rule

EPA issued a proposed rule on July 28, 1994 (59 FR 38524), to establish a

higher manufacture, process, or otherwise use threshold for those facilities having low volumes of specific chemicals for the sum of amounts released and transferred off-site for the purpose of treatment and/or disposal. Facilities qualifying for the low release and transfer criterion and that manufacture, process, or otherwise use less than the higher "alternate" threshold would be eligible to submit a certification statement instead of a full Form R report. The certification statement would be made available to provide the regulated community, compliance programs, and other interested parties basic information concerning which facilities were manufacturing, processing, or otherwise using a TRI chemical at current section 313 reporting quantities, but whose sum of amounts released or transferred, for the purpose of treatment and/or disposal, were below 100 pounds. A facility meeting the above conditions and choosing to submit a certification statement would be required to maintain records substantiating the calculations that establish the facility's eligibility to apply the alternate threshold.

EPA issued the proposal in part as a response to both the SBA and AFIA petitions, but the burden relief provided by the proposal was also a result of EPA's consideration of the future management of the overall TRI program. As stated in the proposal, EPA is in the process of significantly expanding the TRI program to add many additional chemicals to the list. EPA is also in the process of evaluating industry sectors not currently covered by TRI for addition. Both of these actions are expected to substantially increase the level of current reporting. The increase in reporting has obvious information management implications for EPA as well as for States. Today's action will make a significant portion of the current Form R data management capacity available for data on additional chemicals and from new sources. EPA believes this will also help increase the long-term efficiency and utility of the data system while preserving a basic link for the public between facility location and reportable TRI chemicals.

EPA's proposal offered several alternatives to those advanced by the SBA and AFIA petitions. All aspects of the proposal were available for public comment. EPA requested specific comment on the following issues: (1) What should form the basis to determine which facilities or reports should be eligible for burden reduction (for example, should a category of facilities be based on the sum of amounts released and transferred or based on the sum of total waste generated for a given chemical); (2) what volume level should determine the eligible "category"; (3) what should be the alternate manufacture, process, or otherwise use thresholds; (4) what should constitute the certification statement and how often it should be submitted; and (5) what would be the impacts of such a reporting modification. These issues and the comments received are addressed in unit III. of this preamble.

D. Summary of the Final Rule

EPA is establishing an alternate threshold for those facilities with a low amount of a listed toxic chemical in their "annual reportable amount" (in the proposal, this amount was referred to as "total waste"). Contingent upon OMB approval, the alternate threshold rule will be effective for activities beginning January 1, 1995. EPA will publish a technical amendment in the **Federal Register** when the reporting additions have been approved by OMB. This reporting modification will enable facilities otherwise meeting reporting requirements under section 313 of EPCRA to take advantage of a higher threshold than those set out in 40 CFR 372.25 for any listed toxic chemical, if the annual reportable amounts of that toxic chemical did not exceed 500 pounds for the combined total quantities released at the facility, disposed within the facility, treated at the facility (as represented by amounts destroyed or converted by treatment processes), recovered at the facility as a result of recycle operations, combusted for the purpose of energy recovery at the facility, and amounts transferred from the facility to off-site locations for the purpose of recycle, energy recovery, treatment, and/or disposal. These volumes correspond to the sum of amounts reportable for data elements on EPA Form R (EPA Form 9350-1;Rev. 12/4/93) as Part II column B or sections 8.1 (quantity released), 8.2 (quantity used for energy recovery on-site), 8.3 (quantity used for energy recovery off-site), 8.4 (quantity recycled on-site), 8.5 (quantity recycled off-site), 8.6 (quantity treated on-site), and 8.7 (quantity treated off-site).

The alternate threshold applies to a defined category of facilities on a per chemical basis. The alternate manufacture, process, or otherwise use threshold for a specific chemical at a facility meeting the category definition would be an amount greater than 1 million pounds per year. Specifically, if a facility manufactures, processes, or otherwise uses 1 million pounds or less of a chemical annually, and if 500 pounds or less of that chemical is present in their annual reportable amount, then the alternate reporting option is available to that facility for that chemical. Other chemicals at the facility that do not meet the criteria for the alternate threshold would continue to be reported on Form R as currently required.

To take advantage of the alternate threshold, a facility is required to: (1) Submit an annual certification statement indicating that the facility met the requirements for use of the alternate threshold for the specific chemical and (2) maintain and make available upon request accurate records substantiating the calculations supporting the facility's claim of eligibility for the alternate threshold for each chemical.

II. Explanation of this Threshold Modification

This final rule establishes an alternate threshold for purposes of submitting reports under section 313 of EPCRA. The key factors that govern the application of this alternate threshold are, the sum of amounts of the listed toxic chemical in their annual reportable amount, and the quantity of that chemical being manufactured, processed, or otherwise used within the facility.

Current reporting thresholds set forth in EPCRA section 313(f)(1) apply to the manufacture, process, or otherwise use of listed section 313 chemicals. In short, these are activity-based thresholds. EPCRA section 313(f)(2) also provides EPA with the flexibility to revise the established activity-based threshold amounts in section 313(f)(1) and apply such revised thresholds to individual chemicals, classes of chemicals, or categories of facilities. However, any modification of a threshold must continue to obtain reporting on a substantial majority of total releases of the chemical at all facilities subject to the requirements of section 313.

This final rule first establishes a category of facilities based on the annual sum of a listed toxic chemical in their annual reportable amount. By establishing this category of facilities, a threshold modification can then be applied selectively to that category. A facility becomes part of this category if at least one toxic chemical, otherwise reportable, does not exceed the 500 pound criterion for that chemical in their annaual reportable amount. Annaul reportable amount is defined as the combined total quantities released at the facility, disposed within the facility, treated at the facility (as represented by amounts destroyed or converted by

treatment processes), recovered at the facility as a result of recycle operations, combusted for the purpose of energy recovery at the facility, and amounts transferred from the facility to off-site locations for the purpose of recycle, energy recovery, treatment, and/or disposal. These volumes correspond to the sum of amounts reportable for data elements on EPA Form R (EPA Form 9350-1; Rev. 12/4/93) as Part II column B or sections 8.1 (quantity released), 8.2 (quantity used for energy recovery on-site), 8.3 (quantity used for energy recovery off-site), 8.4 (quantity recycled on-site), 8.5 (quantity recycled off-site), 8.6 (quantity treated on-site), and 8.7 (quantity treated off-site).

A facility in this category is then eligible to take advantage of an alternate manufacture, process, or otherwise use threshold of 1 million pounds for that specific chemical. Hence, if the facility meets the criterion of having no more than 500 pounds in its annual reportable amount of a listed toxic chemical, and for that chemical, the facility does not exceed the manufacture, process, or otherwise use threshold of 1 million pounds, then that facility may submit a certification statement for that chemical in lieu of a full Form R. A facility eligible to apply the alternate threshold and choosing to submit a certification statement must keep records substantiating the facility's eligibility determination. If EPA subsequently determines that the facility was ineligible to apply the alternate threshold, then the Agency can bring an enforcement action with respect to non-reporting of Form R.

III. Issues Considered and Comment Summary

EPA received about 500 comments in response to EPA's Alternate Threshold proposal (59 FR 38524). Approximately 400 of these comments were submitted by industry or entities representing industry concerns. The remaining comments were submitted by environmental and labor organizations, public interests groups, state program representatives, and private citizens. The following section is a discussion of the major issues and points raised in comments received and EPA's consideration of those comments that pertain to this final rule. The major issues are discussed in the following order: Structure of the facility category; poundage level for the category; alternate threshold level; certification statement; recordkeeping requirements; covered facility status; degree of burden reduction; and effective date. A *Response to Comment* document, which addresses issues raised in the comments and outlines EPA's response in greater detail, has been prepared and is available through the TSCA docket (OPPTS–400087).

A. Facility Category

The reporting modification established by this rule is intended to provide regulatory relief for facilities that report low amounts of listed toxic chemicals in their annaul reportable amount. For reasons stated in the proposal (59 FR 38524), this reporting modification is intended to help focus both industry's and EPA's resources on the data of greatest significance. EPA proposed to target this regulatory relief at facilities where the sum of releases and a subset of the transfers were below 100 pounds. However, EPA offered alternatives including use of total waste as the basis of the eligible "category."

1. *Category based on releases and certain transfers as proposed.* Many industry commenters voiced approval for the structure of the category as initially proposed by EPA, but generally these commenters urged the Agency to raise the volume level of the category. Several comments submitted by industry requested that EPA consider all releases to Publicly Owned Treatment Works (POTW) as zero releases or disregard them from the calculations a facility must make in determining their eligibility for the alternate threshold. A number of commenters from industry said that EPA should only focus on amounts released and referred to the language in the statute which states, . . . "such revised threshold shall obtain reporting on a substantial majority of total releases of the chemical at all facilities . . . ," as support.[1] These commenters argued that transfers to POTWs and landfills have little environmental effect and do not represent actual environmental loadings. Many commenters from the animal feed and dairy industries referred to their most frequently released chemicals, such as sulfuric acid, arguing that amounts of these chemicals are almost completely neutralized or adequately treated by recipient POTWs and should not be considered a factor in a facility's eligibility. A similar comment suggested that, if EPA is interested in amounts going to or being handled by POTWs or landfills, the TRI should be expanded to include these types of facilities.

EPA disagrees with commenters who would limit the category to direct releases at the facility only. EPA's rationale for proposing the sum of releases and certain transfers was to cover direct as well as potential environmental loadings associated with the wastes generated by that facility. EPA can see no merit in the argument that transfers to POTWs should be discounted as part of the category determination. The ultimate entry into the environment of any particular chemical sent to a POTW in wastes is highly dependent upon the type of treatment/disposal process at that POTW. For example, ammonia may be destroyed by tertiary treatment processes, but not all POTWs employ this process. Additionally, many chemicals, such as most metals, are not converted to less toxic forms during treatment processes, such as those employed by POTWs, and may either pass directly through these treatment operations and/or be directed to other media. Therefore, EPA believes that these amounts, along with amounts handled by other management practices that can potentially result in environmental releases, should be accounted for and be part of a facility's eligibility determination.

Many commenters representing environmental and public interest groups stated their concern over the amounts of materials that would not be accounted for by EPA's proposed category approach. These commenters urged EPA to eliminate the "recycling loophole" which can be characterized by the removal from public access information on the volumes associated with waste management activities such as materials recycling. These commenters contend that not including this type of information as a criterion in the facility category determination undermines source reduction and is in conflict with national policy established in the Pollution Prevention Act (PPA) of 1990. Some of these commenters stated that the recycling loophole encourages burning of toxic wastes that are often transferred to cement kilns, instead of encouraging source reduction practices. Additional comments received raised concerns over hazardous emissions that result from solvent recycling operations, some of which are not listed within the manufacturing SIC codes of 20 through 39, and therefore, are not currently required to report to TRI. Commenters indicated that TRI provides specific data on transfers of hazardous wastes for the purpose of recycling. These data are important because they indicate where

[1] Section 313(f)(2)—The Administrator may establish a threshold amount for a toxic chemical different from the amount established by section 313(f)(1). Such revised threshold shall obtain reporting on a substantial majority of total releases of the chemical at all facilities subject to the requirements of this section. The amounts established under this paragraph may, at the Administrator's discretion, be based on classes of chemicals or categories of facilities.

releases from the further processing of such toxic chemicals may be occurring.

A comment from a representative of a state's toxics reporting program stated that significant amounts of currently reported information within their state would no longer be reported if EPA's category were implemented as proposed. Their analysis of the impact on their state's reporting indicated that EPA's proposal would primarily benefit larger businesses. This commenter noted that some facilities operating in their state identified as meeting the 100 pound category as proposed have reported off-site transfers for recycling of amounts as high as 3 and 15 million pounds for a given chemical. This commenter suggested that this "recycling loophole" could be eliminated by including off-site transfers for recycling and those amounts burned for energy recovery in the category determination.

As discussed below, EPA believes that there is merit in structuring the category in such a way to include volumes associated with management activities beyond releases and limited transfers as proposed. Ultimately, the structure of the category should relate to how well it serves to provide an optimal balance between burden reduction for submitters and data preservation for users of the full range of TRI data.

2. *Category based on annual reportable amount.* EPA's proposal included an alternative that would establish a category based on the total amount in wastes, which was referred to as total waste generation. This category includes all amounts released on-site, transferred off-site for treatment or disposal, recycled or burned for energy recovery on- or off-site, and treated on-site. One commenter from industry argued against using the total waste option, because the purpose of the reporting modification should be concerned with information relevant under EPCRA. This commenter went on to say that the information collected under the PPA of 1990 is subsidiary to EPCRA section 313 data elements. This commenter and several others from industry stated that basing the category on total waste limits the amount of burden reduction sought by this reporting modification, and that adopting the total waste approach would actually serve as a disincentive for applying more pollution prevention practices.

Similarly, commenters from industry said that creating a category determination that does not include amounts sent off-site for recycling or to incineration for energy recovery would encourage more facilities to engage in these activities, as opposed to treating or directly disposing of wastes. An industry representative said that not including amounts sent off-site as part of the facility category determination is particularly relevant when such wastes are recovered and are then returned to the originator. This commenter along with several others from industry said that excluding these amounts would encourage facilities to participate in responsible/reasonable care types of programs, which further pollution prevention goals.

One commenter said that the environmental releases from wastes generated by a "covered facility" are likely to be included in the calculation of environmental releases either (i) by the generator of the waste, or (ii) by an off-site "covered facility" to which the waste is sent for recycling or energy recovery. The commenter continued by saying that since environmental releases are the ultimate focus of the TRI program, the likelihood that they will be included in the release calculations of some "covered facility" should allay fears that toxic chemicals transferred off-site for recycling or energy recovery would somehow escape the system.

EPA disagrees with commenters stating that information collected under the PPA is subsidiary to data mandated by EPCRA section 313. EPA believes that the PPA data are an enhancement of the basic data gathered by EPCRA section 313. The purpose of this enhancement was to provide the public with a more complete picture of the amount of toxic chemicals in facility waste streams, which can highlight the potential for source reduction. EPA believes that including a broader category of amounts reportable to TRI in a facility's determination will not discourage facilities from implementing pollution prevention activities, and that the inclusion of this broader category of amounts will encourage facilities to practice source reduction measures where possible, which is the primary goal of pollution prevention.[2]

Comments from the environmental community, labor organizations, states, and private citizens voiced strong opposition to EPA's proposed category because it did not include amounts being recycled or burned for energy recovery. These commenters were concerned about the removal from public access of information regarding the further processing of hazardous materials and the emissions that may result. A number of commenters urged EPA to continue to collect the information on materials sent off-site for the purpose of recycling and/or energy recovery which were not included in EPA's proposed approach. A few public interest groups submitted comments that described hazardous materials recycling as a hazardous activity, and urged EPA to continue to collect information on materials being sent to these facilities. Noting cases where these facilities have created serious environmental problems, a few other comments came from individuals and local interest groups living near facilities where hazardous waste recycling and burning occurs. These commenters stress the need for their communities to have access to information regarding materials being sent to these facilities. Some urged EPA to list these types of facilities for direct TRI reporting.

Several commenters stated that EPA has the authority, through the PPA and EPCRA, to collect and make available information regarding chemicals being recycled and burned for energy recovery and urged that EPA continue to do so.

EPA believes that a category based on either releases and transfers or annual reportable amounts will satisfy the section 313(f)(2) requirement for reporting on "total releases" because "annual reportable amounts," as defined in this rule, encompasses releases. However, EPA agrees with the commenters concerned with the amounts of materials that are not part of the category based on releases and transfers. As noted in the proposal, amounts associated with waste management activities for those facilities fitting a category description based only on releases and transfers can be substantial. EPA carefully weighed these comments regarding the structure of the category and has determined that a category based on annual reportable amounts is more consistent with the goals of EPCRA than the release and transfer option.

EPA's proposal presented an analysis of the volumes of materials managed as waste that would be affected (i.e., not reported in detail) under a reporting modification based on a facility category of releases and transfers or annual reportable amounts.

[2] Pollution Prevention Act of 1990, section 6602(a)(4) "Source reduction is fundamentally different and more desirable than waste management and pollution control. The Environmental Protection Agency needs to address the historical lack of attention to source reduction."

TABLE 1.—COMPARISON OF IMPACT ON DATA BETWEEN PROPOSAL AND FINAL RULE (1992 DATA)

	1992 Data	Data affected*[1] (Percent of 1992 Data)	
		Proposed	Final
Number of Form Rs	83,000	62,500 (-25%)	63,000 (-24%)
Pounds of Releases and Transfers	4,400,000,000	222,700 (0.01 %)	2,209,800 (0.05%)
Pounds of Annual Reportable Amounts	37,000,000,000	6,105,310,400 (16.7%)	2,505,600 (0.01%)

*[1] Pounds of releases/transfers and annual reportable amounts not reported on Form R and percentage of national amounts, if the alternate threshold had been available and used by all eligible facilities for 1992 reporting.

