AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

5-5-86
Vol. 51 No. 86
Pages 16485-16654

federal register

Monday
May 5, 1986

Briefings on How To Use the Federal Register—
For information on briefings in Washington, DC, see announcement on the inside cover of this issue.

Selected Subjects

Administrative Practice and Procedure
Postal Service

Aviation Safety
Federal Aviation Administration

Biologics
Food and Drug Administration

Bridges
Coast Guard

Endangered and Threatened Species
Fish and Wildlife Service

Environmental Protection
Interior Department

Exports
Commodity Credit Corporation

Federal Home Loan Banks
Federal Home Loan Bank Board

Fisheries
National Oceanic and Atmospheric Administration

Household Appliances
Federal Trade Commission

Imports
Animal and Plant Health Inspection Service

Medical Devices
Food and Drug Administration

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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

How To Cite This Publication: Use the volume number and the page number. Example: 51 FR 12345.

Selected Subjects

Motor Vehicle Safety
National Highway Traffic Safety Administration

Reporting and Recordkeeping Requirements
Federal Deposit Insurance Corporation

Savings and Loan Associations
Federal Home Loan Bank Board

Trade Practices
Federal Trade Commission

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

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

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

WASHINGTON, DC

WHEN: May 15; at 9 am.

WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.

RESERVATIONS: Laurence Davey, 202-523-3517

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Rules and Regulations

Federal Register
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Monday, May 5, 1986

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 86-045]

Limited Ports of Entry; Atlanta, GA

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: This document affirms the interim rule which amended the regulations in 9 CFR Part 92 by adding Atlanta, Georgia, to the list of limited ports of entry for animals and animal products (such as animal semen, animal test specimens, hatching eggs, and day old chicks) which do not appear to require restraint and holding inspection facilities. It was necessary to add Atlanta, Georgia, to this list to reflect the availability of the Veterinary Services inspection facilities and personnel so that importers can make arrangements for the importation of such animals and animal products.

EFFECTIVE DATE: May 5, 1986.

FOR FURTHER INFORMATION CONTACT: Dr. S.S. Richeson, Import-Export Animals and Products Staff, VS, APHIS, USDA, Room 843, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8172.

SUPPLEMENTARY INFORMATION:

Background

The regulations in § 92.3 of 9 CFR Part 92 list a large number of ports with inspection stations or quarantine stations maintained by Veterinary Services for the importation of animals and animal products. In addition to air and ocean ports and several other types of ports, § 92.3 lists certain limited ports for the importation of animals and animal products (such as animal semen, animal test specimens, hatching eggs, and day old chicks) which do not appear to require restraint and holding inspection facilities.

An interim rule published in the **Federal Register** on February 5, 1986 (51 FR 4480-4481), amended § 92.3(e) of the regulations by adding Atlanta, Georgia, to the list of such limited ports for entry. The interim rule was made effective upon publication. Comments were solicited for 60 days following publication. No comments were received. The factual situation which was set forth in the interim rule still provides a basis for the amendment.

Executive Order 12291 and Regulatory Flexibility Act

This action has been reviewed in accordance with Executive Order 12291 and has been classified as not a major rule. The Department has determined that this action will not have a significant effect on the economy; will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this rulemaking action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

It is anticipated that the addition of Atlanta, Georgia, to the list of limited ports for the importation of animals and animal products which do not appear to require restraint and holding inspection facilities will not cause a substantial change in the number of such animals and animal products entering the United States or in the number of persons importing such animals and animal products.

Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR 3015, Subpart V).

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, the interim rule amending 9 CFR Part 92 which was published at 51 FR 4479-4480 on February 5, 1986, is adopted as a final rule.

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102-105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 7 CFR 2.17, 2.51, and 371.2(d).

Done at Washington, D.C., this 29th day of April 1986.

Gerald J. Fichtner,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 86-9995 Filed 5-2-86; 8:45 am]
BILLING CODE 3410-34-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 353

Reports of Apparent Crimes Affecting Insured Nonmember Banks

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC has adopted a regulation to require insured nonmember banks to report, on a prescribed form, criminal violations of the United states Code that involve or affect such banks to the appropriate investigatory and prosecuting authorities, as well as to the FDIC. Robberies, burglaries and nonemployee larcenies, which are subject to the requirements of 12 CFR 326.5(c), are exempt from the requirements of the rule. The central purpose of the report form requirement is to assure that the information needed by investigators and

prosecutors for effective law enforcement is provided in an orderly and timely fashion. Also, the FDIC, by receiving a copy of the reports, will be better able to monitor, and to act to reduce, losses to insured nonmember banks as a result of criminal activity.

EFFECTIVE DATE: June 4, 1986.

FOR FURTHER INFORMATION CONTACT: James R. Dudine, Chief, Special Activities Section, Division of Bank Supervision, FDIC, 550 17th Street, N.W., Washington, D.C. 20429; (202) 898–6750.

SUPPLEMENTARY INFORMATION: The directors of an insured nonmember bank are obligated, by virtue of their fiduciary duties, to cause reports of crimes against the bank to be made to the cognizant investigatory and prosecuting authorities. The FDIC, in the course of exercising its supervisory responsibilities and in the interest of safety and soundness, presently monitors the fulfillment of this obligation through the bank examination process. In view of the threat of increasing bank losses through criminal activity, particularly through crimes involving "insiders", the new rule formalizes the crime reporting requirement, improves the quality and usefulness of crime reports by specifying the information needed for effective law enforcement, and enhances the ability of the FDIC to monitor, and to act to reduce, losses to banks through criminal activity. The rule, including the report form, results from the work and recommendations of an interagency group comprised of representatives of the Federal financial institutions regulatory agencies, the U.S. Department of Justice, Criminal Division, and the Federal Bureau of Investigation.

This rule is adopted following publication by the FDIC of a similar proposed rule on October 24, 1985 on which comments were solicited. 50 FR 43209 (1985). The comments were carefully considered in the course of framing the rule.

Four of the twenty-one comments received addressed the proposed requirement (§ 353.2) that each nonmember insured bank notify the FDIC if its fidelity bond coverage were cancelled or the coverage changed significantly, with one in favor and two opposed. The fourth favored notification but thought it should be given by the bonding company. This requirement has been deleted from the rule in the belief that there are more effective and efficient ways to gather the information and to achieve the objective sought.

Seven commenters opposed the proposed rule in its entirety as unnecessary and unwarranted. Other commenters, while expressing general agreement with the objectives of the proposed rule, raised concern about the lack of a minimum dollar amount for triggering the filing of a report, the shortness of the fourteen-day period for the filing of a required report, and bank customer privacy rights, and suggested that because of the vagueness of criminal law, it would be difficult for banks to determine when the filing of a report was appropriate.

Instructions have been added to the report form that incorporate a $2500 potential loss threshold for the required filing of a report, if the bank is unable to identify a possible perpetrator. The time for the filing of a report after the discovery of an apparent crime that is subject to this part has been changed from fourteen days to thirty days. Of course, the fact that a report is required should not deter a bank from first informing the cognizant authorities by telephone, or by other expeditious means, of an apparent violation, when such action is appropriate.

A notice has been added to the report form stating that the information contained therein is subject to the Privacy Act of 1974, 5 U.S.C. 552a, and to 12 CFR Part 310. The Right to Financial Privacy Act of 1978 specifically authorizes financial institutions voluntarily to report "possible" criminal violations to "any agency or department of the United States, or any officer, employee, or agent thereof." See 12 U.S.C. 3401(3); 3403(c).

The sentence in the proposed rule (§ 353.1) stating that "Doubts as to whether a report should be filed in any particular case should be resolved in favor of doing so" has been deleted, and the following sentence has been added: "For purposes of this part, the phrase 'apparent violation' implies that there is a reasonable basis for believing that a crime has occurred, is occurring, or may occur." An addition to the report form similarly amplifies the phrase "suspected criminal activity."

The requirement in the proposed rule (§ 353.1) that a report of an apparent criminal violation of the United States Code be transmitted also to the state prosecuting attorney if a state law violation may be involved has been deleted. The instructions in the report form have been amended to indicate that the use of the form for this purpose is optional.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601–12), the Board of Directors certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

Inasmuch as the rule formalizes the existing obligation of insured nonmember banks to report criminal violations, the additional burden placed upon most such institutions by this requirement will not be significant. The reporting and notification requirements in the rule were approved by the Office of Management and Budget under control number 3064–0077 pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3504(h)).

List of Subjects in 12 CFR Part 353

Banks, banking, State nonmember banks, Reporting and recordkeeping requirements.

Accordingly, the FDIC hereby adds Part 353 to Title 12, CFR, as follows:

PART 353—REPORTS OF APPARENT CRIMES AFFECTING INSURED NONMEMBER BANKS

Sec.

353.0 Purpose and scope.
353.1 Reports and records.

Appendix A—Form 6710/06 and 6710/06A, Report of Apparent Crime (Short Form and Long Form), and Instructions for Its Preparation and Filing

Authority: 12 U.S.C. 1818, 1819.

§ 353.0 Purpose and scope.

The purpose of this part is to reduce losses to insured nonmember banks resulting from criminal violations of the United States Code involving or affecting the assets or affairs of such banks through the requirement of prompt and systematic reports by such banks of such crimes or attempted crimes. This part complements, and does not supplant any of the requirements of, Part 326. Neither the particular requirements of this part nor of Part 326 shall be construed as reducing in any way the general responsibility of insured nonmember banks to report apparent criminal violations to the appropriate investigatory and prosecuting authorities.

§ 353.1 Reports and records.

(a) Whenever it appears that a criminal violation of the United States Code involving or affecting the assets or affairs of an insured nonmember bank (excluding a federal savings bank) has been committed or attempted, then the bank (using Form 6710/06 or 6710/06A and the instructions therefor, appearing in Appendix A) shall promptly report the apparent violation to the appropriate field office of the Federal Bureau of

Investigation, to the appropriate office of the United States Attorney, and to the regional director (Division of Bank Supervision (DBS)) of the FDIC region in which the bank is located. The bank shall maintain a copy of each such report in its records. For purposes of this part, the phrase "apparent violation" implies that there is a reasonable basis for believing that a crime has occurred, is occurring, or may occur. The fact that a report is required by this part should not in any case deter a bank from first informing the appropriate authorities by telephone, or other expeditious means, of an apparent violation, when such action is deemed fitting.

(b) Robberies, burglaries and nonemployee larcenies, which are subject to the requirements of 12 CFR 326.5(c), are exempt from the requirements of this part.

(c) Supplies of Form 6710/06 and 6710/06A can be obtained from the FDIC regional office (DBS), which will also provide, if needed, the addresses of the investigatory and prosecuting authorities with which reports required by this part are to be filed.

(Approved by the Office of Management and Budget under control number 3064–0077)

Appendix A—Form 6710/06 and 6710/06A, Report of Apparent Crime (Short Form and Log Form), and Instructions for Its Preparation and Filing

BILLING CODE 6714-01-M

CONTROL NO. (AGENCY USE ONLY)

OMB No. 3064-0077
Expiration Date: 7/31/88

FDIC
FEDERAL DEPOSIT INSURANCE CORPORATION

REPORT OF APPARENT CRIME (SHORT FORM)

Federal Deposit Insurance Corporation

ATTENTION:
Use this form only if suspected criminal activity (see 12 C.F.R. §353.1) involves actual or probable loss of less than $10,000 (prior to any recovery or reimbursement) not involving an executive officer, director or principal shareholder of the institution within the meaning of 12 C.F.R. §215.2 (with the term "member bank" deemed to mean "insured non-member bank"). All other referrals should be submitted on FDIC Form 6710/06A, Report of Apparent Crime (Long Form). For purposes of this form, "suspected criminal activity" implies that there is a reasonable basis for believing that a crime has occurred, is occurring or may occur.

This form should be promptly filed by the bank, but no later than thirty days following discovery of the suspected violation. Where appropriate, law enforcement authorities should be immediately notified by telephone or other expeditious means.

The information in this report is confidential and subject to the applicable provisions of the Privacy Act of 1974, 5 U.S.C. 552a and Part 310 (12 C.F.R.) of the FDIC's Rules and Regulations.

1. Name and Location of Financial Institution

NAME _____

LOCATION _____ (STREET) _____ (CITY) ____ (ST) _____ (ZIP)

CERTIFICATE NUMBER _____ If activity occurred at branch office(s) please identify _____

2. Asset Size of Financial Institution (*millions of dollars*) _____

3. Approximate date and dollar amount of suspected violation

DATE _____ (Month Day Year) AMOUNT (*thousands of dollars*) _____

4. Summary characterization of the suspected violation. Check appropriate box(es)

☐ Defalcation/Embezzlement ☐ Bribery/Gratuity ☐ Other (Describe) _____
☐ False Statement ☐ Misuse of Position or Self Dealing _____
☐ Check Kiting ☐ Mysterious Disappearance _____

Applicable Section(s) of the U.S. Code (if known). (See list on page 4) _____

5. This matter is being referred to the FBI in _____ (CITY) ____ (ST)

and the U.S. Attorney in _____ (CITY) ____ (ST) _____ (JUDICIAL DISTRICT (*if known*))

6. Person(s) Suspected of Criminal Violation (if more than one, use continuation sheet)

a. NAME _____ (FIRST) ____ (MI) _____ (LAST)

ADDRESS _____ (STREET) _____ (CITY) ____ (ST) _____ (ZIP)

DATE OF BIRTH (*if known*) _____ (Month Day Year) SOCIAL SECURITY NO (*if known*) _____

b. Relationship to the financial institution (check all applicable blocks)

☐ Officer ☐ Employee ☐ Broker ☐ Shareholder
☐ Director ☐ Agent ☐ Borrower ☐ Other, Specify _____

c. Is person still affiliated with the financial institution ☐ Yes ☐ No

If no, ☐ terminated ☐ resigned. DATE _____
Month Day Year

Describe Circumstances (if necessary, use continuation sheet) _____

d. Prior or related referrals ☐ Yes ☐ No. If yes, please identify

e. Is person affiliated with any other financial institution ☐ Yes ☐ No or business enterprise ☐ Yes ☐ No. If yes to either or both, please identify

7. Explanation/Description of Suspected Violation. (Give brief summary of the suspected violation, explaining what is unusual or irregular about the transaction.) (If necessary, use continuation sheet.)

8. Has there been a confession? ☐ Yes ☐ No. If so, by whom? _____

9. Offer of Assistance
The individuals listed below are/will be authorized to discuss this referral with FBI and Department of Justice officials and to assist in locating or explaining any documents pertinent to this referral, **provided that contact is first made with**
Name_____ Position _____
Phone No:_____

Name_____ Tele No _____
Name_____ Tele No _____
Name_____ Tele No _____

10. Form Prepared by _____
Position _____
Agency/Institution _____
Phone No. _____ Date _____

CONTINUATION SHEET

Item No.	Remarks

PRINCIPAL CRIMINAL STATUTES

18 U.S.C. 2	To aid abet counsel command induce or procure the commission of federal offense
18 U.S.C. 201	Bribery of public officials including elected representatives jurors and employees of any department or agency of the federal government and witnesses in official proceedings e.g. anyone who gives offers or promises anything of value to a public official or a witness with the intent to influence that person's official functions
18 U.S.C. 215	Kickbacks bribes Makes it unlawful for any officer director employee agent or attorney to solicit accept or give anything of value in connection with any transaction or business of any financial institution
18 U.S.C. 371	Conspiracy of two or more persons to either commit a federal offense or to defraud the United States (or any agency of the U.S.)
18 U.S.C. 656	Theft embezzlement or misapplication of bank funds willfully by an officer director agent or employee of a bank with intent to injure or defraud the bank Can infer intent to injure from the fact of injury or from acts knowingly done in reckless disregard for the interests of the bank
18 U.S.C. 709	False advertising or misuse of words 'National' 'Federal Reserve' 'Deposit Insurance' etc to convey impression of federal agency affiliation
18 U.S.C. 1001	General false statements statute - knowingly and willfully falsifying or concealing a material fact or making a false statement or making or using false writing knowing it to be false
18 U.S.C. 1005	False entries and reports or statements including material omissions with intent to injure or defraud the bank the OCC (or Fed or FDIC) bank examiners or other individuals or companies
18 U.S.C. 1014	False statement (oral or written) e.g. loan application made knowingly for the purpose of influencing any bank whose deposits are federally insured upon any application purchase agreement commitment loan (or any change or extension of same) including willfully overvaluing land property or security
18 U.S.C. 1029	Credit Card fraud - knowingly and with intent to defraud produce use or traffic in counterfeit access devices
18 U.S.C. 1030	Computer fraud - knowingly accessing a computer without authorization or using it for unauthorized purposes including obtaining information contained in records of financial institutions
18 U.S.C. 1341	Mail fraud - scheme or artifice to defraud that makes use of the Postal Service
18 U.S.C. 1343	Wire fraud - scheme or artifice to defraud using transmission by wire radio or TV for the purpose of carrying out the scheme
18 U.S.C. 1344	Bank fraud - scheme or artifice to defraud a federally insured institution or take money funds credits assets securities or other property by misrepresentation
18 U.S.C. 1621	Perjury/false statement made under oath (if false statement is not made under oath individual may still be prosecuted under 18 U.S.C. 1001 or 1014)
18 U.S.C. 1951 **18 U.S.C. 1961**	Racketeer Influenced and Corrupt Organizations ('RICO') statutes Investing in any enterprise affecting interstate commerce if the funds for the investment are derived from a pattern of racketeering activity (these activities are defined to include murder drug dealing bribery robbery extortion counterfeiting mail fraud wire fraud embezzlement from pension funds obstruction of criminal investigations fraud in the sale of securities etc.)
31 U.S.C. 5311 **31 C.F.R. 103**	Currency Transactions/Bank Secrecy Act
15 U.S.C. 78dd	Foreign Corrupt Practices Act of 1977 Payment of anything of value to any foreign official foreign political party or candidate or any other person where the American corporation knows or has reason to know the thing of value would be offered to a foreign official foreign political party or candidate for foreign political office
15 U.S.C. 78ff	Criminal violations of securities laws
15 U.S.C. 78x	Criminal penalty provisions of securities laws

INSTRUCTIONS FOR FILING THE SHORT FORM

The purpose of this report is to provide a consistent means by which financial institutions can make referrals of known or suspected criminal activity perpetrated against the institutions whether by insiders or those outside the institution. The report will provide an effective means by which appropriate law enforcement and supervisory authorities will be made aware of known or suspected criminal activity. Institutions should use care in filling out this report and should insure that it is filled out in as complete a manner as practicable under the circumstances.

When a financial institution concludes that a crime has probably occurred involving less than $2,500 where the institution has no basis for identifying a possible suspect or group of suspects (as often occurs with a check forgery or an unauthorized use of a credit card), then reporting the violation to the United States Attorney and federal law enforcement is optional. But if (1) the apparent crime involves $2,500 or more or (2) the institution has a reasonable basis for identifying the suspect or group of suspects, *regardless of the dollar amount involved in the apparent crime,* then reporting is mandatory.

DISTRIBUTION:

1. Retain one copy in bank's files.

2. Send one copy to Regional Director, Division of Bank Supervision, Federal Deposit Insurance Corporation.

3. Send one copy to the nearest office of the FBI.

4. Send one copy to nearest office of the U.S. Attorney.

5. If the violation involves 31 C.F.R. 103, send one copy to the local IRS office, Criminal Investigation Division.

6. In cases involving the unauthorized use of a credit card or credit card number (18 U.S.C. §1029) or computer fraud (18 U.S.C. §1030), perpetrated without any apparent complicity of a bank employee or officer, the financial institution should send the form to the local office of the Secret Service in lieu of sending the referral to the FBI.

7. If also a criminal violation of state law, consider sending the form to the appropriate state prosecuting authority.

CONTROL NO. (AGENCY USE ONLY)

OMB No. 3064-0077
Expiration Date: 7/31/88

FDIC
FEDERAL DEPOSIT INSURANCE CORPORATION

REPORT OF APPARENT CRIME (LONG FORM)

Federal Deposit Insurance Corporation

ATTENTION:

Use this form in all cases where suspected criminal activity (see 12 C.F.R. §353.1) involves probable loss (before reimbursement or recovery) of $10,000 or greater and in all cases, regardless of amount, involving an executive officer, director or principal shareholder of the institution within the meaning of 12 C.F.R. §215.2 (with the term "member bank" deemed to mean "insured nonmember bank"). For purposes of this form, "suspected criminal activity" implies that there is a reasonable basis for believing that a crime has occurred, is occurring or may occur.

This form should be promptly filed by the bank, but no later than thirty days following discovery of the suspected violation. Where appropriate, law enforcement authorities should be immediately notified by telephone or other expeditious means.

The information in this report is subject to the applicable provisions of the Privacy Act of 1974, 5 U.S.C. 552a and Part 310 (12 C.F.R.) of the FDIC's Rules and Regulations.

1. Name and Location of Financial Institution

NAME _____

LOCATION _____ (STREET) _____ (CITY) ____ (ST) _____ (ZIP)

CERTIFICATE NUMBER _____ If activity occurred at branch office(s), please identify _____

2. Asset Size of Financial Institution (*millions of dollars*) _____

3. Approximate date and dollar amount (prior to any allowance for restitution or recovery) of suspected violation

DATE _____ (Month Day Year) AMOUNT (*thousands of dollars*) _____

4. Summary characterization of the suspected violation. Check appropriate box(es)

- ☐ Defalcation/Embezzlement
- ☐ False Statement
- ☐ Check Kiting
- ☐ Bribery/Gratuity
- ☐ Misuse of Position or Self Dealing
- ☐ Mysterious Disappearance
- ☐ Other (Describe) _____

Applicable Section(s) of the U.S. Code (if known). (See list on page 7) _____

5. This matter is being referred to the FBI in _____ (CITY) ____ (ST)

and the U.S. Attorney in _____ (CITY) ____ (ST) _____ (JUDICIAL DISTRICT (*if known*))

6 Person(s) Suspected of Criminal Violation. Complete subparagraphs (a) through (e) on **each** individual suspected of criminal activity (if more than one, use continuation sheet). Include primary suspects only. Individuals who may have knowledge of the suspected criminal activity, but who are not themselves suspected of being involved should be listed as witnesses under item 10. Provide any additional details known with respect to prior referrals or affiliations.

a NAME _____ (FIRST) __ (MI) _____ (LAST)

ADDRESS _____ (STREET) _____ (CITY) ____ (ST) _____ (ZIP)

DATE OF BIRTH (*if known*) _____ (Month Day Year) SOCIAL SECURITY NO (*if known*) _____

b Relationship to the financial institution (check all applicable blocks)

☐ Officer ☐ Employee ☐ Broker ☐ Shareholder
☐ Director ☐ Agent ☐ Borrower ☐ Other, Specify _____

c Is person still affiliated with the financial institution ☐ Yes ☐ No

If no, ☐ terminated ☐ resigned DATE _____ (Month Day Year)

Describe Circumstances (if necessary, use continuation sheet) _____

d Prior or related referrals ☐ Yes ☐ No If yes, please identify

e Is person affiliated with any other financial institution ☐ Yes ☐ No or business enterprise ☐ Yes ☐ No If yes to either or both, please identify

7 a Explanation/Description of Suspected Violation. Provide a **brief** narrative description of the activity giving rise to the referral explaining what is unusual or irregular about the transaction. Details will be provided later in the form. The purpose of this paragraph is to provide a **summary** description of the overall transaction.

b. Give a chronological and complete account of the suspected violation. (Use continuation sheet, if necessary)
- Relate key events to documents and attach copies of those documents.
- Explain who benefited, financially or otherwise, from the transaction, how much, and how.
- Furnish any explanation of the transaction provided by the suspect and indicate to whom and when it was given.
- Furnish any explanation of the transaction provided by any other person.
- Furnish any evidence of cover-up by the suspect or evidence of an attempt to deceive federal or state examiners or others.
- Indicate where the suspected violation took place (*e.g.*, main office, branch, other).
- Recommend any further investigation that might assist law enforcement in fully examining the potential violation.

THIS SECTION OF THE REFERRAL IS CRITICAL. It should be as detailed as circumstances permit. The care with which this section is written may make the difference in whether or not the described conduct and its criminal nature are clearly understood. The discussion points listed in this section are not exhaustive. They should be covered but to the extent additional explanation would be useful as to any particular item or to the extent an additional category should be addressed, it should be done here. Feel free to use attachments or to continue the description on a separate sheet. Include any suggestions for the interviewing of any witnesses, gathering of any documents or methods of investigation which might prove useful in following up on the referral (e.g., tracing of proceeds).

c Indicate whether the suspected violation appears to be an isolated incident or whether it relates to other transactions (Explain)

8 Exclusion of Information from the Referral
Has any pertinent information been excluded from this referral as a result of any legal or other restraint? ☐ Yes ☐ No
If so, why? _____

_____

Have the excluded information or documents been segregated for later retrieval? ☐ Yes ☐ No

9 Has there been a confession? ☐ Yes ☐ No If so, by whom? _____

10 Witnesses
List any witnesses who might have information about the suspected violation and describe their position or employment. Indicate if they have been interviewed. (Use continuation sheet if necessary.)

	Name	Position	Address	Tele.	Interviewed Yes	Interviewed No
1					☐	☐
2					☐	☐
3					☐	☐
4					☐	☐
5					☐	☐

11 Discovery and Reporting
a Who discovered the suspected violation and when?

b Has the suspected violation been reported to the Board of Directors? ☐ Yes ☐ No By whom and when?

c Has the Board of Directors taken action? ☐ Yes ☐ No If so, what and when?

d Has the suspected violation previously been reported to federal or local law enforcement or to any federal or state supervisory agency? ☐ Yes ☐ No If so, by whom, to whom, and when?

12 Loss

a Amount of loss known $ _____

b Restitution by _____

In the amount of $ _____

c Name of Applicable Surety Bond Company _____

d Amount of Bond $ _____

e Amount of deductible $ _____

f Was claim filed? ☐ Yes ☐ No

g Settlement by Surety Company $ _____

h Total restitution and settlement to date $ _____

i Net loss (after subtracting any amounts paid in the form of restitution or settlement) $ _____

j Is additional loss suspected? ☐ Yes ☐ No (If yes, explain)

k. Has the suspected violation had a material impact on or otherwise affected the financial soundness of the institution? If so, please explain.

13 Offer of Assistance

The individuals listed below are/will be authorized to discuss this referral with FBI and Department of Justice officials and to assist in locating or explaining any documents pertinent to this referral **provided that contact is first made with**

Name _____ Position _____

Phone No _____

Name _____ Tele No _____

Name _____ Tele No _____

Name _____ Tele No _____

14 Form Prepared by _____

Position _____

Agency/Institution _____

Phone No _____ Date _____

CONTINUATION SHEET

Item No.	Remarks

PRINCIPAL CRIMINAL STATUTES

18 U.S.C. 2	To aid abet counsel command induce or procure the commission of federal offense
18 U.S.C. 201	Bribery of public officials including elected representatives jurors and employees of any department or agency of the federal government and witnesses in official proceedings e.g. anyone who gives offers or promises anything of value to a public official or a witness with the intent to influence that person's official functions
18 U.S.C. 215	Kickbacks bribes Makes it unlawful for any officer director employee agent or attorney to solicit accept or give anything of value in connection with any transaction or business of any financial institution
18 U.S.C. 371	Conspiracy of two or more persons to either commit a federal offense or to defraud the United States (or any agency of the U.S.)
18 U.S.C. 656	Theft embezzlement or misapplication of bank funds willfully by an officer director agent or employee of a bank with intent to injure or defraud the bank Can infer intent to injure from the fact of injury or from acts knowingly done in reckless disregard for the interests of the bank
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18 U.S.C. 1030	Computer fraud–knowingly accessing a computer without authorization or using it for unauthorized purposes including obtaining information contained in records of financial institutions
18 U.S.C. 1341	Mail fraud–scheme or artifice to defraud that makes use of the Postal Service
18 U.S.C. 1343	Wire fraud–scheme or artifice to defraud using transmission by wire radio or TV for the purpose of carrying out the scheme
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31 U.S.C. 5311 **31 C.F.R. 103**	Currency Transactions/Bank Secrecy Act
15 U.S.C. 78dd	Foreign Corrupt Practices Act of 1977 Payment of anything of value to any foreign official foreign political party or candidate or any other person where the American corporation knows or has reason to know the thing of value would be offered to a foreign official foreign political party or candidate for foreign political office
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15 U.S.C. 78x	Criminal penalty provisions of securities laws

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All information requested within the body of the report should be supplied at the time of the report unless such information is not known or can only be supplied at a later date. Documents not provided with this report should be segregated and safeguarded in order that they might be subsequently supplied upon request or service of subpoena.

DISTRIBUTION:

1. Retain one copy in bank's files.
2. Send one copy to Regional Director, Division of Bank Supervision, Federal Deposit Insurance Corporation.
3. Send one copy to the nearest office of the FBI.
4. Send one copy to nearest office of the U.S. Attorney.
5. Send one copy to the State Banking Authority.
6. If the violation involves 31 C.F.R. 103, send one copy to the local IRS office, Criminal Investigation Division.
7. In cases involving the unauthorized use of a credit card or credit card number (18 U.S.C. §1029) or computer fraud (18 U.S.C. §1030), perpetrated without any apparent complicity of a bank employee or officer, the financial institution should send the form to the local office of the Secret Service in lieu of sending the referral to the FBI.
8. If also a criminal violation of state law, consider sending the form to the appropriate state prosecuting authority.

ADDITIONAL INSTRUCTIONS FOR EXAMINERS

Examiners should fill out this report whenever suspected criminal activity has been identified in a banking institution and either has not yet been reported by the institution or the report made by the institution is deemed to be inadequate. It is important to note that this report should be filled out whenever criminal activity is suspected; examiners are not required to make any initial finding that such reports would, if pursued, result in a criminal conviction. That judgment will be made by responsible law enforcement authorities. Any questions regarding whether or not any particular activity would constitute a crime for purposes of making a criminal referral should be resolved through communications with the Regional Office. In filling out this report, examiners should avoid overly technical descriptions of transactions which might not be readily understood by law enforcement authorities unfamiliar with banking operations.

DISTRIBUTION BY EXAMINER/REGIONAL OFFICE

Examiner

1. Retain one copy in field office file under name of the bank.
2. Send original to the Regional Office.

Regional Office

3. Retain one copy in Regional Office under name of the bank.
4. Send one copy to the Chief, Special Activities Section, Washington, D.C. 20429, accompanied by a signed cover letter indicating, in appropriate cases, the priority to be given the referral.
5. Send one copy to the nearest office of the FBI.
6. Send one copy to the U.S. Attorney.
7. If violation of state law, consider sending the referral to the appropriate state prosecuting authority.
8. If the violation involves 31 C.F.R. 103, send one copy to the local IRS office, Criminal Investigation Division.
9. Send a copy to the State Banking Authority.

BILLING CODE 6714-01-C

By Order of the Board of Directors, April 21, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-9603 Filed 5-2-86; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 556

[No. 86-424]

Interstate Branching

Date: April 24, 1986.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule with request for comments.

SUMMARY: The Federal Home Loan Bank Board ("Board") is amending its statement of policy on branching by Federal savings and loan associations and Federal savings banks ("Federal associations") to provide: (1) General equality of Federal associations with state-chartered thrift institutions of a Federal association's home office state with respect to branching across state lines and (2) possibly broader branching rights for a Federal association acquiring a failing institution in the form of regional branching rights as well as single target state branching rights. The Board is also soliciting comments on further amending its statement of policy to provide general equality of Federal associations with state-chartered financial institutions, including banks, or their holding companies with respect to branching and acquisitions.

DATES: The rule becomes effective May 5, 1986. Comments concerning branching or acquisition equality with banks and bank holding companies must be received before August 4, 1986.

ADDRESSES: Send comments to Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

FOR FURTHER INFORMATION CONTACT: Winifred Sutton, Attorney, Blue Division (202) 377-7044; David Wall, Attorney, Red Division (202) 377-7397; or Mary Rawlings-Milton, Chief Paralegal, Federal Savings and Loan Insurance Corporation Attorneys Group, (202) 377-7048, Office of the General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: On December 20, 1985, the Board proposed amendments to § 556.5 of its Federal Regulations (12 CFR 556.5 (1985)) regarding interstate branching by thrifts. The proposed revisions related to branching in both supervisory and nonsupervisory contexts. In the latter respect, the proposal would have provided Federal associations generally with the same ability to branch or to merge across state lines granted by state law to state-chartered associations headquartered in the state in which a Federal association's home office is located.

The proposal also provided in essence that a Federal association in a holding company structure might not exercise the new branching rights granted under this proposal to Federal associations generally if another insured institution in that structure exercised such rights.

In the supervisory context, the proposal would permit the Board to allow a Federal association acquiring a failing institution to obtain entry into a region rather than being limited to the state of the failing target institution. The region could not exceed three states in addition to the state of the target, unless the target state was itself part of a regional compact specifically authorized "by statute laws of such states, by language to that effect and not merely by implication," in which case the Board might consider an application for branching capacity within the states of the regional compact even if in excess of the target's state plus three others. The proposed rule set forth a preference for applications contemplating a region of contiguous states, but did not prohibit the Board from allowing branching capacity in non-contiguous states.