There was a substantial difference in the annual reportable amount data associated with the forms, as defined by the two basic category approaches. As presented in EPA's proposal, the total waste volume (annual reportable amount) associated with the forms identified by a category based on releases and transfers (at a level of less than 100 pounds), was estimated to be 2.2 billion pounds based on 1991 data. This represented approximately 6.3 percent of this data nationally. The same category, in terms of 1992 data, as seen in Table 1 above, affected approximately 6.1 billion pounds of annual reportable amount information, or 16.7 percent of this data nationally. In comparison, a category based on annual reportable amounts not exceeding 500 pounds would apply to very nearly the same number of Form Rs. However, based on 1991 data, these forms had only 2.7 million pounds of annual reportable amounts associated with them. The forms fitting the same category for 1992 reporting, as seen in Table 1 above, have an estimated 2.5 million pounds of annual reportable amount data associated with them (Ref. 4). EPA believes that the significant increase in volumes of annual reportable amounts reported in 1992 as compared to 1991 can be attributed to a greater amount of recycling and on-site treatment activities reported by those facilities that have releases and transfers of less than 100 pounds. Additionally, some of the volume differences may also be attributed to more accurate reporting given that 1992 was the second year that the data associated with the PPA was required.

EPA believes that the disparity in amounts of data associated with the forms defined by a category based on releases and transfers and a category based on annual reportable amounts is great enough to discount an approach based on only releases and transfers for treatment and/or disposal. Hence, EPA agrees with those commenters who have stressed the need to retain information on amounts of materials being treated, recycled, or burned for energy recovery both on-site and off-site. EPA has therefore structured the category in this final rule to be based on the sum of amounts reported during the calendar year as represented by the following: The combined total of quantities released at the facility, disposed within the facility, treated at the facility (as represented by amounts destroyed or converted by treatment processes), recovered at the facility as a result of recycling operations, combusted for the purpose of energy recovery at the facility, and amounts transferred from the facility to off-site locations for the purpose of recycle, energy recovery, treatment, and/or disposal. These volumes correspond to the sum of amounts reportable for data elements on EPA Form R (EPA Form 9350-1; Rev. 12/4/93) as Part II column B or sections 8.1 (quantity released), 8.2 (quantity used for energy recovery on-site), 8.3 (quantity used for energy recovery off-site), 8.4 (quantity recycled on-site), 8.5 (quantity recycled off-site), 8.6 (quantity treated on-site), and 8.7 (quantity treated off-site).

Certain commenters stated their objection to inclusion of these amounts, using the rationale that doing so would discourage pollution prevention. EPA believes that inclusion of these amounts is in keeping with the goal and national policy of pollution prevention. EPA believes that this information should be available to the public and other interested parties, who are concerned with the operations that generate, receive, and further process large amounts of these materials. The public has demonstrated a strong concern about these operations, and TRI provides a reliable accounting of reportable constituents and their estimated amounts from those facilities required to report to TRI. EPA further believes that requiring facilities to account for pollution prevention efforts, including source reduction activities, can serve to inform industry and the users of the data about the level of progress being made at a particular facility and within a given industry.

EPA believes that a category based on annual reportable amounts will more appropriately focus the burden reduction benefit of this rule on facilities that have limited the entry of toxic chemicals into waste streams, rather than on facilities that could derive the benefit by shifting toxic chemicals from one management practice to another. EPA also believes that a category based on annual reportable amounts will retain a higher degree of specificity of the toxic chemical data while still allowing for the burden reducing "conversion" of a substantial number of full Form R reports to certification statements.

3. *Category based on a chemical list division.* Many commenters from industry supported the approach put forth in the SBA petition to treat listed chemicals differently. This approach was referred to in EPA's proposal as the "split list" approach. These commenters stress that only by distinguishing among chemical toxicities can EPA effectively determine what information can be exempted on the basis of a chemical's relative and potential impact. They argue that only by making distinctions among chemicals on the basis of their human health and/or environmental impacts can EPA properly determine what information is vital to a community's right-to-know, as opposed to chemical accounting for the sake of reporting. A few of these commenters supported EPA's example of splitting the listed chemicals primarily based on their Occupational Safety and Health Administration (OSHA) carcinogen classification, as presented in EPA's *Issues Paper* (Ref. 3). Several of these industry commenters who support the "split list" approach suggested that EPA establish a simplified petitioning system that would allow parties to submit requests to move chemicals from one list to another.

One commenter stated that current risk assessments are overly reliant on cancer rates and ignore too many other health problems, including adverse reproductive outcomes such as birth defects, developmental abnormalities, low birth weights, and behavioral abnormalities. This commenter also cites adverse effects on the human immune system, neurological diseases,

as well as asthma and other respiratory diseases. In addition, other commenters noted that adverse impacts on the ecosystem, including wildlife reproductive effects (e.g., from endocrine disruptors), need to be considered when discussing toxicity.

Many of the commenters from the environmental community stressed their concern over losing any data or limiting the public's access to information on toxic chemicals that persist in the environment or have carcinogenic, developmental, or other serious health impacts. Several commenters described EPA's alternate threshold as inappropriate and insisted on full reporting on "small releases" of persistent toxic chemicals such as mercury or highly toxic chemicals such as phosgene. Other commenters supported the addition of highly toxic chemicals and are in favor of setting a much lower reporting threshold in order to receive reports on these chemicals. A few commenters urged EPA to add these types of chemicals to TRI and require reporting for any amounts released. One commenter objected to EPA's proposed reporting change, stressing that it is based on the fallacious assumption that "small" releases do not pose risks to public health and the environment and therefore the public does not need explicit information regarding such releases.

For the purpose of this category structure, EPA chose to make no distinction among listed chemicals. EPA is not attempting to apply risk-based concepts in this rulemaking. EPA does recognize that there are wide variations in the hazards associated with the chemicals on the list. EPA is concerned that the current threshold structure may be masking important data on releases and waste management activities of certain chemicals that may exhibit bioaccumulative properties or direct toxicity even at low levels. EPA may consider a future modification of current thresholds to more fully capture information on chemicals that persist in the environment and bioaccumulate.

It is, therefore, EPA's intention to establish a reporting modification in this rulemaking that creates a degree of reporting relief without substantially limiting the information currently collected and made available through TRI. It is also EPA's intention that this reporting modification apply to all industries subject to reporting and to all listed toxic chemicals without regard to their relative hazard.

4. *Chemical-specific issues.* Several commenters from the feed industry repeated their position that the chemicals for which the majority of their reports are submitted are Food and Drug Administration (FDA) approved nutrient additives for animal feed, and are generally recognized as safe (GRAS) by the scientific community. One commenter supporting these points added that the industry's handling practices for these chemicals further reduce losses that might otherwise occur, which should lessen concern over adverse affects resulting from the use or processing of these chemicals. One commenter requested that EPA establish a separate reporting threshold for "by-products," such as ammonia generated from rendering operations, and suggested a 100,000 pound level for these chemicals.

A few specialty industries, such as the cold storage industry, which uses ammonia for refrigeration units, claim that their industry accounts for only a fraction of the volume of ammonia produced nationally. These commenters make the point that their use of this chemical is safe, does not threaten the environment, and the reporting of the emissions associated with these uses serves no benefit.

One commenter believes EPA should modify the processing threshold to exclude chemicals intentionally added when making products for distribution if the total facility releases and transfers are less than 4 percent of the use volume of the chemical in the calendar year. This commenter states that this step will promote use reduction and release reduction by facilities where processing of toxic chemicals is essential for the manufacture of their product.

As indicated in the above section, many of the comments submitted by the environmental community urged EPA to collect and make available through TRI information on any amounts of chemicals that could affect serious impacts on human health and the environment.

For many of the same reasons given in the above discussion concerning a possible list division, EPA intends that the regulatory relief provided by this rule be applied to all facilities and all listed toxic chemicals, rather than only those that are not highly toxic. EPA believes that the intent of EPCRA section 313 is to place the decisionmaking on whether a facility's releases are acceptable to a community in the hands of the community. Therefore, EPA does not believe that it should make distinctions among the listed chemicals on the basis of inherent toxicity.

Avoiding further complication in the use of TRI data is also a significant consideration in how this burden reduction amendment is structured. EPA strongly believes that an individual interested in accessing TRI data should be able to locate and understand the information contained in the data base with as few encumbrances as possible. Singling out specific chemicals and chemicals managed by specific processes from how other chemicals are reported, could unnecessarily complicate the use of the data. While many of the issues raised by the commenters concerning specific chemicals may have merit, EPA does not believe it would be productive to further complicate this rule amendment by making particular exceptions for specific chemicals or handling practices.

B. Level of the Category

In addition to the basis on which a category of facilities would be structured, EPA asked for comment on the poundage level proposed and offered alternatives. Although a few commenters supported EPA's proposed level of less than 100 pounds for the sum of releases and transfers, most of the commenters from industry preferred a higher level, while some commenters generally opposed to the reporting modification said they could accept a level such as zero or 10 pounds as long as total waste were not excluded and other conditions were met.

A federal Agency, along with one chemical manufacturer, submitted comments in support of EPA's proposed level, while comments submitted by the feed industry generally supported a release and transfer level of 500 pounds. This level was supported by these commenters based on the types of chemicals handled by their industry. One chemical specifically mentioned was sulfuric acid, which some commenters said, "would not be of great concern for releases at 500 pounds or less." Some of the other commenters supported the 500 pound level based on the level of accuracy of data collected by TRI.

A few industry commenters said that EPA's proposed level was too low to benefit their specific industry and urged EPA to elevate the level. A trade association, among others, criticized EPA's proposal as lacking adequate justification. Several of these commenters said that EPA's selection of approach and level were unfounded, while others disagreed that there was a "natural break" in the data, as EPA described at the 100 pound level. Some commenters identified other levels in the data that they thought indicated a more appropriate level for selection. Several industry commenters

questioned EPA's sincerity in providing any level of significant burden reduction. One commenter stated that EPA's proposed level is based on the impact of total waste information affected, which does not necessarily relate to actual volumes of total waste generated.

One commenter said that EPA should set the category level at 500 pounds because it currently accepts range reporting of 0–499 pounds and adopting a "low-level" release category of less than 500 pounds is effectively no different than allowing a facility to use a range code. Other commenters supporting the 500 pound level describe the data loss as not unreasonable.

Several commenters said that EPA's proposed level does not allow a margin of error in estimating releases, and therefore, many facilities will be forced to submit actual release amounts on Form R and will not be able to take advantage of the alternate threshold.

Additional comments were submitted that stated the application of a less than 100 pound category on chemicals with relatively low toxicities was not consistent with EPA's Common Sense Initiative, and that a 5,000 pound release of a chemical such as an acidic cleaner over the course of 1 year is insignificant. These commenters stress that chemicals such as this do not bioaccumulate, are not carcinogenic, and do not damage the environment at the levels used by their industry.

Commenters supporting the split list approach are in favor of an elevated poundage level for chemicals of low toxicity and a much lower poundage level for those chemicals determined to have higher toxicity or hazard concerns. Many of these commenters urge EPA to apply the SBA's 5,000 pound level to the low toxicity chemicals and a 10 pound level for chemicals considered to be of greater concern. Some commenters supporting the split list approach argued that the adoption of a 5,000 pound level for low toxicity chemicals could improve data quality and further lessen the burden on industry and EPA. Some commenters suggested variations on the levels suggested by the SBA petition, such as 1,000 pounds for low toxicity chemicals and 0 to 500 pounds for chemicals with high toxicities.

One commenter supporting a 5,000 pound split list approach assumed that if all of the amounts released and transferred (for the purpose of treatment and/or disposal) which EPA estimated would not be reported on under its proposal were located at a single facility using one chemical of "typical" toxicity, the concentrations of those releases would be below OSHA permissible exposure limits if the distance to the facility's fenceline was 470 meters or more. The commenter continued with this supposition to make the point that for a 5,000 pound release and transfer category level, within no single location (zip code) would there be a loss of an amount great enough to trip a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) reportable quantity (RQ) for a single facility, at least for two states researched by the commenter. This argument is premised on the amount released and transferred, for a given chemical under the 5,000 pound category level, being evenly distributed over a facility's annual operations while not exceeding the maximum amount released within a single 24–hour period of a chemical of "typical" toxicity. The commenter used ammonia as an example. This argument would not apply for chemicals with CERCLA RQ values below 100 pounds, which would exclude approximately 150 currently listed TRI chemicals (Ref. 2).

Additionally, a CERCLA listed chemical released in excess of its RQ value as part of a facility's routine operations, as presented in the example, would require an application for continuous release notification, or the facility would be required to report each instance that the amount released exceeded the chemical's RQ value.

Many other comments submitted by industry supported a level of 5,000 pounds, making no toxicity distinctions among listed chemicals. This was broadly supported by referring to the percentage of release and transfer (for the purpose of treatment and/or disposal only) data that would still be collected. These commenters referred to EPA's analysis relating to volumes of chemicals released on-site and sent off-site for the purpose of treatment and/or disposal that would be affected based on a range of category levels. Many commenters contend that by establishing the category level at less than 5,000 pounds, only an additional 0.7 percent of the data for releases and transfers would be affected, as compared with a facility category set at less than 100 pounds for releases and transfers. Many of these commenters said that their facility had never received a request for information or had any knowledge of the public's interest in releases of low amounts, adding that resources necessary to provide this information could be used more beneficially.

A comment submitted by a chemicals manufacturer supporting the 5,000 pound threshold said that such a threshold would not significantly reduce the quantity of aggregate releases and transfers that their facilities currently report.

A trade association submitted comment in support of a total waste approach, but proposed a level matching that of a conditionally exempt small quantity generator as defined in the RCRA program, which would be less than 2,645 pounds.

Conversely, some commenters argued that EPA should be focusing on expansion of community right-to-know and should lower reporting thresholds to collect data on small releases of highly toxic chemicals that are currently unavailable to the public in a comprehensive format.

An environmental organization criticized the alternate threshold proposal for not including amounts transferred to recycling and energy recovery facilities. This organization voiced support for a total waste approach, but with a threshold of 10 pounds. Citing data presented in EPA's proposal, this commenter states that a facility category based on total waste at a 10 pound level corresponds to approximately 10,000 forms, which represents substantial regulatory relief for businesses without reducing the public's access to important information which they have a right-to-know. A major trade union voiced approval of this approach, provided that a facility also indicate into which media a chemical was released.

As discussed in the preceding section, EPA has decided to base the facility category on the annual reportable amount rather than the amount released plus limited transfers. After considering the multiple factors related to the selection of a category level, EPA has selected an annual reportable amount of not greater than 500 pounds. In choosing a poundage level, EPA sought a level that provides a reasonable balance between preserving the detail of data available to the public and providing facilities with a realistic option for burden reduction. EPA believes that a level of 500 pounds or less represents a reasonable cut-off for this annual reportable amount approach. EPA estimates that 20,100 Form Rs would have been affected for the 1992 reporting year by the alternate threshold for a category based on an annual reportable amount of no more than 500 pounds. This number of forms is essentially identical to the number that would have been eligible for the proposed approach.

Based on 1992 data, the amounts reported on Form Rs identified as coming from facilities that would meet the facility category of annual reportable

amounts not exceeding 500 pounds, account for less than 1 percent of annual reportable amounts reported nationally. While the amounts reported by facilities fitting EPA's proposed category and level account for nearly 17 percent of annual reportable amounts reported nationally. These data also indicate several additional impacts that EPA believes are important in determining which level is appropriate.

EPA believes that a comparison of impacts at the county level is relevant to EPA's decision. Based on 1992 data, an estimated 250 counties would have greater than 50 percent of all of their annual reportable amount data affected by a category based on releases and transfers at a 100 pound level, as EPA proposed. Under a category based on annual reportable amounts not exceeding 500 pounds, about 90 counties are estimated to have greater than 50 percent of their annual reportable amount data affected (Ref. 1). Perhaps more importantly, the number of counties that would have a volume of over 1 million pounds of their annual reportable amount data affected, based on the proposed release and transfer category, is estimated to be greater than 278, while the category based on annual reportable amounts not exceeding 500 pounds has no counties where annual reportable amounts greater than 1 million pounds would be affected (Ref. 1).

Selection of the 500 pound level is consistent with current range reporting. Current reporting guidance allows facilities to submit estimated amounts pertaining to releases on-site or transfers off-site in terms of three range codes. These range codes correspond to poundage amounts of 1–10, 11–499, and 500–999 pounds. Range codes can be used in as many reporting fields as the estimated amount applies for amounts released or transferred. While range codes are not currently available for reporting PPA data, establishing a category of facilities based on annual reportable amounts effectively extends range reporting to these activities. Submission of a certification statement is different from receipt of a Form R that indicates amounts in ranges. The certification will not provide the detail as to which media the chemical was released or otherwise directed as does Form R.

EPA does not believe that the fact that a commenter has received no inquiries from the public demonstrates that the information is not of value. Because the data are kept in a publically available database, there is no need for individuals to contact a company in order to access and use the information.

Finally, EPA believes a category based on annual reportable amounts not exceeding 500 pounds will limit the loss of detailed information currently available, while providing industry with a reasonably attainable level. As EPA's analysis indicates in Table 1 in unit III.A.2. of this preamble, that the approach selected is estimated to apply to approximately 25 percent of the currently reported submissions.

C. Alternate Threshold Level

EPA proposed that facilities which meet current section 313 reporting requirements for a listed toxic chemical, but estimate for that chemical the sum of amounts released and transferred (for the purpose of treatment and/or disposal only) is below 100 pounds per year, could take advantage of an alternate manufacture, process, or otherwise use threshold of 1 million pounds per year, for that chemical. The proposed 1 million pound alternate threshold received considerable comment. Comments were primarily directed at the proposal's impact on those facilities with low releases and limited transfers but which have high volume chemical uses. The following unit addresses comments on the alternate threshold in terms of: (1) Application of the alternate threshold; (2) impact on high volume chemical users; and (3) alternatives to the proposed approach.