After considering the public comments received and other information, the Board has determined to adopt the amendments substantially as proposed, altering certain language to clarify provisions applicable to Federal associations in a holding company structure and to emphasize that supervisory context branching beyond the state of a target will be granted only upon a showing of reasonableness and very substantial benefit to the Federal Savings and Loan Insurance Corporation ("FSLIC") in a measure sufficient to constitute a compelling factor in determining to make such an award.

Discussion of Comment Letters

The Board received letters from 76 commenters, including: thirty-one from state and federally-chartered thrifts and from thrift holding companies; thirteen from various financial institution leagues and professional associations; eight from commercial banks; and ten from State government officials and regulators. Six members of Congress referred comments written by their constituents and others to the Board for consideration. The Board considered late-filed and late-received letters. Most comments generally favored adoption of the proposed amendment, but many requested substantive and technical changes to the amendment. These comments are discussed below, as are the modifications to the proposal that the Board has incorporated in the final rule.

Most commenters considered the proposed amendment in two parts: the nonsupervisory part, which is that portion of the amendment dealing with interstate branching generally by healthy Federal associations ("Nonsupervisory Amendment"), and the supervisory part, which addresses branching rights that may be granted acquirers of failing institutions ("Supervisory Amendment").

The majority of commenters favored adoption of the Nonsupervisory Amendment as proposed; however, several commenters suggested modifications. Some desired to expand the scope of the Nonsupervisory Amendment to provide a Federal association with the same branching rights allowed by the law of its home office state to state-chartered commercial banks. These commenters urged that Federal associations compete with commercial banks and that to deny such branching parity with commercial banks would disadvantage Federal associations. Several commenters noted that state regional branching laws often apply only to state-chartered commercial banks or holding companies and not state-chartered thrifts. One such letter asserted that state thrifts often do not have the political power necessary to convince state legislators to include thrifts in state regional banking compacts and urged the Board to lead the way for these state thrifts by granting Federal associations branching parity with state-chartered commercial banks, thus encouraging state legislators to include state thrifts in branching legislation.

Some commenters advocated expanding the Nonsupervisory Amendment by allowing a Federal association to have branching parity with state-chartered thrifts in any state in which the Federal association operates, not only in its home office state as proposed. The reason voiced for this position was that Federal associations should be afforded the benefits of the laws of any state in which they operate. Others wished to expand the Nonsupervisory Amendment

by allowing Federal associations to branch in any state that allowed out-of-state financial institutions to enter.

Several commenters expressed concern that Federal associations might weaken their financial condition in taking advantage of new branching rights, thereby increasing the risk to the FSLIC. These commenters favored a policy of controlled growth for Federal associations, and one suggested that the Board allow only Federal associations with net worth in excess of regulatory requirements to take advantage of interstate branching in the nonsupervisory context.

One commenter was of the opinion that the Board's Nonsupervisory Amendment contravened the Congressional policy expressed in the provisions of the Garn-St Germain Depository Institutions Act of 1982, Pub. L. 97-320, 96 Stat. 1469 ("Garn-St Germain Act"), that allow the emergency interstate acquisition of thrifts. The commenter believed that Congress intended interstate branching by thrifts only in extraordinary cases, justified by the existence of severe financial conditions which threaten the stability of a significant number of insured institutions. Accordingly, the commenter concluded that Congress did not intend Federal associations to branch in the non-supervisory context.

The Board in its proposal requested comments on the portion of the Nonsupervisory Amendment that provided in essence that a Federal association in a holding company structure may not exercise the new branching rights if another insured institution in that structure possesses or exercises branching rights. Of the letters submitted that specifically addressed these holding company provisions, most opposed the restrictions. Several commenters argued that they were unfair. Most of these commenters were of the opinion that the holding company provisions of the proposed amendment, if adopted, should be modified to allow management solely to decide which institution within the holding company could exercise the new branching rights. These commenters reasoned that such a decision should be based on management's business judgment and not on a regulatory designation.

Several letters asserted that the holding company provisions were ambiguous and requested clarification.

Other commenters wished to ensure that state law restrictions or requirements on interstate branching by state-chartered thrifts would also be applied to Federal associations under the proposal, in the interests of true branching parity between Federal associations and state-chartered thrifts. One letter gave as an example of such a state law restriction the requirement of continuing reinvestment by thrifts in the host state as a condition of interstate branching.

Commenters opposed to the Nonsupervisory Amendment often expressed concern over the current condition of the thrift industry as the reason for their opposition. Some commenters feared that allowing thrifts to expand interstate would result in weakening the condition of these thrifts. In addition, several argued that the increase in competition would hurt local thrifts and ultimately increase the risk to the FSLIC.

While the majority of comments addressing the Supervisory Amendment generally favored its adoption, the range of comments on that part of the proposal was broad. Most commenters favoring adoption desired modifications. Some commenters advocated eliminating all restrictions on the Board's authority to grant branching rights to acquirers of failing institutions. Several suggested that the Board adopt formal guidelines for its implementation of those provisions. Others felt there should be no change in the Board's branching policy statement concerning supervisory cases, and a few opposed granting interstate branching rights in any event, even under current regulations.

Many commenters opposed the Supervisory Amendment. One such commenter argued that granting branching rights in up to three additional states to acquirers of failing institutions was "an unwarranted override of state prerogative in determining the makeup and direction of regulated institutions in [the] state".

At the other end of the spectrum, several commenters desired to expand the Supervisory Amendment to grant automatically branching rights in three states to acquirers of failing institutions. Some suggested that the Supervisory Amendment should apply retroactively to past acquirers of failing institutions to recognize benefits afforded the FSLIC by those entities. One commenter suggested that acquirers of failed institutions be granted branching rights in three states on a "to be named later" basis by the acquirer.

Many who supported adoption of the Supervisory Amendment desired modifications. For example, several letters suggested removing the reference to "three" states, arguing that this numerical limitation would soon become the minimum number of states in which branching rights were granted in supervisory cases. Others argued that eliminating the reference to "three" states would allow the Board maximum flexibility in granting interstate branching rights in supervisory cases. Several commenters recognized the Board's need to grant branching rights in supervisory cases, but stressed that the Board should adopt a conservative approach in applying the Supervisory Amendment. These commenters asked the Board to articulate formally its policy for implementing the Supervisory Amendment. One suggested that the Board grant branching rights in more than one state to acquirers in supervisory cases, but only as related to the magnitude of the failing institution's problems or contingent upon the acquirer picking up a smaller institution in a state in which branching rights would be granted.

Of the commenters who argued that branching rights should be granted acquirers of failing institutions only in the state of the target institution, several supported allowing the acquirer to take advantage of any regional compact in which the target state was involved.

Several commenters claimed that the supervisory provisions violated traditional notions of comity, upsetting the balance of power between federal and state governments; and some claimed that the proposed regulation, and in particular the Supervisory Amendment, was directly opposed to Congressional policy on interstate branching by thrifts.

One commenter was of the opinion that the proposed amendment was in "direct contravention of Congressional policy expressed in two major statutory enactments." The acts cited were 12 U.S.C. 1730a(e) (1982), and the Garn-St Germain Act. A few commenters argued that the provisions of the Garn-St Germain Act that required notification of state authorities and other procedural requirements prior to approving an interstate acquisition or merger in a supervisory case indicated Congressional intent to restrain interstate branching by thrifts.

Authority

The Board is authorized to regulate the operations of Federal associations by section 5 of the Home Owners' Loan Act of 1933, as amended ("HOLA"), 12 U.S.C. 1464 (1982 & Supp. II 1984), and it has regulated the branching of Federal associations under this authority. The Board's authority in this respect is plenary and not bounded by any restrictions of state law, and it is clear that the Board may authorize Federal associations to branch or acquire other federal associations by merger across

state lines. *IBAA v. FHLBB*, 557 F. Supp. 23 (D.D.C. 1982).

Section 334 of the Garn-St Germain Act added a new subsection (r) to section 5 of the HOLA, 12 U.S.C. 1464(r) (1982), which recognized and confirmed the Board's authority to authorize interstate branching for Federal associations, but imposed a requirement that, with certain specific exceptions, any such Federal association branching across state lines must qualify as a domestic building and loan association under the Internal Revenue Code and meet the Code's asset composition test.

The case law and section 5(r) confirm the Board's authority in this area and clearly contradict the assertions of those commenters who challenged the legal basis of such authority.

Background

The Board permitted Federal associations to branch well before the publication of its first policy statement on branching in 1967, 32 FR 20630 (Dec. 21, 1967). The Board generally limited Federal associations to branching within the states of their home offices, however, until the issuance of an amendment to its statement of policy, Board Resolution No. 81–157, 46 FR 19221 (March 30, 1981), to provide for interstate branch operations that resulted from certain supervisory acquisitions. The Board resolution provided in part:

> The scope of the interstate branching prohibition in section 556.5(a)(3) is qualified by the word "generally", which reserves to the Board discretion to approve interstate branch operations in special circumstances. The exceptional nature of acquisition transactions supervised by the Federal Savings and Loan Insurance Corporation (FSLIC) to prevent the failure of an insured institution gives rise to such special circumstances. Though the Board has authority to approve interstate acquisitions in supervisory cases, the Board's regulations do not presently set forth any policy guidelines regarding factors it will consider when deciding whether to exercise this authority.
>
> This resolution amends the Board's policy statement to clarify that the Board may approve a merger, consolidation, or purchase of assets involving a Federal association that would not otherwise be permissible under the general rule if (1) the proposed acquisition will be effected pursuant to a plan to prevent the failure of an institution insured by the FSLIC, (2) the Board determines that the insurance liability or risk of the FSLIC will be reduced as a result of the proposed acquisition, and (3) the Board determines that the insurance liability or risk of the FSLIC resulting from the proposed acquisition transaction will be substantially less than the liability or risk that would result from otherwise equally desirable acquisition alternatives, if any, that would not result in interstate branch operations.
>
> . . . It should be noted that the amendment accomplished by this Resolution applies only to the specific types of supervisory cases described therein. This final rule does not alter the Board's policy regarding interstate branching in non-supervisory contexts. With respect to supervisory cases to which the rule applies, the amendment does not alter the Board's long-standing preference for intrastate supervisory mergers and acquisitions.

The policy statement on interstate branching has been amended since the issuance of Resolution No. 81–157, by Resolution Nos. 81–496, 46 FR 45120 (Oct. 10, 1981), and 82–498, 47 FR 34125 (Aug. 6, 1982), but such amendments have clarified the original policy statement without altering its basic purposes and limitations. A proposed rule that would have enlarged the scope of interstate branching and acquisition by all institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation ("insured institutions") was published for notice and comment in 1983, but was not adopted. Board Resolution No. 83–244, 48 FR 20930 (May 10, 1983).

The Board has also adopted a final rule concerning branching across state lines within the region formed by the District of Columbia, Maryland, and Virginia. Board Resolution No. 86–423 (April 24, 1986). The amendment set forth in the present resolution is general and does not supersede the Board's specific rulemaking for that region.

It should be noted that the Board may authorize acquisitions of failing insured institutions by out of state acquirers under the temporary authority of section 408(m) of the National Housing Act, 12 U.S.C. 1730a(m) (1982), added by Section 123 of the Garn-St Germain Act, and the Board has employed this authority on several occasions. This extraordinary authority, which is separate from the Board's general rulemaking power over Federal association branching under section 5 of the HOLA, will expire in the middle of July, unless extended by Congress. Pub. L. No. 99–278 (1986).

On June 10, 1985, the United States Supreme Court decided that state statutes that selectively authorized interstate branch acquisitions on a regional basis did not violate the "Douglas Amendment" to the Bank Holding Company Act or the Constitution of the United States. *Northeast Bancorp, Inc.* v. *Board of Governors of the Federal Reserve System*, No. 84–363 (U.S. June 10, 1985). Section 3(d) of the Bank Holding Company Act, 12 U.S.C. 1824(d) (1982), known as the "Douglas Amendment", prohibits the Board of governors from approving an application of a bank holding company or bank located in one state to acquire a bank located in another state unless the acquisition "is specifically authorized by the statute laws of the State in which such bank is located by language to that effect and not merely by implication." From 1956 to 1972, the Douglas Amendment had the effect of barring interstate bank acquisitions because no state had enacted the requisite authorizing statutes. Beginning in 1972, some states enacted statutes permitting such acquisitions in limited circumstances or for specific purposes. Beginning with Massachusetts in 1982, several states enacted statutes authorizing interstate acquisitions on a reciprocal basis within their geographical regions. In *Northeast Bancorp*, the Supreme Court upheld Massachusetts and Connecticut statutes allowing regional acquisitions as consistent with the Douglas Amendment and the Bank Holding Company Act as a whole, and as not violating the Commerce Clause, the Compact Clause, or the Equal Protection Clause of the United States Constitution.

In regulating branching of Federal associations generally, the Board has traditionally provided Federal associations with potential branching rights as broad as those that would be provided under State law for thrifts or commercial banks in the state in which a Federal association is located (as set forth, for example, in the 1979 codification of the Board's policy statement on the organization and branching of Federal associations, at 12 CFR 556.5(b)(1) (1979)).

State law regarding interstate expansion by financial institutions can best be described in terms of emerging trends. Roughly speaking, the states fall into three categories in their articulated statutory attitudes toward interstate expansion. First, there are states that do not allow any form of interstate expansion. Second, there are a growing number that have authorized interstate expansion on a regional, often reciprocal, basis. Finally, there are states which have authorized potential entry by out of the state institutions not limited to a region. There remain, of course, a number of states that do not address this issue by statute, as well as state statutes that defy easy categorization.

There are differences among those states that permit some sort of interstate expansion by financial institutions concerning the type of institution that may branch or acquire and what form the expansion may take: merger, acquisition, establishment of de novo branches, etc. A majority permits some

form of interstate expansion by banks, and at least half of those allow expansion by thrifts. Regional limitations vary considerably; some states provide for future regional expansion through reciprocity.

Most of the states that permit interstate expansion by thrifts permit entry by merger or acquisition. Maine limits entry by out-of state financial institutions to the establishment of, or the acquisition of control over, a Maine financial institution or holding company by an out of state holding company.

Request for Further Comment

The Board's proposal diverged from its traditional approach to the application of state law standards to Federal association branching in that the proposed rule was more conservative, looking only to state law applicable to thrift institutions instead of that applicable to "state financial depository institutions" generally, as expressed in 12 CFR 556.5(a)(2) (1985). Upon consideration of the comments received and a review of state legislation in this area, the Board has determined that a conservative standard, looking only to state law applicable to thrift institutions, should be employed at this time as the standard for Federal association branching across state lines in a nonsupervisory context.

The Board has also decided, however, to invite further comment, for a ninety day period, upon this standard and the possibility of using other standards: state law applicable to all financial depository institutions insured by the FSLIC or the Federal Deposit Insurance Corporation, or state law applicable to such financial depository institutions and their holding companies.

Final rule

The Board's final rule applies a thrift institution standard to determine interstate Federal association branching rights in a nonsupervisory context, as proposed, but the amendment further clarifies the proposal by providing that state law shall be looked to only with respect to basic authority to establish branch offices; approvals by state authority are not incorporated, nor are related state law investment standards or prerequisites, which would be inconsistent with a federal rule for Federal associations already subject to regulation in these matters. State law will be followed, however, in distinguishing the capacity to branch *de novo* from the capacity to acquire offices by merger. The amendment does not authorize a Federal association to become a saving and loan holding company.

The Board has determined to adopt the proposed special rules concerning Federal associations within a holding company structure, but has attempted to clarify these rules. In many ways, these rules embody principles explicitly or implicity set forth in the structure of the Federal savings and loan system, the Savings and Loan Holding Company Amendments of 1967, and Board actions in which aquisition limitations of the Savings and Loan Holding Company Amendments of 1967 were overriden by the FSLIC under the temporary special authority of section 408(m) of the National Housing Act, 12 U.S.C. 1730a(m) (1982). A Federal association that is itself the ultimate parent holding company in a holding company structure is treated, in substance, as if the other associations in the structure were its branches. Extraordinary acquisitions under temporary provisions of the Garn-St Germain Act are not made a basis to "leverage" wide ranging branching authority. And the basic purposes of the Savings and Loan Holding Company Amendments are observed. In response to comments received, and subject to these limitations, the Board has determined to adopt a final rule that provides greater scope for management decision. Except for certain delineated circumstances, a Federal association would not be precluded from utilizing interstate branching rights solely because another institution in the holding company structure possessed such rights, but only if such other institution exercised such rights.

Since 1981, the Board has recognized that different rules should apply to the acquisition of branches and branching rights in connection with actions to prevent the failure of institutions the accounts of which are insured by the FSLIC. The Board's basic policy initiative of 1981, granting interstate branching capacity in connection with the acquisition of a failing institution, preceded the Garn-St Germain Act and was fully implemented prior to the enactment of that statute. The amended final rule is consistent with that initiative. In a context of expanding opportunities for financial institutions, represented by the growth of "regional compacts", and increasing costs of FSLIC actions with respect to failing institutions, it is appropriate to modify the existing rules for the acquisition of failing institutions to provide a potential branching capacity that is more consistent with the greater opportunities now available to financial institutions and with the assistance programs of the FSLIC.

The Board continues to favor limited interstate acquisitions and branching, however, and the rule gives preference to simpler, limited applications, such as those seeking entry only into the state of a failing target institution, over those seeking wider capacity. As stated in the proposal, the amended rule merely expands the Board's flexibility under its own rules to grant branching capacity in connection with the acquisition of assets or liabilities of failing institutions and for the purpose of serving the needs of the FSLIC. It is not the Board's purpose to signal a move toward general unrestricted branching on a national or broad scale in connection with supervisory cases. The Board has considered the variations suggested by the commenters that would be within its authority, but has determined that the steps taken by the amended rule are appropriate at this time. The Board has also decided that implementation of the principles of the amended rule should proceed on a case by case basis without imposing deductive restrictions that are not based upon experience. The Board has decided, however, to clarify the rule by requiring that a grant of branching rights in states other than the state of the target must be supported by a showing that the additional branching is reasonably related to the structure of the applicant, before or after acquisition of a target institution, and that the proposed acquisition is of very substantial benefit to the FSLIC, in a measure sufficient to constitute a compelling factor in determining to make an award to the applicant.

As indicated, the amendment addresses branching capacity for Federal associations generally and in connection with the acquisition of failing institutions. The approval of particular branches remains, of course, subject to standard regulatory procedures.

The Board has determined that this amendment shall become effective immediately upon publication. In the present circumstances of the savings and loan industry, and in particular in view of the large and growing number of distressed insured institutions that are eligible for FSLIC assistance and the increasing cost to the FSLIC of delays in the marketing and acquisition of distressed institutions, it is imperative that the improvements made under this rule be effected without delay. There is no reason to expect that any person or interest will be harmed by making this rule effective upon publication. Any interested party's ability to prepare to take action or to enjoy a reasonable time in which to respond to proposed actions under the new rule would not be impaired by an immediate effective

date. The benefits derived from not delaying the effective date are substantial and compelling from the standpoint of the FSLIC. Accordingly, the Board has determined that good cause exists for providing that this rule shall be effective upon publication and that such good cause satisfies the requirements of 12 CFR 508.14 (1985) and the rulemaking provisions of the Administrative Procedure Act, 5 U.S.C. 553(d) (1982).

Final Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 604, the Board is providing the following regulatory flexibility:

1. *Need for and objectives of the rule.* These elements are incorporated above in the **SUPPLEMENTARY INFORMATION** regarding the rule.

2. *Issues raised by comments and agency assessment and response.* These elements are incorporated above in the **SUPPLEMENTARY INFORMATION** regarding the rule.

3. *Significant alternatives minimizing small-entity impact and agency response.* There are no alternatives that would have less impact on small institutions, consistent with the intended result and existing statutory requirements. Further, the rule will not involve any significant new reporting or compliance costs that could impose a disproportionate burden on small institutions.

List of Subjects in 12 CFR Part 556

Savings and loan associations.

Accordingly, the Federal Home Loan Bank Board hereby amends Part 556, Subchapter C, Chapter V, Title 12, *Code of Federal Regulations*, as set forth below.

Subchapter C—Federal Savings and Loan System

PART 556—STATEMENTS OF POLICY

1. The authority citation for Part 556 continues to read as follows:

Authority: Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); Sec. 341, 96 Stat. 1505, as amended (12 U.S.C. 1701j–3); Secs. 402–403, 406–407, 48 Stat. 1256–1257, 1259–1260, as amended (12 U.S.C. 1725–1726, 1729–1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., P. 1071.

2. Amending § 556.5 by revising paragraphs (a)(1) through (a)(3)(iv) to read as follows:

§ 556.5 Establishment of branch offices

(a) *General.* (1) The Board encourages a competitive savings and loan system that provides choices of facilities for improved financial services to the public. The Board believes that branching is a primary means to increase competition and serve the public. The Board recognizes that establishment of a full service branch is only one means for improving service and competition in an area and, therefore, encourages innovative ideas for branches designed to suit the needs of a particular community.

(2) As a general policy, the Board permits a Federal association to branch within the state in which its home office is located.

(3)(i)(*a*)(*1*) Additionally, the Board will permit a Federal association to establish or operate a branch office in a state other than the state in which its home office is located if the law of the state in which a Federal association's home office is located and the law of the state in which the branch is to be located would permit the establishment of such branch if the Federal association were an institution of the savings and loan or savings bank type chartered by the state in which the Federal association's home office is located.

(*2*) For the purposes of this paragraph (a)(3)(i)(*a*), state law is employed to determine basic authority to branch, or to acquire branch offices by merger or acquisition of assets or liabilities, but authorization by a state official is not required, and other state law limitations or requirements, such as those concerning investment standards, do not apply.

(*3*) This paragraph (a)(3)(i)(*a*) does not authorize a Federal association to become a savings and loan holding company controlling an insured institution located in a state other than the state in which the Federal association's home office is located.

(*b*) For the purposes of this paragraph (a)(3), the home office of a Federal association shall be deemed to be its home office as of the later of the date of its chartering or December 20, 1985, unless an association clearly demonstrates to the satisfaction of the Board that relocation to another state was not effected primarily to obtain branching advantages under this § 556.5(a).

(*c*) If a Federal association is a holding company or a subsidiary of an insured institution that is a holding company, it shall have a home office for the purposes of paragraph (a)(3)(i) only if no other insured institution in its holding company structure exercises or has exercised branching rights described in paragraph (a)(3)(i)(*a*);

(*d*) If a Federal association is an ultimate parent holding company, and no state chartered insured institution in the holding company structure exercises or has exercised branching rights described in paragraph (a)(3)(i)(*a*), such ultimate parent holding company shall be the sole association in the holding company structure that may acquire such branching rights under paragraph (a)(3)(i)(*a*). For the purposes of this paragraph (a)(3)(i), "ultimate parent holding company" means a savings and loan holding company not controlled by another company.

(*e*) *Multiple holding companies* (*1*) A Federal association that is a subsidiary of a multiple savings and loan holding company that controls insured institutions located in more than one state shall have a home office for the purposes of paragraph (a)(3)(i) only if no other subsidiary insured institution of its holding company exercises or has exercised branching rights described in paragraph (a)(3)(i)(*a*).

(*2*) Such a subsidiary Federal association may not exercise branching rights described in paragraph (a)(3)(i)(*a*) if a single state has been designated by its parent pursuant to section 408(e)(3)(B) of the National Housing Act, 12 U.S.C. 1730a(e)(3)(B), that is not the state in which such subsidiary Federal association has its home office, or if it became a subsidiary of its parent holding company pursuant to an acquisition or acquisitions effected pursuant to section 408(m) of the National Housing Act at a time when that parent was an existing savings and loan holding company, unless no subsidiary of such parent in a state designated pursuant to § 408(e)(3)(B) or existing prior to such section 408(m) acquisition posesses branching rights described in paragraph (a)(3)(i)(*a*).

(*f*) A Federal association that acquires and exercises branching rights pursuant to any of subparagraphs (a)(3)(i)(*a*) through (*e*) may not operate or retain branches established pursuant to such exercise if another insured institution in its holding company structure exercises branching rights described in paragraph (a)(3)(i)(*a*).

(ii)(*a*) Notwithstanding the limitations of paragraph (a)(3)(i) of this section, but subject to section 5(r) of the Home Owner's Loan Act of 1933, as amended, the Board may approve the establishment or operation of a branch office by a Federal association in a state other than the state in which its home office is located; *Provided* that:

(*1*) The establishment of the branch office will be achieved as part of or as a result of a transaction in which assets or liabilities of a failing insured institution ("target institution") are acquired by another institution, by merger or otherwise, as part of a transaction in

which the insured accounts of a target institution are assumed by and transferred to an insured institution as a means of payment of insurance by the Federal Savings and Loan Insurance Corporation ("Corporation") or pursuant to an action by the Corporation to prevent the failure of a target institution;

(*2*) The Board determines that the Corporation's insurance liability or risk, including cost or potential cost to the Corporation, will be reduced as a result of the transaction involving a target institution; and

(*3*) If any alternative has been submitted that is not objectionable on supervisory grounds and could be approved in accordance with paragraph (a)(2), (a)(3)(i), or (a)(3)(iii) of this section or that would involve an acquisition by, or transfer of accounts to, a state chartered institution and would be in accordance with the laws governing the chartering and operation of all parties to the transaction, the Board determines that the Corporation's insurance liability or risk, including cost or potential cost to the Corporation, resulting from the proposed interstate acquisition by, or transfer of accounts to, a Federal association under this paragraph (a)(3)(ii) will be substantially less than the liability or risk that would result from such other alternative.

(*b*) Branching approved or permitted pursuant to this paragraph (a)(3)(ii) may be:

(*1*) Operation of a former office or offices of a target institution; and

(*2*) Permission to establish branch offices in a state or states other than the state or states in which a target institution operates: *Provided* that branching rights permitted pursuant to this paragraph (a)(3)(ii)(*b*)(*2*) shall not in any event include any state in addition to the greater of (A) three (3) states in addition to the state or states in which the target institution operates, or (B) if the home office of the target institution is located in a state that, as of the date of acquisition of the target institution, is included in a regional compact of states specifically authorizing branching or acquisition across state lines by institutions of the savings and loan or savings bank type by statute laws of such states, by language to that effect and not merely by implication, the states included within such as regional compact: *Provided further,* that the Board shall give preference to an application seeking limited branching authority over an application seeking wider branching capacity under paragraphs (a)(3)(ii)(*b*) (*1*) and (*2*); *Provided further,* that in considering applications to approve transactions involving the exercise of authority under this paragraph (a)(3)(ii)(*b*)(*2*), the Board shall prefer an application involving branching in states within a regional compact for institutions of the savings and loan or savings bank type or in a state having boundary lines contiguous with boundary lines of the state in which the target institution's home office is located; and *Provided further,* that no application for branching capacity under this paragraph (a)(3)(ii)(*b*)(*2*) shall be approved unless the Board finds that such branching capacity is reasonably related to the office structure of the applicant, before or after acquisition of the target institution or its assets or liabilities, and that an acquisition effected pursuant to such application is of very substantial benefit to the FSLIC in a measure sufficient to constitute a compelling factor in determining to make an award to the applicant.

(*c*) The principles of this paragraph (a)(3)(ii) shall also apply in reverse mergers in which the target institution is the surviving entity and in the acquisition of control of subsidiary insured institutions in a state or states in which a Federal association is not authorized to branch pursuant to paragraph (a)(3)(i).

(iii) Notwithstanding paragraph (a)(3)(i) of this section, but subject to section 5(r) of the Home Owners' Loan Act of 1933, as amended, the Board may approve the establishment of a branch office in a state or states other than the state in which the home office is located, provided that the establishment of the branch office will be achieved by the consolidation of some or all of the savings and loan subsidiaries, or of some or all of the offices of the savings and loan subsidiaries, of a multiple savings and loan holding company. The Board may approve the establishment of a branch office by a resulting institution in any state or states in which it maintains branch offices as a result of the consolidation.

(iv) Notwithstanding paragraph (a)(3)(i) of this section, but subject to section 5(r) or the Home Owners' Loan Act of 1933, as amended, in a transaction not involving an action by the Corporation for transfer of accounts or to prevent the failure of an insured institution, the Board may approve the establishment of a branch office in any state in which the applicant has established or has been permitted to operate a branch office pursuant to the conditions set forth in paragraph (a)(3)(ii) of this section.

* * * * *

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 86-10025 Filed 5-2-86; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-ANE-30; Amdt. 39-5293]

Airworthiness Directives; Avco Lycoming Division T5313B and T5317A Series Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires an initial and repetitive dye penetrant inspections for cracks, and removal as necessary, of the centrifugal compressor impeller installed on Avco Lycoming T5313B and T5317A series turboshaft engines. The AD is needed to prevent an impeller failure that can cause an uncontained engine failure.

DATES: Effective May 6, 1986.

Compliance Schedule—As prescribed in the body of the AD.

Incorporation by Reference—Approved by the Director of the Federal Register effective May 6, 1986.

ADDRESSES: The applicable service bulletin (SB) may be obtained from Avco Lycoming Division, 550 South Main Street, Stratford, Connecticut 06497.

A copy of the SB is contained in the Rules Docket Number 85-ANE-30, in the Office of the Regional Counsel, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Chris Gavriel, Engine Certification Branch, ANE-141, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7084.

SUPPLEMENTARY INFORMATION: The FAA has determined that cracks can develop in the perimeter of the two drain holes on the centrifugal compressor impeller due to low cycle fatigue, and can propagate to a critical length before the published service life limit can be realized. This can precipitate a rapid

tensile fracture of the impeller and can result in an uncontained engine failure. Two impellers have been found with cracks at the drain holes at 5,610 cycles and at 12,691 cycles, and one ruptured at 8,907 cycles causing an uncontained engine failure. Although the ruptured impeller was installed in an engine that was used in a non-aviation application, the mechanism of failure is the same in both aviation and non-aviation engines, yet the consequences of the failure are potentially different.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedures hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Conclusion

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to imvolve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT".**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding to § 39.13 the following new airworthiness directive (AD):

Avco Lycoming Division: Applies to Avco Lycoming Division T5313B and T5317A turboshaft engines.

Compliance is required as indicated unless already accomplished.

To prevent centrifugal compressor impeller rupture that can cause uncontained engine failure, accomplish the following in accordance with Avco Lycoming Service Bulletin (SB) 0052, Paragraph 2A and 2B, dated November 26, 1985, or FAA approved equivalent:

(a) Inspect centrifugal compressor impeller Part Number 1–100–078–08, upon meeting the criteria as stated in (1), (2), or (3) below, within the next 200 cycles in service from the effective date of this AD, and reinspect thereafter per paragraph (b):

(1) Impellers with 4,600 cycles or more in service, installed in T5313B engines.

(2) Impellers with 3,500 cycles or more in service, installed in T513B engines, that have been previously installed and operated in a T5317A engine.

(3) Impellers with 3,500 cycles or more in service, installed in T5317A engines.

(b) Reinspect impellers with no cracks detected at intervals not to exceed 500 cycles in service since last inspection.

(c) Remove from service cracked impellers as follows:

(1) Prior to further flight, if cracks of 0.050 inch or greater are present.

(2) Within the next 10 cycles, if cracks of less than 0.050 inch are present.

Aircraft may be ferried in accordance with the provisions of FAR Parts 21.197 and 21.199 to a base where the AD can be accomplished.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Engine Certification Office, New England Region, may adjust the compliance times specified in this AD.

Avco Lycoming SB Number 0052, dated November 26, 1985, identified and described in this document, is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received this document from the manufacturer may obtain copies upon request to Avco Lycoming Division, 550 South Main Street, Stratford, Connecticut 06497. This document also may be examined at the Office of the Regional Counsel, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, Room Number 311, Rules Docket Number 85–ANE–30, Monday through Friday between the hours of 8:00 a.m. and 4:30 p.m., except Federal holidays.

This amendment becomes effective on May 6, 1986.

Issued in Burlington, Massachusetts, on April 14, 1986.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 86–10001 Filed 5–2–86; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 85–ANE–38; Amdt. 39–5291]

Airworthiness Directives; Glasflugel "Standard Libelle," "Standard Libelle-201B," and H301 and H301B "Libelle" Gliders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of certain Glasflugel "Standard Libelle" and "Libelle" gliders by individual letters. The AD requires inspection of the elevator linkage in the area of the welded seam at the base of the control stick for cracks, and eventual replacement of the elevator linkage. The AD is needed to prevent fatigue failure of the elevator linkage which could result in loss of elevator control.

DATES: Effective May 6, 1986, as to all persons except those persons to whom it was made immediately effective by priority letter ADs No. 85–22–11 and 85–22–11R1, issued October 30, 1985 and December 31, 1985, respectively, which contained this amendment.

Compliance schedule—As prescribed in body of AD.

Incorporation by Reference—Approved by the Director of the **Federal Register** effective May 6, 1986.

ADDRESSES: The applicable technical notes and the elevator linkage Part Number 301–41–4/2 may be obtained from Mr. Hansjoerg Streifender, Bruelstrasse 12, 7318 Lenningen 2, Federal Republic of Germany.