1. *Application of the alternate threshold.* Several commenters requested that EPA clarify whether the Agency intends the application of the alternate threshold to apply in the same manner as current threshold applications for submitting Form R. In particular, commenters wanted clarification that the 1 million pound alternate threshold applies in a mutually exclusive manner to either manufacture, or process, or otherwise use of the toxic chemical within the facility.

EPA confirms that the application of the alternate threshold applies in the same manner as current thresholds apply in making compliance determinations for submitting Form R. This is reflected in § 327.27(c) of the regulatory text. That is, the alternate threshold represents the amount that the facility manufactures, or processes, or otherwise uses of the listed toxic chemical. If the facility meets the eligibility criteria for the category and does not exceed 1 million pounds of manufacture, or process, or otherwise use, then the facility may be eligible for reduced reporting. In a multi-establishment facility situation, the owner or operator must determine the total amount of the same listed toxic chemical that is, for example, otherwise used within all establishments of the facility and then compare it to the alternate threshold. Owners or operators of facilities should also be aware that the calculation of the low volume category amount, annual reportable amounts not exceeding 500 pounds in total wastes, must be based upon a whole facility determination, and must include all activities occurring within all establishments within the facility, unless otherwise exempt.

Several commenters saw no apparent rationale for the million pound threshold, since, as one commenter stated, EPA has not collected threshold data for EPCRA section 313 reported chemicals. One commenter states that EPA should eliminate the million pound per year "manufacture, process, or otherwise use" threshold, since one of the key objectives for the EPA proposal is to reduce reporting of *de minimis* releases; this commenter sees no reason to establish an additional qualification threshold related to chemical usage, which goes beyond the Congressional intent for EPCRA to keep the public informed of releases to the environment.

Another commenter stated that the 1 million pound threshold is unnecessary because this rulemaking focuses on amounts released not used. The volume of a listed chemical which a facility manufactures, processes, or uses should have no bearing on whether that facility qualifies for the proposed de minimis category based on releases, since no appreciable benefit is gained by either the public or the regulated community if releases are below the facility category level.

As described in unit II of this preamble, EPA is issuing this rule under the authority of section 313(f)(2) to reduce the reporting burden for those facilities that have relatively low amounts of listed chemicals in annual reportable amounts. To accomplish this, EPA is establishing a category of facilities based on certain criteria that would be eligible to use an alternate threshold. It is by the application of a higher manufacture, process, or otherwise use alternate threshold that determines the eligibility of facilities within the category to elect to submit a certification statement in lieu of a Form R for those chemicals to which the category criteria apply.

2. *Impact on high volume chemical users.* Many commenters criticized the proposed alternate threshold level for penalizing high volume chemical users with low releases and transfers, providing these facilities with no

incentive for pollution prevention while displaying a bias against facilities reporting within certain SIC codes. Some believe the regulation should serve as an opportunity for EPA to reward or encourage companies with low releases, instead of subjecting facilities to a threshold which many view as still too low. One firm conducted an analysis indicating that facilities operating in the metal and metal fabrication industries (SIC codes 33 and 34) account for approximately 21 percent of all Form Rs submitted under TRI. Under the proposed rule, these facilities would have been unable to take advantage of the alternate threshold at a disproportionate rate due to their large volumes of materials recycled and further processed that would have exceeded the proposed 1 million pound threshold. Several commenters from the feed industry said that facilities in this industry can regularly process 1 million pounds or more of feed ingredients that contain TRI chemicals but are able to keep their releases typically below 100 pounds. These commenters ask why these operations should be penalized for their high efficiency.

Some commenters expressed the belief that EPA's proposed alternate threshold had been arbitrarily selected and was not clearly defined. Several commenters emphasize that EPA should set the alternate threshold level high enough to allow all facilities with qualifying low releases to utilize the burden reduction intended by this rulemaking. Some of these commenters recommended alternatives such as a 10 and 50 million pound thresholds instead of EPA's 1 million pound proposed level.

One commenter said that EPA appears to be unaware of the fundamental reality that production throughput does not relate to amounts released. This commenter repeated the position that EPA should reward large facilities that control their releases by allowing them to qualify for the same benefit.

Through this rule, EPA intends to provide a reporting modification that delivers some degree of regulatory relief while continuing to capture relevant data. The 1 million pound alternate threshold represents an attempt to balance these two concerns.

Many commenters from the environmental community and others commented that the structure of the regulation put forth in EPA's proposal would allow facilities to handle volumes of up to 1 million pounds per chemical without the public having access to this information. These commenters were concerned about those amounts that would not be included in the facility category, such as amounts recycled as EPA proposed, and that the amount of a chemical managed by these activities would only be limited by the level of the alternate manufacture, process, or otherwise use thresholds.

EPA believes that concerns raised by commenters, about the proposed approach affecting potentially very large amounts of information on chemicals in waste streams (i.e., they would not be reported), has been mitigated by establishing a facility category based on annual reportable amounts. By establishing the category based on annual reportable amounts, only amounts managed in waste streams up to the level established for the category are eligible for reduced reporting. In contrast, EPA's proposed approach would have allowed a facility to conduct such waste management activities as on-site treatment well beyond the category level of 100 pounds and submit a certification statement so long as the facility did not exceed the alternate threshold of 1 million pounds.

EPA has established the alternate threshold for manufacture, process, or otherwise use of 1 million pounds in order to provide those facilities with annual reportable amounts not exceeding 500 pounds per chemical with a lower burden reporting option, while preserving more detailed data for facilities that manufacture, process, or otherwise use larger volumes of chemicals. A 1 million pound alternate threshold for amounts manufactured or processed, with annual reportable amounts not exceeding 500 pounds, represents an efficiency of 99.95 percent and EPA believes this level is likely to include the vast majority of facilities meeting the category. EPA also believes that establishing the alternate threshold at 1 million pounds is an effective means to retain more detailed information where exceedingly large volumes of toxic chemicals are managed.

3. *Alternatives to the proposed approach.* Many commenters offered alternatives to the proposed activity threshold. One commenter suggested that EPA consider a straight revision of the otherwise use threshold from the current 10,000 pound level to 25,000 pounds in order to simplify the rule.

EPA considered revising the otherwise use threshold in its initial analysis of this rulemaking. By revising the otherwise use threshold, only those forms pertaining to chemicals used would be affected and the reduced reporting would not apply to chemicals manufactured or processed. Additionally, where a revision of the otherwise use threshold may be easier to implement than the alternate threshold established by this rule, it does not provide the ability to consider and make allowances for the types of information that will be affected. For example, the current reporting thresholds allow a facility to have uses of a chemical in amounts up to 10,000 pounds and not be required to report to TRI. Uses of a chemical can result in direct releases or transfers of nearly all of the amounts used. By raising the otherwise use threshold to 25,000 pounds, a facility could potentially release up to 25,000 pounds of a given constituent and the public would not have access to that information through TRI.

Two commenters believe EPA should modify the "otherwise use" threshold to exclude chemicals contained in closed systems that are not released under normal use activities. Reporting under section 313 is often required when a listed chemical contained in a closed system is charged or recharged in amounts that exceed the "otherwise use" threshold of 10,000 pounds. The commenters state that the inclusion of this type of "otherwise use" in threshold determinations does not meet the intent of EPCRA, since releases may not occur in the same year that the facility's activity meets the reporting threshold. The commenters further state that pollution prevention is generally not applicable to these kinds of closed systems, with the exception of use of a substitute chemical--which may or may not be less toxic, and may be controlled by other laws and regulations. These commenters argue that the exclusion of closed systems from the threshold determination parallels other EPA guidance on exemptions for use of an article, and is in keeping with the intent of EPCRA.

EPA believes the type of activity described by this commenter should continue to be a covered use under TRI. These types of uses can involve handling of significant quantities of a listed chemical. EPA has provided an interpretation that only requires considering amounts toward the otherwise use threshold in those years when such large volumes are handled, such as when refrigeration systems are recharged.

D. Certification Statement

EPA proposed that each qualifying facility that chooses to apply the alternate threshold must file an annual certification statement for that listed toxic chemical instead of a Form R. The proposal outlined two primary purposes of a certification statement. A certification statement serves as a means

of informing the public about the presence and general magnitude of combined releases and transfers of a listed toxic chemical by a facility at a lower burden than submitting a Form R. It also serves to satisfy the statutory intent of section 313(f)(2) which requires that reporting be obtained on a substantial majority of releases of a chemical. The proposed elements of the certification statement included signature of a senior management official, facility identification, location and certain other linkage data, the chemical identity, and an indication of any trade secrecy claim.

1. *General reactions to the certification statement concept.* Many commenters, primarily those representing the regulated community, oppose the concept of a certification statement. Several commenters stated that EPA should comply with the spirit and purpose of the Paperwork Reduction Act and not require an annual certification. Two commenters stated that numerous other environmental requirements, including the basic TRI thresholds, allow for self-determination with requirements, and question why this rule should be different. Others commenters raised similar concerns. For instance, if the facility meets the "exemption" standard, then recordkeeping should be sufficient for the purposes of an inspection.

EPA would like to reiterate that the proposal of an alternate threshold was not developed to establish a wholesale exemption from section 313 reporting requirements. Because the statute does not provide expressed authority to establish a specific release-based threshold, EPA has used the alternate threshold authority in section 313(f)(2) to grant some regulatory relief to small sources. Section 313(f)(2) requires that a revised threshold based on a facility category concept retain reporting on a "substantial majority" of releases. Therefore it would not be sufficient to simply rely on recordkeeping as a means of satisfying the law. A certification statement serves the purposes of right-to-know by providing the public with the basic information that a facility manufactures, processes, or otherwise uses a listed chemical in excess of current thresholds in section 313(f)(1), that the annual reportable amount is between 0 and 500 pounds, and that the facility did not exceed the alternate threshold for reporting. This information will be made available in the TRI data base. Company records supporting such determinations are available to EPA inspectors.

Several commenters representing environmental and public interest groups supported the concept of a certification statement. This support is generally associated, however, with a particular low volume amount that establishes the category. For example, one commenter states that a certification statement is appropriate, but the proposed level is too high. Another commenter states that annual certification should be provided, but only if the level is set at 10 pounds or below. Another commenter states that "at most, EPA should allow annual certification where a facility's releases, all transfers, and waste streams are zero, or 10 pounds, if simple check boxes show where the chemical went (land, water, air, recycling, etc.)." Another commenter states that annual certification is reasonable only if there is no loophole for recycling and energy recovery, that source reduction goals are not undermined, and that small release quantities are truly small. A commenter from a state government indicated that a certification statement would ensure that the present universe of facilities covered by their State pollution prevention rules would remain intact.

EPA, in this final action, has adopted a certification statement approach and the basis of the low volume category has been shifted to an annual reportable amount approach. EPA does not believe, however, that implementation of a certification statement should be made contingent upon the setting of a particular poundage value for the category level. EPA believes that a certification statement is necessary in order to maintain public right-to-know and to meet the statutory "substantial majority" of releases requirement. The certification statement relates to a range volume for a given chemical contained in the annual reportable amount that can have multiple connections to quantitative line items as reported or Form R. However, EPA does not agree that additional check boxes are needed in the certification statement. EPA believes that the category and level established in this final rule are such that replacement of full Form Rs, for those eligible reports, with certification statements provides the public with an adequate level of information.

2. *Frequency of certification.* In the proposed rule, frequency of certification would track the annual requirement for submission of Form R. EPA requested comment on the appropriateness of certification statements received less frequently than on an annual basis. Commenters representing environmental and public interest groups supported annual certification. Many commenters representing the regulated community stated that industries should be able to submit the certification only once, arguing that a facility that takes advantage of the alternate threshold will likely remain eligible year after year, and if they become ineligible, they will submit a Form R. These commenters stated that during facility inspections, EPA could require facilities to perform detailed calculations to verify eligibility and that such detailed calculations to support the certification should not be required each year.

Other commenters recommended a 3 or 5–year certification schedule. Several commenters, many from the metal plating industry, favor a 3–year certification with appropriate recordkeeping. Commenters from industry generally believe that annual certification at any level is not necessary and does little to reduce the burden of reporting. However, one commenter representing an industry which generally opposed the certification statement, indicated that if EPA were to require such a statement that it should be annual. The reason given is that there is a greater likelihood of missed filings under a bi-annual or tri-annual schedule and the consequent exposure to enforcement.

In this final rule, EPA has retained an annual schedule for submission of the certification statements. EPA believes that a one-time or multi-year approach would not provide the data continuity necessary for providing the TRI data annually to the public. In addition, EPA does not believe that it should present the information to the public in the TRI data base from such certification activity unless it is based upon a positive submission by the facility. For example, lack of receipt of a certification statement during one of the "out years" can mean one of two things. The facility could still be within the eligibility limits of the alternate threshold, or it could be beyond such limits and has not submitted a Form R. EPA is sensitive to the cost considerations of an annual certification schedule. However, this cost is in general a lower cost than for Form R submission each year. Also, if operations do not change significantly from year-to-year, as commenters indicate, then the subsequent year determination of eligibility should not be a time-consuming data development process.

Development of the information needed for a facility's certification statements will generally involve only a one-time (one-chemical) collection burden. In addition, most of the information on the certification

statement is very similar, if not identical to the facility identification section of the current Form R. Furthermore, the Agency plans to develop streamlined methods for submitting the certification statements beginning with the 1995 reporting year. The Agency's Automated Form R magnetic media submission software will be modified to include the ability to create the certification statement. This software is already designed to allow importation of data previously filed. Once created or imported, the data will remain accessible for all subsequent filing unless there has been a change in the basic facility identification information. Even then, changing the data will be straight-forward. The only additional variable will be the name of the listed toxic chemical to which the certification statement applies.

3. *Representing certification statements in the data base.* EPA plans to enter the data from these certification statements into its regular TRI data bases. The data will be marked to indicate that it represents certification statements rather than Form Rs. In this way, a geographic or chemical search will be able to show the presence of a facility and the chemical for which it is applying the alternate threshold. Quantitative analyses using certification statement data could be done in one of several ways. The user could make a "worst case" assumption and choose to count a total of 500 pounds of the chemical released from that facility. An alternative would be to use a midpoint of 250 pounds total release, similar to the treatment of current range reports.

EPA received comment from a federal agency that requested that the regulatory language of the proposal be changed prior to the final rule that would allow facilities to submit a single certification for multiple chemicals meeting the alternate threshold criteria.

At this time, EPA is requiring that a facility submit a unique certification statement for each chemical meeting the alternate threshold conditions. Facilities may assert a trade secrecy claim for a chemical identity on the certification statement as on the Form R. Reports submitted on a per chemical basis protect against the disclosure of trade secrets. Certification statements with trade secrecy claims, like Form Rs with similar claims, will be separately handled upon receipt to protect against disclosure. Comingling trade secret chemical identities with non-trade secret chemical identities on the same submission increases the risk of disclosure. Also, processing techniques currently in place make handling of one form with more than one chemical difficult and be more likely to create submission errors on the part of Form R reporters, as well as handling errors by EPA.

E. Covered Facility

Several commenters requested clarification from the Agency regarding the status of a facility that may take advantage of the alternate threshold. These commenters were concerned that the preamble discussion in the proposal seemed to indicate that those facilities taking advantage of an alternate threshold were not covered facilities for purposes of TRI reporting, yet language in the proposed section 372.27(a) states that ". . . a covered facility may apply an alternate reporting threshold . . . ."

1. *Applicability to "piggy-back" requirements.* Several commenters questioned whether a facility that utilizes the alternate threshold is a section 313 "covered facility" as outlined in 40 CFR 372.22. The primary concern expressed by these commenters relates to so called "piggy-back" requirements of other state or federal laws or regulations. For example, a state law or regulation may cite a section 313 "covered facility" as a facility that must pay a fee, submit additional information, or conduct facility pollution prevention planning.

40 CFR 372.22 of the regulations, "covered facilities for toxic chemical release reporting," defines the facilities for which a Form R must be submitted. A facility that can take advantage of the alternate threshold may or may not be a "covered facility" for purposes of any specific toxic chemical. It will depend upon the factual situation and the choices made by the owner/operator. The following examples illustrate common situations/choice combinations:

(i) A facility that fits within the category description, and manufactures, processes or otherwise uses 1 million pounds or less of a listed toxic chemical annually, and whose owner/operator elects to take advantage of the alternate threshold *is not a covered facility* and no Form R is required.

(ii) The facility described in example (i) that fits within the category description, and manufactures, processes, or otherwise uses 1 million pounds or less of a toxic chemical annually, but whose owner/operator elects not to use the alternate threshold *is a covered facility subject to the thresholds under section 313(f)(1)* for which a Form R must be submitted.

(iii) A facility that fits within the category description, but that manufactures, processes, or otherwise uses more than 1 million pounds of a toxic chemical annually must still submit Form R and, therefore, remains a covered facility. In this final rule, § 372.22 has been amended to reflect this interpretation.

The Agency wants to make it clear, however, that its determination on this issue may not necessarily mitigate the impact of piggy-back requirements. The ultimate impact of being a "covered facility" can vary depending upon how the linkage is constructed in the specific state or other federal requirement. For example, where a state requirement is based upon the number of Form R reports submitted to the state (e.g., report-based filing fee), the submission of certification statements instead of Form R reports could provide an incremental burden reduction. Conversely, if the state requirement is based upon the submission of at least one Form R report, a facility may be subject to the same degree of piggy-back burden irrespective of the existence of the alternate threshold. In this scenario, it is only those facilities who could substitute certification statements for all of their Form R reports that may benefit. Under any circumstance, a state could modify its requirements to adjust for certification statements, and EPA has no control over such state actions. Owners/operators should contact the appropriate state authorities for guidance.