A copy of the technical notes is contained in the Rules Docket, Regional Counsel, ANE–7, FAA New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Munro Dearing, Brussels Aircraft Certification Office, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, 15 Rue de la Loi B–1040 Brussels, Belgium telephone 513.38.30 ext. 2710, or Richard B. Noll, ANE–152, Boston Aircraft Certification Office,

FAA New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7111.

SUPPLEMENTARY INFORMATION: On October 30, 1985, priority letter AD 85-22-11 was issued and made effective immediately to all known U.S. owners and operators of certain Glasflugel "Standard Libelle," Standard Libelle-201B," and H301 and H301B "Libelle" gliders. The AD required inspection of the elevator linkage in the area of the welded seam at the base of the control stick for cracks within 10 hours time in service, and replacement of the elevator linkage within 25 hours time in service after receipt of the AD, but not later than December 31, 1985. AD action was necessary to prevent fatigue failure of the elevator linkage which could result in loss of elevator control. The AD was amended by priority letter AD 85-22-11 R1, issued December 31, 1985, which was necessary to extend the compliance period for replacement of the elevator linkage because of the unavailability of the required replacement part within the originally established schedule, and to ensure aircraft safety during the extended compliance period by requiring repetitive inspections of the elevator linkage for cracks. Applicability information was provided because not all aircraft serial numbers of the named models were affected by the AD; the replacement part number omitted from the original AD was identified; and the source of the replacement part was given because Glasflugel is no longer in business.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual letters, issued October 30, 1985 and December 31, 1985, to all known U.S. owners and operators of certain Glasflugel "Standard Libelle," "Standard Libelle-201B," and H301 and H301B "Libelle" gliders. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

Conclusion

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT".**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding to Part 39 the following new airworthiness directive (AD):

Glasflugel: Applies to "Standard Libelle" and "Standard Libelle-201B" (aircraft serial numbers 1 through 476), and H301 and H301B "Libelle" (all aircraft serial numbers) gliders.

Compliance is required as indicated unless already accomplished.

To prevent fatigue failure of the elevator linkage in the area of the welded seam at the base of the control stick which could result in loss of elevator control, accomplish the following:

(a) Within the next 10 hours time in service after the effective date of this AD, and thereafter at intervals not to exceed 10 hours time in service after the last inspection, unless compliance with paragraph (c) is already accomplished, visually inspect the elevator linkage, part number (P/N) 301-41-3/2, by means of a magnifying glass of at least 5 times magnification for cracks in the area of the welded seam at the base of the control stick.

(b) If a crack is found during the inspection required by paragraph (a) of this AD, before further flight, replace elevator linkage, P/N 301-41-3/2, with a serviceable part.

(c) Within the next 50 hours time in service after the effective date of this AD, but no later than July 1, 1986, replace the elevator linkage, P/N 301-41-3/2, with P/N 301-41-4/2, in accordance with Glasflugel Technical Notes Nos. 201-22, dated July 29, 1980, for Models "Standard Libelle" and "Standard Libelle-201B," and 301-31, dated July 29, 1980, for Models H 301 and H 301B "Libelle" gliders, or an FAA-approved equivalent.

Upon request, an equivalent means of compliance with the requirements of this Ad may be approved by the Manager, Brussels Aircraft Certification Office, AEU-100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, 15 Rue de la Loi B-1040 Brussels, Belgium, telephone 513.38.30 ext. 2710.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Brussels Aircraft Certification Office, may adjust the compliance time specified in this AD.

Glasflugel Technical Notes Nos. 201-22 and 301-31, dated July 29, 1980, identified and described in this document, are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Mr. Hansjoerg Streifender, Bruelstrasse 12, 7318 Lenningen 2, Federal Republic of Germany. These documents also may be examined at Regional Counsel, ANE-7, FAA New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

This amendment becomes effective May 6, 1986, as to all persons except those persons to whom it was made immediately effective by priority letters AD No. 85-22-11 and 85-22-11R1, issued October 30 and December 31, 1985, respectively, which contained this amendment.

Issued in Burlington, Massachusetts, on April 14, 1986.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 86-9999 Filed 5-2-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-ANE-22; Amdt. 39-5292]

Airworthiness Directive: Pratt & Whitney (PW) JT9D-3A Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts an airworthiness directive (AD) that requires initial and repetitive radioisotope inspections of the second stage turbine nozzle guide vanes for detection of second stage turbine vane inner shroud rearward deflection, and removal of the affected parts from service if excessive deflection is discovered. The AD is needed to institute an inspection program that would maintain a safe clearance

between the vane inner shroud and the second stage turbine disk, and eliminate uncontained engine failures that can be initiated by excessive vane deflection.

DATE: Effective June 5, 1986.

Compliance schedule—As prescribed in the body of the AD.

Incorporation by reference—Approved by the Director of the Federal Register effective June 5, 1986.

ADDRESSES: The applicable Alert Service Bulletin (ASB) may be obtained from Pratt & Whitney, Publication Department, P.O Box 611, Middletown, Connecticut 06457. A copy of the ASB is contained in the Rules Docket Number 85–ANE–22 in the Office of the Regional Counsel, New England Region Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803 and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chris Gavriel, Engine certification Branch, ANE–141, Engine Certification Office, Aircraft Certification Division, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273–7084.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations (FAR) to include a new AD requiring initial and repetitive inspections of the second stage turbine nozzle guide vanes, Part Number 770372, and PW JT9D–3A engines for rearward deflection and removal of vanes with excessive rearward deflection, was published in the **Federal Register** on October 24, 1985, (50 FR 43222). The FAA has determined that there have been five events of excessive vane rearward deflection to date, not six as previously reported, one of which has resulted in an uncontained engine failure. In this instance, a section of the second stage turbine disk was liberated and an adjacent engine was damaged while the aircraft was executing a takeoff roll. Since this condition is likely to exist or develop on other engines of the same design, a new AD is being issued which requires initial and repetitive radioisotope inspections of the second stage turbine nozzle guide vanes for rearward deflection and removal of vanes that have deflected in excess of established limits per PW ASB 5619, dated July 31, 1985.

Interested persons have been afforded the opportunity to participate in the making of this amendment and due consideration has been given to all relevant data and comments received. One comment was received concerning the proposed rule. The one commenter conducted an industry-wide survey on the proposed rule and received two responses. One participant in the survey recommended, through the commenter, that the proposed rule have provisions to allow monitoring of the vane burning and bowing every 1,000 hours as an equivalent means of compliance. The FAA disagrees. Experience at other JT9D–3A operators has shown that second stage turbine nozzle guide vane deflection is possible without burning or bowing. Vane and shroud deflection is the main concern since this can and has led to second turbine disk contact. Therefore, vane and shroud deflection is the primary criteria for engine removal and the vane deflection limits of ASB 5619 must be adhered to.

A second participant in the survey requested, through the commenter, that the appropriate section of the Engine Manual Part Number 770407 be added to the proposed rule as an alternate reference. The request is denied in that the ASB 5619 is a self contained document that includes all aspects of compliance with this rule. The Engine Manual is referenced in the ASB as a supporting document.

Conclusion

The FAA has determined that this regulation involves 167 JT9D engines installed on Boeing 747 series aircraft and the approximate total annual cost is $112,000. It has also determined that few, if any, small entities within the meaning of the Regulatory Flexibility Act will be affected since the rule affects only operators using Boeing 747 aircraft in which the JT9D engines are installed, none of which are believed to be small entities. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT".

List of Subjects in 14 CFR 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

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

Authority: 49 U.S.C. 1354 (a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding to § 39.13 the following new airworthiness directive (AD):

Pratt & Whitney: Applies to Pratt & Whitney (PW) JT9D–3A series turbofan engines.

Compliance is required as indicated, unless already accomplished.

To preclude second stage turbine disk failures resulting from rearward deflection of the second stage turbine nozzle guide vane inner shroud, inspect second stage nozzle guide vanes, Part Number (P/N) 770372, in accordance with the Accomplishment Instructions of PW Alert Service Bulletin (ASB) 5619, dated July 31, 1985, or FAA approved equivalent, per the following schedule:

(a) Inspect vanes for rearward deflection prior to accumulating 4,000 hours in service since new or since the vanes were refurbished, and reinspect thereafter per paragraph (b).

(b) Reinspect at the following intervals and until such time as the engine incorporates a complete set of new or refurbished vanes with zero time in service, at which time the requirements of paragraph (a) become applicable.

(1) Within the next 1,000 hours in service since last inspection, if the vane deflection is greater than 0.050 inches but not greater than 0.070 inches.

(2) Within the next 2,000 hours in service since last inspection, if the vane deflection is less than or equal to 0.050 inches.

(c) Remove from service, prior to further flight, vanes that have a rearward deflection greater than 0.070 inches.

Notes: 1. Refurbished vanes are defined as vanes which have been operated in service and have subsequently been inspected and repaired to the specifications in Pratt & Whitney Engine Manual, P/N 646028.

2. Engine Manuals P/N 646028 and 770407 are identical for the JT9D–3A engine model and are both FAA approved.

Upon request, an equivalent means of compliance may be approved by the Manager, Engine Certification Office, Aircraft Certification Division, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

Aircraft may be ferried in accordance with the provisions of FAR Parts 21.197 and 21.199 to a base where the AD can be accomplished.

Upon submission of substantiating data by an owner or operator through the FAA maintenance inspector, the Manager, Engine Certification Office, New England Region, may adjust the compliance time specified in this AD.

PW ASB 5619, dated July 31, 1985, is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received this document from the manufacturer may obtain copies upon request to Pratt & Whitney, Publication Department, P.O. Box 611, Middletown, Connecticut 06457.

This document also may be examined at the Office of the Regional Counsel, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, Rules Docket Number 85-ANE-22, Room Number 311, between the hours of 8:00 a.m. and 4.30 p.m., Monday through Friday except Federal holidays.

This amendment becomes effective on June 5, 1986.

Issued in Burlington, Massachusetts, on April 14, 1986.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 86-10000 Filed 5-2-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-AWA-5]

Establishment of Airport Radar Service Areas; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: This action corrects the description of the Michiana Regional Airport, South Bend, IN, Airport Radar Service Area (ARSA). An ARSA is operational only during the hours of operation of the control tower and associated radar approach control facility. Michiana Regional Airport, South Bend Tower and Approach Control Facility provide services only during a portion of the day. The description of these hours was inadvertently omitted from the ARSA description as published on April 7, 1986. This action corrects that description.

EFFECTIVE DATE: 0901 G.m.t., May 8, 1986.

FOR FURTHER INFORMATION CONTACT: Robert Burns, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 86-7686 was published on April 7, 1986, establishing the Michiana Regional Airport, South Bend, IN, ARSA. The legal description of the ARSA inadvertently omitted a narrative description of the limited hours of operation. An ARSA is operational during the hours the control tower and approach control facility are operating. This action corrects that omission.

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 "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) 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 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

Aviation safety, Airport radar services areas

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me, **Federal Register** Document 86-7686, as published in the **Federal Register** on April 7, 1986, (51 FR 11886) is corrected as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1384(a) and 1354(a); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.501 is amended as follows:

Michiana Regional Airport, South Bend, IN [Amended]

By adding the words "This airport radar service area is effective during the specific days and times of the South Bend Tower and Approach Control Facility as 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 Washington, D.C., on April 29, 1986.

Daniel J. Peterson,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 86-10002 Filed 5-2-86; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 9148]

Flowers Industries, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Tade Commission.

ACTION: Modifying order.

SUMMARY: The Federal Trade Commission has modified a 1983 consent order with Flower Industries, Inc., a Thomasville, Ga. baker (48 FR 53403), by appointing a trustee to divest two bakeries and extending for six months the deadline for the divestitures.

DATES: Consent Order Issued Nov. 3, 1983. Modified Order Issued April 16, 1986.

FOR FURTHER INFORMATION CONTACT: Elliot Feinberg, FTC/L-301, Washington, D.C. 20580. (202) 634-4604.

SUPPLEMENTARY INFORMATION: In the Matter of Flowers Industries, Inc., a corporation. The prohibited trade practices and/or corrective actions, as set forth at 48 FR 53403, remain unchanged.

List of Subjects in 16 CFR Part 13

Bakeries, Trade practices.

[Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

[Docket No. 9148]

Order Modifying Order to Divest

In the matter of Flowers Industries, Inc., a corporation.

Commissioners: Terry Calvani, Acting Chairman; Patricia P. Bailey; Mary L. Azcuenaga; Andrew J. Strenio, Jr.

On November 3, 1983, the Commission issued its Order in this matter requiring, *inter alia*, that respondent Flowers Industries, Inc. ("Flowers") "divest itself absolutely and in good faith of the High Point Baker Plant . . . [and] of the Gadsden Bakery Plant to an Eligible Person including, without limitation, land, buildings, fixtures attached thereto, machinery and equipment." As of the date of this order, neither plant has been divested by Flowers. Because it appeared that the public interest would be served by modifying the order to allow for the appointment of a trustee to accomplish divestiture, on March 19, 1986, the Commission issued its Order To show Cause why Order Requiring Divestiture Should Not Be Modified ("Order To Show Cause") pursuant to § 3.72 of the Commission's Rules of Practice. The Order to Show Cause

proposed the insertion of a new Paragraph VII of the Order to appoint Graham Humes of Mellon Bank (East) N.A. as trustee. On March 31, 1986, the Order To Show Cause was served on Flowers, and Flowers answered on April 2, 1986, stating that it consents to the modifications.

After reviewing Flowers's answer and the materials submitted with its compliance reports, the Commission has concluded that the public interest warrants modifying the order as proposed in the Order To Show Cause. As the Commission observed in the Order To Show Cause, the appointment of the trustee appears likely to advance the remedial objectives of the order.

Accordingly,

It is hereby ordered that pursuant to 15 U.S.C. 45 (b), and § 3.72 of the Commission's Rules of Practice, 16 CFR § 3.72, (1) Paragraphs VII, VIII, IX, X and XI of the order in this matter be modified to renumber these Paragraphs VIII, IX, X, XI, and XII respectively, and (2) a new Paragraph VII be added to the order, as follows:

VII

The Commission hereby appoints Graham Humes, of Mellon Bank (East) N.A., as Trustee to serve subject to all the terms and conditions specified herein.

A. Powers and Duties of Trustee; Conditions of Trusteeship

1. The Trustee shall have the duty and authority to effect the divestiture of the properties and assets of Flowers subject to divestiture pursuant to Paragraphs I and II of this Order ("the Assets") as quickly as possible in good faith to an Eligible Person who has represented in good faith that the Assets will, if acquired, be used in accordance with subparagraphs I(B) and II(B) of the Order. The Trustee may divest the plants separately or together.

2. The duty and authority of the Trustee to divest the Assets shall be at the most favorable price and terms available, but there shall be no minimum price therefor.

3. If requested by Flowers or the Commission, the Trustee shall furnish a surety bond, the cost of which may be included in the Trustee's expenses as provided in subparagraph VII(D).

4. Except for cases of misfeasance, negligence, willful or wanton acts, or bad faith by the Trustee, the Trustee shall not be liable to Flowers for any action taken or not taken in the performance of the trusteeship. Flowers shall indemnify the Trustee and hold the Trustee harmless against any liabilities, claims, or expenses arising out of performance of the trusteeship, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, claims, or expenses result from misfeasance, negligence, willful or wanton acts, or bad faith by the Trustee.

5. Rule 2.41(f) of the Commission's Rules of Practice and Procedures shall apply to the Trustee in the same manner as it would be applicable to Flowers.

6. The Trustee may seek approval of a proposed acquirer at any time during the period specified in subparagraphs VII(B)(1) and VII(B)(2), and the Trustee may seek approval for more than one proposed acquirer. After the expiration of the time for seeking approval of a proposed acquirer, the Trustee shall have no duty or authority to seek approval of a proposed acquirer.

7. Each request to the Commission for approval of a proposed acquirer shall be in writing and shall include a definitive written agreement between the proposed acquirer and the Trustee. The agreement shall be conditional upon approval of the transaction by the Commission.

8. The Trustee shall have the power (a) to retain the services of attorneys, appraisers, consultants, investment bankers, and such others as may be reasonably necessary to assist in the divestiture of the Assets; (b) to disclose confidential information and data respecting the Assets to any person who, in the opinion of the Trustee, shows a bona fide interest in acquiring the Assets or any portion thereof; (c) to enter into such contracts and execute such documents on behalf of Flowers as may be reasonable and necessary to effect divestiture in accordance with the terms of this Order, provided that such contracts and documents may include representations, warranties covenants, and indemnity agreements only as to clear title; and (d) to take such other actions as may be reasonable and necessary to effect divestiture in accordance with the terms of this Order.

9. Within thirty days following appointment of the Trustee and every thirty days thereafter, until the Commission approves a proposed acquirer or the time for seeking approval of a proposed acquirer has expired, the Trustee shall submit a verified report in writing to the Commission, with a copy to Flowers, setting forth (a) the steps taken by the Trustee to make public the availability for purchase of the Assets, (b) a list of all persons or organizations to whom notice of availability for purchase has been given directly, (c) a summary of all discussions and negotiations together with the indentities and addresses of all interested persons or organizations, and (d) copies of all internal memoranda, offers, counter-offers, communications, and correspondence concerning divestiture. The Trustee shall provide such other reports as may be required by the Commission.

10. The Trustee shall account for all monies derived from any divestiture. All funds received by the Trustee from a prospective acquirer shall be deposited immediately in a federally chartered bank in an interest-bearing account until settlement of the Trustee's account.

11. Within sixty days after divestiture or after expiration of the time for seeking approval of a proposed acquirer, the Trustee shall submit to the Commission a detailed final accounting, including all amounts received or paid by the Trustee and all unpaid amounts still owing to the Trustee or others. Upon approval of the accounting by the Commission, the Trustee shall pay the approved unpaid expenses and pay the balance of the funds, together with all interest earned, to Flowers. Should the amount in the Trustee's account be insufficient to pay the approved unpaid expenses and to compensate the Trustee, Flowers, within 15 days after receiving notice thereof from the Commission, shall deliver to the Trustee an amount sufficient to compensate the Trustee pursuant to subparagraph VII(D) and to permit the Trustee to pay all approved unpaid expenses.

12. The Trustee may be removed by the Commission for failure to discharge the Trustee's obligations diligently or faithfully, or for other good cause. Upon the removal, death, or resignation of the Trustee, a successor Trustee shall be appointed by the Commission. Selection of such successor Trustee shall be subject to the consent of Flowers, which consent shall not be unreasonably withheld.

B. Term of Trusteeship; Extension

1. The Trustee shall have 180 days from the date of appointment to submit requests for approval of a proposed acquirer to the Commission.

2. That time period may be extended by the Commission (a) upon the removal, death, or resignation of the Trustee, for an additional thirty days plus a period equal to the time during which there was no Trustee; (b) for a period necessary to remedy any delay in the submission of a request for approval of a proposed acquirer that has been substantially caused by any violation of this Order by Flowers; or (c) for a period

equal to such time as there exists any unresolved dispute with Flowers over the interpretation of this Order.

3. The trusteeship shall terminate upon the Trustee's discharge of the obligations set forth in subparagraph VII(A)(II).

C. Additional Obligations of Flowers

1. Flowers shall cooperate fully with the Trustee in the Trustee's efforts to effect divestiture of the Assets. Flowers will do nothing to impede or interfere with those efforts.

2. When requested to do so by the Trustee, Flowers shall promptly empower the Trustee to perform, on Flower's behalf, every act necessary to convey clear title to the Assets from Flowers to any Eligible Person in accordance with the terms of this Order. All documents to be executed in compliance with this subparagraph shall first be submitted to and approved by the Director of the Bureau of Competition.

3. When requested to do so by the Trustee, Flowers shall promptly provide the Trustee and prospective acquirers with existing information relating to the Assets, including but not limited to, written information and data, access to the Assets, access to records relating to the Assets, access to personnel for tours and inspections of the Assets, access to knowledgeable personnel for answering questions about the Assets, and information previously submitted to the Commission regarding Flowers' prior divestiture efforts.

4. Flowers shall not cause or permit the Assets to become subject to any new lien or encumbrance, and no existing lien or encumbrance shall be increased.

D. Compensation and Expenses of Trustee

1. The Trustee's compensation shall be paid by Flowers, and the Trustee's reasonable expenses shall be reimbursed by Flowers.

2. The Trustee's compensation shall consist of a flat fee and a contingent fee, as follows:

(a) The Trustee shall be paid a flat fee of $5000 per month from the date hereof until the first to occur of either:

(i) Divestiture of the Assets as provided for herein, or

(ii) The Expiration of the time provided for seeking approval of a proposed acquirer.

(b) In addition to the flat fee specified in subparagraph VII(D)(2)(a), the Trustee shall be paid a fee contingent upon the consummation of the divestitures contemplated hereunder from the proceeds of the divestitures.

(c) If the combined purchase price of the Assets is less than or equal to six million dollars, the contingent fee shall be $10,000 for the divestiture of the properties and assets subject to divestiture pursuant to Paragraph I of this Order and $10,000 for the divestiture of the properties and assets subject to divestiture pursuant to Paragraph II of this Order, plus an additional amount based on the combined purchase price of the Assets and calculated as follows:

(i) 3% of that portion of the purchase price less than or equal to one million dollars; plus

(ii) 1% of that portion of the purchase price greater than one million dollars but less than or equal to two million dollars; plus

(iii) 2% of that portion of the purchase price greater than two million dollars but less than or equal to three million dollars; plus

(iv) 3% of that portion of the purchase price greater than three million dollars but less than or equal to four million dollars; plus

(v) 4% of that portion of the purchase price greater than four million dollars but less than or equal to five million dollars; plus

(vi) 5% of that portion of the purchase price greater than five million dollars but less than or equal to six million dollars.

(d) If the combined purchase price of the Assets is greater than six million dollars, the contingent fee shall be based on the combined purchase price of the Assets and calculated as follows:

(i) If the purchase price is greater than six million dollars but less than or equal to seven million dollars, 6% of the purchase price;

(ii) If the purchase price is greater than seven million dollars but less than or equal to eight million dollars, 7% of the purchase price;

(iii) If the purchase price is greater than eight million dollars but less than or equal to nine million dollars, 8% of the purchase price;

(iv) If the purchase price is greater than nine million dollars but less than or equal to ten million dollars, 9% of the purchase price;

(v) If the purchase price is greater than ten million dollars, 10% of the purchase price.

3. Notwithstanding any other term of this Order, Flowers shall not be obligated to reimburse the Trustee for any expenses in excess of $30,000 unless those expenses have been approved by the Commission.

4. Each month the Trustee shall present Flowers with a detailed written statement of the Trustee's expenses for the previous month. A copy of each monthly expense statement shall be sent to the Director of the Bureau of Competition. Subject o the condition set forth in subparagraph VII(D)(3), Flowers shall reimburse the Trustee for such expenses within five days of receipt of each monthly statement.

E. Resolution of Disputes

1. If Flowers and the Trustee are unable to resolve any dispute arising out of the interpretation of this Order, either party may notify the Commission thereof in writing.

2. The Commission shall resolve a dispute arising under subparagraph VII(E)(1) without unreasonable delay. With regard to any dispute arising out of the interpretation of subparagraphs VII(A)(8)(a), VII(A)(8)(b), VII(C)(3), or VII(D) of this Order, the Commission's determination shall be final and binding upon Flowers and the Trustee.

3. For the purpose of subparagraph VII(B)(2)(c), an unresolved dispute shall exist as of the date the Commission (a) receives notice under subparagraph VII(E)(1), or (b) in the case of a dispute between it and Flowers, notifies Flowers in writing thereof.

F. Termination of Obligation To Divest

Except upon a showing that any act or omission by Flowers in violation of the terms of this Order has contributed substantially to the Trustee's inability to divest the Assets, Flowers's obligation to divest the Assets under this Order shall terminate upon expiration of the time for seeking approval of a proposed acquirer; provided, however, that Flowers shall proceed to accomplish any divestiture that has been approved by the Commission, or that is subsequently approved by the Commission if the request for approval was received by the Commission before the expiration of the time for seeking approval of a proposed acquirer.

By the Commission. Commissioner Strenio was recorded as not participating.

Issued: April 16, 1986.

Emily H. Rock,

Secretary.

[FR Doc. 86-9973 Filed 5-2-86; 8:45 am]

BILLING CODE 6750-01

16 CFR Part 13

[Docket No. C-3183]

Saab-Scania of America, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires an Orange, Conn. wholly-owned subsidiary of a Swedish automobile company, among other things, to make repairs or reimburse consumers for costs they incurred because of paint problems with Saab cars assembled at the company's factory in Malines, Belgium, from 1976 to 1978. The offer to repair or reimburse will be made to consumers who bought a new Belgian-made Saab after Dec. 31, 1977 and to subsequent owners who bought their vehicle within the first 36 months after the original purchase. The repair or reimbursement cost will be up to $2,000 per car, except for cars purchased in Massachusetts. The Attorneys General in Massachusetts, Maine and Vermont have reached separate agreements with Saab in those states over the paint problem, but Saab consumers in Maine and Vermont are eligible for the repair or reimbursement program. Date: Complaint and Order issued April 16, 1986.[1]

FOR FURTHER INFORMATION CONTACT: Phoebe Morse, Director, Boston Regional Office, Federal Trade Commission, 150 Causeway St., Room 1301, Boston, MA 02114. (312) 353–4423.

SUPPLEMENTARY INFORMATION: On Thursday, Dec. 12, 1985, there was published in the **Federal Register**, 50 FR 50800, a proposed consent agreement with analysis In the Matter of Saab-Scania of America, Inc., a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its modified order to cease and desist, as set forth below, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Corrective Actions and/or Requirements: S 13.533 Corrective actions and/or requirements; 13.533–45 Maintain records; 13.533–55 Refunds, rebates, and/or credit.

List of Subjects in 16 CFR Part 13

Automobiles, Trade practices.

[1] Copies of the Complaint are available from the Commission's Public Reference Branch, H–130, 6th & Pa. Ave., NW., Washington, D.C. 20580.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Emily H. Rock,

Secretary.

[FR Doc. 86–9972 Filed 5–2–86; 8:45 am]

BILLING CODE 6750–01

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16 CFR Part 13

[Docket No. 9166]

Figgie International, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Final order.

SUMMARY: This final order requires, among other things, a Richmond, Va. manufacturer and seller of home heat detectors to provide notification that smoke detectors give earlier warning than heat detectors in nearly all residential fires to past purchasers of its heat detectors. Respondent must also disclose that fact in any future promotional materials that make claims about the residential fire protection provided by heat detectors. Additionally, respondent is prohibited from misrepresenting: (1) The performance characteristics of any heat or smoke detector, or any system containing both; or (2) any standard or recommendation established by the National Fire Protection Association or any other group concerning fire warning systems.

DATES: Complaint issued May 17, 1983. Final Order issued April 11, 1986.[1]

FOR FURTHER INFORMATION CONTACT: Christopher Schwartz, New York Regional Office, Federal Trade Commission, 2243–EB Federal Bldg., 26 Federal Plaza, New York, NY 10278. (212) 264–1207.

SUPPLEMENTARY INFORMATION: In the Matter of Figgie International, Inc., a corporation. The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: § 13.10 Advertising falsely or misleadingly; § 13.170 Qualities or properties of product or service; § 13.195 Safety; § 13.205 Scientific or other relevant facts; § 13.245 Specifications or standards conformance. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533–20 Disclosures; § 13.533–45 Maintain records.

List of Subjects in 16 CFR Part 13

Residential heat detectors, Trade practices.

(Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Before Federal Trade Commission

[Docket No. 9166]

Commissioners: Terry Calvani, Acting Chairman, Patricia P. Bailey, Mary L. Azcuenaga, Andrew J. Strenio, Jr.

In the Matter of Figgie International, Inc., a corporation.

Final Order

This matter has been heard by the Commission upon the appeals of respondent and complaint counsel from the initial decision, and upon briefs and oral argument in support of and in opposition to the appeals. For the reasons stated in the accompanying opinion, the Commission has denied the appeal of the respondent and has granted in part and denied in part the appeal of complaint counsel.

It is ordered that the initial decision of the administrative law judge be adopted as the findings of fact and conclusions of law of the Commission except where it is inconsistent with the accompanying opinion. Other findings of fact and conclusions of law of the Commission are contained in the accompanying opinion.

It is further ordered that the following order to cease and desist be entered:

I

It is ordered that respondent, Figgie International, Inc., its successors and assigns, and respondent's officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale or distribution of any heat detector or any residential fire alarm system containing a heat detector, as the term "heat detector" is defined by the National Fire Protection Association's Standard 74, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing in any manner, directly or by implication:

(1) That heat detectors provide the necessary warning to allow safe escape from most residential fires; or

(2) That fire alarm systems combining heat detectors and smoke detectors provide significantly greater fire warning protection than smoke

[1] Copies of the Complaint, Initial Decision and Opinion of the Commission are available from the Commission's Public Reference Branch, H–130, 6th & Pa. Ave., NW., Washington, D.C. 20580.

detectors alone because heat detectors give earlier warning of hot, flaming fires.

B. Misrepresenting in any manner, directly or by implication:

(1) The performance characteristics of any heat detector or any residential fire alarm system containing a heat detector including, but not limited to, the capability of the heat detector to provide the necessary warning to occupants to allow them to escape safely in the event of fire; or

(2) The existence or content of any standard or recommendation established or made by the National Fire Protection Association or any other entity regarding the location, number or type of fire protection devices to be installed in a residence, or compliance of any heat detector or residential fire alarm system containing a heat detector with any such standard or recommendation; or

(3) The performance characteristics of any smoke detectors or any residential fire alarm system containing a smoke detector; or

C. Representing in any manner, directly or by implication, the performance characteristics of any heat detector or any fire alarm system containing a heat detector including, but not limited to, the capability of the heat detector to provide fire warning protection, unless at the time of making any such representation respondent possesses and relies upon competent and reliable scientific evidence which substantiates such representation.

II.

It is further ordered that respondent shall, within 120 days from the date of service of this Order, include the following notice in all print advertising or print promotional material for all heat detectors manufactured or sold by respondent or for any fire warning system containing such heat detectors, if that advertising or promotional material expressly or impliedly represents that heat detectors provide the necessary warning to allow safe escape in the event of fire or that a combination system of heat and smoke detectors provides significantly greater protection than smoke detectors alone:

NOTICE: Smoke detectors give earlier warning than heat detectors in nearly all residential fires. That is because detectable amounts of smoke almost always develop before detectable levels of heat.

The above-required language shall be printed in a typeface and color that are clear and conspicuous, and, in multipage documents, shall appear on the cover or first page. Nothing contrary to, inconsistent with, or in mitigation of the above-required language shall be used in any advertising or promotional materials. With respect to any film, video tape, or slide promotional material, the above-required language shall be included both orally and visually within the first minute of the presentation, in a matter designed to ensure clarity and prominence.

III.

It is further ordered that respondent shall, within 180 days after service of this Order, send by first-class mail, to each identifiable purchaser of respondent's fire alarm products since January 1, 1979, the disclosure required by part II.

Purchasers shall be deemed identifiable if they can be traced using warranty cards or testimonial letters in respondent's possession and/or using sales records maintained by respondent's dealers.

IV.

It is further ordered that respondent shall:

A. Distribute a copy of this Order to all of its officers and to all employees, agents or representatives having sales or promotional responsibilities with respect to the subject matter of this Order. The respondent shall also distribute a copy of this Order to each dealer of its fire alarm products.

B. Provide each of its dealers with a form clearly stating that dealer's intention to conform his or her sales practices to the requirements of this Order.

C. Cease selling its fire warning devices to any dealer who does not sign and return that form to respondent or fails to conform his or her sales practices to the requirements of this Order.

D. Investigate and make good faith efforts to resolve any complaints it receives that any dealer has failed to conform his or her sales practices to the requirements of this Order.

V.

It is further ordered that respondent shall maintain such documents as will demonstrate compliance with this Order for a period of three years from the date the document is created or used, whichever is later. Such documents shall be made available to the Commission or its staff for inspection and copying upon reasonable request and shall include, but not be limited to, the following:

(a) A copy of each nonidentical form of promotional and training materials disseminated by respondent;

(b) The name and last known address of each dealer of respondent's first fire alarm products;

(c) The name and last known address of each purchaser identified under Part III of this Order; and

(d) A copy of each complaint it receives that any of its dealers has failed to conform his or her sales practices to the requirements of this Order, and a record of the investigation and disposition of the complaint.

VI.

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the Order.

VII.

It is further ordered that respondent shall, within 120 days after service upon it of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

By the Commission, Commissioner Bailey concurring in part and dissenting in part and Commissioner Strenio did not participate.

Issued: April 11, 1986.

Emily H. Rock,

Secretary.

Statement of Commissioner Bailey Concurring in Part and Dissenting in Part

Figgie International, Inc.

[Docket No. 9166]

April 11, 1986.

The Commission rules today that respondent Figgie International, Inc. (Figgie) misrepresented the performance of its Vanguard heat detectors. I agree. Figgie claimed that its heat detectors "provide the necessary warning to occupants to allow them to escape safely" from residential fires. That is untrue for nearly all residential fires, and the Commission's order prohibits Figgie from repeating that claim.