EPA's determination on this issue in no way limits or affects its ability to bring enforcement actions against a facility. If a facility wishes to take advantage of the alternate threshold, then it must determine that its annual reportable amount did not exceed 500 pounds of the chemical for that year, it must file a certification statement, and it must keep appropriate records. Therefore, if the facility fails to submit either a certification statement or a Form R, the facility is a non-reporter and faces penalties up to $25,000 per day per violation (see EPCRA section 325(c), 42 U.S.C. 11045). In addition, even if the facility files a certification statement, the Agency can bring an enforcement action based upon the inadequacy of required records or a determination that the facility's calculation of annual reportable amount was incorrect.

2. *Applicability to partial facility reports.* Commenters asked whether the alternate threshold certification process applied in the same manner as Form R reporting in the case of such partial facility reports. Currently the regulations at § 372.30(c) allow separate reports to be filed for the same chemical by establishments within a multi-establishment facility. This was allowed as a convenience for such multi-

establishment facilities because these separate establishments may operate independently of one another and would find it easier to file reports on their own operations than to have to consolidate reporting data across several such operating units. However, this is only allowed if there has been a total facility threshold determination for the manufacture, process, or otherwise use of a listed chemical. Form R contains a check box for a question relating to whether the report is a "partial facility" report.

For the purposes of the certification statement, the facility must also make its determination based upon the entire facility's operations including all of its establishments. If the facility as a whole is able to take advantage of the alternate threshold, a single certification is required. EPA can see no benefit in allowing a facility with multiple establishments to submit more than one certification statement for each of the chemicals for which it is eligible. The eligibility to submit a certification statement is made on a whole facility determination. Thus, all of the information necessary to make the determination has been assembled to the facility level. No other detail is required by the certification statement and, therefore, no apparent benefit is provided to the facility in having it submit multiple statements containing duplicative information.

EPA also believes that multiple submissions of certification statements for the same chemical from the same facility provides a greater opportunity for the data to be misinterpreted. If, for example, a user of the data were interested in a facility's chemical management practices and found more than one certification for the same chemical, as it would appear in the data base, then the user might incorrectly assume that the facility managed the maximum annaul reportable amount of 500 pounds for that chemical times the number of certification statements appearing in the data base for the same chemical from another establishment. For these reasons, EPA is not extending "partial facility" or multiple submissions of the certification statement by multi-establishment facilities.

3. *Loss of eligibility for the threshold and relationship to prior year reporting.* A commenter questioned whether the facility was required to submit prior year data under section 8 of Form R if in a subsequent reporting year the facility became ineligible to take advantage of the alternate threshold. EPA's determination on this issue is that the facility would not be required to include prior year data. This is because the facility was not specifically obligated to develop such data and submit it on Form R. This would be similar to a situation in which a facility fell below the statutory threshold for an activity and was not required to file Form R for a preceding year. The facility may enter "NA" in these blocks of column A of section 8 of Form R. However, EPA encourages facilities to provide such data voluntarily. A facility may have developed specific determinations regarding amounts that contributed to the total waste determination in order to take advantage of the alternate threshold for that prior year. Given this, the facility could fill in the appropriate blocks of column A without significant additional burden.

F. Degree of Burden Reduction

A majority of commenters indicated that the proposal would provide, at best, only minimal regulatory relief from current reporting burden. Others indicated that, while they support the concept of this proposal, it will not relieve the reporting burden placed on either large or small businesses. In addition, some commenters considered EPA's estimates of net savings to the regulated community to be overstated. Most of the comments received concerning burden relief focussed on four aspects that, in the commenters' view, are unrelieved by EPA's proposal: (1) Data elements required to complete the annual certification; (2) level of effort required to document eligibility for submitting a certification statement; (3) failure of EPA to account for facilities manufacturing, processing, or otherwise using chemicals in excess of the alternate threshold; and (4) relief from additional regulations at the state and local level, which are predicated upon eligibility for reporting in TRI.

1. *Data elements required to complete the annual certification.* Commenters' most frequent contention was that only minimal burden reduction would be available through the alternate threshold. The reason given by commenters was that filing the annual certification statement would require that all calculations required when filing Form R would still be necessary in order to document eligibility for the alternate threshold. The only reduction in burden, argue commenters, would be associated with the actual preparation and mailing of Form R.

EPA emphasizes that information regarding source reduction activities (including, for example, prior and subsequent year estimates required under section 8 of Form R) and certain other data (including, for example, location of transfer recipients; waste treatment method and efficiency) would not be required under the rule. Some commenters believe that many facilities eligible for the alternate threshold will perform such calculations in any event, to ensure that a complete Form R submission can be prepared in case their eligibility cannot be maintained from year-to-year. EPA stresses that these calculations for previous and subsequent years are not required, and concludes that meaningful burden reduction is available through the alternate threshold to facilities choosing to file the certification statement.

2. *Level of effort required to document eligibility for the alternate threshold.* Some commenters expressed concern regarding the level of effort needed to document a claim of eligibility under the proposed rule, fearing that increased stringency will be applied to recordkeeping requirements. Consequently, the additional burden and cost associated with this increased stringency, commenters argue, could prevent many facilities from taking advantage of the exemption. While EPA recognizes that facility operators may perceive a level of burden in documenting eligibility for the alternate threshold in excess of current requirements, EPA does not intend to seek greater precision in estimates from facilities eligible for the alternate threshold. Since facility operators have presumably filed Form Rs in the past, estimation procedures and recent records of calculations and submissions most likely exist for most facilities; thus, new or additional procedures should not need to be established. Consequently, EPA disagrees with these commenters, and sees no reason why recordkeeping requirements associated with the alternate threshold should deter eligible facilities from filing the annual certification statement.

3. *Failure of EPA to account for facilities manufacturing, processing, or otherwise using chemicals in excess of the alternate threshold.* One commenter explained that EPA's aggregate estimate of savings attributable to the alternate threshold were overstated due to the Agency's assumption that all facilities identified as meeting the category criteria were in fact eligible to file the certification statement under the alternate threshold. The commenter noted that many facilities with low level releases would be ineligible to file the annual certification statement because they would exceed the proposed 1 million pound alternate manufacture, process, or otherwise use threshold.

EPA acknowledges this, and agrees that, to the extent that there are facilities

that satisfy the category criteria but do not meet threshold requirements, aggregate savings are overstated. While data are not available to estimate the frequency of occurrence of such facilities, EPA is confident that the overall impacts of the assumption are minor.

Conversely, EPA's estimates may understate savings due to the effect of range reporting on the analysis. That is, the number of facilities estimated to meet the category criteria likely excludes many facilities satisfying the criteria because many take advantage of the option of range reporting when filing Form R. Since facilities may report releases within a range of 11–499 pounds to each media type, EPA cannot know for certain the number of facilities for which the annual reportable amount would be limited to 500 pounds. Where range reporting was used, EPA assumed actual releases to be the midpoint of 250 pounds; thus, facilities with actual releases below this amount would be excluded if reporting for more than two media types.

4. *Impact of other regulatory requirements.* Many commenters pointed out that burden is also a function of "piggyback" state or federal requirements that reference TRI reporting as a trigger for additional reporting, submission of fees, or development of facility plans for pollution prevention. Commenters urge EPA to clearly state that those who take advantage of the alternate threshold are not considered to be "covered facilities" and should not be subject to additional "piggyback" regulations.

As discussed in unit III.E.1. of this preamble, the covered facility determination relative to these other requirements is a chemical-specific determination. If all potential Form R reports can be converted to certification statements, EPA estimates that approximately 3,800 facilities would no longer be "covered facilities" for purposes of Form R reporting. In addition, approximately 6,000 other facilities would be eligible to convert one or more of their Form R reports to a certification statement (Ref. 4). However, facilities that can take advantage of the alternate threshold are required to report under EPCRA section 313 for purposes of submission of the alternate threshold certification statement for a specific chemical. The ultimate mitigation of the burden associated with the piggyback requirements will relate to the specific way in which those requirements reference TRI submitters or forms.

G. Effective Date

Some commenters suggested that EPA consider alternatives to the effective date of the proposal. Suggestions included a retroactive date corresponding to the effective date of EPCRA, in essence applying the alternate threshold to all past reports under section 313. Others felt that no delays in promulgating this rule should prevent its application in reporting year 1995. Another commenter indicated that EPA should deliberate as long as is necessary to complete the analysis that supports this rule, while a few commenters requested that the effective date of the rule be applied to reporting year 1994.

Contingent upon OMB approval, the alternate threshold rule is effective for reporting on activities beginning January 1, 1995, with the first receipt of certifications due on or before July 1, 1996. EPA will publish a technical amendment in the **Federal Register** when the reporting additions have been approved by OMB. As with any major changes in reporting requirements, EPA believes that both the regulated community, EPA, and the states require time to understand and prepare for implementing this change. The regulated community will need an opportunity to become fully aware of the alternate threshold and understand how it can apply to their data development and their own data management systems for TRI compliance purposes. EPA and the states need time to make necessary modifications in data systems to incorporate the certification statements. Also, changes to the Agency's automated reporting software have to be made and tested in order to add the certification statement feature.

IV. Rulemaking Record

The record supporting this rule is contained in the TSCA docket, number OPPTS–400087. All documents, including an index of the docket, are available in the TSCA Nonconfidential Information Center (NCIC), also known as the TSCA Public Docket Office from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The NCIC is located at EPA Headquarters, Rm. NE-B607, 401 M St., SW., Washington, DC 20460.

V. References

(1) Regulatory Impact Analysis of the EPCRA Section 313 Alternate Threshold Final Rule; USEPA, (October 17, 1994).

(2) Title III List of Lists, Consolidated List of Chemicals Subject to Reporting Under the Emergency Planning And Community Right-To-Know Act; USEPA, 560/492-011, (January 1992).

(3) Toxic Release Inventory-Small Source Exemption Issues Paper; prepared by the Office of Pollution Prevention and Toxics, (January 27, 1994).

(4) TRI Data: Summary of Estimated Impacts (1991 verses 1992).

VI. Regulatory Assessment Requirements

A. 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 review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines as "significant" those regulatory actions likely to lead to a rule (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlements, grants, user fees, or loan programs; or (4) raising 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 this Executive Order, EPA has determined that this rule is "significant" because of the novel policy issues arising out of the statutory mandate to maintain reporting on a substantial majority of releases if the reporting threshold under section 313(f)(1) is modified. This action was submitted to OMB for review, as required by Executive Order 12866, and any comments or changes made in response to OMB suggestions or recommendations have been documented in the public record.

EPA has prepared a Regulatory Impact Analysis (RIA) in conjunction with this rulemaking. A copy of this document (titled "Regulatory Impact Analysis of the Final Rule for the Alternate Threshold for EPCRA Section 313 Reporting") is available in the TSCA Nonconfidential Information Center (NCIC) (also known as the TSCA Public Docket Office), for review and copying (see unit IV. of this preamble).

EPA has estimated that the alternate threshold will generate $19 million a

year in savings. The savings from the final rule differ from the savings from the proposed rule because the basis of the facility category has been changed from releases and transfers to annual reportable amounts, and the level has been changed from 100 pounds to 500 pounds. These differences are shown in Table 2 below.

EPA is issuing a final rule to add chemicals and chemical categories to the EPCRA section 313 list. The alternate threshold is estimated to save an additional $3 million per year for reporting on these additional chemicals. Further information on the chemical additions will be presented the **Federal Register.**

TABLE 2.—SUMMARY OF COST COMPARISON BETWEEN PROPOSED AND FINAL RULE

	Proposed Rule (100lb. Release and Transfer)	Final Rule (500lb. Annual Reportable Amount)	Final Rule with New Chemicals
Number of facilities with one or more reports affected	10,200	9,900	11,600
Number of facilities with all reports affected	3,600	3,800	4,500
Number of reports affected	20,500	20,100	23,600
Industry savings per report affected	$1,264	$912	$912
EPA savings per report affected	$33.20	$33.20	$33.20
Annual industry savings	$25.9 million	$18.4 million	$21.5 million
Annual EPA savings	$0.7 million	$0.7 million	$0.8 million

Source—RIA.

The savings described in Table 2 above are only related to those actions that are required under EPCRA section 313. There are other requirements that are linked to reporting under EPCRA section 313, but that are not required by it. EPA is aware of 13 states that place a fee or tax on facilities that file a Form R or report to EPA under EPCRA section 313, and 7 states that mandate pollution prevention plans from such facilities. EPA has also created special requirements for certain facilities with NPDES storm water permits that report under EPCRA section 313.

The alternate threshold may also create savings related to the linked requirements. Since a facility that can take advantage of the alternate threshold is not a "covered facility" for purposes of a specific Form R submission, the linkage to state requirements may no longer hold. This will not necessarily increase net social benefits, because the linked fees and taxes are transfers (and there will be a corresponding decrease in state revenues), and the benefits of covering these facilities under the pollution prevention planning requirements may be lost. Moreover, these states may choose to reimpose the linked requirements, even if the facilities have not filed a Form R.

B. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities. Because this rule will result in cost savings to facilities, EPA certifies that small entities will not be significantly affected by it.

C. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to OMB under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA (ICR No. 1704.01) and a copy may be obtained from Sandy Farmer, Information Policy Branch, Mail Code 2136, EPA, 401 M St., SW., Washington, DC 20460 or by calling (202) 260–2740. These requirements are not effective until OMB approves them and a technical amendment to that effect is published in the **Federal Register.**

This collection of information has an estimated reporting burden averaging 33 hours per response and an estimated annual recordkeeping burden averaging 6 hours per respondent. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: November 22, 1994.

Carol M. Browner,

Administrator.

Therefore, 40 CFR part 372 is amended as follows:

PART 372—[AMENDED]

1. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11023 and 11048.

2. In § 372.10, by adding a new paragraph (d) to read as follows:

§ 372.10 Recordkeeping.

* * * * *

(d) Each owner or operator who determines that the owner operator may apply the alternate threshold as specified under § 372.27(a) must retain the following records for a period of 3 years from the date of the submission of the certification statement as required under § 372.27(b):

(1) A copy of each certification statement submitted by the person under § 372.27(b).

(2) All supporting materials and documentation used by the person to make the compliance determination that the facility or establishment is eligible to apply the alternate threshold as specified in § 372.27.

(3) Documentation supporting the certification statement submitted under § 372.27(b) including:

(i) Data supporting the determination of whether the alternate threshold specified under § 372.27(a) applies for each toxic chemical.

(ii) Documentation supporting the calculation of annual reportable amount, as defined in § 372.27(a), for each toxic chemical, including documentation supporting the calculations and the calculations of each data element combined for the annual reportable amount.

(iii) Receipts or manifests associated with the transfer of each chemical in waste to off-site locations.

3. In § 372.22, by revising paragraph (c) to read as follows:

§ 372.22 Covered facilities for toxic chemical release reporting.

* * * * *

(c) The facility manufactured (including imported), processed, or otherwise used a toxic chemical in excess of an applicable threshold quantity of that chemical set forth in § 372.25 or § 372.27.

4. In § 372.25, by revising the introductory paragraph to read as follows:

§ 372.25 Thresholds for reporting.

Except as provided in § 372.27, the threshold amounts for purposes of reporting under § 372.30 for toxic chemicals are as follows:

* * * * *

5. By adding new § 372.27 to read as follows:

§ 372.27 Alternate threshold and certification.

(a) With respect to the manufacture, process, or otherwise use of a toxic chemical, the owner or operator of a facility may apply an alternate threshold of 1 million pounds per year to that chemical if the owner or operator calculates that the facility would have an annual reportable amount of that toxic chemical not exceeding 500 pounds for the combined total quantities released at the facility, disposed within the facility, treated at the facility (as represented by amounts destroyed or converted by treatment processes), recovered at the facility as a result of recycle operations, combusted for the purpose of energy recovery at the facility, and amounts transferred from the facility to off-site locations for the purpose of recycle, energy recovery, treatment, and/or disposal. These volumes correspond to the sum of amounts reportable for data elements on EPA Form R (EPA Form 9350-1; Rev. 12/4/93) as Part II column B or sections 8.1 (quantity released), 8.2 (quantity used for energy recovery on-site), 8.3 (quantity used for energy recovery off-site), 8.4 (quantity recycled on-site), 8.5 (quantity recycled off-site), 8.6 (quantity treated on-site), and 8.7 (quantity treated off-site).

(b) If an owner or operator of a facility determines that the owner or operator may apply the alternate reporting threshold specified in paragraph (a) of this section for a specific toxic chemical, the owner or operator is not required to submit a report for that chemical under § 372.30, but must submit a certification statement that contains the information required in § 372.95. The owner or operator of the facility must also keep records as specified in § 372.10(d).

(c) Threshold determination provisions of § 372.25 and exemptions pertaining to threshold determinations in § 372.38 are applicable to the determination of whether the alternate threshold has been met.

(d) Each certification statement under this section for activities involving a toxic chemical that occurred during a calendar year at a facility must be submitted to EPA and to the State in which the facility is located on or before July 1 of the next year.

6. By adding a new § 372.95 to read as follow:

§ 372.95 Alternate threshold certification and instructions.

(a) *Availability of the alternate threshold certification statement and instructions.* Availability of the alternate threshold certification statement and instructions is the same as provided in § 372.85(a) for availability of the reporting form and instructions.

(b) *Alternate threshold certification statement elements.* The following information must be reported on an alternate threshold certification statement pursuant to § 372.27(b):

(1) Reporting year.

(2) An indication of whether the chemical identified is being claimed as trade secret.

(3) Chemical name and CAS number (if applicable) of the chemical, or the category name.

(4) Signature of a senior management official certifying the following: pursuant to 40 CFR 372.27, "I hereby certify that to the best of my knowledge and belief for the toxic chemical listed in this statement, the annual reportable amount, as defined in 40 CFR 372.27(a), did not exceed 500 pounds for this reporting year and that the chemical was manufactured, or processed, or otherwise used in an amount not exceeding 1 million pounds during this reporting year."

(5) Date signed.

(6) Facility name and address.

(7) Mailing address of the facility if different than paragraph (b)(6) of this section.

(8) Toxic chemical release inventory facility identification number if known.

(9) Name and telephone number of a technical contact.

(10) The four-digit SIC codes for the facility or establishments in the facility.

(11) Latitude and longitude coordinates for the facility.

(12) Dun and Bradstreet Number of the facility.

(13) EPA Identification Number(s) (RCRA) I.D. Number(s) of the facility.

(14) Facility NPDES Permit Number(s).

(15) Underground Injection Well Code (UIC) I.D. Number(s) of the facility.

(16) Name of the facility's parent company.

(17) Parent company's Dun and Bradstreet Number.

[FR Doc. 94–29377 Filed 11–29–94; 8:45 am]

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federal register

Wednesday
November 30, 1994

Part VII

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 81

Continuation of Federal Home Loan Mortgage Corporation and Federal National Mortgage Association Housing Goals; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 81

[Docket No. R–94–1763; FR–3810–F–01]

RIN 2501–AB87

Continuation of Federal Home Loan Mortgage Corporation and Federal National Mortgage Association Housing Goals

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: Under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, the Secretary is required to establish housing goals to direct the purchase of mortgages by the Federal Home Loan Mortgage Corporation (Freddie Mac) and the Federal National Mortgage Association (Fannie Mae) on: housing for low- and moderate-income families; housing located in central cities, rural areas and other underserved areas; and housing meeting the needs of and affordable to low-income families in low-income areas and very low-income families. By Notices published on October 13, 1993, the Secretary established housing goals for 1993 and 1994. This final rule temporarily extends into 1995 the 1994 housing goals that were established by the Secretary for Freddie Mac and Fannie Mae. The Secretary will soon propose regulations that will include adjusted housing goals for 1995. When these new 1995 goals are established by final regulation, the 1994 goals extended through this action will be superseded for the remainder of the year, *i.e.*, the new goals will be established "short year," so that the Freddie Mac and Fannie Mae are not expected to perform under the new goals for the entire year. The goals shall be applied using the same requirements set forth in the Notices of Interim Housing Goals and as clarified subsequently by the Department.

EFFECTIVE DATE: December 30, 1994.

FOR FURTHER INFORMATION CONTACT: Harold Bunce, Acting Director, Financial Institutions Regulation, Office of Policy Development and Research, telephone (202) 708–2770 or (202) 708–0770 (TDD). For legal questions, contact Kenneth A. Markison, Assistant General Counsel for Government-Sponsored Enterprises/RESPA, Office of General Counsel, telephone (202) 708–3137. The address for both of these persons is: Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. A telecommunications device for deaf persons (TDD) is available at (202) 708–9300. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

Justification for Final Rulemaking

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking, 24 CFR part 10. However, the Administrative Procedure Act (see 5 U.S.C. 553) and part 10 provide for exceptions from that general rule where the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest." (24 CFR 10.1)

The Department finds that good cause exists to publish this rule for effect without first soliciting public comment, in that prior public procedure is impracticable, unnecessary, and contrary to public interest. The rule merely ensures that housing goals are established under which the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association (together, Fannie Mae and Freddie Mac are referenced throughout this text as "Government-Sponsored Enterprises" or "GSEs") will be accountable for carrying out their statutory and charter responsibilities. A critical need exists to ensure continued applicability of housing goals pending the establishment of new housing goals through notice-and-comment rulemaking.

The Secretary currently is in the process of issuing a proposed regulation that will establish housing goals from the date established when such regulation becomes final, some time in 1995. That final regulation will replace this rule. Accordingly, the housing goals extended through this rule will only apply to that portion of 1995 that precedes the effective date of that rule.

This Rule

This rule extends the housing goals for the GSEs' purchase of mortgages on housing for low- and moderate-income families, housing located in central cities, and housing meeting the needs of and affordable to low-income families in low-income areas and very low-income families. The housing goals being extended were established by the Secretary and promulgated as Notices of Interim Housing Goals (58 FR 53048 and 53072; October 13, 1993). The requirements of the Notices, including any clarifications issued by the Secretary, will also apply to the housing goals continued for 1995 by this action.

For the housing goals for low- and moderate-income families and for housing located in central cities, this rule extends the Notices' goals into 1995. Accordingly, the housing goal for each GSE's purchases of mortgages financing housing for low- and moderate-income families is 30 percent of the total number of dwelling units financed by each GSE's mortgage purchases. For central cities, the housing goal for each GSE's purchases of mortgages financing housing located in central cities is 30 percent of the total number of dwelling units financed by each GSE's mortgage purchases. These goals shall apply on a proportional basis for that portion of 1995 before permanent goals are established and effective following rulemaking.

The goals for special affordable housing (i.e., housing meeting the needs of and affordable to low-income families in low-income areas and very low-income families) applicable to each GSE were established under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, 12 U.S.C. 4501–4641 (the 1992 Act), and the Interim Notices as two-year goals covering 1993 and 1994. This rule extends the 1993–1994 special affordable housing goals for each GSE into 1995 and provides that the goals for 1995 shall be as described below. The special affordable housing goals established under this rule also shall apply on a proportional basis to that portion of 1995 before permanent goals are established and effective following rulemaking.

The level of the two-year (1993–1994) special affordable housing goal for each GSE was established at a dollar amount above and beyond a 1992 baseline. The GSEs were asked to provide the Secretary with a good-faith estimate of the dollar amount of each enterprise's 1992 mortgage purchases that would have qualified under the special affordable housing goal if the goal had applied to 1992 purchases. Fannie Mae estimated that in 1992 it purchased $7.1965 billion of mortgages that would have qualified toward the special affordable housing goal had it applied. Freddie Mac estimated that in 1992 it purchased $5.214 billion of mortgages that would have qualified toward the special affordable housing goal had it applied.

The 1993–1994 special affordable housing goal for Fannie Mae was then established as twice the 1992 baseline ($14.393 billion) plus $2 billion—the minimum amount of the goal for the

transition period established for Fannie Mae under the 1992 Act—for a two-year goal of $16.393 billion. The 1993–1994 special affordable housing goal for Freddie Mac was then established as twice the 1992 baseline ($10.428 billion) plus $1.5 billion—the minimum amount of the goal for the transition period established for Freddie Mac under the 1992 Act—for a two-year goal of $11.928 billion.

The Secretary recognizes that in 1995 the dollar amount of conventional mortgages originated will be substantially lower than the amount originated in 1992. HUD estimates that there will be a reduction in conventional originations of at least one-third between the 1992 market ($819 billion) and the 1995 mortgage market (an estimated $510 billion). In addition, seasonality is an important factor in the mortgage markets—fewer mortgages are originated in the first quarter of the year than in any other quarter. These goals are likely to be in place for only a portion of 1995, including that quarter for which mortgage originations are the lowest.

Because of these two factors—the large reduction in the size of the mortgage market and the seasonality of originations—the Secretary has appropriately revised the baseline applicable to the special affordable housing goals that will be in place for 1995. The Secretary has reduced the baselines for each enterprise by 50 percent. The 1995 goal for Fannie Mae is $4.598 billion (the revised baseline plus $1 billion, half of the two-year goal under the 1992 Act). The 1995 goal for Freddie Mac is $3.357 billion (the revised baseline plus $750 million, half of the goal for Freddie Mac under the 1992 Act).

Background

Since 1968, the Secretary has had general regulatory authority and specific regulatory authorities respecting Fannie Mae. Since 1989, pursuant to the Financial Institution Reform Recovery and Enforcement Act of 1989 (Pub.L. 101–73, approved August 9, 1989) ("FIRREA"), the Secretary has had the same regulatory authorities respecting Freddie Mac.

The 1992 Act substantially changed the Secretary's regulatory authorities respecting the GSEs. The 1992 Act increased and detailed the Secretary's authority to establish, monitor performance under, and enforce annual goals for mortgage purchases by the GSEs of mortgages financing: (1) housing for low- and moderate-income families; (2) housing located in central cities, rural areas, and other underserved areas; and (3) housing meeting the needs of and affordable to low-income families in low-income areas and very low-income families. (See generally sections 1331–49 of the 1992 Act.)

The 1992 Act provided for a transition period of 1993 and 1994, for which the Act established annual targets for the purchases by both GSEs of mortgages financing housing for low- and moderate-income families and housing located in central cities. These transition targets were set at the same percentages provided under HUD regulations applicable to Fannie Mae that were issued in 1978. Accordingly, the 1992 Act set the transition targets at 30 percent of the mortgage purchases of the GSEs.

The 1992 Act provided that, for the transition period, in cases where a GSE was not meeting its 30 percent target as of January 1, 1993, the Secretary was to establish annual goals so that the GSE would improve its performance relative to the target annually and, to the maximum extent feasible, would meet the target at the conclusion of the transition period. The 1992 Act also established dollar goals for the GSEs' purchases of mortgages financing special affordable housing.

On July 22, 1993, in accordance with requirements in the 1992 Act, the Secretary provided the GSEs with an opportunity to review and comment on the proposed interim goals. Subsequently, HUD staff met with representatives of both GSEs for discussion of the comments received, after which the GSEs provided additional comments to the Department.

Pursuant to sections 1332(d)(3), 1333(d)(4), and 1334(d)(3) of the 1992 Act, on October 13, 1993 (58 FR 53048 and 53061) ("October 13 Notice"), the Secretary published two notices in the **Federal Register** establishing the interim goals for each GSE—applicable to the transition years of 1993 and 1994—and requirements for implementation of the goals. Since neither GSE was meeting its targets as of the beginning of the transition period, the goals were established so that the GSEs would, to the maximum extent feasible, meet the targets by the end of the transition period.

The October 13 Notice established Fannie Mae's low- and moderate-income housing goal at 30 percent of the units financed by mortgages purchased by Fannie Mae in 1993 and 1994. The notice also established Fannie Mae's central cities goal at 28 percent of units financed by mortgages purchased by Fannie Mae in 1993, and 30 percent in 1994.

The October 13 Notice established Freddie Mac's low- and moderate-income housing goal at 28 percent for 1993 and 30 percent for 1994. The notice also established Freddie Mac's goal for purchases of mortgages financing housing located in central cities at 26 percent for 1993 and 30 percent for 1994.

The October 13 Notice established the Special Affordable Housing Goals as two-year goals for the GSEs' purchases of conventional mortgages on rental and owner-occupied housing meeting the then-existing unaddressed needs of, and affordable to, low-income families in low-income areas and very low-income families. This goal for Fannie Mae was established as not less than 2 billion dollars ($2,000,000,000) above Fannie Mae's existing performance and commitments. This goal for Freddie Mac was established as not less than 1½ billion dollars ($1,500,000,000) above Freddie Mac's existing performance and commitments.

Basis for Secretary's Action

The Secretary is empowered to extend the housing goals under section 1321 of the 1992 Act, which confers on the Secretary general regulatory authority and the authority to "make such rules and regulations as shall be necessary and proper" to ensure that the purposes of the 1992 Act and the purposes of the Fannie Mae Charter Act and the Freddie Mac Act are accomplished.

Section 1331 of the 1992 Act provides that the Secretary shall establish housing goals by regulation. Section 1331 also provides that from year to year the Secretary may adjust any housing goal by regulation. Section 1349 of the 1992 Act provides that any final regulations necessary to implement the provisions of the 1992 Act relating to the housing goals shall be issued after notice and opportunity for public comment.

This rule does not involve either an establishment of goals or an adjustment of existing goals; it involves an extension of established goals for which the GSEs were invited to comment. (In the case of the special affordable housing goal, only the baseline is revised appropriately to reflect market conditions and seasonality.) The Secretary will soon propose final regulations implementing the Secretary's responsibilities under the 1992 Act, including establishing new housing goals. Those regulations will be proposed for public comment. However, those regulations will not be effective by the beginning of 1995.

Therefore, issuance of this final rule is essential to assure that the GSEs

continue carrying out their Charter purposes pending rulemaking. The Fannie Mae Charter Act (12 U.S.C. 1716 *et seq.*) and the Freddie Mac Act (12 U.S.C. 1451 *et seq.*) establish identical purposes for Fannie Mae and Freddie Mac, including "provid[ing] ongoing assistance to the secondary market for residential mortgages (including activities relating to mortgages on housing for low- and moderate-income families involving a reasonable economic return that may be less than the return earned on other activities) by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for residential mortgage financing;" and "promot[ing] access to mortgage credit throughout the Nation (including central cities, rural areas, and other underserved areas) by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for residential mortgage financing." (See section 301 (3) and (4) of the Fannie Mae Charter Act and section 301(b) (3) and (4) of the Freddie Mac Act.)

Other Matters

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule is limited to ensuring the continuation of established housing goals for Fannie Mae and Freddie Mac pending the specification of new housing goals through notice-and-comment rulemaking.

Environmental Impact Statement

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(l) of the HUD regulations, the policies and procedures contained in this rule relate only to the extension of statutorily required housing goals and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule do not have substantial direct effects on states or their political subdivisions, or the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order. Promulgation of this rule merely ensures the continuation of established housing goals for the GSEs pending the specification of new housing goals through notice-and-comment rulemaking.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, *the Family*, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and thus, is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

Regulatory Agenda

This rule was not listed in the Department's Semiannual Agenda of Regulations published on November 14, 1994, (59 FR 57632) in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 81

Accounting, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

Accordingly, title 24 of the Code of Federal Regulations is amended by adding a new subpart F to part 81, as follows.

PART 81—REGULATIONS IMPLEMENTING THE AUTHORITY OF THE SECRETARY OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT OVER THE CONDUCT OF THE SECONDARY MARKET OPERATIONS OF THE FEDERAL NATIONAL MORTGAGE ASSOCIATION (FNMA)

1. The authority citation for part 81 is revised to read as follows:

Authority: 12 U.S.C. 4501–4641; 42 U.S.C. 3535(d).

2. Subpart F is added, to read as follows:

Subpart F—Extension of Housing Goals for the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation

§ 81.51 Extension of Housing Goals for 1995.

(a) *Low- and moderate-income families and central cities.* The housing goals for 1994 for purchases by the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) of mortgages on housing for low- and moderate-income families and housing located in central cities provided in the Notices of Interim Housing Goals, 58 FR 53048 and 53072 (October 13, 1993), shall apply to 1995. The goals established under this paragraph shall apply on a proportional basis to that portion of 1995 before goals are established and effective following notice and comment rulemaking.

(b) *Special affordable housing goals.* The housing goals for 1993 and 1994 for purchases by Fannie Mae and Freddie Mac of mortgages on special affordable housing provided in the Notices of Interim Housing Goals, 58 FR 53048 and 53072 (October 13, 1993), shall apply to 1995 with appropriate revisions to the 1992 baseline for the goals as set forth herein. In establishing the levels of these housing goals for 1995, the Secretary has considered the level of estimated mortgage originations in 1995 and that these goals will be in place for only a portion of the year. Consequently, the Secretary has adjusted the baselines applicable to the special affordable housing goals, from the 1992 baselines, so that the goals result in the following dollar amounts: The 1995 goal for Fannie Mae shall be $4.598 billion and the 1995 goal for Freddie Mac shall be $3.357 billion. The goals established under this paragraph shall apply on a proportional basis to that portion of 1995 before goals are established and effective following notice and comment rulemaking.

(c) *Applicability of clarifications.* The requirements contained in the Notices of Interim Housing Goals at 58 FR 53048 and 53072 (October 13, 1993), including any clarifications issued by the Secretary or the Secretary's designee(s), shall apply to the housing goals under this section.

Dated: November 23, 1994.

Henry G. Cisneros,

Secretary.

[FR Doc. 94–29433 Filed 11–25–94; 9:08 am]

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federal register

Wednesday
November 30, 1994

Part VIII

Department of Transportation

Office of the Secretary

14 CFR Parts 380, 381, and 399
Special Event Tours; Final Rule

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 380, 381, and 399

[Docket No. 49385]

RIN 2105–AC03

Special Event Tours

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Department expands its rules on Super Bowl tours to cover air tours to other types of special events. The new rule requires that operators of tours to special events that are promoted as including admission to the event must have those event tickets in hand or under contract before they advertise or sell the tours, and that they must refund the entire tour price to any customer who does not receive a promised event ticket. This rule also extends the charter rule's prohibition on last-minute price increases to non-charter special event tours. This initiative arises as a result of problems on certain tours to the 1994 Rose Bowl on which participants did not receive game tickets that were promoted as being included in the package, or were required to make additional payments in order to receive tickets.

EFFECTIVE DATE: This final rule is effective December 7, 1994.

FOR FURTHER INFORMATION CONTACT: Tim Kelly, Consumer Affairs Division/I–25, Office of the Secretary, Room 10405, Department of Transportation, 400 Seventh Street S.W., Washington, DC 20590. Telephone (202) 366–5952.

SUPPLEMENTARY INFORMATION:

The ANPRM

In conjunction with the Rose Bowl football game that was played in Pasadena, California on January 1, 1994, a large number of fans of the University of Wisconsin (one of the two teams participating in the game) purchased package tours to California. Many of those tours were promoted as including a ticket to the Rose Bowl game. However, a significant number of these individuals either did not receive the game tickets that they had been promised and did not gain admission to the game, or were required to make an additional payment after they arrived in Pasadena in order to obtain their tickets.