The complaint in this matter also alleged that respondent claimed that its "fire alarm systems combining heat detectors and smoke detectors provide *significantly greater* fire warning protection for occupants than smoke detectors alone." Complaint para. 5 (emphasis added). The Commission agrees that this claim was made in three forms, but concludes that complaint counsel failed to prove that two of them were false[1] I believe

[1] The opinion examines three different ways in which Figgie represented that its heat detectors

Continued

complaint counsel adequately proved that heat detectors do not provide "significantly greater" protection in any of the three fashions claimed, and so I dissent from that part of the Commission's opinion.

Figgie made the following statements, all of which contribute to the notion that heat detectors provide significantly greater protection from fires than smoke detectors alone: "HEAT DETECTORS HAVE PROBABLY SAVED MORE LIVES AND PROPERTY THAN ANY OTHER FIRE DETECTION DEVICE" (CX 63); combining heat detectors with smoke detectors gives consumers "the combination needed to give a greater measure of life safety" and is needed "to maximize chances for survival" (CXs 69, 68); and "to have adequate protection, the home must have heat detectors as well as smoke detectors." (CX 130) In the face of this and other evidence, the ALJ found that a claim of "significantly greater benefit" was made, and the Commission expressly adopts that conclusion. Opinion at 11 & n. 12.

The record evidence of how heat detectors actually perform compared to smoke detectors contrasts sharply with the picture Figgie painted in its advertising and marketing materials. For example, Figgie claimed that its heat detectors are significantly more protective because they can be placed where smoke detectors are not recommended (such as kitchens, garages, and attics). However, the expert testimony and test data introduced at trial establish that this confers virtually no life safety protection benefit over smoke detectors because smoke detectors almost always alarm before heat detectors, regardless of their respective locations.[2] Figgie also claimed that heat detectors provide significantly more protection because they are mechanically reliable. Smoke detectors, which rely on outside power sources, are theoretically less reliable than mechanically operated heat detectors. But the most reliable empirical data in the record suggests that the difference is quite small so that characterizing it as "significantly greater" life safety protection is inaccurate.[3]

Moreover, this record demonstrates that: (1) Smoke detectors provide the best protection for saving lives in case of fire; and (2) heat detectors, wherever placed, do not alarm soon enough to allow safe escape in most residential fires. Since heat detectors do not allow consumers to escape safely from most fires, but smoke detectors do, it is difficult to understand how heat detectors could be said to provide "significantly greater" protection than smoke detectors, or even any "significant" degree of protection at all.

The Commission's failure to enter a finding that Figgie's "significantly greater" benefit claims are deceptive stems primarily from what I believe to be a misreading of the complaint and complaint counsel's burden. The Commission agrees that the relevant claims were made and reaches conclusions not too dissimilar from my own about what level of increased protection heat detectors provide in the two situations in dispute. However the Commission then asks not whether that level of increase is "significant," but whether even a small or slight increase might nevertheless be "important" or "meaningful" or "significant" to at least some consumers. This is the crux of the Commission's error: a shift in emphasis away from the complaint's focus on whether the *increase* is significant and towards a new focus, not pled in the complaint and thus not litigated at trial, on whether the *protection* is or may be significant to some consumers.[4]

While this may appear to be only a subtle shift in emphasis, it reverses the result in the case. I would prohibit Figgie from repeating any claims to the effect that heat detectors provide "significantly greater" protection than smoke detectors, although I would permit the company to publicize whatever marginal increases in protection are demonstrated by the evidence because I agree with the opinion's conclusion that some consumers might consider even slight increases in fire protection "important" (particularly if they are highly risk averse). The Commission appears to agree that at least some of Figgie's increased benefit claims are false (concluding, for example, that placement of heat detectors confers only a "slightly," not a significantly, better level of protection), but refuses to ban those false claims outright because complaint counsel failed to prove that no one would find slight increases in fire protection significant.[5]

I think the opinion is trying to say that if consumers have no other protection, then heat detectors in their garages may help to prevent property damage, and that should consumers with smoke detectors fail to maintain them then a heat detector may provide an alarm that is late, but better than nothing. In other words, the Commission believes Figgie should be allowed to continue selling heat detectors to consumers who are sufficiently risk averse that they are willing to spend between $500 and $600 for a heat detector system that adds at most a slight increment of protection to smoke detectors. I do not disagree with that goal. I simply disagree with the notion that Figgie can continue to sell its heat detectors by convincing consumers that they are more valuable, and more beneficial in protecting the lives of consumers and their families, than the evidence shows to be true.

My dissent is tempered only by the fact that the order entered in this case prohibits Figgie from making performance claims for its heat detectors which cannot be substantiated. I believe the record of this proceeding contains clear evidence that Figgie cannot substantiate claims that its heat detectors provide "significantly greater" life safety protection than do smoke detectors alone. For that reason, therefore, the order should have the effect of restraining Figgie indirectly from making exaggerated claims of this kind in the future But there is not the slightest reason, on this record, to have left open any doubt on this point. Figgie's heat detectors do not provide "significantly

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were significantly better than smoke detectors alone: in their response to hot, flaming fires; in their ability to be located where smoke detectors are not recommended; and in their mechancial reliability. The Commission rules the first claim deceptive, and I agree. My dissent focuses on the resolution of the second two claims. I join the Commission's opinion and order in all other respects.

[2] The record includes a test report in which a heat detector was placed in a kitchen and a smoke detector was placed in an adjacent hallway; after a fire was set in the kitchen, the smoke detector located elsewhere in the house alarmed before the heat detector located in the same kitchen. (I.D. 149) While this represents the result of only a single test, the conclusion about the respective performance of the devices holds true in almost all cases, according to experts who testified. They asserted that smoke detectors would almost always alarm before heat detectors because smoke disperses quickly and evenly throughout a home, while heat buildup is highly uneven. Detectors that react to smoke are not limited in space coverage the way that detectors that react to heat are. As a consequence, these experts testified that heat detectors would *not* significantly increase consumers' life safety potential and would provide only marginal benefits by increasing property protection. (Bukowski Tr. 1058–59; Clark Tr. 711–12).

Other test data in the record confirm that smoke detectors virtually always outperform heat detectors, regardless of location. For example, the Indiana Dunes I and II tests, showed that heat detectors provided no increase in escape time compared to smoke detectors. (Bukowski Tr. 988–91) In Dunes I, heat detectors never activated first and in one-third of the tests no heat detectors ever activated at all. (Bukowski Tr. 986) In Dunes II, not one heat detector alarmed in time to provide three minutes of escape time. (Bukowski Tr. 991) The California Fire Chiefs' tests, which included tests where fires were set in the kitchen, similarly reported that heat detectors never responded first to fires. (Martin Tr. 879) The Commission's opinion discounts the results of these tests because it claims the tests measured only comparative heat and smoke detector performance in the same room. However, each test involved detector arrays in several locations in each house, so that the responses of heat and smoke detectors in different rooms were recorded and compared. The results show that smoke detectors alarmed in time to give the necessary three-minute warning in 89 percent of the tests in Dunes I, and that heat detectors add *no* increase in protection. (Bukowski Tr. 980, 982–83).

[3] The only objective data on comparative smoke detector reliability are from three tests, one showing a failure rate of approximately two percent over several years, and a third showing that 16 percent of smoke detectors surveyed in the field over an indeterminate period were not operational. (Bukowski Tr. 1048) Because the definition of failure used to compile these figures encompasses a range of performance well short of mechanical failure—such as slight decreases in smoke detector sensitivity and removal of batteries (Bukowski Tr. 1051)—the rates of actual smoke detector failure are even lower than these figures suggest.

[4] This focus is especially curious since the actual claims Figgie made did not by any stretch of the imagination suggest that heat detectors added only slight increments of protection that could be important to some people. To the contrary, Figgie repeatedly stressed that consumers' chances for survival were significantly greater, or "maximize[d]," with heat detectors and that smoke detectors alone were inadequate to save them and their families from death by fire.

[5] The suggestion that complaint counsel should have provided testimony or survey evidence to show what level of additional protection consumers find "significant" is in my view unwarranted. *See* Opinion at 33. Once the Commission determines what claims Figgie made, this case simply does not present questions of consumer perception. Surely the Commission does not mean to suggest that complaint counsel must prove first that a claim is false as a matter of scientific fact and second that it is false in the subjective view of consumers.

greater" fire warning protection for occupants than smoke detectors alone, and Figgie should have been told directly in the order not to make that claim again or any of the statements that contributed to it.

[FR Doc. 86-9974 Filed 5-2-86; 8:45 am]

BILLING CODE 6750-01-M

16 CFR Part 305

Rules for Using Energy Cost and Consumption Information Provided in Labeling and Advertising of Consumer Appliances

AGENCY: Federal Trade Commission.

ACTION: Final rule revision.

SUMMARY: The Federal Trade Commission's Appliance Labeling Rule requires that the table in § 305.9, which sets forth the representative average unit energy costs for four residential energy sources, be revised periodically on the basis of updated information provided by the Department of Energy ("DOE").

This notice revised the table to incorporate the latest figures for average unit energy costs as published in the Federal Register on February 20, 1986 by DOE.

EFFECTIVE DATE: The revised Table 1 is effective May 5, 1986. The mandatory dates for using these revised DOE cost figures are detailed below.

FOR FURTHER INFORMATION CONTACT: James Mills, 202-376-8934, attorney, Division of Enforcement, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On November 19, 1979, the Federal Trade Commission issued a final Appliance Labeling Rule (44 FR 66466) in response to a directive in section 324 of the Energy Policy and Conservation Act ("EPCA"), 42 U.S C. 6201 (1975). The rule requires the disclosure of energy efficiency or cost information on labels and in retail sales catalogs for seven categories of appliances, and mandates that these energy costs or energy efficiency ratings be based on standardized test procedures developed by DOE. The rule also requires a general disclosure, on certain point-of-sale promotional materials, of the availability of energy cost or energy efficiency information, and requires that any claims concerning energy consumption made in writing or in broadcast advertisements be based on results of the standardized test procedures. The cost and efficiency information obtained by followed the test procedures is derived by using the representative average unit energy costs provided by DOE.

Table 1 in § 305.9 of the rule sets forth the representative average unit energy costs to be used for all requirements of the rule. As stated in § 305.9(b), the Table is intended to be revised periodically on the basis of updated information provided by DOE. Table 1 was first revised by publication of new DOE figures on January 13, 1981 in the Federal Register (46 FR 2974).

On February 20, 1986, DOE published (51 FR 6165) the most recent figures for representative average unit energy costs. Consequently, Table 1 must again be updated in order to reflect these latest cost figures. Accordingly, Table 1 is revised to read as set forth below.

Mandatory Use of Revised Cost Figures

The dates when use of the figures in the Revised Table 1 becomes mandatory in calculating cost disclosures for use in reporting, labeling and advertising products covered by the Commission's rule and/or EPCA are as follows:

For 1986 Submissions of Data Under § 305.8 of the Commission's Rule: The new cost figures must be used in all 1986 submissions except clothes washers. Because the 1986 costs were not published in time for use in preparing data for the mandatory submission date for these products, clothes washer submissions for 1986 could be based on the 1985 cost figures.

For Labeling and Advertising of Products Under the Commission's Rule: Only those products for which new ranges are published that are based on 1986 submissions using these 1986 DOE cost figures should be labeled with estimated annual cost figures calculated using these 1986 DOE cost figures. If such new ranges are published, the effective date for labeling new products will be ninety days after publication of the ranges in the Federal Register. Advertising for such products will also have to be based on the new costs and ranges beginning ninety days after publication of the new ranges in the Register.

Advertising of Products Covered by EPCA but not by the Commission's Rule: Manufacturers of products covered by section 323(c) of EPCA, but not by the Appliance Labeling Rule (clothes dryers, television sets, kitchen ranges and ovens, humidifiers and dehumidifiers, central air conditioners, and space heaters) must use the 1986 representative average unit costs for energy in all representations effective August 4, 1986.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

PART 305 [AMENDED]

Accordingly, 16 CFR Part 305 is amended as follows:

1. The authority citation for Part 305 continues to read as follows, and the authority citation following 305.9 is removed.

Authority: Sec. 324, Energy Policy and Conservation Act, (Pub. L. 94-163, (42 U.S.C. 6294)); as amended by the National Energy Conservation Policy Act (Pub. L. 95-619)

2. Section 305.9(a) is amended by revising Table 1 to read as follows:

§ 305.9 Representative average unit energy costs.

(a) * * *

TABLE 1.—REPRESENTATIVE AVERAGE UNIT COSTS OF ENERGY FOR FOUR RESIDENTIAL ENERGY SOURCES (1986)

Type of energy	In common terms	As required by DOE test procedure	Dollars per million Btu's [1]
Electricity	8.20¢/kWh[2] [3]	$0.0820/kWh	$24.03
Natural Gas	62.0¢/therm[4] or $6.30/MCF[5] [6]	0.00000620/Btu.	6.20
No. 2 heating Oil	$1.04/gallon[7]	0.00000750/Btu.	7.50
Propane	81.6¢/gallon[8]	0.00000897/Btu.	8.97

[1] Btu stands for British thermal unit.
[2] kWh stands for kilowatt hour.
[3] 1 kWh=3,413 Btu's.
[4] 1 therm=100,000 Btu's.
[5] MCF stands for 1,000 cubic feet.
[6] For the purposes of this table, 1 cubic foot of natural gas has an energy equivalence of 1,016 Btu's.
[7] For the purposes of this table, 1 gallon of No. 2 heating oil has an energy equivalence of 138,700 Btu's.
[8] For the purposes of this table, 1 gallon of liquid propane has an energy equivalence of 91,000 Btu's.

* * * * *

Emily H. Rock,

Secretary.

[FR Doc. 86-9906 Filed 5-2-86; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 441

[Docket No. 86N-0070]

Antibiotic Drugs; Imipenem Monohydrate-Cilastatin Sodium for Injection

Correction

In FR Doc. 86-7369, beginning on page 11571, in the issue of Friday, April 4, 1986, make the following corrections:

1. On page 11573, third column, §441.20a(a)(3)(i), third line, "of" should read "on".

2. On page 11574, first column, in § 441.20a(b)(1), first line, "at" should read "a", and in the second line, "and" should read "an".

3. On the same page and column, in § 441.20a(b)(1)(i)(*a*), fourth line, "with" should read "of".

4. On the same page and column, in § 441.20a(b)(1)(i)(*d*), fourth line, "deionized" was misspelled.

5. On the same page and column, in § 441.20a(b)(1)(ii), first line, "standards" should read "standard".

6. On the same page and column, in § 441.20a(b)(1)(ii)(*a*), eleventh line, "nor" should read "no".

7. On the same page, following the formula definitions, in § 441.20a(b)(1)(iv), paragraphs (b) (2) through (6) were omitted. The omitted text reads as follows:

§ 441.20a Sterile imipenem monohydrate.

* * * * *

(b) * * *

(2) *Sterility.* Proceed as directed in § 436.20 of this chapter, using the method described in paragraph (e)(1) of that section.

(3) *Pyrogens.* Proceed as directed in § 436.32(a) of this chapter, using a solution containing 5.0 milligrams of imipenem per milliliter, except inject 10 milliliters per kilogram of rabbit weight.

(4) *Loss on drying.* Proceed as directed in § 436.200(i) of this chapter.

(5) *Specific rotation.* Dilute an accurately weighed sample with sufficient pH 7.0 phosphate buffer to give a concentration of approximately 5.0 milligrams of imipenem per milliliter. Proceed as directed in § 436.210 of this chapter, using a 1.0-decimeter polarimeter tube. To prepare the pH 7.0 phosphate buffer, transfer 5 grams of monobasic potassium phosphate and 11 grams of dibasic potassium phosphate to a 1.0-liter volumetric flask. Dissolve and dilute to volume with distilled water.

(6) *Identity.* Proceed as directed in § 436.211 of this chapter, using the sample preparation described in paragraph (b)(2) of that section.

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BILLING CODE 1505-01-M

VETERANS ADMINISTRATION

DEPARTMENT OF DEFENSE

38 CFR Part 21

Veterans Education; Waiver of Right To Receive Benefits Under the G.I. Bill

Correction

In FR Doc. 86-8458, beginning on page 12852, in the issue of Wednesday, April 16, 1986, make the following correction:

In the third column, § 21.5022(b), second line, "open" should read "one".

BILLING CODE 1505-01-M

POSTAL SERVICE

39 CFR Part 951

Eligibility to Practice Before the Postal Service

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service is adopting this final rule to make it clear that whenever the Judicial Officer is unavailable, other postal officials may decide cases relating to the misconduct of persons who practice before the Postal Service. The rule is intended to give the Postal Service maximum flexibility in assigning misconduct cases to ensure that these cases are timely resolved and decided by individuals who did not participate in the original postal proceeding that resulted in the misconduct charge.

EFFECTIVE DATE: May 12, 1986.

FOR FURTHER INFORMATION CONTACT: Maureen C. Lindsey (202) 268-5438.

For the reasons set out above, the Postal Service amends title 39 CFR as follows:

List of Subjects in 39 CFR Part 951

Administrative practice and procedure, Lawyers, Postal Service.

PART 951—PROCEDURE GOVERNING THE ELIGIBILITY OF PERSONS TO PRACTICE BEFORE THE POSTAL SERVICE

1. The authority citation for Part 951 continues to read as follows:

Authority: 39 U.S.C. 204, 401.

2. In § 951.6, revise paragraph (c) to read as follows:

§ 951.6 Censure, suspension or disbarment; grounds

* * * * *

(c) In the event the Judicial Officer is unavailable for any reason, he may assign complaints of misconduct to the Associate Judicial Officer, an Administrative Law Judge appointed pursuant to the provisions of the Administrative Procedure Act, an Administrative Judge appointed pursuant to the provisions of the Contract Disputes Act of 1978, or some other disinterested member of the headquarters staff of the Postal Service recommended by the Deputy Postmaster General, for the determinations required by § 951.5, the conduct of the hearings, and the decision to censure, suspend, or debar persons as provided herein.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 86-10003 Filed 5-2-86; 8:45 am]

BILLING CODE 7710-12-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 85-09; Notice 02]

Federal Motor Vehicle Safety Standards; New Pneumatic Tires on Passenger Cars

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This notice amends Federal Motor Vehicle Safety Standard (FMVSS) No. 109, *New Pneumatic Tires on Passenger Cars*, to delete paragraph S4.2.2.2(b) of the standard. Paragraph S4.2.2.2(b) imposes a size factor dimensional requirement on tires manufactured for passenger cars. The agency has concluded that the size factor requirement provides no safety benefits, and that removing that requirement relieves an unnecessary restriction on tire manufacturers.

EFFECTIVE DATE: This amendment is effective May 5, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Cook, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202) 426-1750.

SUPPLEMENTARY INFORMATION: Federal Motor Vehicle Safety Standard (FMVSS) No. 109, *New Pneumatic Tires—Passenger Cars*, 49 CFR 571.109, specifies the requirements for all tires manufactured for use on passenger cars manufactured after 1948. Under that safety standard, tires must meet

specified dimensional, strength, resistance to bead unseating, endurance, and high speed requirements, and be labeled with certain safety information.

The European Tyre and Rim Technical Organisation (ETRTO) petitioned NHTSA to amend Standard No. 109 to delete the size factor requirement in paragraph S4.2.2.2(b). "Size factor" is defined in paragraph S3 of the standard as "the sum of the section width and the outer diameter of a tire determined on the test rim." The basis for ETRTO's request was that size factor provides no safety benefits and should be deleted for the same reasons stated by the agency for deleting the minimum size factor requirement. (*See*, 46 FR 61473, December 17, 1981; 47 FR 36180; August 19, 1982.) NHTSA tentatively agreed that the size factor dimensional requirement provides no safety benefits and issued a notice on July 12, 1985 (50 FR 28426), granting ETRTO's petition and proposing to delete the size factor requirement.

Background

A rule published in December 1981, deleted an informational table (referred to as "Table 1") that had been included in FMVSS No. 109 to list dimensional and loading information for all passenger car tire sizes, including dimensional specifications for "minimum size factor." The information had been used by the agency for testing tires for compliance with FMVSS No. 109 and for determining the appropriateness of the tires used on particular vehicles, in accordance with FMVSS No. 110, *Tire Selection and Rims*. NHTSA determined that retaining Table 1 was not necessary because the required specifications for compliance testing could be determined from the information labeled on the sidewall of the tires, and because no safety-related justifications for keeping the table were found to exist.

In deleting Table 1 from Standard No. 109, NHTSA intended to reduce unnecessary paperwork burdens for manufacturers and facilitate the introduction of new technology in tires, and thus amended the standard's requirements for tire sizes and load factors to reference publications of private standards groups. Commenters to the NPRM on this action has requested the agency to delete the dimensional requirements of Standard No. 109 in its final rule, but NHTSA determined that those requests could not be considered since the public was not given an opportunity to comment on such a change. NHTSA thus issued the final rule which amended S4.2.2.2 to simply delete reference to Table 1 and instead include the new references to the private publications.

Since dimensional requirements were being retained in S4.2.2.2, several commenters were concerned that some of the standardization organizations do not publish the size factor dimension. NHTSA addressed this concern by explaining that all yearbooks specify a tire's overall diameter and section width, and that added together, those dimensions equal the size factor. However, when Table I was deleted from Standard No. 109, NHTSA should have distinguished between specifications referring to "size factor" and those which had referred previously to "minimum size factor." As explained below, this oversight resulted in an unintended removal of dimensional tolerances previously permitted by the standard.

Size factor

Prior to the deletion of Table 1, paragaph S4.2.2.2(b) of the standard had required that a tire's size factor be *at least as large* as the size factor provided by the table. Accordingly, a "minimum size factor" was specified in Table 1 for each tire size designation. The minimum size factor for a particular tire size was always less than the size factor of that tire. A tire could meet the size factor dimensional requirement of FMVSS No. 109 when its size factor was equal to or greater than the size factor provided by Table 1 for its size designation. (For example, according to data from the 1982 Tire and Rim Association Yearbook, the size factor for the tire listed as P195/75R14 is 33.23 inches, while its minimum size factor is calculated as 32.64 inches.)

When the agency deleted Table 1, NHTSA removed Standard No. 109's listing of minimum size factors for tire sizes. NHTSA determined that the requirement was no longer necessary because manufacturers would not undersize their tire absent such a requirement. The agency amended the standard to require that a tire's size factor be at least as large as that specified in a submission made by an individual manufacturer to NHTSA, pursuant to the requirements of paragraph S4.4.1(a) of the standard, or in one of the standardization organization's publications described in S4.4.1(b), for the tire's size designation and type. However, since size factor is simply the sum of the section width and the outer diameter of a tire and is actually a design goal, the unintended effect of specifying that a tire's size factor be "at least as large as" that specified in a publication or yearbook was to revise S4.2.2.2(b) to remove the dimensional tolerances previously permitted by the minimum size factors provided in Table 1.

ETRTO's petition

When the agency denied petitions for reconsideration of its decision to delete the minimum size factor requirement, NHTSA reiterated its conclusion that such a requirement was not needed in Standard No. 109. 47 FR at 36181. ETRTO subsequently petitioned the agency to delete or amend S4.2.2.2(b) to accord with NHTSA's determination that a dimensional requirement for tire size factor was unnecessary and "to avoid any confusion" regarding that matter. NHTSA granted the petition and issued an NPRM proposing to remove paragraph S4.2.2.2(b) from Standard No. 109 and the definition of "size factor" from paragraph S3 (50 FR 28426; July 12, 1985).

The July 1985 NPRM explained that the size factor requirement should be deleted for the same reasons that minimum size factor was deleted. As explained in that notice, the agency tentatively determined that there were no safety benefits to retaining the size factor requirements since it would be implausible that tire manufacturers would either intentionally or inadvertently undersize their passenger car tires, due to the engineering and quality control efforts that are involved in designing and producing new tire sizes. First, the size factor of a tire cannot be changed after the mold is set up to produce that tire size. Second, tire manufacturers are required to certify that their tires can carry 100 percent of its maximum load at a speed of 50 miles per hour for 24 hours. Undersized tires would be overloaded and would predictably have a high failure rate during this test, which would alert tire manufacturers and NHTSA to any undersizing. Further, product liability awards and negative publicity would more than offset the few dollars saved by undersizing, and would serve as compelling disincentives to manufacturers. Finally, NHTSA believed that the size factor requirement was unnecessary because the absence of such a requirement in Safety Standard No. 119, which applies to tires for use on all motor vehicles other than passenger cars, had not created any problems. Accordingly, since NHTSA believed that tire manufacturers would not intentionally or inadvertently produce a tire which was smaller than the size labelled on the sidewall, the agency proposed to delete the size factor requirement as a means of relieving an

unnecessary restriction on tire manufacturers.

Comments

The agency received four comments on the proposal. Ford agreed that the size requirement provides no safety benefits and should therefore be deleted from Standard No. 109, while Volkswagen, BMW, and Daimler-Benz AG (Mercedes-Benz) opposed the proposal.

Volkswagen (VW) argued that deleting the size factor requirement would eliminate one of the last constraints on tire manufacturers. VW cited examples of identical tires being marked with different sizes due to the overlap between maximum and minimum dimensions. That company believed that the performance requirements of Standard No. 109 do not represent a safeguard against undersizing or tire section width, so that tire manufacturers could continue to designate a tire in different ways which can enable them to charge unjustified premiums for certain tires marked with larger sizes. VW suggested NHTSA adopt lower tolerance limits for tire section width.

In response to this comment, NHTSA believes that motor vehicle manufacturers must use their own expertise in tire selection to comply with both FMVSS No. 109 and FMVSS No. 110. The practices of some tire manufacturers to supply identical tires at different prices is one which can occur regardless of the size factor requirement in Standard No.109. Since there are means available to motor vehicle manufacturers to guard against those types of actions, NHTSA has concluded that VW has not provided a sufficient basis for retaining the size factor requirement.

BMW believed that the agency should not limit its consideration of undersized tires to tire strength and durability. BMW urged NHTSA to consider that tire size affects drivability, braking and steering, and is dependent on wheelwell clearances, and that tire revolutions per mile affect speedometer and odometer accuracy, noise and exhaust emission and fuel economy. That commenter also believed that a minimum dimensional requirement is necessary in light of the use of aftermarket tires, and that, given the entry of other countries into tire production, "compliance with some existing voluntary size standard could become a nebulous quantity."

NHTSA agrees that the factors cited by BMW can be affected by tire size. However, the agency believes that the effect, if any, would be significant. Further, there is no reason to believe that manufacturers will produce tires which do not accord with their labeled sizes.

In their petitions for reconsideration of NHTSA's decision to remove the minimum size factor requirement, commenters argued that, absent a minimum size factor requirement, it would be possible for manufacturers to undersize their tires. The agency did not agree that manufacturers will undersize their tires absent a minimum size factor requirement, and explained its decision in the following manner:

> The size factor of a tire cannot change after the mold is set up to begin producing that size of tire. With all of the engineering and quality control effort involved in designing and producing new tire sizes, it is simply implausible that a tire manufacturer would either intentionally or inadevertently undersize the molds. The undersize tires that would be produced might save the manufacturers a few dollars per tire, but the savings would be more than offset by product liability awards and negative publicity generated. Since automobile manufacturers design cars to a tire's rated load, undersized tires would be overloaded on those cars, and would predictably exhibit higher failure rates than properly sized tires made by other manufacturers. This appears to be a very compelling disincentive to undersizing tires. Hence, the agency concludes that the minimum size factor is not needed in Standard No. 109. (47 FR at 36181; August 19, 1982.)

The agency has concluded that the rationale against undersizing is still valid. Therefore, NHTSA does not agree with BMW that tire undersizing by aftermarket or foreign tire manufacturers might occur absent a size factor requirement.

Daimler-Benz AG (DBAG) agreed with NHTSA that it is highly improbable that tires with insufficient load carrying capacities will be produced, even in the absence of a size factor requirement. However, that company believed that future tires will have less width than current tires if the size factor requirement were deleted. Although DBAG acknowledged that this might not necessarily result in a direct safety hazard with respect to tire strength and endurance, that commenter was concerned about decreased in tire width. DBAG believed that, since the wheelwell spaces have to be determined on the basis of the largest possible dimensions of the designated tire size, narrower tires in set wheelwells might not be esthetically pleasing to customers. Customers might therefore replace their original tires with large sizes which could interfere with the surrounding body and suspension parts. DBAG was also concerned that customer cost and dissatisfaction could increase if smaller tires were produced, since smaller tires tend to wear more rapidly.

NHTSA does not agree that customers will purchase tires that are oversized for their vehicles. FMVSS No. 110 requires that consumers be informed of recommended tire sizes for their vehicles, to ensure that existing tires are not replaced with tires of sizes not recommended for a particular vehicle. Further, the agency believes that tire dealers will exercise great care in order to avoid tort liability for selling incompatible tires.

NHTSA has concluded that the size factor requirement in Standard No. 109 provides no safety benefits. The agency has concluded that removing size factor not only relieves an unnecessary restriction on tire manufacturers but also recognizes that mass-produced products have some minor product-to-product variations, and that these variations can be perfectly acceptable. Therefore, NHTSA is amending FMVSS No. 109 to delete S4.2.2.2(b), and the definition of "size factor' from paragraph S3.

Effective date

The changes to Standard No. 109 described herein are effective upon publication of this rule in the **Federal Register.** These changes relieve a restriction on tire manufacture which the agency has determined to be unnecessary. The revisions to the standard do not specify different test procedures or additional requirements, and no leadtime for preparation by tire or vehicle manufacturers is required. NHTSA therefore finds good cause for making these changes effective upon publication of this final rule in the **Federal Register.**

Analysis of regulatory impacts

The changes to Safety Standard No. 109 made by this rule removes an unnecessary requirement from the standard. The elimination of unnecessary regulation is a useful step for the industry, the general public, and this agency.

NHTSA has examined the effect of this rulemaking action and determined that it is not major within the meaning of Executive Order 12291 or significant within the meaning of the Department of Transportation's regulatory policies and procedures. The agency has also determined that the economic and other effects of this rulemaking action are so minimal that a regulatory evaluation is not required. NHTSA believes that the implementation of this rule would not

increase the costs or burdens for any party.

Regulatory Flexibility Act

NHTSA has also considered the effects of this rulemaking action under the Regulatory Flexibility Act. The agency believes that few of the tire manufacturers would qualify as small businesses. Any tire manufacturer that do qualify as small business might benefit to a small extent by the changes made by this rule, since removing size factor allows manufacturers the leeway to produce tires of sizes which are within acceptable industry standards.

Small governmental units and small organizations are generally affected by amendments to the Federal motor vehicle safety standards as purchasers of new motor vehicles and new motor vehicle equipment. However, these entities will not be affected by the revisions made by this rule since the changes will not singificantly affect the price of tires. For the reasons stated above, I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities, and that a regulatory flexibility analysis is, therefore, not required.

Environmental effects

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

List of Subjects in 49 CFR 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR Part 571 is amended as follows:

1. The authority citation for Part 571 will continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

§ 571.109 Standard No. 109, new pneumatic tires—passenger cars. [Amended]

2. Paragraph S3 is amended by removing the following paragraph:

"Size Factor" means the sum of the section width and the outer diameter of a tire determined on the test rim.

3. Paragraph S4.2.2.2 is revised to read as follows:

* * * * *

S4.2.2.2 *Physical Dimensions.* The actual section width and overall width for each tire measured in accordance with S5.1, shall not exceed the section width specified in a submission made by an individual manufacturer, pursuant to S4.4.1(a) or in one of the publications described in S4.4.1.(b) for its size designation and type by more than:

(1) (For tires with a maximum permissible inflation pressure of 32, 36, or 40 psi) 7 percent, or

(2) (For tires with a maximum permissible inflation pressure of 60 psi or 240, 280, or 300kPa) 7 percent or 0.4 inch, whichever is larger.

* * * * *

Issued on April 29, 1986.

Diane K. Steed,

Administrator.

[FR Doc. 86-10020 Filed 5-2-86; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 650

[Docket No. 51222-5222]

Fishery and Conservation Management; Atlantic Sea Scallop Fishery

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

ACTION: Emergency interim rule; extension of effective date.

SUMMARY: The Secretary of Commerce extends an emergency interim rule which delayed implementation of Amendment 1 to the Fishery Management Plan for Atlantic Sea Scallops (FMP) and reestablished the 35-meats-per-pound standard until May 5, 1986. It is necessary to extend this emergency rule for an additional 60 days, through July 3, 1986, because the conditions requiring the emergency measure still exist. This action is intended to avert severe immediate economic hardship while processors revise, as necessary, their handling procedures.

EFFECTIVE DATE: The effective date of Amendment 1 to 50 CFR Part 650 is delayed through July 3, 1986.

FOR FURTHER INFORMATION CONTACT: Carol J. Kilbride, 617-281-3600.

SUPPLEMENTARY INFORMATION: Under section 305(e)(1) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), the Secretary issued an emergency rule on January 3, 1986, at 51 FR 208, delaying the effective date of Amendment 1 for 90 days until April 1, 1986. On April 8, 1986, NOAA further delayed the effective date of Amendment 1 an additional 30 days from April 4, until May 5, 1986, at 51 FR 11927.

This rule delays the implementation of Amendment 1 for an additional 60 days and extends the regulations implementing the FMP which established a minimum size at harvest within a range from 40–25 meats per pound (47 FR 35990, August 18, 1982). This rule also continues the 35-meats-per-pound standard provided in the emergency rule of January 3, 1986, and April 8, 1986.