On January 27, 1994, the Department issued an Advance Notice of Proposed Rulemaking in this proceeding (published February 1, 1994; 59 FR 4614). In this notice, we stated that we were tentatively proposing to issue a new rule which would contain the procedures of the Department's rules on Super Bowl tours and extend these rules to include air tours to other types of special events where admission to the event is advertised as being included in the package.

The Department's rules on Super Bowl tours are contained in Title 14 of the Code of Federal Regulations, Part 380 and section 399.87. These rules came about following problems with game tickets for Super Bowl tours in the late 1970's (see 45 FR 1856, January 9, 1980). The rules were limited to the Super Bowl because that was the only event where such problems had surfaced.

Part 380 contains the rules for Super Bowl tours on Public Charter flights:

- Section 380.2 defines a Super Bowl charter as a charter flight that is represented by its charter operator as including tickets to the National Football League's Super Bowl game as part of its ground package.
- Section 380.18a states that a Super Bowl charter may not be advertised unless the operator has submitted verification to the Department [1] that the operator (1) is in physical possession of enough Super Bowl game tickets to provide them for a substantial number of seats on the charter, or (2) has a contract with the NFL or with an NFL team for such a number of game tickets, or (3) has a contract with another person who has a contract with the NFL or an NFL team for such a number of game tickets.
- Section 380.18a also states that a Super Bowl charter may not be sold unless the operator has submitted verification to the Department that the operator has possession of, or contracts for, enough game tickets to provide one to every person who is to receive one under the terms of the operator/participant contract for the charter.
- Section 380.31(c) states that if an operator receives a booking for which he or she does not have possession of or a contract for a game ticket, the operator must return that participant's money within 3 days, unless the participant has authorized the operator in writing to retain the payment while the operator seeks additional tickets.
- Sections 380.32(s), 380.33(a)(5) and 380.33(e) state that if Super Bowl game tickets are not supplied when promised, the affected participant must be sent a refund of the price of the entire charter package within 14 days after the return flight.

In addition to the Super Bowl rules in Part 380, the Department has a policy statement at 14 CFR section 399.87 which states that it shall be an unfair or deceptive practice within the meaning of section 411 of the Federal Aviation Act [now 49 U.S.C. § 41712] to advertise or sell an air tour that is promoted as including a ticket to the Super Bowl game unless the operator has tickets or contracts for tickets in the manner described in 14 CFR 380.18a (see above). The principal purpose of this policy statement is to reach tours operated on scheduled air service, which are not covered by the Part 380 charter rules. The Part 399 policy statement mirrors section 380.18a, but does not include the other Part 380 provisions described above. Most importantly, it does not include the requirement that the entire tour price be refunded if a game ticket is not provided.

Like current section 399.87, the new rule tentatively proposed in the ANPRM would apply to tours on all forms of air transportation, not just charters. Like the existing Super Bowl charter rules in Part 380, it would require the tour operator to refund the entire tour price to any participant who does not receive a promised event ticket, even if the tour were not on a charter. The proposed rule would also pick up the procedures of section 380.31(c) of the charter rule, which requires an operator to refund any money received for a booking within 3 days if the operator has no contract for an event ticket for that person, unless the person has authorized the operator in writing to retain the payment while the operator seeks a ticket.

Comments on the ANPRM

The Department received comments from 11 organizations and 7 individuals. The great majority of the comments favored adoption of a rule in this area.

On the subject of the type of special event that should be covered by the rule, several of the comments discussed only sports events as the context for the rule. Other commenters stated that the context of the rule should be broader than that. The American Society of Travel Agents (ASTA) said that it should apply to all events where a separately-purchased ticket is necessary for admission to the event. The RG Travel Companies, which were involved in sending 1,700 Wisconsin fans to the 1994 Rose Bowl, stated that the rule should cover any special event "where a good possibility exists that the

[1] References to "the Board" in Part 380 refer to the Civil Aeronautics Board, the Department's predecessor in aviation economic and consumer matters. The Department of Transportation now administers this rule as authorized by the Civil Aeronautics Board Sunset Act of 1984 (P.L. 98–443; 98 Stat. 1703).

demand for tickets will exceed the supply * * *" In a similar vein, the Pasadena Tournament of Roses commented that the rule should apply to any event with limited admission. The National Tour Association (NTA, representing motorcoach tour operators) and Congressman Robert Andrews of New Jersey expressed the opinion that the rule should not be limited to sports events. Ms. Arlene Caldwell said that the rule should cover any tour that claims to include a ticket to the event, and Mr. Donald Hamilton stated that it should apply to any event for which tour packages are sold.

All of the commenters that expressed an opinion on whether the rule should apply to both charter and scheduled transportation felt that it should apply to both forms of air service. Those commenters were the RG Travel Companies, NACA, the NHL, ASTA, the NCAA, FBA, the Pasadena Tournament of Roses, and the Wisconsin Attorney General.

The ANPRM asked whether the rule should contain only the advertising and sale restrictions of sections 380.18a and 399.87 of the current Super Bowl rule, or whether it should also contain the "money back guarantee" of sections 380.32 and 380.33 and/or the "booking rejection" and "contingent booking" procedures of section 380.31(c). Except for NTA, all commenters that expressed a position on this question felt that some form of regulation along these lines was appropriate. NTA stated that the majority of its members that responded to a poll on this matter felt that regulation of special-event tours should not be a responsibility of the government, but the association said that in the event a rule is adopted it favors the "booking rejection" and "contingent booking" procedures of section 380.31(c).

ASTA and the Wisconsin Attorney General also expressed support for the "booking rejection" and "contingent booking" procedures. They favored the "money back guarantee" as well, as did the RG Travel Companies, the National Air Carrier Association (NACA, an organization of charter airlines), the NHL, NCAA, FBA, and Pasadena Tournament of Roses. The Tournament of Roses stated that this guarantee should apply "at any time prior to departure" if it is clear tickets will not be forthcoming. FBA commented "the greater the remedy available, the less likely that tour packagers will create the problem by promoting packages that may not be legitimate."

NACA said that there should be an exception to the "money back guarantee" for situations of force majeure and acts of God, such as the earthquake in San Francisco that forced postponement of the World Series. Similarly, the NHL stated that if the event is canceled or substantially altered after the tour begins, consumers should be entitled only to a refund of the face value of the event ticket, but that if such cancellation or alteration takes place before departure, the operator should be required to inform the consumers, who would have the right to cancel (presumably with a full refund).

Congressman Andrews was also in favor of the "money back guarantee," as well as a requirement for tour operators to disclose whether event tickets are guaranteed or tentative. However, he stated that any rule that would totally prohibit marketing of a special-event tour until the tour operator has event tickets in hand would not be practical. Tickets for many such events are not available until less than two weeks before the event, he pointed out, but other arrangements (e.g., air and hotel) must be made before that. NTA, the NCAA and the Wisconsin Attorney General stated that the current restrictions against marketing Super Bowl tours until the operator has game tickets in hand or under contract should be included in the new rule.

In discussing the "money-back guarantee," the ANPRM asked if the rule should contain procedures to protect the operator from having to refund the entire tour price if a participant doesn't receive promised admission to something like a welcoming cocktail party. Of those who commented on the issue, NTA, the NHL, ASTA, the Pasadena Tournament of Roses said that operators should not be required to refund the entire tour price over failure to provide something like a promised welcoming cocktail party. NACA and the Wisconsin Attorney General stated that the rule should require the value of undelivered ancillary events to be refunded, but should not require a refund of the entire tour price. FBA and the Wisconsin Attorney General both pointed out that certain events on a special event tour (e.g., the Tournament of Roses parade on a Rose Bowl tour) are integral to the experience for which the tour was organized while other events on the same tour (e.g., a side trip to Disneyland) are not. These two commenters suggest that integral events be protected by the "money back guarantee" of the total tour price, but not other events.

The ANPRM sought comment on whether the rule should ban last-minute or post-departure price increases for admission to the event, one of the problems that allegedly occurred on the 1994 Rose Bowl tours. All commenters who offered an opinion on this subject felt that last-minute price increases should be regulated in some manner. The RG Travel Companies, NACA, the NCAA, ASTA, the Wisconsin Attorney General and Mr. Donald Hamilton stated that last-minute price increases should be banned. FBA and the Pasadena Tournament of Roses said that price increases at any time following purchase should be prohibited unless the consumer receives written notice that the operator reserves this right. The Pasadena Tournament of Roses also suggested that participants who cancel within a few days of notification of a price increase be entitled to a full refund. The Wisconsin Attorney General commented that on tours to special events, "last-minute or post-departure price increases are common and are tantamount to extortion" because other options may be sold out.

The NHL stated that, in general, price increases should be banned unless the face value of the ticket has been increased subsequent to departure of the tour. However, for events with short lead times such as the Stanley Cup playoffs, the NHL said that the rule should permit tours on which participants are required to agree to purchase event tickets at the yet-unknown face price plus a service fee, as long as the consumer is given prominent notice of this fact.

Some tours are promoted in conjunction with a special event, but do not include, and do not represent that they include, admission to the event. For example, there have been tours to the Super Bowl host city during the Super Bowl weekend that prominently feature "Super Bowl" in the headline of advertisements and flyers, but which do not include game tickets. The ANPRM asked whether the new rule should ban this practice, or require affirmative, prominent disclosure that admission to the event is not included.

All of the commenters that expressed an opinion on this issue felt that it should be regulated in some manner. The RG Travel Companies stated that they favored either banning the practice or requiring disclosure. The NCAA urged affirmative, prominent disclosure, "if such tours are to be allowed at all." All others who commented on this point recommended prominent disclosure. The NHL and Pasadena Tournament of Roses submitted specific suggestions for minimum required typeface size for advertisements for such tours.

The ANPRM solicited comment on the economic burdens of such a rule,

and asked whether it would be impractical for events where the participants are known only a week in advance, e.g. the NCAA Final Four.

All of the parties that commented on this issue agreed that the rule can and should apply to events in which the participants are not known until shortly before the event. The RG Travel Companies commented that commitments centering around a particular team could be made contingent on that team qualifying for the event. The NHL stated that the rule may be burdensome for organizers of short-lead-time tours, but that this is justified by the benefit to consumers.

ASTA, like NACA, said that the degree of advance notice is not relevant, and that an operator who markets an event-oriented tour before the participants are known should simply disclose that event tickets are not included in the advertised price. FBA commented that participating teams in college bowl games are generally known at least a month in advance, and also that any experience the Department has had with Super Bowl tours would be instructive, as the competing teams in that game are sometimes determined only a week before the game.

Several commenters pointed out that even though the participating teams in the NCAA Final Four (the example given in the ANPRM) are determined only the weekend before, the tickets are sold out months beforehand. Thus, the fact that the participants are not known until the final week has minimal impact on the availability of tickets and the feasibility of tours. The Pasadena Tournament of Roses asserted that any economic burden resulting from this rule would fall on ticket brokers and tour operators who buy event tickets from individuals in order to resell them. The Wisconsin Attorney General stated that consumer protection may be even more important in cases where event participants are determined at the last minute, because consumers have less time to investigate their options.

The Air Transport Association (ATA, an association of large scheduled airlines) filed a comment stating that it expressed no opinion about whether, or to what extent, the current Super Bowl rules should be made applicable to tours to other special events. However, ATA said that DOT should not make air carriers responsible for assuring that tour operators comply with the new rule. NACA echoed this view, stating that carriers should not be made the guarantors of tour operators.

The NPRM

The Department issued a Notice of Proposed Rulemaking in this proceeding on October 6, 1994 (published October 13, 1994; 59 FR 51881). The proposed rule was very similar to that described in the ANPRM, which in turn closely tracks the existing rules for Super Bowl tours.

The rule proposed in the NPRM would apply to any tour that is organized for the purpose of attending a sporting, social, religious, educational, cultural, political or other event of a special nature and limited duration, which exists for reasons apart from the tour itself, and which is represented by the operator of the tour as including admission to that event. We stated that we did not wish to engage in line-drawing of the type that would be required were we to publish a list of specific events that would be covered by the rule. In addition, we said in the NPRM that we saw no justification for limiting the applicability of the rule to sporting events. Few commenters specifically suggested such a limitation, although a number of them offered sports contests as examples of the type of event that should be covered.

We stated that we agreed with the comments that suggested that the rule should apply to any event where a separate ticket is required for admission to the event or where there is limited admission. The proposed rule would apply to any tour to an event of the type described at the beginning of the previous paragraph in which the tour operator has represented that the tour includes admission to the event. If the event is free, or attendance is unlimited, the operator should have no trouble furnishing tickets and this rule will impose no burden. On the other hand, if tours are promoted to an unusually popular event of a non-sporting nature, those tour participants would be just as disappointed at not receiving the promised admission to the event that constituted the entire purpose of their trip as would a fan traveling to a bowl game.

We tentatively concluded in the NPRM that the rule should apply to both charter and scheduled air transportation, as well as to any other form of air service meeting the statutory definition of "air transportation" that may develop in the future. Thus, we proposed to apply it to "scheduled, charter, and other air transportation."

The proposed rule would apply to all interstate (i.e., domestic) [2] air transportation, and to foreign (i.e., international) air transportation originating at a point within the United States. Applying the rule only to outbound international flights is consistent with the approach taken in the existing Public Charter rule (see 14 CFR 380.23) and with the "country of origin" concept of regulation of international air transportation. As a policy matter, the Department has less of an interest in applying this rule to tours originating in foreign countries whose participants are largely or exclusively foreign citizens.

The rule that we proposed would apply to any operator of a tour that meets the rule's definition of a Special Event Tour, regardless of whether that operator is a direct air carrier (i.e., an airline), an indirect air carrier (e.g., a Public Charter operator), or a ticket agent (as defined in 49 U.S.C. § 40102, e.g., a scheduled-service tour operator, including a travel agent acting as a tour operator). The proposed rule would apply to both U.S. and foreign entities that act as operators of Special Event Tours, just as current § 399.87 does.

With regard to the comments of ATA and NACA, neither the ANPRM nor the NPRM proposed that this rule should include provisions that obligate direct air carriers to assure that tour operators comply with the rule. Except where an airline might choose to directly operate a Special Event Tour (i.e., to become the tour operator), a direct air carrier of a Special Event Tour would incur no greater or lesser obligations under this rule than it has in its capacity as a common carrier either certificated under 49 U.S.C. § 41101 or holding a foreign air carrier permit issued under 49 U.S.C. § 41301 (formerly sections 401 and 402 of the Federal Aviation Act).

As we had suggested in the ANPRM, the NPRM proposed to carry over the provisions from the existing Super Bowl rule that prohibit advertising or sale of such tours before game tickets are in hand or under contract. These provisions would be expanded to apply to all special events. This approach was supported by the comments on the ANPRM, and involves no novel processes since the existing procedures have been in place in the Super Bowl rule for 15 years.

In addition to the provision that prohibits advertising or sale of a Super Bowl tour until game tickets are in hand or under contract, the Super Bowl charter rule requires Super Bowl charter

[2] The statutory term "overseas air transportation," which referred to domestic transportation to or from U.S. territories or possessions, was abolished in a recent recodification of transportation laws. Such transportation is now included in the definition of "interstate air transportation," and consequently would be covered by this proposed rule.

operators to include in the prospectus that is required to be filed with the Department for all Public Charters a certification that they have the game tickets in hand or else a copy of the contract for the game tickets. We did not propose to carry over this additional filing requirement to the new rule. The underlying requirement to have the tickets or ticket contracts before advertising or sales commence would remain and would be enforceable without the filing provision. Moreover, in those instances deemed necessary, we have ample authority under 49 U.S.C. § 41708 (formerly section 407(a) of the Federal Aviation Act) to require such information to be provided. The Super Bowl rules that apply to scheduled-service tours have never required a filing of this type. Since the NPRM proposed consolidating regulation of this type of tour in a single rule, we stated that we saw no justification for having a filing requirement for charter tours but not scheduled-service tours, nor did we see a need to impose a new paperwork burden on scheduled-service tour operators. This tentative decision was consistent with the Paperwork Reduction Act and with the Department's proposal in Docket 48341 (57 FR 42864) to eliminate unnecessary paperwork burdens on charters.

Congressman Andrews expressed concern that any rule that would prohibit marketing of a tour until tickets are in hand would not be practical, since tickets for many events are not available until a couple of weeks in advance but other arrangements (e.g., air and hotel) must be made before that. However, neither the existing nor proposed rules requires that tickets be in hand before marketing is allowed; the operator can simply have a written contract for the tickets.

The proposed rule also incorporated the so-called "booking rejection" and "contingent booking" procedures currently found in section 380.31(c) of the Super Bowl charter rule, and expanded them to apply to all events and to all forms of air transportation. These provisions require operators to return unsolicited bookings for which they don't have event tickets unless a tour participant authorizes the operator in writing to retain the participant's payment while the operator attempts to obtain more event tickets. We are modifying this slightly to allow for situations in which participants agree to take the tour without an event ticket; the operator would be required to obtain the participant's written acknowledgment of this understanding

One of the key provisions of the Super Bowl charter rule is the requirement for the operator to refund the total tour price to any participant who does not receive a promised game ticket, even if the participant uses all of the other tour features. The ANPRM tentatively proposed to incorporate this provision in the new rule, but also asked for comment on whether the rule should contain only the "booking rejection" and "contingent booking" procedures without the "money back guarantee." However, the comments solidly supported the "money back guarantee," and we incorporated it in the proposed rule. We stated that we agreed with the Football Bowl Association that strong consumer remedies will also have the effect of deterring the promotion of non-legitimate tour packages.