The New England Fishery Management Council has voted to extend this emergency rule for the full 90 days since the conditions within the fishery requiring the original emergency rule still exist. This action is authorized by section 305(e)(3) of the Magnuson Act. The emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided for in section 8(a)(1) of the order. This rule is being reported to the Office of Management and Budget with an explanation of why it is not possible to follow the procedures of that order.

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

Dated: April 30, 1986.

William G. Gordon,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 86-10065 Filed 5-1-86; 11:11 am]

BILLING CODE 3510-22-M

50 CFR Part 661

[Docket No. 60477-6077]

Ocean Salmon Fisheries off the Coasts of Washington, Oregon and California

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

ACTION: Final 1986 fishery management measures and request for comments.

SUMMARY: NOAA issues this notice establishing final fishery management measures for the commercial and recreational ocean salmon fisheries off Washington, Oregon, and California for 1986. Specific measures vary by fishery and area. Together they establish fishing areas, seasons, quotas, legal gear, recreational fishing days and catch limits, possession and landing restrictions, and minimum sizes for salmon taken in the fishery conservation zone (3–200 miles) off Washington, Oregon, and California. Similar regulations are being adopted for the

territorial sea (0–3 miles) by the States of Washington, Oregon, and California. The management measures are intended to prevent overfishing and to apportion the ocean harvest equitably among non-treaty commercial and recreational and treaty Indian fisheries. The regulations also are calculated to allow salmon to escape the ocean fisheries to provide for treaty Indian and non-Indian inside fisheries and spawning. These management measures were established using the procedures instituted by the framework amendment to the ocean salmon fishery management plan.

EFFECTIVE DATE: This notice will be effective from 0001 hours (Pacific Daylight Time) April 30, 1986 until modified, superseded or rescinded. Comments will be accepted until May 15, 1986.

ADDRESSES: Comments on this notice may be submitted to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Seattle, WA 98115; or Mr. E. Charles Fullerton, Director, Southwest Region, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten, 206–526–6150; E. Charles Fullerton, 213–514–6196; or the Pacific Fishery Management Council, 503–221–6352.

SUPPLEMENTARY INFORMATION:

Background

The ocean salmon fisheries off Washington, Oregon, and California are managed under a "framework" fishery management plan (FMP). Regulations at 50 CFR Part 661 provide the mechanism for making preseason and inseason adjustments to the management measures, within limits set by the FMP, by notice in the **Federal Register**.

The majority of the 1985 management measures, which were implemented under the framework FMP (50 FR 18672, May 2, 1985), remain in effect until modified, superseded, or rescinded.

This notice implements management measures for the 1986 ocean salmon fisheries recommended by the Pacific Fishery Management Council (Council).

Schedule for Establishing or Adjusting Annual Management Measures

During the first week of March, the Council's Salmon Plan Development Team (Team) and staff economist prepared two reports for the Council, its advisors and the public. The first report, "Review of 1985 Ocean Salmon Fisheries," summarizes the 1985 ocean salmon fisheries and assesses how well the Council's management objectives were met in 1985. The second report, "Preseason Report I: Stock Abundance Analysis for 1986 Ocean Salmon Fisheries," provides the 1986 salmon stock status projections and analyzes the impacts on the stocks and FMP management goals if the 1985 regulations were to be used in 1986.

On March 10–13, the Council met in Portland, Oregon, to develop proposed management options for 1986. Three troll and three recreational fishery management options were proposed for further analysis and public comment. These options presented various combinations of management measures calculated to protect the weak stocks and provide for maximum harvests of more abundant stocks of coho and chinook salmon.

During the third week of March, the Team and staff economist prepared a third report, "Preseason Report II: Analysis of Proposed Regulatory Options for 1986 Ocean Salmon Fisheries," which analyzes the effects of the proposed 1986 management options. This report also was distributed to the Council, its advisors, and the public.

On April 1, 2, and 7, public hearings on the proposed options were held in Renton, Washington, Coos Bay and Astoria, Oregon, and Sacramento and Eureka, California.

On April 8–11, the Council met in Eureka to adopt its final 1986 management measures and its recommendations to the Secretary of Commerce (Secretary). The Team and staff economist prepared a fourth report, "Preseason Report III: 1986 Ocean Salmon Fisheries, Analysis of Impacts of Council Adopted 1986 Regulations," which analyzes the effects of the Council's final recommendations. This report also was distributed to the Council, its advisors, and the public.

Resource Status

Most salmon runs returning to Washington, Oregon, and California rivers and streams in 1986 are expected to be about the same as or larger than in 1985. Bright spots include predicted ocean abundance of three-year-old Klamath River fall-run chinook, which at 213,000 fish is 87 percent above the 1979–85 average; hatchery coho stocks contributing to the Oregon Production Index (OPI), which are expected to be nearly 2½ times more abundant than in 1985, and a predicted return of 286,100 Columbia River bright fall chinook salmon destined for areas above Bonneville Dam, which is about 50 percent greater than the 191,100 fish that returned in 1985.

Primary resource management concerns are for stocks predicted to be substantially below last year's abundance, including Bonneville Pool (Spring Creek) hatchery chinook, Oregon coastal natural coho, and some Washington coastal natural coho stocks.

Chinook Salmon Stocks. The Sacramento and San Joaquin river chinook stocks are expected to return in numbers comparable to recent years. These stocks are expected to permit a harvest only slightly smaller than in 1985 and still provide spawning escapement slightly below the upper end of the goal range.

Primary management concerns in the area south of Cape Blanco, Oregon, are for Klamath River fall chinook. The estimated total ocean population of Klamath River fall chinook in 1986 is 266,000 fish, compared with the 1985 estimate of 102,000. Although the abundance of age three chinook is improved over recent years, the abundance of age four chinook is predicted to be five percent below the 1979–1985 average.

Oregon coastal chinook stocks include south-migrating and localized stocks primarily from southern Oregon streams, and north-migrating chinook stocks which generally originate in central and northern Oregon streams. The southern stocks were depressed in 1983 and 1984 from the effects of El Nino. It is predicted that the 1986 abundance will continue to improve over 1984 and 1985 levels. North-migrating chinook stocks are in stable condition, and are expected to contribute to the ocean catch at about the same level as in 1985 and meet escapement goals.

Estimates of Columbia River chinook abundance vary by stock. The number of upriver spring chinook predicted to return to the river is well above the 84,700 fish that returned in 1985, an encouraging sign for this stock which has been severely depressed for many years. Upriver summer chinook stocks continue to be severely depressed. They are affected insignificantly by ocean harvests off Oregon and Washington. The projected 1986 ocean escapement is slightly below the 1985 ocean escapement of 21,400 fish and far short of the spawning escapement goal of 80,000 fish above Bonneville Dam. Lower river spring (Willamette) chinook returns should be nearly as good as in 1985. The upriver bright fall chinook run is in excellent condition with 286,100 fish forecasted to return to the river. The inriver return of this stock in 1985 was also excellent, the largest since 1973. The escapement goal for upriver bright chinook is 40,000 fish above McNary Dam. Although the total 1986 lower river hatchery stock abundance is expected to

increase from the 1985 level. Bonneville Pool hatchery fall chinook stocks are depressed; only 16,200 Spring Creek hatchery chinook are expected to return to the river, compared with 33,000 fish in 1985.

Washington coastal and Puget Sound chinook are generally far-north migrating, and are affected insignificantly by ocean harvests from Cape Falcon to the U.S.-Canada border.

Coho Salmon Stocks. Oregon coastal and Columbia River coho stocks are the primary components of the Oregon Production Index (OPI). The OPI is an annual index of coho abundance from Leadbetter Point, Washington, south through California. The 1986 OPI is 1,793,000 coho, a 147 percent increase over the 1985 OPI of 727,100 fish. Estimated private hatchery production within the OPI area is 285,500 coho salmon which is added to the OPI to estimate total coho abundance in the area.

Columbia River and Oregon coastal coho are managed as one stock under the framework of the OPI because they are largely mixed in the ocean fisheries. However, Columbia River stocks are managed for full utilization of hatchery production, while Oregon coastal stocks are managed to achieve the rebuilding schedule for naturally-spawning adults. The Oregon Department of Fish and Wildlife estimates Oregon coastal natural (OCN) coho abundance in 1986 at 285,600 fish, below the abundance of recent years. The natural stocks returning this year come from a parent run that spawned in the El Nino year of 1983. Only 57,000 wild fish returned to spawn that year, the lowest return on record and only about one-third of the escapement goal. Of particular concern to fishery managers is that to meet the 1986 OCN coho ocean escapement goal with this level of abundance, the ocean harvest rate must be considerably less than the rates the other stocks in the OPI could sustain.

The 1986 abundance of several northern Washington coastal natural coho stocks is expected to be lower than the preseason estimates used for planning ocean seasons in 1985. The predicted low ocean escapement of Queets River natural coho salmon of 5,200 fish, compared to 6,100 fish in 1985, is of particular concern.

All Puget Sound coho stocks are expected to meet ocean escapement goals, although most stocks have declined in abundance from 1985.

Management Measures for 1986

The Council adopted allowable ocean harvest levels and management measures for 1986, which are designed to protect the weak stocks discussed above, while at the same time allowing maximum harvest of runs with surplus hatchery stocks available to the ocean fisheries.

Only one change in the 1985 regulations was proposed for ocean salmon fisheries south of Point Delgada, California. A subarea coho quota was established to reduce the fishery impacts on OCN coho. It is predicted that ocean escapement of chinook will be slightly below the upper end of the Sacramento River fall chinook spawning escapement goal range of 122,000 to 180–000 adults.

From Point Delgada to Cape Blanco, harvests are constrained by quotas to protect Klamath River fall chinook. The 1986 quotas were proposed by the Klamath River Salmon Management Group (KRSMG), an advisory group of managers of both ocean and inriver Indian and non-Indian fisheries. The ocean quotas are larger than those needed to meet the 1986 ocean escapement goal of 115,100 Klamath River chinook, and reflect the poor socioeconomic condition of affected communities brought about by the lower-than-average ocean harvests in recent years. The area was closed to commercial fishing in 1985. Nevertheless, the Council estimated that 97,200 chinook will escape the ocean fisheries in 1986, compared with 59,300 chinook in 1985 and 43,300 chinook in 1984. Resulting spawning escapement in 1986 is predicted to be 61,200 fish, compared to 43,000 fish in 1985 and 22,700 fish in 1984.

Coho quotas south of Cape Falcon (troll 409,800; recreational 189,000) are higher than in 1985 (troll 45,000; recreational 170,000), because of the predicted high abundance of 1986 OPI coho. The ocean quotas exceed the levels necessary to meet the 1986 escapement goal for Oregon coastal natural coho spawning adults (170,000), to maximize the catch of hatchery stocks surplus to inside fishery and spawning needs. Estimated spawning escapement for OCN coho stocks in 1986 is 142,800.

North of Cape Falcon, as in recent years, ocean treaty and non-treaty harvests and management measures were established by the Council based on negotiations among fishery managers and user group representatives as authorized by the U.S. District Court in *U.S.* v. *Washington, U.S.* v. *Oregon,* and *Hoh Indian Tribe et al.* v. *Baldrige.* Ocean regulations will allow an inside fishery in north coastal streams and will provide spawning escapements at levels agreed to by the negotiators. Ocean management measures are designed to protect weak Washington coastal natural coho stocks in 1986, including Queets River natural fall coho, as well as to minimize the ocean harvest of Bonneville Pool hatchery chinook. A deviation from the framework allocation scale to allocate coho salmon to ocean fisheries north of Cape Falcon in 1986 is being implemented by an emergency rule to be promulgated shortly. Puget Sound escapements are expected to be above established goals for Skagit and Stillaguamish naturally spawning coho.

The Makah, Quileute, Quinault, and Hoh ocean troll fisheries will have a quota of 12,500 chinook and 86,000 coho during May–September, somewhat higher than 1985 quota levels. These quotas are separate from the non-Indian troll and recreational quotas. When tribal quotas are reached, the tribal fishery will close regardless of the number of fish, if any, remaining in the non-Indian quotas; there will be no transfer of overages or underages between non-Indian and Indian ocean quotas.

The following tables and text reflect the management measures recommended by the Council for 1986. The Secretary concurs with these recommendations and finds them responsive to the goals of the FMP, requirements of the resource, and the socio-economic factors affecting resource users. The recommendations are consistent with the requirements of the Magnuson Fishery Conservation and Management Act and other applicable law.

The following management measures are adopted for 1986 under 50 CFR Part 661.

TABLE 1.—COMMERCIAL MANAGEMENT MEASURES FOR 1986 OCEAN SALMON FISHERIES.[a]

[NOTE: Footnotes to this table contain important additional restrictions which must be followed for lawful participation in the fishery.]

Area and season	Salmon species possession and landing restrictions	Quotas		Minimum size limit (inches)		Special restrictions by area
		Chinook	Coho	Chinook	Coho	
United States-Canada Border to Cape Falcon:						
May 1 through earlier of May 10 or chinook quota	All except coho	[b] 33,700		28		Barbless hooks; Conservation Zone 1[f] (Columbia River mouth) is closed.
May 14 through earlier of May 31 or chinook quota						
United States-Canada Border to Carroll Island:						
Aug. 2 through Aug. 3	All	[b] 4,000	[b] 30,000	28	16	Barbless hooks.
Aug. 7 through earliest of Sept. 15,[c] coho quota, or chinook quota.	All					
Leadbetter Point to Cape Falcon		[b][e] 13,300	[b][d] 110,600	28	16	Barbless hooks; Conservation Zone 1[f] (Columbia River mouth) is closed.
Aug. 2 through Aug. 3	All					
Aug. 7 through earliest of Sept. 15, coho quota, or chinook quota.	All					
Cape Falcon to Cape Perpetua		None	[g]	26	16	Barbless hooks.
May 1 through June 30	All except coho					
July 1 through July 20	All, with restrictions [h]					
July 23 through coho quota	All					
Coho quota through Oct. 31	All except coho					
Cape Perpetua to Cape Blanco		None	[g]	26	16	Barbless hooks.
May 1 through June 30	All except coho					
July 1 through July 20	All, with restrictions [i]					
July 23 through coho quota	All					
Coho quota through Oct. 31	All except coho					
Cape Blanco to Point Delgada		[j] 68,200	[g]	26	22	Barbless hooks; not more than 6 lines per boat off California; Conservation Zones 2 (Humbug Mountain to Sisters Rocks), 3 (Punta Gorda to Point Delgada), and 4 (12-mile square at the mouth of the Klamath River) are closed.[l]
June 16 through June 19	All, with restrictions [k]					
June 23 through June 26	All, with restrictions [k]					
June 30 through earlier of Aug. 31 coho quota, or chinook quota.	All, with restrictions [k]					
Coho quota through earlier of Aug. 31 or chinook quota						
Sisters Rocks to Chetco Point:						
May 1 through earlier of June 7 or chinook subarea quota.	All except coho	[j] 7,500		26		Barbless hooks; open only within six nautical miles of the baseline from which the territorial sea is measured.
Sisters Rocks to Mack Arch:						
Lastest of Aug. 7 or chinook quota through earlier of Sept. 15 or chinook subarea quota.	All except coho	[j][m] 7,500				Barbless hooks; open only within six nautical miles of the baseline from which the territorial sea is measured.
South Jetty, Humboldt Bay to Punta Gorda:						
Sept. 8 through earlier of Sept. 30 or chinook subarea quota.	All	[m] 10,000	[g]	26	22	Barbless hooks; open only within six nautical miles of the baseline from which the territorial sea is measured; no more than 6 lines per boat.
Point Delgada to United States-Mexico Border		None	[g]	26	22	Barbless hooks; no more than 6 lines per boat.
May 1 through May 31	All except coho					
June 1 through earlier of Sept. 30 or coho quota	All					
Coho quota through Sept. 30	All except coho					

[a] In addition to the troll seasons listed, the Oregon Fish and Wildlife Commission may establish limited additional late all-salmon-except-coho seasons inside State waters near the mouths of the Elk, Sixes, and Chetco rivers, which seasons will be consistent with the objectives of these regulations.

[b] The non-treaty ocean fisheries north of Cape Falcon (recreational and troll) will be managed not to exceed either (1) an overall 88,100 chinook quota or (2) impacts on Washington coastal natural coho stocks equivalent, but not necessarily equal to, the subarea quotas set forth in tables 1 and 2.

[c] The season will reopen on August 7 only if at least one full day of fishing on both coho and chinook remains. Fishing continues for both species until either the chinook or coho quota is projected to be attained.

[d] Coho quotas north of Cape Falcon, Oregon, are being implemented by an emergency rule which provides for a deviation from the framework allocation scale for 1986. Any quota overage or underage in the troll quotas from the United States-Canada Border to Carroll Island August troll fishery will be subtracted from or added to the troll quotas beginning August 7 from Leadbetter Point to Cape Falcon.

[f] Conservation Zone 1 is defined as: The ocean area surrounding the Columbia River mouth bounded by a line extending for 6 nautical miles due west from North Head along 46°18'00" N. latitude to 124°13'18" W. longitude, then southerly along a line of 167° True to 46°11'06" N. latitude and 124°11'00" W. longitude (Lighthouse Buoy), then due east to shore along 46°11'06" N. latitude.

[g] The non-treaty ocean troll fishery south of Cape Falcon will be managed not to exceed harvest quotas and hooking mortality of 463,000 coho From Cape Falcon to Pt. Delgada, the subarea harvest quota is 383,000 coho salmon and there is a mortality of 50,000 coho salmon. South of Pt. Delgada, the subarea harvest quota is 26,800 coho salmon and there is a hooking mortality of 3,200 coho salmon.

[h] (1) From July 1 through July 20: A single daily possession or landing per boat of 50 coho is permitted without chinook restrictions. For over 50 coho, chinook also must be possessed and landed and there cannot be more than two coho possessed or landed for each chinook possessed or landed over 50 coho. Mixed loads of chinook and coho and coho-only loads must be delivered in the area. There are no restrictions on the place of delivery of chinook-only loads. Chinook salmon possessed or landed in this management area may not be returned or transferred to any vessel engaged in the commercial salmon fishery.

(2) If there are less than 200,000 coho remaining in the subarea quota when the fishery reopens on July 23, the above restrictions will remain in effect until the coho quota is reached. This determination will be made by the Pacific Fishery Management Council's Salmon Plan Development Team by July 22 and will be announced by notice in the FEDERAL REGISTER. If more than 200,000 coho remain, no ratio restrictions will apply in the fishery beginning July 23.

[i] (1) From July 1 through July 20: At least one chinook must be possessed or landed for each two coho possessed or landed. Coho may not be possessed without a chinook salmon in possession. The chinook must be delivered with the coho. Chinook salmon possessed or landed in this management area may not be returned or transferred to any vessel engaged in the commercial salmon fishery.

(2) If there are less than 200,000 coho remaining in the subarea quota when the fishery reopens on July 23, then a single daily possession or landing per boat of 50 coho is permitted without chinook restrictions. For over 50 coho, chinook also must be possessed and landed and there cannot be more than two coho possessed or landed for each chinook possessed or landed over 50 coho. Chinook salmon possessed or landed in this management area may not be returned or transferred to any vessel engaged in the commercial salmon fishery. This determination will be made by the Pacific Fishery Management Council's Salmon Plan Development Team by July 22 and will be announced by notice in the FEDERAL REGISTER. If more than 200,000 coho remain, no ratio restrictions will apply in the fishery beginning July 23.

[j] The total chinook quota of 123,200 for all ocean salmon fisheries in this area consists of 83,200 chinook for the troll fishery and 40,000 chinook for the recreational fishery. On July 16, the Salmon Plan Development Team will determine how many chinook will be required to complete the recreational season, not to exceed its 40,000 quota. Any remaining allowable catch will be allocated to the troll fishery. The total troll quota includes subares quotas for fisheries from Sisters Rocks to Chetco Point (7,500 chinook) and Sisters Rocks to Mack Arch (7,500 chinook). Any overage or underage in the subarea chinook quota from Sisters Rocks to Chetco Point will be added to or subtracted from the troll quota from Cape Blanco to Point Delgada. Any overage in the troll fishery from Cape Blanco to Point Delgada will be subtracted from the subarea troll quota from Sisters Rocks to Mack Arch.

[k] (1) At least one chinook must be possessed or landed for each two coho possessed or landed. The chinook must be delivered with the coho. Coho may not be possessed without a chinook salmon in possession. Chinook salmon possessed or landed in this management area may not be returned or transferred to any vessel engaged in the commercial salmon fishery.

(2) From June 16 through June 30: Salmon may not be possessed in a closed area more than 12 hours after that area is closed. Except for the 12-hour period following closure, no vessel may enter the closed area with salmon on board without prior notification of the Commander, Pacific Area, U.S. Coast Guard, through the nearest Coast Guard station. It is unlawful for a vessel to which has been issued an ocean salmon fishing permit by any state to have troll gear in the water during the closed periods between June 20 and June 22, and June 27 and June 29.

[l] Conservation zones 2, 3, and 4 are defined as follows;

Conservation zone 2: The ocean area bounded on the north by 42°40'30" N. latitude, and on the south by 42°35'45" N. latitude.

Conservation zone 3: The ocean area bounded on the north by 40°15'30" N. latitude, and on the south by 40°01'24" N. latitude.

Conservation zone 4: The ocean area surrounding the Klamath River mouth bounded on the north by 41°38'48" N. latitude (approximately 6 nautical miles north of the Klamath River mouth), on the west by 124°23'00" W. longitude (approximately 12 miles from shore), and on the south by 41°26'48" N. latitude (approximately 6 nautical miles south of the Klamath River mouth).

[m] The Klamath River fall chinook portion of the catch after September 7, as determined by the Salmon Plan Development Team, will be subtracted from the 1987 troll allocation.

[n] Coho catches in this fishery will not count toward any coho quota.

TABLE 2.—RECREATIONAL MANAGEMENT MEASURES FOR 1986 OCEAN SALMON FISHERIES [a]

[NOTE: Footnotes to this table contain important additional restrictions which must be followed for lawful participation in the fishery.]

Area and season	Salmon Species	Quota		Minimum size limit (inches)		Daily bag limit and special restrictions by area
		Chinook	Coho	Chinook	Coho	
United States-Canada Border to Queets River	All	[b] 2,300	[b] 26,000	24	16	2 fish.
June 29 through earliest of Sept. 25, chinook quota, or coho quota						
Sunday through Thursday only						
Queets River to Klipsan Beach:						
June 29 through earliest of Sept. 25, chinook quota, or coho quota.	All	[b] 23,100	[b] 76,300	24	16	2 fish; closed within 0–3 nautical miles.
Sunday through Thursday only.						
Klipsan Beach to Red Buoy Line: (Closed)						
Red Buoy Line to Cape Falcon:						
June 29 through earliest of Sept. 25, chinook quota, or coho quota.	All	[b] 11,700	[b] 103,200	24	16	2 fish.
Sunday through Thursday only.						
Cape Falcon to Cape Blanco:						
May 24 through May 26	All	None	[c]	None	None	First 2 fish hooked per day must be retained, no more than 2 fish may be retained per day, and no more than 6 fish may be retained in 7 consecutive days.[d]
June 28 through earlier of Sept. 4 or coho quota						
Cape Blanco to Point Delgada[f]	All	[e] 40,000	[c]	20	20	From May 24 through June 22, not more than 1 coho and 1 chinook; after June 22, 2 salmon of any species. No more than 6 fish may be retained in 7 consecutive days; barbless hooks; Conservation zone 4 (12-mile square at Klamath River mouth) is closed Aug. 1 thru Aug. 31.[g]
Effective immediately, closed until May 24						
May 24 through earlier of Sept. 7 or chinook quota						
Point Delgada to United States-Mexico Border	All	None	[c]	20	20	2 fish; barbless hooks.
Nearest Saturday to Feb. 15 through nearest Sunday to November 15						

[a] These management measures assume a Buoy 10 recreational fishery in Washington and Oregon State waters (Columbia River mouth to the Astoria-Megler Bridge) with total state quotas of 10,000 chinook and 67,000 coho. Washington and Oregon will negotiate a Buoy 10 fishery within these parameters at a later date. In addition to the ocean recreational seasons listed, the Oregon Fish and Wildlife Commission may establish limited additional late all-salmon-except-coho seasons inside State waters near the mouths of the Elk, Sixes and Chetco rivers and Tillamook Bay, which seasons will be consistent with the objectives of these regulations.

[b] The non-treaty ocean fisheries north of Cape Falcon (recreational and troll) will be managed not to exceed either (1) an overall 88,100 chinook quota, or (2) impacts on Washington coastal natural coho stocks equivalent, but not necessarily equal to, the subarea quotas set forth in tables 1 and 2.

[c] Coho quota south of Cape Falcon is 189,000 fish. Coho caught south of Cape Blanco count toward the total quota, but the fishery south of Cape Blanco will not close when the coho quota is met.

[d] If the inseason catch rate indicates the possibility of reaching the recreational quota before Labor Day, inseason revision of fishing days per week to extend the season through Labor Day will be invoked. The order of preference for daily closures will be (1) Sundays, (2) Sundays and Mondays, and (3) other combination of days.

[e] On July 16, the Salmon Plan Development Team will determine how many chinook will be required to complete the recreational season. Any portion of the recreational chinook quota (40,000 fish) not needed to complete the recreational season will be reallocated to the troll fishery. Troll and recreational fisheries from Cape Blanco to Point Delgada will be managed not to exceed a total quota of 123,200 chinook.

[f] Federal regulations for 1985 allowed the recreational fishery to open on February 15, 1986. The State of California closed the fishery in territorial waters north of Point Delgada on March 28, 1986. Effective upon filing of these regulations, the recreational fishery in the FCZ from the Oregon-California Border to Point Delgada will close until opened by these regulations on May 24.

[g] If 14,000 or more chinook are caught by July 1, no more than 1 chinook may be retained per day, fishing for all species will be open only Thursday through Monday each week, and no more than 4 salmon may be retained in 7 consecutive days. This determination will be made by the Pacific Fishery Management Council's Salmon Plan Development Team, and will be announced by notice in the FEDERAL REGISTER. Conservation Zone 4 is defined as the ocean area surrounding the Klamath River mouth bounded on the north by 41°38'48" N. latitude (approximately 6 nautical miles north of the Klamath River mouth) on the west by 124°23'00" W. longitude (approximately 12 miles from shore), and on the south by 41°26'48" N. latitude (approximately 6 nautical miles south of the Klamath River mouth).

TABLE 3.—TREATY INDIAN MANAGEMENT MEASURES

[NOTE: Footnotes to this table contain important additional restrictions which must be followed for lawful participation in the fishery.]

Tribe	Boundaries [a]	Open seasons	Species	Minimum lengths [b]		Special restrictions by area
				Chinook	Coho	
Makah	That portion of the Fishery Management Area north of 48°02'15" N. latitude (Norwegian Memorial) and east of 125°44'00" W. longitude.	May 1 to earlier of May 31 or chinook quota [c].	All salmon except coho	24"		Barbless hooks, except that hooks used with bait and plugs may be barbed. No more than 6 fixed lines/boat, or no more than 4 hand-held lines per person.
		June 1 to earlier of Oct. 31 or chinook or coho quota [c].	All salmon	24"	16"	Barbless hooks, except that hooks used with bait and plugs may be barbed. No more than 6 fixed lines/boat, or no more than 4 hand held lines per person.
Quileute	That portion of the Fishery Management Area between 48°07'36" N. latitude (Sand Point) and 47°31'42" N. latitude (Queets River).	May 1 to earlier of May 31 or chinook quota [c].	All salmon except coho	26"		Barbless hooks, except that hooks used with bait and plugs may be barbed. No more than 8 lines/boat.[d]
		June 1 to earlier of Sept. 15 or chinook or coho quota [c].	All salmon	26"	16"	Barbless hooks, except that hooks used with bait and plugs may be barbed. No more than 8 lines/boat.[d]
Hoh	That portion of the Fishery Management Area between 47°54'18" N. latitude (Quillayute River) and 47°21'00" N. latitude (Quinault River).	May 1 to earlier of May 31 or chinook quota [c].	All salmon except coho	26"		Barbless hooks, except that hooks used with bait and plugs may be barbed. No more than 8 lines/boat.[d]
		June 1 to earlier of Sept. 15 or chinook or coho quota [c]	All salmon	26"	16"	Barbless hooks, except that hooks used with bait and plugs may be barbed. No more than 8 lines/boat.[d]

TABLE 3.—TREATY INDIAN MANAGEMENT MEASURES—Continued

[NOTE: Footnotes to this table contain important additional restrictions which must be followed for lawful participation in the fishery.]

Tribe	Boundaries [a]	Open seasons	Species	Minimum lengths [b]		Special restrictions by area
				Chinook	Coho	
Quinalt	That portion of the Fishery Management Area between 47°40'06" N. latitude (Destruction Island) and 46°53'18" N. latitude (Point Chehalis).	May 1 to earlier of May 31 or chinook quota [c].	All salmon except coho	26"		Barbless hooks, except that hooks used with bait and plugs may be barbed. No more than 8 lines/boat. [d]
		June 1 to earlier of Sept. 15 or chinook or coho quota [c].	All salmon	26"	16"	Barbless hooks, except that hooks used with bait and plugs may be barbed. No more than 8 lines/boat. [d]

[a] All boundaries may be changed to include such other areas as may hereafter be authorized for that tribe's treaty fishery by a federal court.
[b] For subsistence and ceremonial purposes, the minimum total lengths of salmon are:
Makah Tribe: None.
Quileute, Hoh, and Quinault Tribes: Not more than two chinook salmon between the lengths of 24 and 26 inches per day may be retained.
[c] The overall ocean quotas for the Washington Coastal Tribes are: 12,500 chinook and 66,000 coho salmon. These quotas include troll catches by the Klallam and Makah tribes in Area 4B.
[d] The area within a 6 miles radius of the mouths of the Queets River (47°31'42" N. latitude), the Hoh River (47°45'12" N. latitude) and the Quillayute River (47°54'18" N. latitude) will be closed to commercial fishing. A closure within 2 miles of the mouth of the Quinault River (47°21'00" N. latitude) may be enacted by the Tribe and/or the State of Washington and will not adversely affect the Secretary's management regime.

Gear Definitions and Restrictions

In addition to gear restrictions shown in Tables 1, 2, and 3, the following gear definitions and restrictions will be in effect until modified, superseded or rescinded.

Troll Fishing Gear

Troll fishing gear for the FMA is defined as one or more lines that drag hooks with bait or lures behind a moving fishing vessel.

In that portion of the FMA off Oregon and Washington, the line or lines must be affixed to the vessel and must not be disengaged from the vessel at any time during the fishing operation.

Recreational Fishing Gear

Recreational fishing gear for the Fishery Management Area (FMA) is defined as angling tackle consisting of a line with not more than one artificial lure or natural bait attached.

In that portion of the FMA off Oregon and Washington, the line must be attached to a rod and reel held by hand or closely attended; the rod and reel must be held by hand while playing a hooked fish. No person may use more than one rod and line while fishing off Oregon or Washington. Off Oregon, not more than three hooks can be used. There is no limit to the number of hooks that can be used off Washington and California.

In that portion of the FMA off California, weights directly attached to a line may not exceed four (4) pounds. There is no limit to the number of lines that a person may use while recreationally fishing off California.

Geographical Landmarks

Geographical landmarks referenced in this notice are at the following locations:

Carroll Island	48°00'18" N. lat.
Queets River	47°31'42" N. lat.
Leadbetter Point	46°38'10" N. lat.
Klipsan Beach	46°28'12" N. lat.
Red Buoy Line	Seaward along the south jetty of the Columbia River to the visible tip of the jetty and then to Buoy #2SJ, then southwesterly to Buoy #4, continuing southwesterly to Buoy #2, and then to the Columbia River Buoy, then due west along 46°11'06" N. latitude.
Cape Falcon	45°46'00" N. lat.
Cape Perpetua	44°17'30" N. lat.
Cape Blanco	42°50'20" N. lat.
Humbug Mountain.	42°40'30" N. lat.
Sisters Rocks	42°35'45" N. lat.
Mack Arch	42°13'40" N. lat.
Chetco Point	42°02'35" N. lat.
South Jetty, Humboldt Bay.	40°45'30" N. lat.
Punta Gorda	40°15'30" N. lat.
Point Delgada	40°01'24" N. lat.

Classification

The 1986 management measures established under the provisions of the FMP and its implementing regulations are based on the most recent data available. The aggregate data upon which the measures are based are available for public inspection at the offices of the Regional Directors (see **ADDRESSES**) during business hours until the end of the comment period.

These actions are taken under 50 CFR Part 661, are in compliance with Executive Order 12291, and are covered by the Regulatory Flexibility Analysis RFA/Final Supplemental Environmental Impact Statement (SEIS) prepared for the framework amendment to the FMP. These actions impose no information collection requirements under the Paperwork Reduction Act.

Section 661.23 of the ocean salmon regulations states that the Secretary will publish a notice establishing management measures for 1986 and will invite public comments prior to its effective date. If the Secretary determines, for good cause, that a notice must be issued without affording a prior opportunity for public comment, comments on the notice will be received by the Secretary for a period of 15 days after the effective date of the notice.

Because of the depressed status of some salmon stocks, and the need to reduce harvest in some areas or to establish different opening dates than those in the 1985 regulations for some fisheries, the Secretary has determined that time does not permit a comment period prior to the date the management measures must be in effect. Comments will be accepted for 15 days after the effective date of this notice.

The public has had opportunity to comment on these management measures during the process of their development. The public participated in the March and April Council, Team, and Advisor meetings, and in public hearings held in Washington, Oregon, and California in early April, which generated the management actions recommended by the Council and approved by the Secretary. Written public comments were invited by the Council between the March and April Council meetings.

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

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

Dated: April 30, 1986.

William G. Gordon,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 86-10023 Filed 4-30-86; 4:14 pm]

BILLING CODE 3510-22-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Rule to Determine Cycladenia Humilis var. Jonesii (Jones Cycladenia) to be a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Cycladenia humilis* var. *jonesii* (Jones cycladenia) to be a threatened species under the authority of the Endangered Species Act of 1973, as amended. This taxon occurs in three general areas in the Canyonlands section of southeastern Utah, in Emery, Garfield, and Grand Counties. The three populations total about 7,500 individuals, with over half on pubic land managed by the Bureau of Land Management, approximately 2,500 on National Park Service lands at Glen Canyon National Recreation Area and Capitol Reef National Park, and approximately 500 at one site on State of Utah land. A fourth population may still occur in Kane County, Utah, or in Mohave County, Arizona, but is known only from a collection with general location information made in 1882, before the boundary between the territories of Utah and Arizona was surveyed. The taxon grows on barren clay hills forming the steep side slopes and bases of mesas in the canyon country. The species is vulnerable due to its rarity, and is threatened by impacts from mineral and oil and gas exploration and off-road vehicle disturbance.

DATES: The effective date of this rule is June 4, 1986.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours of the Service's Endangered Species Staff at the following locations: 134 Union Boulevard, Fourth Floor, Lakewood, Colorado 80228; Room 2078 Administration Building, 1745 West 1700 South, Salt Lake City, Utah 84140; and Suite B-109, Independence Plaza, 529 25-½ Road, Grand Junction, Colorado 81505.

FOR FURTHER INFORMATION CONTACT: John L. England, Salt Lake City (801/524-4430 or FTS 588-4430), or John Anderson, Grand Junction (303/241-0563 or FTS 322-0348), at the above address.

SUPPLEMENTARY INFORMATION:

Background

Cycladenia humilis var. *jonesii* (Jones cycladenia) is a herbaceous perennial 4 to 6 inches (10-15 centimeters) tall, with clumps of bright green leaves and ". . . rosy flowers (that) somewhat resemble small morning-glories and have a charm that thrills the beholder" (Eastwood 1942). Alice Eastwood described the plant in 1942 as *Cycladenia jonesii* based on a collection from the San Rafael Swell (Emery County) made by Marcus E. Jones in 1914. Except for two other San Rafael Swell collections in the 1930's, this taxon was not seen again until a single plant was discovered by Dr. Stanley Welsh in 1968 in Castle Valley, northeast of Moab (Grand County), about 65 miles east of the San Rafael Swell (Welsh 1970). He and Dr. Duane Atwood later reduced the Jones cycladenia to varietal status (Welsh, Atwood, and Reveal 1975). During inventories in the spring of 1985, since the proposal of endangered status on January 10, 1985, about 1,000 individuals were located in Castle Valley on Bureau of Land Management (BLM) land and another 1,000 individuals about 5 miles (8 kilometers) to the northeast along Onion Creek below Fisher Mesa, also on BLM land. These plants are growing in mixed desert shrub and the lower edge of the pinyon pine and juniper community at 5,000-5,600 feet (1,500-1,700 meters) on sparsely vegetated hills derived from arkosic (containing unweathered feldspar) sandstone of the Permian Cutler Formation.

In 1979, James Harris, then a graduate student at Brigham Young University, rediscovered Jones cycladenia at two sites 2 miles (3 kilometers) apart in the area of the 1914 collection. The larger site, with some 2,000 plants, is on public land managed by the BLM; the other has some 500 plants on State of Utah land. This San Rafael Desert population, which is just east of the San Rafael Reef and south of Interstate 70, consists of mostly mature plants, many of which are connected by underground stems (rhizomes). Therefore, the number of separate individual plants is hard to determine but is certainly lower than the number of above-ground stems. These plants are growing on sparsely vegetated "badland" hills, a habitat similar in aspect to the one in Castle Valley, but with fine-textured soils derived from a different formation, the Jurassic Summerville, at a slightly lower elevation (4,600 feet—1,400 meters) in the mixed desert shrub community with Mormon tea (*Ephedra torreyana*), shrubby wild-buckwheat (*Eriogonum corymbosum*), and *Enceliopsis nudicaulis*, a herbaceous perennial.

A third population was found during the 1984 field season on the Purple Hills, within the Circle Cliffs area of the Glen Canyon National Recreation Area (GCNRA), administered by the National Park Service (NPS), in Garfield County, Utah, (Welsh 1984). This population was discovered during a rare plant inventory as part of a biological baseline study for an Environmental Impact Statement on Federal tar sand leasing. This population is about 90 miles (145 kilometers) south of the San Rafael Swell population. Subsequently, inventories by Jim Holland (NPS), Steve Hedges (BLM), and John Anderson of the Fish and Wildlife Service in the spring of 1985 located three other sites of the Jones cycladenia with a total of 3,000 plants near the Purple Hills over an area about 5 miles (8 kilometers) long. These sites occur on sparsely vegetated "badland" hills and steep side slopes of mesas, as do the two previously discussed more northern populations, but at a slightly higher elevation (5,600-6,600 feet—1,700-2,000 meters), on another formation, the Triassic Chinle, and with the primarily herbaceous perennial plant associates, *Brickellia oblongifolia* and *Oenothera brachycarpa*. A fourth population from further south in Utah or from northern Arizona (the Pipe Spring area in Mohave County, Arizona and Kane County, Utah) may remain; it is known only from an 1882 collection by Andrew Siler, but the locality information is indefinite and the site has never been relocated (Holmgren 1984).

Cycladenia humilis var. *jonesii* is the only member of its genus in the Intermountain West; the genus consists of only the one species with its other varieties restricted to California. Because the Jones cycladenia has a disjunct distribution pattern in three localized areas over 100 miles apart and its nearest relatives are in California, it is believed to be a Tertiary relict. This taxon thus may be ill adapted to the present-day climatic regime of the Intermountain West, increasing its vulnerability.

The Canyonlands section of Utah has more endemic plants than any other portion of the State, about 70 taxa. In

addition to the *Cycladenia*, about 13 of these taxa are candidates for possible listing under the Endangered Species Act (48 FR 53639). The Canyonlands are considered relatively ancient floristically, having "been less affected by the special conditions of recent changing [geological] epochs" (Holmgren 1972, p. 103).

Threats to the Jones cycladenia include habitat disturbance from exploration for oil and gas, tar sands, and minerals (primarily uranium), and from recreational and other off-road vehicle (ORV) use.

Section 12 of the Endangered Species Act of 1973 (Act) directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of this report as a petition within the context of section 4(c)(2) of the Act (petition acceptance is now governed by section 4(b)(3) of the Act, as amended), and of its intention thereby to review the status of the plant taxa named within. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant taxa to be endangered species pursuant to section 4 of the Act. This list was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** notice. *Cycladenia humilis* var. *jonesii* was included (as *Cycladenia jonesii*) in the July, 1975, notice (40 FR 27880) and the June, 1976, proposal (41 FR 24527). General comments received in relation to the 1976 proposal are summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909).

The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn, but established a 1-year grace period for proposals that were already 2 years old. On December 10, 1979, the Service published a notice of the withdrawal of the still-applicable portions of the June, 1976, proposal, along with other proposals that had expired. On December 15, 1980, the Service published a new notice of review for plants in the **Federal Register** (45 FR 82480), which included *Cycladenia humilis* var. *jonesii* as a category-1 species, indicating that the Service then possessed substantial information to support a proposal of endangered or threatened status. No comments on this taxon were received in response to the 1980 notice. On February 15, 1983, the Service published a notice in the **Federal Register** (48 FR 6752) of its prior finding that the petitioned action on this taxon may be warranted, in accordance with section 4(b)(3)(A) of the Act as amended in 1982.

On October 13, 1983, and again on October 12, 1984, the petition finding was made that listing the Jones cycladenia was warranted but precluded by other listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. Such a finding requires a recycling of the petition, pursuant to section 4(b)(3)(C)(i) of the Act and another finding becomes due within 12 months. The Service published a proposed rule, constituting a finding that the petitioned section was warranted, to list *Cycladenia humilis* var. *jonesii* as an endangered species in the January 10, 1985, **Federal Register** (50 FR 1247).

Endangered status was proposed for the Jones cycladenia based upon then-current status information, which indicated that the species comprised about 2,900 individuals in three populations. The Service's Grand Junction Field Office obtained additional status information after the publication of the proposed rule indicating the existence of two additional sites, one each in Grand County and Garfield County, and 7,500 individuals altogether. The Service, after evaluating the threats and the biological status of *Cycladenia humilis* var. *jonesii*, has determined that the species should be listed as threatened, rather than endangered as was proposed in the January 10, 1985, **Federal Register**.

Summary of Comments and Recommendations

In the January 10, 1985, proposed rule (50 FR 1247) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices that invited general public comment were published in the *Salt Lake Tribune* and *Deseret News* on February 12, 1985. Seven comments were received and are discussed below. No public hearing was requested or held.

The National Park Service supported the listing and reported an inventory that located three additional sites in the Purple Hills area: Middle Moody Canyon (GCNRA), Deer Point (BLM), and an adjacent site in Capitol Reef National Park (CRNP). The Park Service enumerated threats to the Purple Hills sites including nine oil and gas leases and five lease applications around the Purple Hills site within GCNRA, a proposal to develop the Circle Cliffs Special Tar Sands Area, ORV activity associated with uranium exploration, and the possibility of increased visitor access and recreational ORV activity associated with new road construction. The Middle Moody Canyon site is within the park natural zone. It and the CRNP site are protected from energy developments. The Park Service also noted that all of the Purple Hills sites are within grazing allotments. Recently, Service and NPS personnel visited the Purple Hills sites and observed the new sites and impacts to them. The Service agrees with the NPS comments.

The Bureau of Land Management submitted a comment in which it identified no threats to the BLM site in the Purple Hills. However, since the site is on the uranium-bearing Chinle Formation and the area is open to mining claims, there is a potential threat from uranium exploration. Although Kirkwood Oil and Gas Company has withdrawn its plan of operation for tar sand development, the threat of future tar sand development in the Circle Cliffs Special Tar Sands area remains, as noted by NPS. The BLM also noted that the Mohave County, Arizona, site was within Pipe Spring National Monument, on NPS land, not public domain land. However, the locality given for this collection is vague, and it could have been made anywhere in the vicinity of Pipe Spring National Monument, which is only 40 acres in size. There is potential habitat in this area on the slopes and foothills of the Chinle Formation, below the Vermillion Cliffs, between Cane Beds, Arizona, and Kanab, Utah.

The Smithsonian Institution and the State of Utah supported the listing; the State agreed there is no need to designate critical habitat. The Utah Native Plant Society also supported the listing and expressed the hope that listing would stimulate protection for the Jones cycladenia.

A comment from two individuals supported the listing. They mentioned that a graded road bisects the larger San Rafael site. This road has also been observed by the Service and is in an area of uranium exploration.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Cycladenia humilis* var. *jonesii* should be classified as a threatened species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) were followed. A species may be determined to be an endangered or a threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Cycladenia humilis* Bentham var. *jonesii* (Eastwood) Welsh & Atwood (Jones cycladenia) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Off-road vehicle use for recreation and exploration for minerals, tar sands, and oil and gas is impacting the habitat of *Cycladenia humilis* var. *jonesii*. The San Rafael Swell population is crisscrossed with vehicle tracks and pockmarked from uranium exploration (Anderson 1981, Hreha and Greenwood 1980). This habitat has also been staked with mining claims. Although none of the claims have been developed and most may be simply speculative, the danger of future mining for uranium remains a possibility. In addition, annual assessment work is required to maintain a valid claim. This assessment work causes continual distrubance of the habitat. Vehicle tracts and mining claims are also evident at the Purple Hills population (Welsh pers. comm.).

Oil and gas leases have been issued either on or immediately adjacent to all known extant population sites. There is active exploratory drilling for oil and gas adjacent to the Castle Valley site. The BLM site at the Purple Hills is within the Circle Cliffs Special Tar Sands Area, but no development is planned at present. Off-road vehicle use at the Castle Valley and Fisher Mesa (Onion Creek) sites has denuded strips through the population.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not known.

C. *Disease or predation.* All populations are within grazing allotments, but the probability of serious damage is low.

D. *The inadequacy of existing regulatory mechanisms.* No Federal or State laws directly protect *Cycladenia humilis* var. *jonesii*. Although the BLM is aware of this taxon, it is not currently obligated to regulate activities so as to provide for the conservation of the *Cycladenia*, and the sites on BLM land and the Purple Hills site on GCNRA are under multiple-use management.

E. *Other natural or manmade factors affecting its continued existence.* The arid climate and harsh soils of the habitat of the Jones cycladenia make its ecosystem a fragile one, easily degraded by surface distrubances, and slow to recover its natural condition. As an apparent relict species, it may not be well-adapted to present-day climatic conditions in the Intermountain region and may be especially susceptible to habitat disturbance through reduced ability for seedling establishment. Its low numbers in only three known extant populations increase its vulnerability to significant loss from a single inadvertent catastrophic disturbance.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Cycladenia humilis* var. *jonesii* as a threatened species. The Jones cycladenia was proposed as endangered based on its rarity and evidence of threats. In the last year, new sites for two of the populations have been found: At Purple Hills and Castle Valley. These new findings have raised the total population estimate to 7,500 individuals from the 2,900 estimated in the proposal. Most of the new sites face the same threats and impacts as the others, and the Jones cycladenia remains a vulnerable species. Because of the increased numbers but continuing threats, threatened status is more appropriate than either endangered status or no action. Critical habitat is not being determined for this species for the reasons detailed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Cycladenia humilis* var. *jonesii* at this time. The designation of critical habitat is not considered to be prudent when such designation would not be of benefit to the taxon involved (50 CFR 424.12). The Service finds that designation of critical habitat is not prudent because the species would derive no additional benefits from the critical habitat designation that do not already arise from listing and that would outweigh the possible negative effects of such designation. Listing highlights the rarity of a plant and can lead to vandalism or collecting as well as positive attention. Publication of critical habitat descriptions and maps could be detrimental to the species by singling out the location of each occurrence, thus increasing risk to the species. The plant is attractive and conspicuous, and could be taken despite the Federal collecting prohibition. Also, the BLM, NPS, and the State are already aware of the occurrences on their land.

Available Conservation Measures

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

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Possible effects from BLM and NPS activities are expected to be limited. The two agencies funded some of the field surveys on this taxon and are aware of it for planning purposes. Management by these agencies would be affected. Restricting traffic to some existing roads and fencing some areas might be required, as well as special care in administering mining claims and oil and gas and tar sands leases so that

the taxon is accommodated in exploration or any development activity.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all threatened plant species. With respect to *Cycladenia humilis* var. *jonesii*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. No such trade in *Cycladenia humilis* var. *jonesii* is known. It is anticipated that few trade permits would ever be sought or issued since the species is not common in cultivation or in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. Regulations implementing this prohibition were published on September 30, 1985 (50 FR 39681). The protection is also extended to threatened plant species under 50 CFR 17.71. These regulations also provide for the issuance of permits for exceptions to this prohibition under 50 CFR 17.72. The Jones cycladenia occurs in large part on land managed by the BLM and NPS. It is likely that few collecting permits for the Jones cycladenia will be requested, as the plant is not common in the wild and has not been of interest to collectors.

Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1903).

National Environmental Policy Act

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

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Welsh, S.L., N.D. Atwood, and J.L. Reveal. 1975. Endangered, threatened, extinct, endemic, and rare or restricted Utah vascular plants. Great Basin Naturalist 35:327–376.

Authors

The author of this rule is John Anderson, Botanist, Grand Junction Field Office, at the address given above. John L. England, Botanist, Salt Lake City Field Office, at the address given above, served as editor.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

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

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.12(h) by adding the following, in alphabetical order under the family Apocynaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Apocynaceae—Dogbane family:						
Cycladenia humilis var. *jonesii*	Jones cycladenia	U.S.A. (AZ, UT)	T		NA	NA

Dated: April 12, 1986.

P. Daniel Smith,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-9983 Filed 5-2-86; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 604 and 630

[Docket No. 50581-5127]

Reporting and Recordkeeping Requirements for Atlantic Swordfish Fishery; Technical Amendment

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

ACTION: Final rule; technical amendment.

SUMMARY: NOAA issues this final rule implementing a technical amendment to the regulations for the Fishery Management Plan for the Atlantic Swordfish Fishery (FMP). This rule clarifies the reporting requirements for vessels harvesting swordfish from the Caribbean. The intended effect is to implement the intent of the FMP.

EFFECTIVE DATE: May 5, 1986. The information collection requirements at § 630.5 have been approved by the Office of Management and Budget and are effective as of September 18, 1985.

FOR FURTHER INFORMATION CONTACT: Donald W. Geagan, 813-893-3722.

SUPPLEMENTARY INFORMATION: NOAA published a final rule on August 25, 1985 (50 FR 33956) to implement the Fishery Management Plan for the Atlantic Swordfish Fishery (FMP).

The time limit for submission of reports of the Center Director was omitted inadvertently from § 630.5. This rule revises § 630.5 by adding a statement requiring that reports be submitted within 10 days after swordfish are landed. Without this time limit, the reporting requirement is unenforceable.

Other Matters

This action is taken under the authority of 50 CFR Part 630 and is taken in compliance with Executive Order 12291.

List of Subjects

50 CFR Part 604

Reporting and recordkeeping requirements.

50 CFR Part 630

Fisheries, Reporting and recordkeeping requirements.

Dated: April 30, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

For the reasons set forth in the preamble, NOAA amends 50 CFR Parts 604 and 630 as set forth below:

PART 604—OMB CONTROL NUMBERS FOR NOAA INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for Part 604 continues to read:

Authority: Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520 (1982).

2. The table in § 604.1 is amended by adding the following entry in numerical order by section number:

§ 604.1 OMB control numbers assigned under the Paperwork Reduction Act.

* * * * *

50 CFR part or section where the information collection requirement is located	Current OBM control No. (all numbers begin 0648-)
§ 630.5	-0013

PART 630—ATLANTIC SWORDFISH FISHERY

1. The authority citation for Part 630 continues to read as follows:

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

2. Section 630.5 is amended by adding a new last sentence to read as follows:

§ 630.5 Reporting requirements.

* * * Copies of the weigh-out sheets must be provided to the Center Director within 10 days after the swordfish are landed.

[FR Doc. 86-10010 Filed 4-30-86; 3:36 pm]

BILLING CODE 3510-22-M

50 CFR Part 642

[Docket No. 60339-6039]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Extension of Effective Date

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

ACTION: Emergency interim rule; extension of effective date.

SUMMARY: An emergency interim rule amending the regulations for the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic (FMP) is in effect through June 4, 1986. The Secretary of Commerce (Secretary) extends this rule for an additional 26 days (through June 30, 1986). This extension maintains the total allowable catch (TAC), allocations, and quotas established for the Gulf migratory group of king mackerel by the initial emergency regulations and continues in effect a closure of the commercial fishery. The intent of this rule is to protect the Gulf migratory group of king mackerel from being over-fished during the remainder of the fishing year ending June 30, 1986.

EFFECTIVE DATE: From 0001 hours June 5, 1986, through 2400 hours June 30, 1986.

ADDRESS: Copies of an environmental assessment may be obtained from and comments on this action may be sent to Donald W. Geagan, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

FOR FURTHER INFORMATION CONTACT: Donald W. Geagan, 813-893-3722.

SUPPLEMENTARY INFORMATION: Under section 305(e)(3)(B) of the Magnuson Fishery Conservation and Management Act the Secretary issued an emergency interim rule amending the FMP implementing regulations on March 11, 1986 (51 FR 8325). The rule reduced the TAC, allocations, and quotas for the Gulf migratory group of king mackerel.

The emergency rule set TAC at 5.2 million pounds with recreational and commercial allocations of 3.54 and 1.66 million pounds, respectively. The commercial allocation was exceeded and this fishery was closed by notice effective March 12, 1986, through June 4, 1986 (51 FR 9012, March 17, 1986). The closure notice provided for extension pending continuance of the initial emergency interim rule. Therefore, by implementation of this emergency rule, the Secretary extends the closure of the commercial fishery for the Gulf migratory group through June 30, 1986, unchanged from the emergency rule published March 11, 1986.

A detailed discussion of the background, issues, regulations, and the classification of the rulemaking is set forth in the preamble to the emergency interim rule and is not repeated here. Extension of the emergency interim rule was requested by the Gulf of Mexico and South Atlantic Fishery Management Councils.

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

List of Subjects in 50 CFR Part 642

Fisheries, Fishing.

Dated: April 29, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR Part 642 is amended as follows:

PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND THE SOUTH ATLANTIC

1. The authority citation for Part 642 continues to read as follows:

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

2. Section 642.7 is amended by adding a new paragraph (a)(27) to be effective from 0001 hours June 5, 1986, through 2400 hours June 30, 1986, to read as follows:

§ 642.7 Prohibitions.

(a) * * *

(27) Possess Gulf migratory group king mackerel harvested in the FCZ under the recreational allocation set forth at § 642.21(h) after closure has been invoked as specified in § 642.22.

* * * * *

3. Section 642.21 is amended by suspending all of paragraph (a) except the last two sentences and paragraph (c), from 0001 hours June 5, 1986, through 2400 hours June 30, 1986, and adding new paragraphs (f), (g) and (h) to be effective from 0001 hours June 5, 1986, through 2400 hours June 30, 1986, to read as follows:

§ 642.21 Quotas.

* * * * *

(f) The commercial allocation for the Gulf migratory group of king mackerel is 1.66 million pounds for the current fishing year (July 1, 1985–June 30, 1986). This allocation is divided into quotas as follows:

(1) 1.08 million pounds for the eastern zone;

(2) 0.48 million pounds for the western zone; and

(3) 0.10 million pounds for purse seines (see Figure 2 of § 642.29, and paragraph (i) of this section for a description of allocation zones).

(g) *Purse seine quota for king mackerel.* (1) The harvest of king mackerel by purse seines from the Gulf migratory group is limited to 0.10 million pounds for the current fishing year.

(2) The total harvest of king mackerel by purse seines from the Atlantic Ocean is limited to 400,000 pounds each fishing year.

(3) King mackerel harvested by purse seines are counted in the commercial allocations and quotas specified in paragraphs (a) and (f) of this section.

(h) *Recreational quota for king mackerel.* The recreational allocation for the Gulf migratory group of king mackerel is 3.54 million pounds for the current fishing year (July 1, 1985–June 30, 1986).

[FR Doc. 86-9942 Filed 5-2-86; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 51, No. 86
Monday, May 5, 1986

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

Commodity Credit Corporation

7 CFR Part 1493

CCC Export Credit Guarantee Program (GSM–102) and CCC Intermediate Export Credit Guarantee Program (GSM–103), Amendment 2

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Commodity Credit Corporation (CCC) Export Credit Guarantee Program (GSM–102) Regulations (7 CFR Part 1493) to include a new program, the Intermediate Export Credit Guarantee Program (GSM–103). The GSM–103 program would allow U.S. exporters to apply for payment guarantees which would protect the exporter or the exporter's assignee against loss due to defaults in payment by foreign banks when commodities are sold on credit terms in excess of three years but not more than ten years. This rule will help promote the export of U.S. agricultural commodities since a U.S. exporter would be able to extend credit for a longer term when selling those commodities and obtain payment guarantee coverage for that sale. In addition, this rule will (i) permit CCC to adjust the maximum amount of interest which CCC guarantees to pay to the exporter or its assignee; (ii) permit freight cost to be covered under the CCC payment guarantees for breeding animals that are financed under GSM–102 and GSM–103 and (iii) permit CCC to enter into agreements with exporters/assignees for alternative methods of satisfying payment guarantees.

DATE: In order to assure consideration comments must be received by May 27, 1986.

ADDRESS: Mail or deliver comments to the General Sales Manager, Foreign Agricultural Service, Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: L.T. McElvain, Director, CCC Operations Division, Export Credits, Foreign Agricultural Service, USDA, Washington, D.C. 20250, Telephone: (202) 447–6225.

SUPPLEMENTARY INFORMATION:

Discussion of Rule

The current provisions of 7 CFR Part 1493, Subpart A, containing the CCC Export Credit Guarantee Program (GSM–102) regulations, protect an exporter or an exporter's assignee against loss from defaults in payment by foreign banks due to commercial or noncommercial reasons when commodities are sold on deferred payment terms of not more than three years. Section 1131 of the Food Security Act of 1985 (Pub L. 99–198) amended section 4 of the Food for Peace Act of 1966 (7 U.S.C. 1707a) to provide for CCC guarantees of the repayment of credit extended in connection with export sales where the credit terms are in excess of three years but not more than ten years. Pursuant to this authority, CCC propose to amend Subpart A in general to include a new program, the Intermediate Export Credit Guarantee Program (GSM–103). It was determined that for purposes of program management, the proposed CCC Intermediate Export Credit Guarantee Program (GSM–103) and the current CCC Export Credit Guarantee Program (GSM–102) should be codified together in the same regulations. Accordingly, this rule would amend the title of Part 1493 and several sections of Subpart A to include both programs.

The GSM–103 program would provide coverage to U.S. exporters who sell commodities on deferred payment terms in excess of three years but not more than ten years if repayment is secured by a foreign bank approved by CCC.

Under the rule, U.S. exporters would submit applications to CCC for payment guarantees. The exporter, among other things, would furnish information concerning the credit terms needed to finance the export sale. If the credit terms were for three years or less, the application would request coverage under the GSM–102 program. Applications with credit terms in excess of three years but not more than 10 years would request coverage under the GSM–103 program. If the application is accepted by CCC, a GSM–102 or GSM–103 payment guarantee, as applicable, would be issued to the U.S. exporter. CCC would permit the proceeds payable under the payment guarantee issued to be assigned to a financing institution in the U.S.

Sections 1493.1, 1493.2, 1493.3, 1493.4, 1493.5, 1493.10 and 1493.12 would be amended to include the GSM–103 program. Some of the language in these sections, as well as sections 1493.8 and 1493.9, would be revised slightly in the interest of greater clarity. This rule would also amend 1493.2(e) to permit CCC to adjust, during the period of repayment by the foreign banks, the maximum rate of interest which CCC guarantees. The present regulations only provide for a fixed-rate maximum interest coverage. The inability to adjust the interest rate coverage in response to changes in interest rates may inhibit export financing under the program. This rule would permit the interest rate coverage to be adjusted, but in any event the coverage would be limited to the average investment rate of the most recently auctioned 52-week Treasury bills as announced by the Department of Treasury at the time CCC determines the interest rate coverage or at the time the interest rate coverage is adjusted.

Paragraphs 1493.2 (f) and (m) would be amended to redefine "exported value" and "port value" to include freight for breeding animals and paragraph (m) would be redesignated as paragraph (o). Permitting freight to be covered by CCC payments guarantees for breeding animals would provide greater incentive for foreign countries to increase their purchase of breeding animals over what they would normally purchase. Transportation expenses for breeding animals can represent a significant cost for importers of breeding animals and their ability to have such expenses financed could influence them to buy U.S. breeding animals.

A new section 1493.16 would be added to make clear that CCC may establish alternative procedures in settling its obligations to U.S. exporters or their assignees in the course of rescheduling a foreign country's debt covered by a CCC payment guarantee.

Rulemaking Requirements

This rule has been reviewed under USDA procedures required by Executive Order 12291 and Departmental Regulation 1512–1 and has been

classified as "not major" since the rule would not have any of the effects specified in those documents.

Melvin E. Sims, General Sales Manager, Foreign Agricultural Service, has determined that it is appropriate to have less than a 60-day comment period on this proposed action because a timely adoption of the final rule is crucial to comply with statutory provisions requiring CCC to make available credit guarantees for at least $500 million of credit extended on terms in excess of three years but not more than ten years during Fiscal Year 1986. Section 4 of the Food for Peace Act of 1966, as amended by Section 1131 of the Food Security Act of 1985, requires CCC to make available payment guarantees for each fiscal year ending September 30, 1986, through September 30, 1988, for not less than $500 million of export sales and for each of the fiscal years ending September 30, 1989 and September 30, 1990, for not more than $1 billion of export sales. These guarantees must be made available for credits calling for terms of more than three years but not more than ten years.

To the extent that the provisions of the Regulatory Flexibility Act apply, if any, the General Sales Manager, Foreign Agricultural Service (FAS), certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities since there will not be a substantial number of such entities affected by this proposed rule. Consequently, no regulatory flexibility analysis is required under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The public is invited to comment on the impact of this rule on small entities, and the General Sales Manager will review this determination in light of those comments.

An assessment of the impact of this proposed rule, if promulgated, on the environment was made, and based on that evaluation, this action is not a major federal action and will have no foreseeable significant effects on the quality of the human environment. Consequently, no environmental impact statement is necessary for this rule. The environmental assessment is available for review in Room 4525, South Building, USDA, during normal business hours.

The public is invited to submit written comments regarding the proposed rule. Each person submitting comments regarding the proposed rule must include his or her name and address and give reasons for any suggested changes in the proposed rule. Copies of all written communications received will be available for examination by interested persons in Room 4525, South Agriculture Building, 14th Street and Independence Avenue, SW., Washington, D.C. 20250, during regular business hours.

List of Subjects in 7 CFR Part 1493

Agricultural commodities, Credit, Exports, Financing, Guarantees.

PART 1493—[AMENDED]

Accordingly, it is proposed to amend Part 1493 of Title 7 of the Code of Federal Regulations as follows:

1. The authority citation for Subpart A of Part 1493 is revised to read as follows:

Authority: Sec. 5(f), Pub. L. 80–89, 62 Stat. 1072, as amended by Sec. 405(a), Pub. L. 98–623, 98 Stat. 3409 (15 U.S.C. 714c(f)); Sec. 4(b), Pub. L. 89–808, 80 Stat. 1537, as amended by Sec. 101, Pub. L. 95–501, 92 Stat. 1685 and Sec. 1131, Pub. L. 99–198, 99 Stat. 1486 (7 U.S.C. 1707a(b)); 5 U.S.C. 301.

2. The title of Part 1493 is revised to read as follows: Part 1493—CCC Export Credit Guarantee Program (GSM–102) and CCC Intermediate Export Credit Guarantee Program (GSM–103).

3. The table of contents for Subpart A of Part 1493 is amended by adding at the end the following:

Sec.
1493.16 Alternative satisfaction of payment guarantees.
1493.17 OMB Control Number assigned pursuant to the Paperwork Reduction Act.

4. Section 1493.1 is revised to read as follows:

§ 1493.1 General statement.

(a) This part contains the regulations governing the Commodity Credit Corporation (CCC) Export Credit Guarantee Program (GSM–102) and the CCC Intermediate Export Credit Guarantee Program (GSM–103). Exporters of U.S. agricultural commodities usually require importers to guarantee payment of the selling price of commodities sold to such importers. The guarantee may be in the form of (1) an irrevocable foreign bank letter of credit issued in favor of the exporter who may draw drafts for the deferred payments to be presented to the foreign bank as such payments become due; or (2) an irrevocable foreign bank letter of credit which authorizes the exporter to draw drafts on a U.S. correspondent bank of the foreign bank. The exporter may assign the account receivable to a U.S. bank or financial institution so that the exporter may realize the proceeds of the sale prior to the deferred payment dates, as called for in the export credit sale. GSM–102 and GSM–103 are designed to protect the exporter or the exporter's assignee against loss from non-payment due to commercial and noncommercial risks under the foreign bank letter of credit or related obligation. By transferring some of the risk of loss due to non-payment by foreign banks from the exporters or their financing institutions to CCC, GSM–102 and GSM–103 are intended to: facilitate exportation; forestall or limit declines in exports; permit exporters to meet competition from other countries; and increase commercial exports of U.S. agricultural commodities.

(b) GSM–102 and GSM–103 will be administered by the General Sales Manager, Foreign Agricultural Service (FAS), U.S. Department of Agriculture.

(c) The provisions of Public Law 83–664 (Cargo Preference Act) are not applicable to the shipment of commodities under GSM–102 and GSM–103.

(d) GSM–102 and GSM–103 may be supplemented by USDA announcements.

5. Section 1493.2 is amended by revising paragraphs (e) and (f) to read as follows; adding new paragraphs (j) and (k) to read as follows; redesignating previous paragraphs (j) through (n) as (l) through (p), respectively; and revising newly redesignated paragraphs (n) and (o) to read as follows:

§ 1493.2 Definition of terms.