In its comments on the ANPRM, NACA stated that there should be an exception to the "money back guarantee" for situations of force majeure and acts of God, such as the earthquake in San Francisco that caused postponement of the World Series several years ago. The NHL suggested that if the event is canceled or substantially altered, participants should be entitled only to a refund of the face value of the event, not the total tour price. We replied in the NPRM that it was never our intent to make the tour operator the guarantor of the event itself. The "money back guarantee" in the existing Super Bowl charter rule kicks in "if game tickets are not supplied." The rule we proposed in October would require refunds "* * * if promised admission to the [event] is not furnished by the tour operator * * *" These provisions are directed toward potential problems with ticket distribution, not with the event itself. If people who have tickets are able to attend the event and Special Event Tour participants are shut out because they don't have tickets, the "money back guarantee" would apply. On the other hand, if nobody with a ticket can use it during the period of the tour because the event itself was canceled or postponed, the "money back guarantee" would not apply.

We stated in the NPRM that we wished to make it clear that we are talking only about problems with the event itself, not about any or all problems that the tour operator might view as beyond its control. Failure of a ticket broker to deliver tickets to the tour operator, we said, would not invalidate the "money back guarantee."

In the NPRM we stated that we agreed with the NHL that if the event is canceled consumers should receive a refund for the portion of their tour price that applied to the event that they paid for but did not receive. However, we said, mandating such a partial refund in a situation where the event itself did not take place and where there were no problems with ticket distribution was beyond the scope of this proceeding, and would best be dealt with in the context of contract law or other applicable existing law.

The ANPRM solicited comment on whether the rule should include procedures to protect the tour operator from having to refund the total tour price to participants who don't receive promised admission to an "event" like a welcoming cocktail party. Most commenters who addressed this issue were opposed to requiring a refund of the entire tour price in these circumstances. Some suggested that participants so affected simply be entitled to a refund of the value of that ancillary event. Two commenters urged that a tour operator's failure to deliver admission to ancillary events that are integral to the experience for which the tour was organized (e.g., the Tournament of Roses parade on a Rose Bowl tour) should entitle the participant to a refund of the total tour price.

In raising this issue in the ANPRM, the Department had intended to focus on the situation of a tour that would not normally be thought of as a Special Event Tour but which held out admission to an "event" as one of its features, e.g., a welcoming cocktail party on a 5-day package to the Bahamas. If the definition of "special event" had been broad, we were concerned that the rule might have the effect of requiring refunds of the entire price on such tours after failure to deliver a relatively minor and low-value component. The comments on the ANPRM shed light on another issue: multiple "events" on a true Special Event Tour.

We stated in the NPRM that we agreed with the commenters that failure to deliver a relatively minor feature should not result in a refund of the total tour price. We also felt that this rule should be limited to tours that are organized around an event, not to events that occur in the normal course of the typical vacation tour. Accordingly, in the NPRM we limited the scope of the proposed rule in two ways. First, there was a definition of "Special Event Tour" in proposed § 381.5 which was broad yet specific; it limited the applicability of the rule to tours to sporting, social, religious, educational, cultural, political or other event of a special nature and limited duration, which exist for reasons apart from the tour itself. Second, the "money back guarantee" in proposed § 381.11 would

apply only to the primary event for which a Special Event Tour is organized.

In the ANPRM, the Department solicited comment on whether the rule should ban last-minute or post-departure price increases, something which occurred on certain tours to the 1994 Rose Bowl. The great majority of the comments on this subject favored banning such increases. Some commenters said no price increase should be permitted unless the tour operator has reserved this right in writing and allows participants to cancel and receive a full refund in the event of a price increase.

We stated in the NPRM that we had decided to incorporate into the proposed rule the price increase provisions of the Department's Public Charter rule (14 CFR 380.33). While it is not our intent in this proceeding to address all potential sources of consumer harm on Special Event Tours, the issue of price increases is directly related to the issue of ticket availability. Almost any event ticket is procurable if the price is right; if we do not regulate price increases in the Special Event Tour rule, tour operators would always be able to acquire event tickets at greatly inflated prices and then simply increase the price to the participant to cover it. Since a ticket has been offered in this situation, the "money back guarantee" would not come into play.

The proposed provisions on price increases, modeled on similar provisions in the charter rule, state that if a given participant is assessed price increases for the tour that in the aggregate are more than 10 percent above his or her original tour price, the participant shall have the right to cancel and receive a full refund (i.e., no cancellation penalties would apply). No price increases in any amount would be permitted less than 5 days before departure (as opposed to 10 days in the charter rule, recognizing the fact that Special Event Tours often have shorter lead times than the typical charter). This would eliminate both last-minute and post-departure price hikes. Finally, proposed § 381.11 specifies that the promised event ticket must be furnished at the price that was agreed to before departure or else the operator is subject to the "money back guarantee" just as if he had not provided the ticket at all.

In its comments on the ANPRM the NHL stated that for events with short lead times such as the Stanley Cup playoffs, the rule should permit tours on which participants are required to agree to purchase event tickets at the yet-unknown face price plus a service fee, as long as the consumer is given prominent notice of this fact. We replied in the NPRM that as an initial matter, a tour would not be covered under this rule at all if the event ticket were simply held out as an option rather than as a mandatory feature. However, where the participant must agree to buy the event ticket, such tours are clearly Special Event Tours since the tour operator is representing that admission to the event is included in the tour (even if the price of that admission is not yet known and consequently any price that is advertised for that tour is not the full tour price).

However, nothing in the proposed rule would explicitly prohibit a transaction of this type. The operator would still have to have the requisite number of event tickets under contract before advertising or sales could begin; in other words, the variable must be price, not availability. Beyond that, the proposed rule requires that tour participants must receive promised event tickets "at the tour price agreed to before departure" or else the participant is entitled to a refund of the total tour price. If a participant agrees to a price consisting of a known value p plus an unknown value x, and the operator delivers the tour (including the event ticket) at that price, the operator has satisfied the requirements of the rule.

The ANPRM sought comment on whether the rule would be impractical for events where the participants are known only a week in advance, such as the NCAA Final Four. All of the parties that commented on this issue thought that this should not be a problem, and that the rule should apply. As noted above, several commenters pointed out that the Final Four sells out months in advance even though the participating teams are not determined until the week before. Also, as FBA noted, the contestants in the Super Bowl have been determined only the week before on several occasions, and that does not appear to have either harmed the marketability of Super Bowl tours or resulted in additional consumer problems.

Comments on NPRM; Final Rule

In response to the NPRM we received individual comments from six organizations, plus identical letters from the National Association of Ticket Brokers and 38 of its members.

The Football Bowl Association (representing all 19 post-season college football bowl games) and the National Collegiate Athletic Association filed comments repeating the support that these organizations had expressed for the rule in their comments on the ANPRM. However, both organizations also expressed disagreement with the Department's tentative decision not to apply the "money back guarantee" to secondary events on a Special Event Tour, such as a ticket to the Tournament of Roses Parade on a Rose Bowl tour. The FBA stated that such events are part of the Bowl Game ambience and might be just as important to some as tickets to the game itself. The NCAA said that in the case of multi-game tournaments, questions may arise concerning whether the primary event is the entire tournament or only the final championship game. The NCAA suggested that the words "and tournaments" be added to the list of examples of events contained in § 381.5.

We will not adopt these suggestions. As we said in the NPRM, identifying the primary event on a Special Event Tour will seldom be a matter of debate, but identifying secondary events that are "integral to the experience" of the tour would be a far more subjective exercise. Tour participants who do not receive promised admission to a secondary event may have a contractual right to a refund of the value of that event, and they can pursue that claim with the tour operator. By declining to incorporate the commenters' suggestion in the rule we are not suggesting that a consumer would not as a matter of contract law in certain circumstances be entitled to a full refund in situations other than failure to receive a promised ticket to the primary event. We are merely not establishing as a matter of regulation a guarantee of a full refund beyond those instances in which a ticket to the primary event is not provided.

As for multi-game tournaments, the rule as proposed should be able to deal with this situation. If the tour operator held out admission to "the NCAA Final Four," the operator would be obligated to provide tickets to all three Final Four games (the two semi-final games plus the final). On the other hand, if what was held out was admission to the championship game on Monday night, there would be no reason for tour participants to assume that they were also going to receive tickets to the semi-final games on the previous Saturday.

In the NPRM we proposed to incorporate in the new rule the provisions in the existing Public Charter rule on price increases (14 CFR 380.33). These provisions allow participants to cancel and receive a full refund if the tour price is increased more than 10 percent, and prohibit price increases in any amount during the last ten days before departure. We proposed to apply the ban on price increases to the last five days before departure in the Special Event Tours rule, recognizing that these

tours often have shorter lead times than the typical charter. In comments on the NPRM the price increase provisions were supported by the Football Bowl Association and the NCAA; there were no other comments on this point. We are finalizing this provision as proposed except that for the ban on price increases we have decided to remain with the ten-day period specified in the provision on which this requirement is modeled (§ 380.33 of the charter rule) rather than reducing it to five days in the Special Event Tours rule as proposed in the NPRM. Although Special Event Tours may be organized on shorter notice than the typical charter, most Special Event Tours are marketed significantly more than ten days before departure. Being presented with a price increase only five days before departure is unjustifiably disruptive, and this is just as true of Special Event Tours as other tours. Operators of Public Charters to special events have been subject to the ten-day requirement for years, and incorporating this provision in the Special Event Tours rule should not constitute an unreasonable burden. In addition, the requirement to have tickets in hand or under contract may result in fewer unanticipated cost increases for tour operators for this component of the tour.

The ANPRM noted that some tours are promoted in conjunction with a special event, but do not include, and do not represent that they include, admission to the event. The ANPRM solicited comment on whether the new rule should ban this practice, or whether it should specify a form of required disclosure. Most of the comments on the ANPRM favored requiring disclosure of the fact that an event ticket is not included. In the NPRM, however, we proposed not to regulate these tours. The FBA and the NCAA have objected to this tentative decision; both organizations urge a disclosure requirement. We have decided not to include a provision of this type. Consumers solicited for such tours are able to determine from the advertising material that an event ticket is not held out as included; this is distinguishable from the situation of a tour participant who paid for an event ticket and then didn't receive it. Should any particular tour deceptively imply that event tickets are included when in reality they are not, the Department has authority to take enforcement action and will not hesitate to do so. For example, 49 U.S.C. § 41712 (formerly section 411 of the Federal Aviation Act) prohibits unfair and deceptive practices or unfair methods of competition, and 14 CFR 399.80(f) declares that it is unfair or deceptive for a ticket agent to misrepresent fares, charges or services in connection with air transportation.

The Attorney General of the Commonwealth of Pennsylvania filed comments in support of the proposed rule. However, he said that tour operators should be required to disclose the protections available under this rule to all tour participants, in writing. He noted that such disclosure is currently required in section 380.32(s) of the Department's regulations, but that the NPRM proposed to eliminate this provision.

Section 380.32(s) is one of the provisions of the Public Charter portion of the Super Bowl rule. The NPRM proposed to rescind the Super Bowl rule, since it would be replaced by the new Part 381. A disclosure requirement for Part 381 of the type suggested by the Pennsylvania Attorney General was not proposed in the ANPRM or the NPRM, or in any previous comments in this proceeding. While section 380.32(s) has required specific disclosure of the protections of the Super Bowl rule on charter flights, there has never been a corresponding requirement for tours on scheduled service, and we see no reason to impose one now. The past notice for Super Bowl tours using charter air transportation had been incorporated in the operator-participant contract, an extensive document that was already required on all publicly-sold charters. There has been no required contract for Super Bowl tours (or other tours) on scheduled service, and we are not aware of any problems related to lack of notice on past tours of this type. With our action here, which will apply the protections of the new Part 381 broadly to all types of Special Event Tours on both scheduled and charter service, we see no need for a requirement that specific notice be given consumers of the rule's protections.

The American Society of Travel Agents filed a comment urging the Department to adopt the rule as proposed. The Air Transport Association reiterated the comment that it made in response to the ANPRM that it expressed no opinion about whether, or to what extent, the current Super Bowl rules should be made applicable to tours to other special events. However, ATA said that DOT should not make air carriers responsible for assuring that tour operators comply with the new rule.

Concerning ATA's comment, the ANPRM and the NPRM did not propose, and the final rule does not include, any provisions that obligate direct air carriers to assure that tour operators comply with the rule. Except where an airline might choose to directly operate a Special Event Tour (i.e., to become the tour operator), a direct air carrier of a Special Event Tour will incur no greater or lesser obligations under this rule than it has in its capacity as a common carrier either certificated under 49 U.S.C. 41101 or holding a foreign air carrier permit issued under 49 U.S.C. 41301 (formerly sections 401 and 402 of the Federal Aviation Act). Of course, all direct air carriers will remain subject to 14 CFR 380.40 where charter air transportation is used, including charters that constitute Special Event Tours. Section 380.40 provides that a direct air carrier shall not perform a Public Charter unless it has made a reasonable effort to verify that all provisions of the Public Charter rule (14 CFR Part 380) have been complied with and that the charter operator's authority has not been suspended by the Department.

We received identical letters from the National Association of Ticket Brokers and 38 individual ticket brokers. These commenters stated that the conditions of the proposed rule could not be met by either tour operators or ticket brokers. They said that in most cases the venue would not have the event tickets in hand sufficiently in advance of the event to make the proper distribution. They also commented that many venues will not deal with the ticket broker or tour operator directly, thus requiring the latter entities to procure tickets on the secondary market. They indicated that the proposed rule would have a chilling effect on the brokerage industry.

Event USA, a ticket agency and tour provider, commented that the proposed rule is broad and over-reaching. The January 1994 Rose Bowl problem was an isolated instance and did not represent a trend, this commenter claimed. According to Event USA, for many events the tickets are not distributed until shortly before the event and there is no meaningful prospect for contracts. "[K]nowing what orders the operator has, he can then determine what to buy as they are physically available, rather than buying those on a speculation basis." The commenter suggested that the rule be limited to the "money back guarantee" and a requirement for tour operators to have a contract for event tickets with "established and reliable sources of tickets."

The comments of the ticket brokers have not persuaded us to decrease the level of protection proposed in the NPRM. The rule does not require tour operators to have tickets in hand, as long as they have contracts (in the manner described in the rule) for

tickets. In addition, the rule does not require a tour operator to have a contract for all the tickets it will ever need before it can begin advertising; advertising can commence as soon as the operator has contracts for tickets for "a substantial number of seats on the tour."

However, before a tour operator sells someone a tour that includes a ticket to the event, the operator must have a contract for the event ticket (or the ticket itself) for that individual. That is the entire point of the rule. It is designed to make clear that tour operators must end the practice of selling something that they do not have rights to at the time they sell it. This is consistent with Department deceptive practice rules (see 14 CFR 399.80 (c), (f) and (j)), as well as rules that prohibit the sale of air transportation until the provider has the required authority (see 14 CFR 201.5 and 14 CFR 380.25(a)). To that extent, the process described by Event USA is backwards; we wish to make clear the fact that we will not accept a situation where, on air tours that are promoted as including a ticket to a special event, the tour operator sells seats on the tour first and then attempts to find enough event tickets for those customers. Indeed, while the prohibition here is made specific to special events, such a deceptive practice has long been prohibited in a broad sense under current regulations (see 14 CFR 399.80 (c), (f) and (j)).

We note that the proposed requirement for tour operators to have event tickets in hand or under contract was supported by the NCAA in its comments on the ANPRM. The Football Bowl Association (representing all 19 post-season college bowl games) and the Pasadena Tournament of Roses, while not commenting specifically on the proposed requirement for firm contracts or tickets in hand, did not take exception to this provision and urged adoption of the rule.

We can appreciate the concerns of many ticket brokers that they may not be able to conduct business with tour operators in the same manner as they have in the past. However, it is also possible that the new Part 381 may influence a realignment of the distribution channels traditionally tapped by tour operators, for example by creating a motivation for event organizers to deal directly with ticket brokers or tour operators in order to facilitate the availability of tickets for event participants who use air tours. Nevertheless, experience has shown that the existing system is fraught with risk for consumers and that, when problems occur, significant inconvenience if not substantial financial harm is likely. The rights of consumers to be adequately informed about an offer and to receive what they are promised outweighs the concerns expressed by those who feel the new rule may alter the way they must do business.

We note that there is nothing in the new rule that would prevent a tour operator from obtaining a contract for event tickets from a ticket broker who has obtained a written commitment from a series of individuals (e.g., alumni who are entitled to tickets but who aren't going to the game) who in turn each have a written commitment for game tickets from the ultimate distributor of the game tickets or an organization that receives such tickets directly from the distributor (e.g., a bowl committee, conference, or university). We would also like to emphasize that the rule applies only where a ticket to the event has been held out as a component of the tour that is being purchased. Tour operators remain free to use the same methods to obtain event tickets that they have in the past as long as they disclose that an event ticket is not a component of the tour, and that the operator will attempt to obtain the event ticket for the participant on an "as available" basis. (Once the operator represents to a participant that he has found the participant an event ticket, however, the operator must either have the ticket in hand or have a contract for it in the manner required by Part 381. In addition, the "money back guarantee" in Part 381 will apply from the point that the operator has represented that he has located and reserved a ticket for that individual.)