* * * * *

(e) "Eligible interest" means the maximum rate of interest which CCC agrees to pay the exporter, or the exporter's assignee, as indicated in CCC's payment guarantee, including any amendments to the payment guarantee. The payment guarantee may provide for automatic adjustments in the eligible interest during the term of the credit. Eligible interest shall not exceed the average investment rate of the most recent 52-week Treasury bills as announced by the Department of Treasury at the time CCC determines the eligible interest or at the time the eligible interest is adjusted.

(f) "Exported value" means the value of the commodity exported under the payment guarantee, basis f.a.s. or f.o.b. point of export, except that "exported value" may, upon approval by CCC, include freight costs for breeding animals if the animals are sold on c.&f. or c.i.f. basis. The exported value for breeding animals shall not include marine and war risk insurance for c.i.f. sales.

* * * * *

(j) "GSM–102" means the program under this subpart, also referred to as the "Export Credit Guarantee Program", under which the payment guarantees

issued are for a period not exceeding 3 years from the date of export.

(k) "GSM–103" means the program under this subpart, also referred to as the "Intermediate Export Credit Guarantee Program", under which the payment guarantees issued are for a period exceeding 3 years but not exceeding 10 years from the date of export.

* * * * *

(n) "Payment guarantee" means the written agreement under which CCC undertakes to protect the exporter or the exporter's assignee from losses due to non-payment by a foreign bank under the foreign bank's letter of credit supporting the exporter's export credit sales contract or under the foreign bank's obligation owed to the exporter's assignee related to the foreign bank's letter of credit issued in favor of the U.S. exporter.

(o) "Port value" means the total value of the export credit sales, less any discounts or allowances, basis f.a.s. or f.o.b. at U.S. points of export. Port value may, upon approval by CCC, include freight cost for breeding animals if the export credit sale is made basis c.&f. or c.i.f., less any discounts or allowances. Such values shall include the amount of the upward loading tolerance, if any, as provided for by the export credit sales contract.

* * * * *

6. Section 1493.3 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 1493.3 Application for payment guarantee.

(a) An exporter shall submit a written application (e.g., letter, telex, or TWX) for a payment guarantee to the USDA office specified in section 1493.15 and should request coverage under GSM–102, if the credit terms are three years or less, or GSM–103, if the credit terms are more than three years but not more than 10 years. * * *

* * * * *

7. Section 1493.4 is amended by revising paragraphs (b), (c) and (d) to read as follows:

§ 1493.4 Payment guarantee.

* * * * *

(b) The payment guarantee shall become effective on the date(s) of export(s) of the agricultural commodities sold by the exporter to the importer and continue in force with respect to payments due during the period covered by the final payment schedule not exceeding (1) 36 months for credits covered by GSM–102 and (2) 120 months for credits covered by GSM–103, from the date(s) of such export(s). Exports made prior to receipt by CCC of a telephonic or written application for a payment guarantee or exports made after the final date for export shown on the payment guarantee or amendment thereof are ineligible for GSM–102 or GSM–103 coverage, except where it is determined by the Assistant General Sales Manager to be in the interest of CCC.

(c) The payment guarantee may contain such additional terms, conditions, and limitations as are deemed necessary or desirable by the Assistant General Sales Manager.

(d) The payment guarantee may be amended by the parties thereto, provided that such amendment is in conformity with GSM–102 and GSM–103 at the time the amendment is approved. Amendments may include a change in the credit period or an extension of time to export. Any amendment to the payment guarantee may be subject to an increase in the guarantee fee. The assignee may submit corrections to the payment schedule.

* * * * *

8. Section 1493.5 is amended by revising the second sentence to read as follows:

§ 1493.5 Guarantee rates.

* * * Guarantee rates charged by CCC under GSM–102 and GSM–103 will be available upon request from the USDA office specified in § 1493.15.

9. Section 1493.8 is amended by revising paragraph (a) and (b) (3) (iii) and (iv) to read as follows:

§ 1493.8 Notice of default.

(a) If the foreign bank issuing the letter of credit fails to make a remittance on the due date pursuant to the terms of the foreign bank letter of credit or related obligation, the exporter or the exporter's assignee shall notify CCC at the address indicated in Section 1493.15 by phone or wire within 10 calendar days of the due date, or any extension thereof by the Treasurer, or Assistant Treasurer, CCC. If made by phone it must be confirmed in writing. The notice shall include the payment guarantee number, the amount due, the date of refusal to pay and reason for default, if known.

(b) * * *

(3) * * *

(iii) Invoice(s) showing the exported value. If there is an intervening purchaser both the exporter's invoice to the intervening purchaser and the invoice to the foreign buyer should be included.

(iv) An instrument, in form and substance satisfactory to CCC, subrogating to CCC their respective rights for the amount of payment in default under the applicable export credit sale.

* * * * *

10. Section 1493.9 is amended by revising the second sentence of paragraph (a) to read as follows:

§ 1493.9 Payment of loss.

(a) * * * If CCC determines that it is liable to the exporter and/or the exporter's assignee, CCC will remit to the exporter or the exporter's assignee the amount of the combined principal and interest loss covered by the payment guarantee plus interest at the latest average investment rate of the most recent 52-week Treasury bills as announced by the Department of Treasury as of the date of default. * * *

* * * * *

11. Section 1493.10 is amended by revising paragraph (d) to read as follows:

§ 1493.10 Recovery of losses.

* * * * *

(d) Notwithstanding any other terms of the payment guarantee, the exporter shall be liable to CCC for any amount paid by CCC under the payment guarantee when and if it is determined by CCC that the exporter has been or is in breach of any contractual obligation, certification or warranty made by the exporter for the purpose of obtaining the payment guarantee or in fulfilling obligations under GSM–102 or GSM–103, and the exporter's assignee shall be liable to CCC for any amounts paid by CCC under the payment guarantee when and if it is determined by CCC that the exporter's assignee has not fulfilled any of the obligations under GSM–102 or GSM–103.

* * * * *

12. Section 1493.12 is amended by revising the second sentence to read as follows:

§ 1493.12 Covenant against contingent fees.

* * * For breach or violation of this or other obligations or warranties undertaken by the exporter in regard to a GSM–102 or GSM–103 payment guarantee, CCC shall have the right notwithstanding other rights provided under these regulations to annul coverage for any commodities not yet shipped and/or to proceed against the exporter.

13. A new § 1493.16 is added to read as follows:

§ 1493.16 Alternative satisfaction of payment guarantees.

CCC may, upon agreement of the exporter (or if the proceeds payable under the payment guarantee have been properly assigned, then the exporter's assignee), establish procedures, terms and conditions for the satisfaction of CCC's obligations under a payment guarantee other than those provided for in this subpart if CCC determines that those alternative procedures, terms and conditions are appropriate in rescheduling the debts arising out of any transaction covered by the payment guarantee and would not result in CCC paying more for an obligation than the amount of CCC's obligation.

14. A new § 1493.17 is added to read as follows:

§ 1493.17 OMB Control Number assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in this regulation (7 CFR Part 1493, Subpart A) have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0551–0004.

Dated: April 25, 1986.

George J. Pope,

Acting General Sales Manager and Acting Associate Administrator, FAS, and Acting Vice President, Commodity Credit Corporation.

[FR Doc. 86–9959 Filed 4–30–86; 8:45 am]

BILLING CODE 3410–10–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

[Docket No. 20–16]

A.N. Tschaeche; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission is denying a petition for rulemaking submitted by A.N. Tschaeche. The petitioner requested that the Commission amend its regulations to state that full compliance with the Commission's regulations is evidence acceptable in a court of law that the licensee was not negligent, and that the Commission's regulations must be violated before a *prima facie* case is pleaded on the issues of negligence and causation in any action to recover for injuries claimed to have resulted from exposure to ionizing radiation. The Commission is denying the petition because it is inconsistent with the intent of the Commission's regulations and because the Commission lacks the legal authority to grant the petitioner's request.

ADDRESS: Copies of the petition are available for public inspection or copying for a fee at the NRC's Public Document Room at 1717 H Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Linda S. Gilbert, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–492–7678.

SUPPLEMENTARY INFORMATION:

The Petition

On October 28, 1985, the Commission received a petition for rulemaking from A.N. Tschaeche. The petitioner requested that the NRC amend its regulations to state that a licensee's full compliance with the Commission's regulations, and particularly with the regulations set forth in 10 CFR Part 20, is evidence acceptable in a court of law that the licensee was not negligent, and that the Commission's regulations must be violated before a *prima facie* case is pleaded on the issues of negligence and causation in any action based on injuries claimed to have resulted from exposure to ionizing radiation. The petitioner further requested that the amended regulations clearly state that noncompliance with the Commission's regulations, and in particular, exceeding the standards set forth in 10 CFR Part 20, does not in and of itself confer negligence on the licensee. Finally, the petitioner requested that, if the Commission determines that it does not have the authority to comply with the petition, the Commission seek the requisite authority from the Congress.

Basis for the Request

The petitioner asserts that resources are being "recklessly, wantonly, and uselessly squandered on radiation injury claims cases, both Workman's compensation and in tort, that are brought against NRC licensees who have demonstrably complied with the Commission's regulations." He cites the *Silkwood* case as a well-known example, and questions the reasonableness of allowing a jury of laypersons to determine whether the Commission's regulations result in safety.

According to the petitioner, the specific issue is whether a licensee who complies with the Commission's regulations can be considered to have met its obligation to provide an adequately safe working environment for conducting its licensed activities. The petition encompasses all NRC regulations, but emphasizes those set forth in 10 CFR Part 20, particularly the external occupational dose limits in § 20.101 and the limits for intake of radionuclides in air and water in § 20.103. The petitioner argues that there is no evidence based on observation of humans that demonstrates any harm to an individual or group from NRC-licensed activities performed in accordance with NRC regulations. In addition, he states that there is no evidence from animal or other studies that demonstrates any harm or risk of harm to workers or the general public from such activities.

The petitioner urges that his proposal would save money, alleviate public fear of radiation, protect licensees against claims of negligence, and clarify the intent of NRC regulations. He therefore requests that the Commission affirmatively state that compliance with its regulations is sufficient to demonstrate the absence of negligence. If the Commission considers that statement overly broad, the petitioner requests that the Commission apply it to all of Part 20 and to Appendix I of Part 50. If the Commission finds even that statement too broad, the petitioner requests that the Commission apply it to §§ 20.101 and 20.103. According to the petitioner, this could be easily accomplished if the Commission were to adopt the point of view that activities performed in accordance with its regulations are safe unless and until experience demonstrates differently.

Reasons for Denial

As the petitioner anticipated, the Commission has no legal authority to grant the petitioner's request. In essence, the petitioner would have the Commission promulgate rules of evidence for the courts. This would clearly exceed the Commission's rulemaking authority. Rules of evidence are derived from statutes, case law, and court rules.

In addition, the petitioner's request is contrary to judicial precedent. In general, compliance with government safety regulations is accepted as evidence of a person's having acted reasonably but is not considered

conclusive proof of the absence of negligence. In its *Silkwood* decision, the District Court examined a number of cases in various contexts and reaffirmed that general rule. *Silkwood* v. *Kerr-McGee Corp.*, 485 F. Supp. 566, 577–79 (W. D. Okla. 1979), *aff'd in part and rev'd in part*, 667 F.2d 908 (10th Cir. 1981), *rev'd and remanded*, 464 U.S. 238 (1984), *on remand*, 769 F.2d 1451 (1985). The court found no authority for the proposition that a different rule should apply to nuclear safety regulations. Accordingly, the court held that evidence of Kerr-McGee's compliance with the Commission's regulations was not conclusive proof of the absence of negligence. Subsequent decisions in the case did not disturb that holding. Thus, *Silkwood* is controlling on this point.

As the petitioner pointed out, the District Court considered the intent of the Atomic Energy Commission (AEC) in promulgating its radiation protection standards. Because the AEC did not intend the standards to establish absolute safe levels of exposure below which no injury could occur, the court concluded that the standards were not dispositive of the issues of negligence or causation. The petitioner urges that the NRC change the intent of its regulations to establish such absolute levels and thereby preclude a finding of negligence if a licensee complies with NRC standards. However, the Commission has never taken the position that there is a level of radiation exposure below which one can conclusively presume that no injury will result. Rather, in view of scientific uncertainty about radiation exposure, the Commission has required its licensees to ensure that radiation exposures are kept "as low as is reasonably achievable." In short, the Commission lacks the technical basis to make the finding that the petitioner requests.

For this reason, it would be pointless for the Commission to ask Congress to give it the necessary legal authority to promulgate the requested rules. Similarly, it would serve no purpose to seek public comments on this petition for rulemaking, as is the Commission's usual practice. See 10 CFR 2.802(e).

Accordingly, the Commission denies the petition.

Dated at Bethesda, Maryland, this 23rd day of April, 1986.

For The Nuclear Regulatory Commission.

Jack W. Roe,

Acting Executive Director for Operations.

[FR Doc. 86–10026 Filed 5–2–86; 8:45 am]

BILLING CODE 7590–01–M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 523

[No. 86–428]

Liquidity Requirements

Dated: April 24, 1986.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") is proposing to amend its regulations governing the liquidity requirements applicable to members of the Federal Home Loan Bank system and to institutions whose accounts are insured by the Federal Savings and Loan Insurance Corporation ("FSLIC") ("insured institutions"). The proposed amendments would make three significant changes to the requirements currently in effect. First, the Board proposes to amend the regulations to recognize the connection between an institution's liquidity needs and its outstanding firm commitments and loans in process. Therefore, these liquidity amendments would permit an institution to use its liquid assets to satisfy its liquidity requirement only to the extent that those assets exceed the total of the institution's firm commitments to disburse funds less 12.5 percent of its liquidity base. For purposes of this proposal, however, an institution would be required to perform this offset of liquid assets only against firm commitments requiring disbursements within six months of the date on which the institution must report its liquidity requirement.

Secondly, the Board proposes to exercise its authority to classify institutions for purposes of setting required liquidity and to implement variable liquidity requirements. Based on its supervisory experience and assessment of institutions' liquidity needs, the Board has developed a measure of an institution's asset/liability structure and resulting need for liquidity called the Liquidity Coverage Index ("LCI"). The Board proposes to use the LCI in classifying institutions for the purpose of setting required liquidity ratios. Each institution would then determine its liquidity requirement based on its LCI.

Finally, the Board proposes increasing the minimum liquidity required of all institutions to 6 percent of an institution's liquidity base, thereby increasing the current requirement of 5 percent by one percentage point.

The Board believes that these amendments are needed to raise levels of minimum required liquidity, to set different liquidity requirements based on different asset/liability structures and needs for liquidity, and to discourage institutions from making commitments in excess of their ability to deliver the funds committed.

DATE: Comments must be received by July 7, 1986.

ADDRESS: Send comments to Director, Information Services, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Ben F. Dixon (202–377–6399), Financial Analyst, Office of Examinations and Supervision; Donald G. Edwards (202–377–6914), Director, General Research Division, Office of Policy and Economic Research; or Karen Knopp O'Konski (202–377–7240), Attorney, Office of General Counsel, Federal Home Loan Bank Board, at the above address.

SUPPLEMENTARY INFORMATION:

A. Background

Section 5A of the Federal Home Loan Bank Act, 12 U.S.C. 1425a (1982 & Supp. II 1984) ("Bank Act"), requires the Board to set liquidity requirements for institutions that are members of the Federal Home Loan Bank system or are insured by the FSLIC. By delegating this authority to the Board, Congress sought to create "meaningful and flexible liquidity" that could be increased "when mortgage money is plentiful, maintained in easily liquidated instruments, and reduced to add to the flow of funds to the mortgage market in periods of credit stringency." *Id.* at 1425a(a). Congress intended flexible liquidity "to support two main purposes" of the Bank Act, namely "sound mortgage credit and a more stable supply of such credit." *Id.* The regulatory tools given to the Board to achieve these purposes include the authority to define terms, to classify institutions for liquidity purposes on any basis it finds reasonably necessary or appropriate, to set the liquidity requirement anywhere between a minimum of 4% and a maximum of 10% of an institution's liquidity base, and to prescribe the method of calculating the liquidity requirement. *Id.*

The Board's current regulations require each institution to maintain an average daily balance of liquid assets not less than 5 percent of the average daily balance of its liquidity base during the preceding calendar month. In addition, each institution must maintain an average daily balance of short-term liquid assets not less than 1 percent of

the average daily balance of its liquidity base during the preceding calendar month. 12 CFR 523.11 (1985). The regulation also prescribes the method for calculating an average daily balance. *Id.* A member with less than $25,000,000 in total assets at the beginning of a fiscal year may, by resolution of its board of directors, figure the liquidity requirement as a percentage of its liquidity base at the end of the preceding calendar month, rather than as a percentage of the average daily balance of its liquidity base. The liquidity requirement may vary if the member is a mutual savings bank ("MSB"). An MSB must maintain an average daily balance of liquid assets not less than 5 percent of the average daily balance of its liquidity base. In lieu of the short-term liquid asset requirement prescribed for other members, however, a member MSB may elect to maintain commercial paper aggregating not less than the difference between the amount of liquid assets it would have been required to maintain absent its election and the actual amount of its liquid assets. *Id.*

In the Board's view, these regulations are no longer adequate to achieve the purposes intended by Congress because they do not permit adequate monitoring of an institution's true liquidity position or its true liquidity needs. Specifically, the regulations do not recognize the connection between an institution's liquidity needs and the commitments it has made to disburse funds. Sound business practices require that before an institution enters into legally binding commitments to disburse money, it should plan how it will fund those commitments as they come due. Otherwise, the institution will be required to drain its available liquidity in order to meet its obligations. As discussed in greater detail below, however, the Board has found among some segments of the industry a disturbing failure to engage in advance planning to fund commitments.

In addition, certain developments within the savings and loan industry have affected thrifts' liquidity needs. The advent of a secondary market for one-to-four family mortgages and of a repurchase market and the development of mortgage-backed securities mean that thrifts can readily convert certain types of loans into cash. The current liquidity regulations do not recognize these new sources of cash. They therefore do not permit the Board accurately to gauge an institution's true need for liquidity.

Moreover, recent financial deregulation and innovations have led to a far more complicated and heterogeneous industry than previously existed. As a result, institutions now have a diverse range of financial strategies, asset/liability structures, sources and uses of funds, and liquidity needs. The current liquidity requirements ignore this diversity by treating all institutions as if they were identical in nature and therefore had identical liquidity needs. A corollary to this problem of inflexibility is that the current regulations present the Board with a dilemma in that it must choose between liquidity requirements which are either clearly too high or too low for many institutions, since it is unable to differentiate among needs under the current regulations.

The Board believes that the best way to address these problems is to amend its regulations to take into account the effect on liquidity needs of new sources of ready cash and the extent of commitments an institution has made and to permit the Board to assess the relative needs of individual institutions for liquidity. This proposal is designed to achieve those results.

B. Description of Proposed Amendments

1. Overview

The proposed amendments to the liquidity requirements would make three significant changes to the requirements currently in effect. First, the amendments would require an institution to offset its liquid assets, as they are currently defined in 50 FR 13968 (1985) (to be codified at 12 CFR 523.10) and 12 CFR 523.10(gf) (1985), against its outstanding firm commitments to disburse funds (in excess of 12.5 percent of its liquidity base) before it could count those liquid assets toward meeting its liquidity requirement. Only disbursements that the institution is committed to make within six months of the date it reports its liquidity requirement would be included in this computation. The purpose of this portion of the proposal is to ensure that the institution can meet its obligations to disburse funds without draining its available liquidity.

Second, the amendments would establish a classification scheme for purposes of determining what an institution's liquidity requirement would be. The tool for establishing this scheme would be the LCI, which is designed to measure need for liquidity. Each institution would first calculate the value of its LCI. The figure obtained from this calculation would then be used to determine the institution's liquidity requirement, expressed as a percentage of its liquidity base.

Finally, the amendments would propose higher liquidity requirements industry-wide by setting a minimum liquidity requirement of 6 percent. Further, they would impose variable liquidity requirements ranging from 6 percent for institutions with positive LCI—indicating a moderate need for liquidity—to 10 percent for institutions with a significantly negative LCI—indicating a need for a relatively high level of liquidity.

2. Assets Eligible To Satisfy the Liquidity Requirement

Congress has given the Board plenary authority to regulate with respect to liquidity requirements. 12 U.S.C. 1425a (1982 & Supp. II 1984). This authority includes the authority to define terms as well as to prescribe the method by which the liquidity requirement is calculated. In accordance with its statutory authority, the Board's current regulations define, among other terms, the term "liquid assets." Moreover, the current regulations impose no conditions on an institution's use of liquid assets to meet its liquidity requirement. They permit an institution to use any asset defined as liquid in any amount to satisfy the requirement. The Board does not now propose to modify its current definitions of liquid assets. It does, however, propose to place a condition on an institution's use of its liquid assets to meet its liquidity requirement. Specifically, an institution could count liquid assets toward meeting its requirement only to the extent they exceed the amount of its firm commitments less 12.5 percent of liquidity base.

"Firm commitments" are defined in proposed § 523.10(o) as the total of a member's net commitments and its loans in process. Net commitments are commitments, due to be funded within six months of the date on which the liquidity requirement is reported, to originate loans (both residential and non-residential), plus commitments to purchase loans and other assets, plus firm take-out commitments, minus commitments to sell loans and other assets. For liquidity purposes, loans in process are loans that have been funded, not yet disbursed, but on which disbursements are due within six months of the reporting date. Commitments are not counted for this purpose unless they are legally binding, since the Board would otherwise require an institution to match its liquid assets against unenforceable obligations.

In essence, the eligible-assets portion of the proposal requires a dollar-for-dollar matching of liquid assets against

an institution's excess obligations to disburse funds before those assets may be used to satisfy the liquidity requirement. For purposes of the proposed rule, an institution is considered over-extended if its firm commitments exceed 12.5 percent of its liquidity base. Aside from the growth that such commitments imply, the Board also notes that some institutions have used loan commitments to generate disproportionately large front-end profit in the form of fees. The Board disapproves neither growth, within certain capitalization limits prescribed in its net-worth rule,[1] nor the generation of profits. What the Board wishes to discourage, however, is the practice of making commitments without adequate ready cash to fund those commitments.

The Board's Office of Policy and Economic Research ("OPER") has performed statistical analyses that show a drastic diminution in true liquidity for some institutions once their outstanding firm commitments are taken into account.[2] One such analysis, based on data reported as of the end of the second quarter of 1985, shows the amount of liquidity held by institutions if their commitments and loans in process are deducted from the amount of their liquid assets as defined in the Board's current liquidity regulations ("eligible liquidity"). 50 FR 13968 (1985) (to be codified at 12 CFR 523.10) and 12 CFR 523.10(g) (1985). For purposes of this analysis, OPER defined an "experimental liquidity variable" as an institution's eligible liquidity less its commitments and loans in process in excess of 10 percent of its liquidity base. OPER found that the 100 institutions with the lowest values of the experimental liquidity variable held a median value of—11 percent liquidity, as compared with an industry median of 13.1 percent. Under the currently applicable regulations, that some 100-firm sample was reporting a median liquidity of 7.2 percent, lower than the industry median of 13.3 percent, but still in excess of the Board's current requirement of 5 percent.

Under the current regulations, then, it is possible for institutions to report adequate regulatory liquidity at a time when their outstanding commitments and loans in process threaten a cash drain that significantly exceeds their true liquidity. Thus, under the current regulations, which do not take account of an institution's commitments and loans in process, an institution may mask its true liquidity position.

This statistical analysis is borne out by the Board's supervisory experience. For example, one institution that was declared insolvent by the FSLIC had reported liquidity of 4.9 percent as of the end of the third quarter of 1985. At that same time, however, the institution had $232,233,000 in outstanding commitments, an amount that its reported liquidity was inadequate to cover. Thus, although the institution reported liquidity of just under the regulatory requirement, it had committed itself to a cash outflow that its ready cash was insufficient to cover.

An institution that is over-extended in this way may turn to the secondary-mortgage or the repurchase market to obtain cash to fund its commitments, or it may seek advances from its Federal Home Loan Bank ("FHLBank") for that purpose. The first solution requires that the institution sell its prime assets, perhaps at "distress" prices, in order to meet its short-term need for cash. Having done so, it may have only poor-quality collateral to offer its Bank in exchange for an advance. In either case, the institution decreases the quality of its asset portfolio in exchange for cash that does not enhance its liquidity position.

The Board would add two observations regarding the portion of the proposed rule pertaining to eligible assets. First, it is intended to achieve results not accomplished by other regulations. For example, the Board is also proposing new regulatory capital requirements, published elsewhere in today's **Federal Register**. That proposal addresses, among other things, contingency capital requirements for certain types of loans. These proposed contingency capital requirements are designed to encourage prudent risk-taking by providing investors with a sufficient capital stake and to assure the FSLIC an adequate buffer against losses. By contrast, the portion of the liquidity amendments under discussion here addresses the institution's need for cash before its committed funds must be disbursed. Thus, it acts to smooth an institution's daily operations and reduce risk to operational stability, rather than to provide a cushion against losses. In short, the requirement imposed by the eligible-assets portion of the proposal is merely that an institution have enough cash to meet the commitments it has made.

Second, the Board anticipates that the eligible-assets portion of the regulation will primarily affect those institutions with disproportionately large amounts of firm commitments. Institutions that have heretofore engaged in prudent, balanced lending will not experience a significant impact. The work-sheet, which appears as an Appendix to this preamble for the purpose of illustrating the calculations it would require, should enable institutions to gauge the degree to which they will be affected by the eligible-assets portion of the regulation.

3. Liquidity Coverage Index

The Bank Act empowers the Board to set the liquidity requirement at any amount it deems appropriate on a scale of between 4 percent and 10 percent of a member-institution's liquidity base. 12 U.S.C. 1425a(b)(1), (b)(2) (1982 & Supp. II 1984). Liquidity base is statutorily defined as "withdrawable accounts and borrowings payable on demand or with unexpired maturities of one year or less . . ." *Id.* at 1425a(b)(2).[3] The Board is proposing to vary the liquidity requirement on a scale of between a minimum of 6 percent and a maximum of 10 percent of liquidity base according to an institution's need for liquidity.

No measure of this need is currently available. The Board's OPER has, however, developed a tool for this purpose, which it has designated the LCI. The LCI is the measure by which the Board proposes to classify institutions for purposes of setting their liquidity requirement.

Simply stated, the LCI is a measure of an institution's ability to generate ready cash as compared with its potential need for cash. Accordingly, proposed § 523.10(i) includes in the LCI the total of a member's liquid assets, together with its borrowing power and the repayments and prepayments of loans it can reasonably expect to receive. All these items represent sources of readily available funds.

The component of the LCI called "borrowing power" is intended to reflect an institution's ability to obtain ready cash by borrowing on the collateral of certain assets. Accordingly, it is defined in proposed § 523.10(j) as 80 percent of the book-value of the member's one-to-four-family mortgages; [4] 90 percent of the book-value of its mortgage-backed securities ("MBSs"); 80 percent of the book-value of assets that would qualify

[1] *See* 50 FR 6891 (Feb. 9, 1985).

[2] The discussion in this paragraph is based upon statistical analyses performed during the period from October 1985 to February 1986 by OPER to aid the Board as it considered proposing changes to the liquidity regulations.

[3] The statute permits the Board to determine the liquidity base for a member which is an insurance company. The Board has done so by defining that base as "the policy reserve of a member insurance company required by State law" plus its short-term borrowings. 12 CFR 523.10(c) (1985).

[4] The proposed section includes all mortgage loans and contracts that are federally insured or guaranteed; *e.g.*, FHA- and VA-insured loans.

as liquid under current § 523.10(g) of the Board's liquidity regulations; less FHLBank advances; less reverse repurchase agreements; and less mortgage-backed bonds.

As mentioned previously both one-to-four-family mortgages and MBSs are easily convertible into cash. The LCI reflects book value rather than market value so that the value of these assets for purposes of calculating the liquidity requirement will not fluctuate with interest rates. Otherwise—in a rising interest-rate environment, for example—the LCI would work to increase an institution's liquidity requirement as the supply of mortgage money was becoming more constricted. Including one-to-four-family mortgages and MBSs in the LCI at their book value is therefore consistent with the statutory mandate of adjusting the liquidity requirements in accordance with the relative availability of mortgage credit. The Board recognizes, however, that inclusion of these assets in the LCI at their book value will preclude an institution from obtaining the benefit of any appreciation on those assets. Therefore, the Board specifically invites comments on whether the advantages of the book-value approach, as outlined, outweigh the advantages of a market-value approach. Finally, the discount factor applied in the LCI to these types of assets is intended to reflect the discount at which such assets are normally sold or accepted as collateral by the FHLBanks.

If a member institution has obtained FHLBank advances, entered into reverse repurchase agreements, or issued mortgage-backed bonds, it will have used some of its available collateral. Use of collateral reduces borrowing power: Assets pledged to obtain the funds are not available to collateralize new applications for cash. Thus, the value of advances, reverse repurchase agreement and mortgage-backed bonds is subtracted from borrowing power.

In addition to liquid assets and borrowing power, the LCI also permits inclusion of an amount for repayments of loan principal (including prepayments) since repayments also represent a source of readily available cash for the institution. The amount is determined by computing the total of repayments of loan principal that the institution received during the twelve-month period immediately preceding the liquidity reporting date and dividing that figure by 2. In this way, the figure used in the LCI is adjusted for seasonal variations, provides a reasonable basis for predicting the institution's anticipated loan repayments, and is computed for a time-period consistent with that used for maturing liabilities, which are discussed below.

The elements of the LCI described so far, that is, liquid assets, borrowing power, and loan repayments, all represent positive contributions, or potential contributions, to an institution's ready cash. In contrast, that ready cash will be negatively affected to the extent an institution must meet obligations in the near term. Therefore, to compute its LCI, a member must subtract the value of its maturing liabilities, which are defined, at proposed § 523.10(k), as financial liabilities with a fixed maturity date of six months or less from the reporting date.[5] FHLBank advances and passbook accounts are excluded from the definition of maturing liabilities because both are stable liabilities that the institution is unlikely to have to pay quickly or without notice.

As a final step, the total of all of the components of the LCI is multiplied by 100 and then divided by the member's liquidity base. This step converts a dollar amount into a ratio that is scaled to the institution's size. That ratio is the LCI. The worksheet appended to this preamble shows how the LCI is to be calculated.

4. Liquidity Requirement

The liquidity requirement is currently fixed at 5 percent of the liquidity base for all institutions. The Board proposes to raise the minimum requirement to 6 percent. An institution's liquidity requirement would increase, along a scale of between 6 percent and 10 percent of liquidity base, as its LCI diminished. This progression is indicated in the table set forth in proposed § 523.11. That section would first require a member to calculate its LCI. It would then impose a liquidity requirement of 6 percent for a member with an LCI of greater than 0, and 8 percent requirement for a member whose LCI fell between 0 and −25; and a 10 percent requirement for a member whose LCI was below −25.

The proposed increase in the minimum liquidity requirement serves one of the purposes for which the liquidity statute was enacted. By imposing liquidity requirements, Congress intended to provide the Board with a regulatory tool to expand the supply of mortgage credit in periods of credit stringency and to restrict that supply when such credit was plentiful. 12 U.S.C. 1425a(a) (1982 & Supp. II 1984). For example, the Board has previously lowered the liquidity requirement to compensate for "reduced savings flows into member institutions" in order to "help fund the large volume of forward mortgage commitments that institutions have outstanding, and to reduce the pressure for advances from Federal Home Loan Banks." 44 FR 62481 (Oct. 31, 1979). Data concerning the relative availability of mortgage credit are routinely prepared by the Board's OPER and presented to the Board on a regular basis. Based on the most recent such data, prepared by OPER in April, 1986, the Board notes that the value of mortgage loans closed, mortgage commitments made and outstanding, and private housing starts are currently at or near record highs. Further, the recent, dramatic decline in mortgage interest rates had led to a surge in demand for refinancing that is currently straining the capacity of origination and appraisal departments of mortgage lenders. In such an economic climate, the Board believes that an increase in the minimum liquidity requirement is consistent with the purposes of the statute.

This proposal would preserve the definition of "short-term liquid assets" and would continue the requirement that a member hold 1 percent of its liquidity base in short-term liquid assets. The proposal also retains the requirement that the value of the assets a member may use to satisfy its liquidity requirement and the member's liquidity base be computed as average daily balances. The LCI, however, is to be calculated at the end of each quarter for use in determining liquidity required in each of the following three months. Quarterly calculation of the LCI will insure that a member's liquidity requirement will remain stable through at least a quarter, enabling an institution to better predict its liquidity needs.

As described above, the current regulations provide special rules for MSBs, which are permitted to hold commercial paper to satisfy their liquidity requirements to an extent greater than that permitted other institutions, and for small institutions (defined as institutions with assets totalling less than $25,000,000), which may compute their liquidity requirement as a percentage not of the average daily balance of liquidity base, but of liquidity base as of the end of the preceding calendar month. The Board believes that these special rules are no longer necessary and, accordingly, it has deleted them from the proposed rule.