In summary, we are issuing the rule as proposed in the NPRM, except for a minor change in the language in § 381.7(c) made for purposes of clarity and changing the ban on price increases in § 381.13 to apply to the last ten days before departure instead of the last five days, consistent with the same provision in the Public Charter rule (14 CFR Part 380).

Regulatory Analyses and Notices

This rule will be effective seven days after being published in the **Federal Register**. The seven day period will allow tour operators time to obtain ticket contracts that comply with the rule. A lengthier period between the publication and effective dates is not called for. The final rule is virtually unchanged from the proposed rule described in the NPRM; between the NPRM published in October and the ANPRM published last January, there has been ample notice of the Department's intentions in this proceeding. Air tours to college football bowl games have been popular in the past, and one such bowl was the reason that this rulemaking was initiated. The bowl season is only weeks away, and it is important for the consumer protections of this rule to be put in place as soon as possible lest consumers be financially harmed. The Department is already investigating several current special-event air tour promotions and is concerned that the risk of harm is real and significant.

This rule is considered to be non-significant under DOT regulatory policies and procedures, 44 FR 11034. The proposal would have minimal economic impact, and accordingly no regulatory evaluation has been prepared. It is not subject to review by the Office of Information and Regulatory Affairs pursuant to Executive Order 12866.

The NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

I certify that the rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects

14 CFR Part 380

Charter flights, Reporting and recordkeeping requirements, Surety bonds.

14 CFR Part 381

Charter flights, Consumer protection

14 CFR Part 399

Administrative practice and procedure, Air carriers, Air rates and fares, Air taxis, Consumer protection, Small businesses.

Accordingly, the Department is amending 14 CFR Chapter II as follows:

1. Part 381 is added to read as follows:

PART 381—SPECIAL EVENT TOURS

Sec.

381.1 Purpose.
381.3 Applicability.
381.5 Definition.
381.7 Advertising.
381.9 Sales.
381.11 Refunds.
381.13 Price increases.

Authority: 49 U.S.C. 40113(a) and 41712.

§ 381.1 Purpose.

The purpose of this part is ensure that air travelers who have purchased tours to special events will receive the promised admission to the event. This

part expands the "Super Bowl rule" to other events.

§ 381.3 Applicability.

This part applies to Special Event Tours that are in interstate air transportation, or in foreign air transportation originating at a point in the United States. This part applies to U.S. and foreign operators of Special Event Tours, whether they be air carriers or ticket agents. This part applies to scheduled, charter, and other air transportation.

§ 381.5 Definition.

Special Event Tour means a tour that is organized for the purpose of attending a sporting, social, religious, educational, cultural, political or other event of a special nature and limited duration, which exists for reasons apart from the tour itself, and which is represented by the operator of the tour as including admission to that event. Examples of such events include, but are not limited to, college and professional sporting events, the Olympics, concerts, the Passion Play in Oberammergau, etc.

§ 381.7 Advertising.

No operator of a Special Event Tour or agent of such an operator shall conduct, or cause or allow to be conducted, any advertising, solicitation or other promotion for a Special Event Tour unless:

(a) The operator is in physical possession of enough tickets for admission to the event to provide such tickets for a substantial number of seats on the tour; or

(b) The operator has entered into a written contract with an organization that is the distributor of such tickets or an organization that receives such tickets directly from the distributor (e.g., a bowl committee; football conference, league or team; concert promoter or arena; etc.), the terms of which provide for that organization to furnish the operator enough admission tickets to provide such tickets for a substantial number of seats on the tour; or

(c) The operator has entered into a written contract with another person or organization that has a written contract or series of written contracts with the distributor of such tickets or with an organization that receives such tickets directly from the distributor, the terms of which provide for that organization (the organization with which the operator has contracted) to furnish the operator enough admission tickets to provide such tickets for a substantial number of seats on the tour.

§ 381.9 Sales.

(a) Except as provided in paragraph (b) of this section:

(1) No operator of a Special Event Tour shall accept money for a seat on a Special Event Tour, or authorize an agent to accept such money, unless the operator has physical possession of, or written contracts (in the manner described in § 381.7) for, a ticket for admission to the event for that individual. To the extent that the operator receives an unsolicited booking for which the operator does not have physical possession of or written contracts for a ticket for admission to the event, any payment accompanying that booking must be returned within 3 business days.

(2) Upon acceptance of the money for a sale, the operator must reserve one event ticket for that individual. An operator may not sell more seats on the tour than it has event tickets in hand or under contract. (An operator need not continue to reserve an event ticket for an individual who withdraws from the tour by providing notice to the operator or by being notified by the operator that the individual's participation has been canceled due to failure to remit a required installment payment.)

(b) An operator of a Special Event Tour may accept a booking and payment from an individual for whom the operator does not have an event ticket in hand or under contract if that individual agrees in writing that he or she understands that no event ticket has been reserved for him or her. This agreement shall specify whether the person has agreed to participate in the tour without an event ticket and/or the operator has agreed to attempt to acquire an event ticket for this person. If the two parties agree that the operator will attempt to acquire an event ticket, the agreement shall specify any penalties that will apply if the individual later cancels because an event ticket did not become available. If the operator notifies this person that an event ticket has become available, that person shall enjoy all the other protections of this part from that time.

§ 381.11 Refunds.

If promised admission to the primary event for which a Special Event Tour was organized is not furnished by the tour operator, at the tour price agreed to before departure (including any increases that the participant has accepted pursuant to § 381.13(a)), the operator must provide each tour participant affected in this way a refund of the total tour price. This refund is to be provided within 14 calendar days after the scheduled return date of the tour.

§ 381.13 Price increases.

(a) Should the tour operator increase a participant's tour price by more than 10 percent (aggregate of all increases to that participant), that participant shall have the option of canceling his or her participation in the tour and receiving a full refund within 14 days after the cancellation.

(b) The tour operator shall not increase the tour price to any participant less than ten days before departure.

PART 380—PUBLIC CHARTERS

2. The authority citation for part 380 continues to read as follows:

Authority: Secs. 101(3), 204, 401, 402, 407, 416 and 1102, Pub. L. 85–726, as amended, 72 Stat. 737, 743, 754, 757, 766, 771, 797 (49 U.S.C. 1301, 1324, 1371, 1372, 1377, 1386, 1502).

§ 380.2 [Amended]

3. Remove the definition for *Super Bowl charter* in § 380.2.

4. Amend § 380.18 by adding a new paragraph (f) to read as follows:

§ 380.18 Charters for special events.

* * * * *

(f) Where the charter operator represents that the charter includes admission to the special event, the charter shall comply with part 381 of this subchapter.

§ 380.18a [Removed]

5. Remove § 380.18a.

§ 380.28 [Amended]

6. Amend § 380.28 by removing paragraph (a)(4).

7. Amend § 380.31 by revising paragraphs (b) and (c) to read as follows:

§ 380.31 General requirements for operator-participant contracts.

* * * * *

(b) The contract form may include a space that participants may check to authorize the charter operator to retain their money while attempting to make other arrangements for them if there is no space available on the flight or on specific alternative flights they have requested.

(c) If there is no space available on the flight or specific alternative flights requested by the participant, the operator shall return all the participant's money within 7 days after receiving it unless the participant, in accordance with paragraph (b) of this section, has authorized the operator to retain the payments while the operator attempts to make other arrangements for the

participant. If the operator retains the payments while attempting to make other arrangements for the participant, it shall notify the participant of the fact within 7 days after receiving the payments, but in no event later than the departure. For the purpose of the time periods in this paragraph, receipt of money by a travel agent on behalf of a charter operator will not be considered as receipt by the operator.

* * * * *

§ 380.32 [Amended]

8. In § 380.32(s), remove the second sentence and remove the period at the end of the first sentence and add a semicolon in its place.

§ 380.33 [Amended]

9. In § 380.33, remove paragraph (a)(5).

PART 399—STATEMENTS OF GENERAL POLICY

10. The authority citation for Part 399 continues to read as follows:

Authority: 49 U.S.C. 1301, 1302, 1305, 1324, 1371, 1372, 1373, 1374, 1375, 1376, 1377, 1378, 1379, 1381, 1382, 1384, 1386, 1461, 1481, 1482, 1502 and 1504, unless otherwise noted.

§ 399.87 [Removed and reserved]

11. Remove and reserve § 399.87.

Issued this 23rd day of November, 1994 at Washington, DC.

Patrick V. Murphy,

Acting Assistant Secretary for Policy and International Affairs.

[FR Doc. 94–29590 Filed 11–29–94; 8:45 am]

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federal register

Wednesday
November 30, 1994

Part IX

The President

Executive Order 12940—Amendment to Civil Service Rule VI

Federal Register
Vol. 59, No. 229
Wednesday, November 30, 1994

Presidential Documents

Title 3—

The President

Executive Order 12940 of November 28, 1994

Amendment to Civil Service Rule VI

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 3301 and 3302 of title 5, United States Code, and having determined that it is necessary and warranted by conditions of good administration that certain positions in the Department of Agriculture continue to be excluded from the coverage of section 2302 of title 5, United States Code, and excepted from the competitive service because of their confidential, policy-determining, policy-making, or policy-advocating character, in order to ensure their deep involvement in the development and advocacy of Administration proposals and policies and to ensure their effective and vigorous implementation, and as a result of a reorganization of the Department of Agriculture carried out pursuant to Public Law 103–354, it is hereby ordered that subsection (c) of section 6.8 of Civil Service Rule VI (5 C.F.R. 6.8) is revised to read as follows:

> "(c) Within the Department of Agriculture, positions the incumbents of which serve as State Executive Directors of the Consolidated Farm Service Agency and positions the incumbents of which serve as State Directors or State Directors-at-Large for Rural Economic and Community Development shall be listed in Schedule C for all grades of the General Schedule."

This order supersedes Executive Order No. 12300.

William J. Clinton

THE WHITE HOUSE,
November 28, 1994.

[FR Doc. 94–29663
Filed 11–29–94; 11:09 am]
Billing code 3195–01–P

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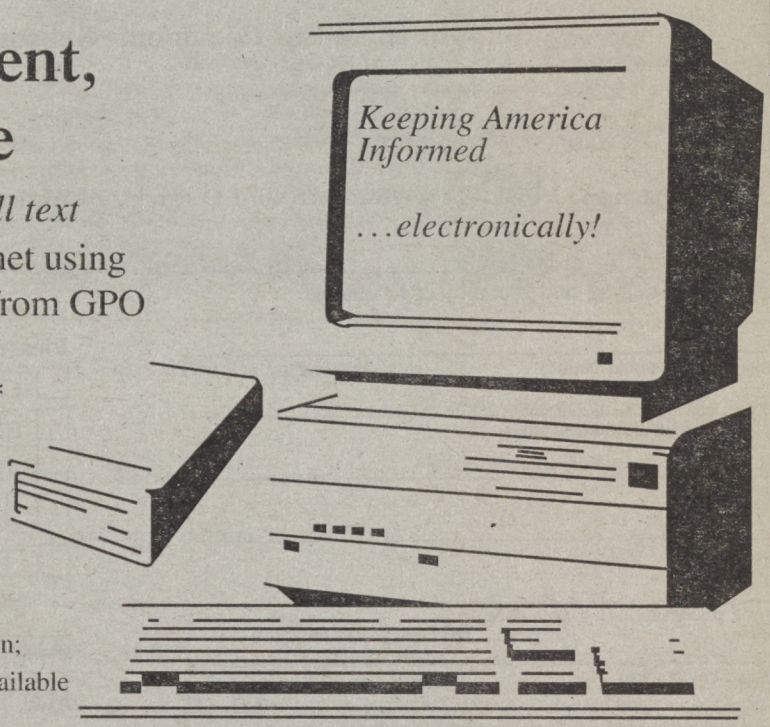
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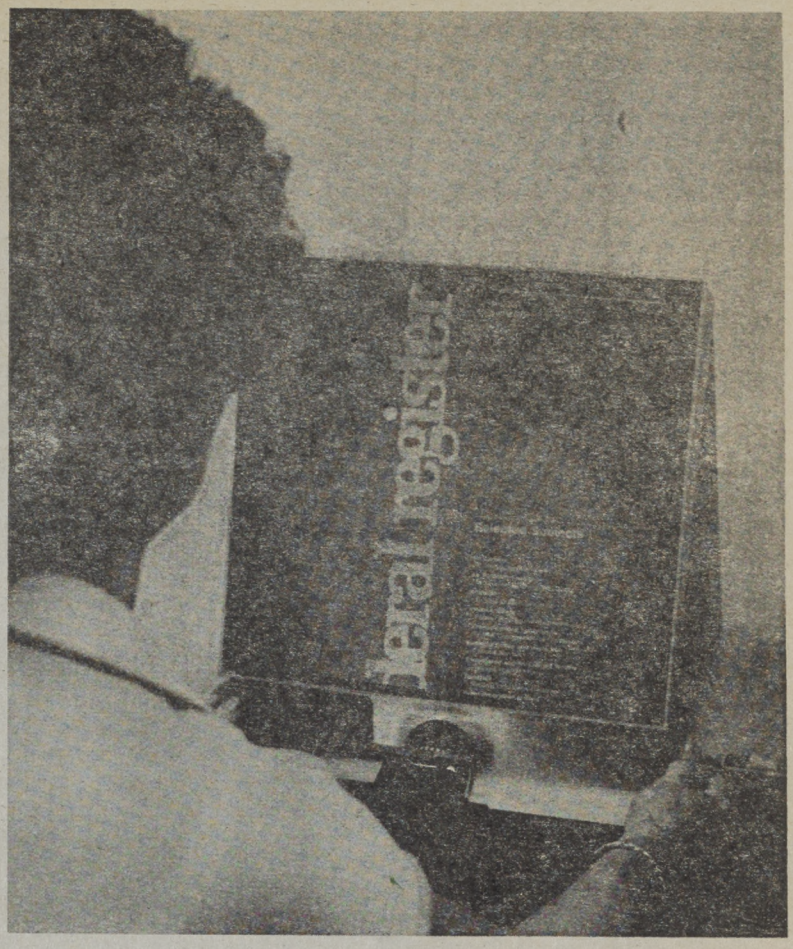
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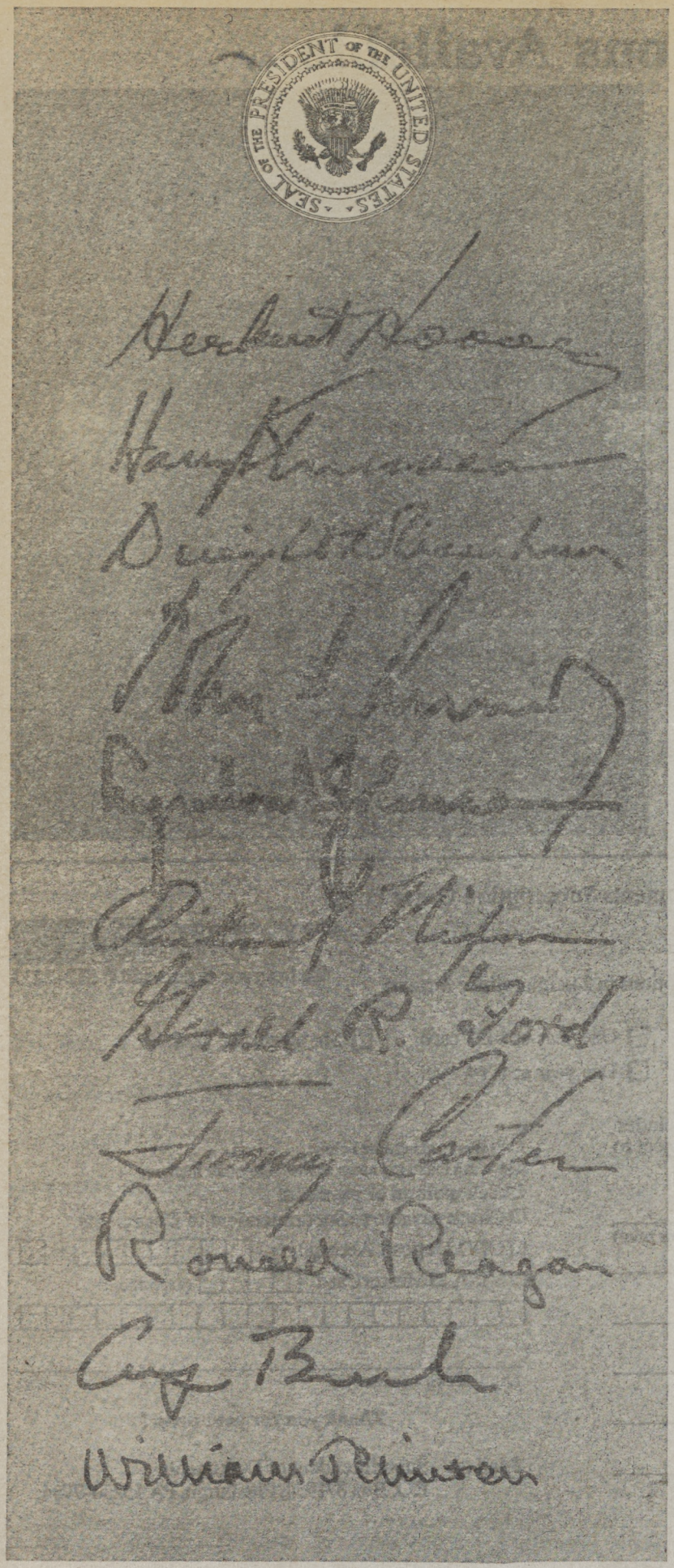
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