The election for MSBs was adopted at a time when such institutions could invest in commercial paper to a greater

[5] Liquidity reporting requirements are discussed in greater detail in subsection 5, below.

extent than other members. The election was intended to accommodate this difference. The Garn-St Germain Depository Institutions Act of 1982, Pub. L. No. 97-320, 96 Stat. 1469, liberalized investment powers for federally-chartered savings and loan institutions. Moreover, many states have enacted parallel statutes giving similarly expanded investment powers to state-chartered institutions. The distinction between MSBs and other thrift institutions has, therefore, become blurred, and the need for a special election for MSBs is, in the Board's view, outdated.

Under the current regulations, small institutions may use a month-end figure rather than an average daily balance, in computing their liquidity base. The Board believes, however, that there is no longer a discernible difference between the operations of small institutions and their larger counterparts that would justify continuing this exception. Moreover, given the other reporting requirements to which small institutions are subject under this proposal, the requirement that such an institution compute its liquidity base as an average daily balance would not constitute a significant additional burden. The Board therefore proposes to eliminate the limited special exception currently available to small institutions, and invites comment concerning whether any reasons remain to continue the exception or whether there are any reasonable alternatives to eliminating it.

5. Miscellaneous Provisions

The Board recognizes that some institutions may be significantly affected by the eligible-assets portion of this proposal, which may in some cases result in an institution's failure to comply with the liquidity requirement immediately upon the effective date of any substantially similar final regulation. To mitigate this potential effect, the Board proposes a temporary exemption from compliance with the terms of the regulation for an institution that can show that its liquidity deficiency is primarily attributable to the amount of firm commitments it has made. The determination whether this showing has been adequately made would rest with the Principal Supervisory Agent ("PSA") and the Director of the Board's Office of Examinations and Supervision or his designee.

If the requisite showing has been made, then the institution would be required to submit a business plan to the PSA setting forth a plan to achieve compliance with its liquidity requirement. The Board wishes to emphasize the importance of such a plan. Today's amendments are designed to encourage sound cash-management policies. The business plan would promote such policies by requiring affected institutions to devise strategies to meet their liquidity needs.

Pursuant to a plan approved by the PSA, a member qualifying for this exemption may, for an interim period, use its liquid assets, without regard to its outstanding firm commitments, for purposes of meeting its liquidity requirement. The interim period could not exceed two calendar quarters from the effective date of the final regulation, starting with the first full calendar quarter after the effective date.

Moreover, such a member could seek and obtain the PSA's approval to fund its temporary liquidity deficiency with firm lines of credit from its FHLBank. A firm line of credit, as defined in proposed § 523.10(l), is a properly collateralized line of credit extended by a FHLBank to a member institution. The Board considers resort to this device for liquidity purposes to be an interim short-term solution to a member's liquidity problem. Accordingly, firm lines of credit could not be used for this purpose except for a period of two calendar quarters from the effective date of the final regulation.

This proposal would also amend § 523.10 to require reports and records that would enable the Board to monitor compliance with the amendments. The proposed amendments § 523.13 would require institutions to report their requied liquidity, assests eligible to satisfy the requirement, and any penalties assessed for deficiencies, as well as any other information that the Board finds necessary to monitor compliance with the requirements of the liquidity regulation. The Board anticipates that these reporting requirements would be incorporated into its current monthly and quarterly reporting system so that institutions could include the liquidity figures on forms amended for that purposes.

Finally, the proposal contains a provision invalidating, for liquidity purposes, any transaction into which an institution enters in order to evade compliance with the liquidity requirements.

APPENDIX—LIQUIDITY REQUIREMENT WORKSHEET

Part A—Required liquidity Ratio (Complete at end of Quarter)

1. Cash and liquid assets as defined in § 523.10(g) ..... 1. $_____

2. Borrowing power based on uncommitted qualfying collateral:
   (a) Borrowing power of total qualifying collateral
   80 percent of book value of convential mortgage loans and contracts on 1-4 family dwelling units and FHA/VA and other federally insured or guaranteed mortgage loans and contracts ..... $_____
   90 percent of book value of mortgage-backed backed securities ..... $_____
   80 percent of book value of assets that would qualify as liquid under § 523.10(g) but for their remaining maturities ..... $_____
   Total ..... (a) $_____
   (b) Uses of qualifying collateral:
   FHLB advances ..... $_____
   Reverse repurchase agreements ..... $_____
   Mortgage-backed bonds ..... $_____
   Total ..... (b) $_____
   Borrowing power available (subtract line 2(b) from line 2(a)) ..... 2. $_____
3. Cash repayment of loan principal at six-month rate (enter one-half of repayments received during past 12 months) ..... 3. $_____
4. Financial liabilities maturing in six months or less, excluding passbook accounts and FHLB advances ..... 4. $_____
5. Net liquidity coverage gap (subtract line 4 from the sum of lines 1, 2, and 3] ..... 5. $_____
6. Liquidity base at end of quarter ..... 6. $_____
7. liquidity coverage index (LCI) (divide line 5 by line 6 and multiply by 100) ..... 7. $_____
8. Required liquidity ratio (%) (select requirements from following schedule based on value of LCI on line 7)
   If LCI is greater than zero, enter "6"
   If LCI is greater than -25 but not greater than zero, enter "8"
   If LCI is -25 or less, enter "10" ..... 8. $_____

*Part B—Liquidity Requirement (Complete at end of Month)**

Liquidity requirement for month just ended

9. Required liquidity ratio in *decimal form* for month just ended (as calculated at end of previous quarter, line 8, Part A) ..... 9. $_____
10. Average daily balance of liquidity base during preceding month ..... 10. $_____

11. Liquidity requirement (multiply line 9 by 10 and enter requirement here)	11. $	
Assets eligible to satisfy liquidity requirement		
12. Liquid assets (as defined in § 523.10(g))	12. $	
13. Amount by which firm commitments exceed 12.5 percent of liquidity base Firm commitments outstanding (as defined in proposed amended § 523.10(o))	(a) $	
12.5 percent of liquidity base	(b) $	
Subtract (b) from (a); if less then zero, enter zero	13. $	
14. Liquid assets to the extent they exceed outstanding firm commitments less 12.5 percent of liquidity base (subract line 13 from line 12; if less than zero, enter zero)	14. $	

* Note.—All dollar amounts in Part B are averages of daily balances during month.

Initial Regulatory Flexibility Analysis

Pursuant to Section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Board is providing the following initial regulatory flexibility analysis.

1. Reasons, objectives, and legal bases underlying the proposed rules. These elements have been discussed elsewhere in the **SUPPLEMENTARY INFORMATION** regarding the proposal.

2. Small entities to which the rules will apply. This rule would apply to all members of Federal Home Loan Banks.

3. Impact of the proposed rules on small institutions. This rule would eliminate a current exception applicable to small institutions. This portion of the proposal is discussed elsewhere in the **SUPPLEMENTARY INFORMATION.**

4. Overlapping or conflicting rules. The Board has no rules prescribing liquidity requirements other than those contained in 12 CFR 523.10 through 523.14, which are the rules that would be amended by the proposed regulation.

5. Alternatives to the proposed rules. There are no alternatives that would achieve the Board's objectives as described elsewhere in the Supplementary Information.

The Board is providing a 60-day comment period for this rule. Comment is invited on all aspects of the proposal, including the appropriateness and effect of the proposed changes, and any additional or alternative measures that would serve the goals of the Board as outlined in the proposal. In addition, the Board specifically solicits comment on the effect this proposal would have in combination with others published elsewhere in today's **Federal Register,** such as the proposed rule on regulatory capital requirements.

List of Subjects in 12 CFR Part 523

Federal home loan banks, Flood insurance, Mortgages, Reporting and recordkeeping requirements.

Accordingly, the Federal Home Loan Bank Board hereby proposes to amend Part 523, Subchapter B, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

PART 523—MEMBERS OF BANKS

1. The authority citation for Part 523 is revised to read as follows:

Authority: Sec. 5, 47 Stat. 727, sec. 416(a), 83 Stat. 401, as amended (12 U.S.C. 1425); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425a); sec. 17, 47 Stat. 736, sec. 405, 94 Stat. 132, sec. 25, 94 Stat. 1649, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–403, 405–407, 48 Stat. 1255–1257, 1259–1260, as amended (12 U.S.C. 1724–1726, 1728–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); sec. 503, 88 Stat. 1521, as amended (15 U.S.C. 1691, 1991a); sec. 202(b), 87 Stat. 982, as amended (42 U.S.C. 4106(b)); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1947 Supp., 1943–48 Comp., p. 1071.

2. Amend § 523.10 by adding the following new paragraphs (i) through (o) to read as follows:

§ 523.10 Definitions for purposes of this section, § 523.11 and § 523.12.

* * * * *

(i) *Liquidity Coverage Index.* A fraction, the numerator of which is 100, multiplied by the total derived by adding a member's liquid assets, its borrowing power, and ½ of the cash repayments (including prepayments) of loan principal it has received during the twelve months immediately preceding the reporting date, and subtracting from such sum its maturing liabilities; and the denominator of which is the member's liquidity base.

(j) *Borrowing power.* The total derived by adding the sum of 80 percent of the book value of a member's outstanding one-to-four-family mortgages, plus 90 percent of the book value of its mortgage-backed securities, plus 80 percent of the book value of assets that would qualify as liquid under § 523.10(g) but for their remaining maturities; and subtracting from such sum advances made to the member by the Federal Home Loan Bank in which it has membership, the member's reverse repurchase agreements, and the member's mortgage-backed bonds. For purposes of this section, one-to-four-family mortgages include FHA- and VA-insured mortgages and other federally insured or guaranteed mortgage loans and contracts.

(k) *Maturing Liabilities.* A member's financial liabilities with a fixed maturity date of six months or less from the reporting date. The term maturing liabilities does not include passbook accounts or advances made to a member by the Federal Home Loan Bank in which it has membership.

(l) *Firm line of credit.* A line of credit for an advance extended to a member institution by the Federal Home Loan Bank in which it has membership, so long as the line of credit is collateralized in accordance with the prevailing policies of collateralization for advances of that Federal Home Loan Bank.

(m) *Net commitments.* A member's commitments, other than loans in process, to originate loans; plus its commitments to purchase loans and other assets; plus its firm take-out commitments; minus its commitments to sell loans and other assets: *Provided,* that such commitments are due to be funded within 6 months of the date of the member's required liquidity report under § 523.13(a), and are evidenced by a writing whose terms impose a legally binding obligation upon the member to deliver or to accept delivery of the commitment that is the subject of the writing.

(n) *Loans in process.* Loans that a member has committed to fund and for which all proceeds have not been disbursed to the borrower: *Provided,* that the member is scheduled to disburse funds for such loans within six months of the date of its required liquidity report.

(o) *Firm commitments.* A figure equal to the total of net commitments and loans in process.

3. Amend § 523.11 by removing paragraph (e), by redesignating paragraphs (c) and (d) as paragraphs (d) and (e), respectively, by revising paragraphs (a) and (b) and by adding a new paragraph (c) to read as follows:

§ 523.11 Liquidity requirements.

(a) *Calculation of liquidity coverage index.* In order to determine its liquidity requirement for each calendar quarter, each member shall first calculate its liquidity coverage index. The liquidity coverage index shall be calculated at the end of each quarter, using figures accurate as of the last business day of that quarter, for use in determining the liquidity required in each of the following three months.

(b) *Calculation of liquidity requirement.* Except as otherwise provided in paragraph (d) of this section, for each calendar month, each member shall maintain an average daily balance of liquid assets, expressed as a percentage of the average daily balance of its liquidity base during the preceding calendar month, that corresponds with its liquidity coverage index as shown in the table set forth below. Each member, other than an insurance company, shall maintain an average daily balance of short-term liquid assets of not less than 1 percent of the average daily balance of its liquidity base during the preceding calendar month.

TABLE 1

Liquidity coverage index	Liquidity requirement (percent)
Greater than 0	6
Greater than −25 but less than or equal to 0	8
Less than or equal to −25	10

(c) *Assets eligible to satisfy the liquidity requirement.* A member may satisfy its liquidity requirement by maintaining an average daily balance of the required percentage of liquid assets, *Provided:* that the amount of such liquid assets eligible to satisfy the liquidity requirement must exceed the total of the member's outstanding firm commitments minus 12.5 percent of the member's liquidity base.

* * * * *

4. Amend § 523.12 by removing paragraph (a)(2)(i); by removing the paragraph designation "(ii)", and the heading "New Rule", and by removing paragraph (a)(2)(iii). The colon at the end of paragraph (a)(2) introductory text is changed to a period.

5. Amend § 523.12 by adding new paragraphs (d) and (e) to read as follows:

§ 523.12 Deficiencies and penalties.

* * * * *

(d) *Temporary Exemption from Deficiency.* During a period commencing on [effective date of final rule] and extending until [last business day of the second full quarter following the effective date of final rule] if, in the opinion of the Principal Supervisory Agent, and the Director of the Office of Examinations and Supervision or his designee, a deficiency in the amount of a member's assets eligible to satisfy the liquidity requirement results primarily from the large amounts of that member's firm commitments, the Principal Supervisory Agent shall require the member to submit for approval a business plan setting forth how the member will achieve compliance with its liquidity requirement. The business plan shall include the member's proposed restructuring of its assets and liabilities and shall specify the time within which the member will achieve compliance with the liquidity requirements. *Provided,* however, that the Principal Supervisory Agent shall not approve any such business plan that projects the member's compliance with the liquidity requirements at a time later than [last business day of the second full quarter following the effective date of final rule]. During such time period, the member may use the full extent of its liquid assets, its firm commitments notwithstanding, or if the Principal Supervisory Agent approves a business plan that specifically calls for the member temporarily to reduce its deficiency in assets eligible to satisfy the liquidity requirement by including firm lines of credit in such assets, the member may use such lines of credit, to such extent as the Principal Supervisory Agent may allow, so long as firm lines of credit are not included for a period longer than [last business day of the second full calendar quarter after effective date of final rule].

(e) *Transactions for purposes of evasion.* An institution's Principal Supervisory Agent may disregard any transaction entered into primarily for the purpose of evading the requirements of this section. An institution may seek review of any such determination by the Board.

6. Amend § 523.13 by adding the following sentences to the end of paragraph (a) to read as follows:

§ 523.13 Reports; records.

(a) *Reports.* Each member shall also report data relating to the determination of and compliance with liquidity requirements as specified in the periodic reports required by the Board in § 563.18 and related sections. The reported data shall include, but not be limited to, the liquidity required of the member, assets eligible to satisfy the liquidity requirement, and penalties assessed for deficiencies under § 523.12(c).

* * * * *

§ 523.3–3, 523.10, 523.11, 523.12, and 523.9 [Amended]

7. Amend § 523.3–3, § 523.10, § 523.11, § 523.12, and § 523.29, by removing the authority citations located at the end of the sections.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 86–9916 Filed 5–2–86, 8:45 am]

BILLING CODE 6720–01–M

12 CFR Parts 541, 545, 561, 563, 570, and Ch. V

[No. 86–427]

Definition of Regulatory Capital

Dated: April 24, 1986.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") as the operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), is proposing to amend its regulations pertaining to the definition of regulatory net worth applicable to all institutions the accounts of which are insured by the FSLIC ("insured institutions"). First, the Board is proposing to require that all financial statements issued by insured instititutions (including statements of condition required pursuant to 50 FR 2,662, 2,663 (1985) (to be codified at 12 CFR 545.115) and all financial reports filed with the Board shall be prepared in accordance with generally accepted accounting principles ("GAAP"). Second, the proposed rule would substitute the term "regulatory capital" for "regulatory net worth" and would define "regulatory capital" to mean the sum of equity capital as determined in accordance with GAAP plus certain other items as determined appropriate by the Board based on risk analysis report ("RAR"). The Board believes that these actions will aid its supervisory efforts in evaluating the viability of insured institutions and the related risk to the Corporation.

This proposal is part of the Board's comprehensive review of appropriate capital requirements for insured institutions. The Board is also proposing today amendments to its regulatory capital requirements for insured institutions. Board Res. No. 86–426, published elsewhere in the Proposed Rules section of this issue. The proposals are designed to complement each other, and to operate in tandem to further the Board's goals of more effective monitoring the condition of insured institutions and the related risks to the Corporation. The Board will consider jointly comments filed on either proposal.

DATE: Comments must be received by July 7, 1986.

ADDRESS: Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552. Public comments received on this

proposal and materials referred to in the preamble of this document will be publicly available at this address.

FOR FURTHER INFORMATION CONTACT: Christina M. Gattuso, Attorney, Office of General Counsel, (202) 377–6649; Thomas R. Bloom, Professional Accounting Fellow, Office of Examinations and Supervision, (202) 377–6392; M. Christian Mitchell, Professional Accounting Fellow, Office of Examinations and Supervision, (202) 377–6837; or Robert J. Pomeranz, Senior Policy Analyst, Office of Policy and Economic Research, (202) 377–6209, Federal Home Loan Bank Board, at the above address.

SUPPLEMENTARY INFORMATION: This proposal is adopted pursuant to the provisions of section 403(b) of the National Housing Act ("NHA"), 12 U.S.C. 1726(b), as amended by the Garn-St Germain Depository Institutions Act of 1982 ("DIA"), Pub. L. 97–320, 96 Stat. 1469, which gives the Board broad discretion to determine appropriate reserve requirements for insured institutions. Specifically, section 403(b) of the NHA requires all insured institutions to "provide adequate reserves in a form satisfactory to the Corporation, to be established in accordance with regulations made by the Corporation". Pursuant to its authority under this section, the Board established regulatory capital requirements for insured institutions and determined those components of capital which may be included in computing regulatory net worth.

Current Regulatory Practice and Net Worth Definition

Section 561.13 of the Insurance Regulations (50 FR 20,550, 20,553 (1985) and 50 FR 46,739, 46,742 (1985) (to be codified at 12 CFR 561.13)) sets forth the current definition of "regulatory net worth," which includes components of net worth as determined in accordance with GAAP as well as other components the Board has determined constitute net worth in accordance with regulatory accounting practices. The current differences in the definition and calculation of equity capital under GAAP and regulatory net worth for insured institutions reflect the fundamental distinctions in the basis and purpose of these concepts. GAAP developed to establish consistent accounting measurements and provides a uniform standard for investors and regulatory agencies to compare the financial condition of various entities. Regulatory accounting practices were developed by the Board as a supplement or substitute for GAAP in certain instances deemed appropriate to more effectively assess risk of loss to the FSLIC, to better evaluate the underlying viability of insured institutions or to establish standards where GAAP had not been clearly enunciated.

The Board recognizes that GAAP is a comprehensive basis of accounting and always has required insured institutions to prepare their financial statements on the basis of GAAP unless, by regulation or otherwise, the Board has permitted the use of regulatory accounting practices. *See* 12 CFR 563.23–3 (1985). Over a period of time, a number of concerns unique to the Board's regulatory role in evaluating risk to the FSLIC led it to permit or require insured institutions to depart from GAAP in certain instances. The Board believed that without those changes, GAAP could not fully reflect the ability of certain forms of capital to buffer the FSLIC from loss, or the risks attendant on certain transactions.

For example, certain Board-authorized practices affecting the definition of regulatory net worth evolved in response to unprecedented strains on thrift earnings and viability earlier in this decade, when rate deregulation and soaring interest rates severely eroded the value of the business' predominantly long-term, fixed-rate mortgage portfolio. The Board recognized that the state of the industry at the time and the uncertain economic environment made it very difficult for most insured institutions to obtain added capital through the issuance of those instruments which traditionally have constituted the capital accounts of insured institutions. Given the need to maintain public confidence in the industry during a period of financial and operational transition and the need to more precisely monitor the viability of the industry, the Board found it was appropriate to include in regulatory net worth certain items which served to buffer institutions and the FSLIC from losses, but which did not comprise equity capital under GAAP. *See e.g.* 47 FR 52,961 (Nov. 22, 1982) ("Appraised Equity Capital"). The Board recognized at the time that its actions were a departure from its past policy and from GAAP. *Id.*

Other regulatory practices affecting the net worth definition resulted from congressional action. Thus, by statute, Congress has mandated that for statutory and regulatory purposes mutual capital certificates and net worth certificates (authorized under section 202 of the DIA) shall be included in the general reserves and net worth of insured institutions. 12 U.S.C. 1464(b)(5)(A), (B), 1726(b) (1982 & Supp. II 1984)). These items, however, do not qualify as equity capital under GAAP.

A third category of regulatory practices affecting net worth include those designed to provide specific guidance during periods when GAAP had not yet been established for certain transactions. This was the case, for example, when the Board adopted accounting guidelines for insured institution transactions in futures. *See* 12 CFR 563.17–4(a) (1985).

Finally, the Board adopted certain other practices affecting net worth because of its view that GAAP did not accurately reflect the economic risks to institutions, and to the FSLIC, which might result from certain transactions. *See e.g.*, 50 FR 53,275 (Dec. 31, 1985) ("Classification of Assets").

Purpose and Description of Proposal

Upon reconsideration of the bases for the existing variances between GAAP and regulatory accounting practices affecting net worth for insured institutions, the Board is proposing to require insured institutions to rely more significantly on GAAP in computing and reporting their financial condition and results of operations. The proposal would therefore require all insured institutions to file all financial statements, including statements of condition required pursuant to 50 FR 2,622, 2,663 (1985) (to be codified at 12 CFR 545.115), and reports to the Board, on a GAAP basis with a reconciliation to regulatory capital.

In conjunction with this GAAP reporting requirement, the proposal also restructures the definition of regulatory capital to reflect the concepts embodied in RAR, and to streamline and remove those procedures the Board no longer deems appropriate for risk analysis reporting. This feature of the proposal should ensure comprehensive disclosure and minimize any potential for confusion on behalf of the public.

This restructured definition, in the Board's view, provides the most appropriate means of integrating the benefits of GAAP and regulatory accounting practices. The proposal achieves this balance by revising the provisions of § 561.13 to define "regulatory capital" as the sum of amounts derived by adding together (1) the amount of equity capital determined in accordance with GAAP, and (2) the amount of capital representing the sum of selected components now reflected in "regulatory net worth," the total of which the Board views as appropriate supplemental indices of risk. The sum of regulatory capital so computed would be

used to determine the institution's compliance with the Board's minimum regulatory capital requirements under § 563.13, as proposed to be amended and published elsewhere in the Proposed Rules section of this issue.

The Board also proposes to substitute the term "regulatory capital" for the term "regulatory net worth" in § 561.13. This change recognizes that the term "regulatory net worth" does not precisely parallel "net worth" or "equity" as defined by accounting literature, and reaffirms the Board's discretion to define the components of regulatory capital for purposes of its regulations, in a manner most appropriately suited to the objectives and responsibilities of the Board. The proposal would also amend Chapter V to clarify that all existing references in the Board's Regulations to "regulatory net worth" and "net worth" shall be construed to mean "regulatory capital."

The Board's modifications to GAAP are commonly referred to in the industry as "regulatory accounting practices," "regulatory accounting principles," or "RAP." Further, certain memoranda of the Board's Office of Examination and Supervision refer to this regulatory body of accounting as RAP. The Board recognizes that regulatory accounting guidelines do not constitute a comprehensive basis of accounting, and could prove misleading if categorized as "accounting principles." Thus, consistent with its goal of reaffirming the district purposes and functions of GAAP and regulatory risk analysis, this preamble as well as the proposed regulatory language substitute the term "risk analysis reporting" for "regulatory accounting practices" in describing the Board's modification of GAAP in determining the capital components considered appropriate for evaluating risk to the FSLIC.

A. Reporting in Accordance with GAAP

To assure consistency with the elements of the proposal affecting the components of regulatory capital, the Board is proposing to amend § 563.23–3 to require that all financial statements issued by insured institutions (including statements of condition required to be made publicly available pursuant to 50 FR 2.662, 2.663 (1985) (to be codified at 12 CFR 545.115) and all financial reports filed with the Board after the effective date of any final rule adopted shall be prepared in accordance with GAAP. At the same time, given the very different purposes of GAAP and regulatory measures of net worth, the Board also recognizes that many of the concepts embodied in regulatory accounting practices and "regulatory net worth" continue to serve a useful and valid role, complementing GAAP, in evaluating the viability of insured institutions and the related risk to the FSLIC. The proposal therefore requires institutions to include in all such financial statements and reports a full and fair disclosure of the reconciliation of equity captial, as determined in accordance with GAAP, with regulatory capital, as defined herein. The Board is reviewing all reports and forms currently required to be filed by insured institutions and will be revising such reports and forms if this rule is adopted as a substantially similar final rule.

The Board believes that requiring insured institutions to prepare all financial statements and all reports to the Board in accordance with GAAP will best serve the public interest for four reasons. First, requiring insured institutions to report on this basis would provide the Board a more consistent basis for analyzing and comparing the financial statements filed by all insured institutions. Currently, institutions subject to the Securities Exchange Act of 1934 (15 U.S.C. 78a. *et seq.*) are required to file financial statements prepared in accordance with GAAP with the Board or the Securities and Exchange Commission,[1] while other institutions may file regulatory reports with the Board based on regulatory accounting practices.

Because of the predominant role of GAAP in the public disclosure and reporting of other financial institutions as well as other entities in the business community, a greater reliance on uniform reporting in accordance with GAAP should provide the Board a more consistent, comprehensive basis to monitor the performance and soundness of the industry. This should significantly enhance industry stability by providing the Board with an additional tool to analyze and address supervisory concerns.

Second, the proposal also would benefit readers and users of financial statements by providing a consistent basis for analyzing and comparing insured institutions' financial statements. Third, the requirement also would give insured institutions an improved measure of their capacity to access the capital markets. Finally, by encouraging the use of GAAP, a recognized comprehensive body of accounting, the proposal will assure consistency with the accounting practices of other sectors of the business community.

[1] *See* 50 FR 53,284, 53,288 (1985) (to be codified at 12 CFR 563c.1(a)(2)) and 12 CFR 563c.1 (1985)); 17 CFR 210.4–01 (1985).

B. Components Included in Regulatory Capital

As explained in more detail below, the proposal would define regulatory capital as the sum of: (1) Equity capital as determined in accordance with GAAP ("equity captial"), (2) items which serve as the functional equivalents of capital for the FSLIC by providing a buffer against loss, and specific capital instruments created by congressional action and Board authority ("definitional capital"), (3) certain other components of capital as the Board determines to be consistent with its risk analysis conventions, and (4) risk analysis reporting forbearances.

In connection with this definition of regulatory capital, the components of definitional capital and certain other regualtory risk analysis conventions will continue to reflect RAR based on the Board's determination that risk analysis reporting better serves the Board's goal of assessing risk of loss to the FSLIC and assessing amounts available to buffer such loss. At the same time, the Board also is proposing to eliminate many of its current risk analysis conventions because it believes that such conventions are no longer appropriate.

1. Equity Capital

The Board proposes that equity capital shall be determined in accordance with GAAP. Equity capital represents the difference between the recorded values of an institution's assets and its liabilities, as determined under GAAP.[2] *See FASB Statement of*

[2] The Board notes that institutions may continue to use "push-down" accounting as set forth in the Board's Office of Examinations and Supervision Memorandum No. R 55. Push-down accounting is the establishment of a new accounting and reporting basis for a savings and loan association in its separate financial statements based on a purchase transaction in its voting stock that results in a substantial change in the ownership of the outstanding voting stock of the association. The purchaser may be an individual, a group of individuals, a corporation, or any other entity. While "push-down" accounting is recognized under GAAP, the Board believes that while GAAP continues to evolve in this area, continued specific guidance by the Board is necessary.

Additionally, the Board notes that insured institutions will continue to use the Board's current accounting procedures for wash sale transactions as set forth in the Board's Office of Examinations and Supervision Memorandum No. T 59–8 ("T59–8"). T59–8 requires institutions to recognize profit or losses from those transactions in income currently unless the gain or loss is deferred in accordance with 50 FR 20,395 (1985) (to be codified at 12 CFR 563c.14(a)) and 12 CFR 563c.14 (1985). The Board recognizes that there currently is a divergence in application of GAAP and thus, the Board believes continued specific guidance is necessary with respect to these transactions.

Financial Accounting Concepts No. 6 (December 1985), which set forth a detailed discussion of equity capital.

2. Definitional Capital

This proposed category closely parallels the provisions of current § 561.13 and would include qualified subordinated debt, qualified redeemable preferred stock, income capital certificates, mutual capital certificates, outstanding net worth certificates, pledged certificates of deposit, and other nonwithdrawable accounts (excluding any treasury shares held by the insured institution), to the extent such nonwithdrawable accounts are not included in equity capital.

In the Board's experience, the inclusion of items such as subordinated debt and redeemable preferred stock in regulatory capital has had a beneficial effect on both insured institutions and the Corporation. Structurally, these items have two characteristics important for any component of capital: (1) They are subordinate to other obligations of the insured institution and (2) their medium-to-long-term nature makes them a reliable buffer against losses. Thus, the Board believes that for purposes of risk analysis these items should continue to be included in regulatory capital.[3] In the Board's view, these components, although not equity capital under GAAP, provide the FSLIC with protection analogous to traditional equity capital in the event of insolvency, and accordingly should be added to GAAP equity capital to arrive at regulatory capital.

Additionally, the Board believes that including mutual capital certificates, net worth certificates and income capital certificate in regulatory capital has also had a beneficial effect on insured institutions. Congress, by statute, has mandated that mutual capital certificates and net worth certificates shall constitute capital infusion and be included in the regulatory capital of insured institutions. 12 U.S.C. 1464(b)(5)(A), (B), 1726(b) (1982 & Supp. II 1984).[4] Income capital certificates were designed to provide a similar function.

3. Risk Analysis Reporting Pre-[Effective Date of Final Rule]

This category of regulatory capital would include only the components of risk analysis reporting permitted prior to the effective date of any final rule adopted, and for which further elections cannot be made. This category includes appraised equity capital, the deferral of certain gains and losses pursuant to 12 CFR 563c.14, and certain other practices enumerated in detail below.

a. *Appraised Equity Capital.* Under this category, an insured insititution may add to equity capital the amount of appraised equity capital as defined in 12 CFR 563.13(c), provided that the insured institution has included appraised equity capital as part of its regulatory capital prior to December 31, 1986.

The Board promulgated the appraised-equity-capital regulation in 1982 in response to serve industry-wide distress. Unprecedented losses severely depleted the industry's net worth and made it difficult for many institutions—the vast majority of which were then in the mutual form—to generate added capital through retained earnings or the issuance of traditional capital instruments. The Board determined that including this item in net worth was preferrable to forcing insured institutions that had experienced property appreciation to sell and leaseback their properties merely in order to maintain net worth. In the Board's view, during this period, such sale and leaseback transactions could have adversely affected the best interests of the association and the FSLIC fund. Moreover, the Board found that appraised equity capital represented a real, though unrealized, equity value that, in the case of merger or liquidation, would serve to protect the interests of the Corporation.

Because the rule was designed to bolster net worth during a limited recovery period for the industry, the authority to include appraised equity capital in regulatory capital was originally scheduled to expire on December 31, 1985. On October 24, 1985, by board Resolution No. 85–949, the Board extended that authority to December 31, 1986, and "grandfathered" elections under the appraised-equity-capital regulation so that insured institutions could continue to receive the benefit of the election after the provision expires. *See* 50 FR 45,988 (Nov. 6, 1985).

The Board believes that the current expiration date for the use of the appraised equity capital rule is appropriate. To avoid undue hardship for those institutions who relied on the rule, however, the proposal would permit those insured institutions that inlcuded appraised equity capital in their regulatory capital prior to December 31, 1986 to continue to include that appraised equity capital in their regulatory capital after the effective date of a final rule.

b. *Deferral of Loan Gains and Losses.* The proposal would also permit an insured institution, in computing its regulatory capital, to continue to exclude the unamortized amount of loan gains and to include the unamortized amount of loan losses, which were deferred pursuant to 12 CFR 563c.14, provided that the insured institution has excluded such gains and included such losses, in computing its regulatory capital prior to the effective date of a final rule. The Board originally authorized such deferrals of loan gains and losses in computing regulatory capital to facilitate the restructuring of insured institutions' portfolios. *See* 46 FR 42,275 (Aug. 20, 1981). The Board believes that insured institutions have had adequate time to achieve this purpose. The proposal therefore authorizes such gain and loss deferrals as a component of regulatory capital only if and to the extent that the insured institution has excluded such gains and included such losses prior to the effective date of a final rule.

In the Board's view, continued availability of this regulation until the effective date of a final rule and the current economic conditions provide insured institutions an opportunity to complete restructuring plans which depend on such factors.

c. *Miscellaneous.* In addition to the items referenced above, the proposal also would permit an insured institution to continue to include in regulatory capital amounts reflecting the RAR/GAAP differential for specific items provided that the insured institution elected to use RAR for these items prior to the effective date of a final rule. Under the proposal, an insured institution would include in its regulatory capital the amount representing the RAR/GAAP differential for the following items: accounting for the sale of real estate developed by the association or its subsidiary (12 CFR 563.23–1(f) (1985)), futures transactions (12 CFR 563.17–4(g) (1985)), and accretion of discounts and amortization of premiums on securities (12 CFR 563.23–1(a)(b) (1985)).

As discussed more fully below in subpart C, the Board is proposing to eliminate future RAR elections for these

[3] The Board notes that other financial regulatory agencies advocate the use of subordinated debt for these same reasons. *See* 50 FR 16,057 (April 24, 1985) (Federal Reserve System), 50 FR 11,128 (March 19, 1985) (Federal Deposit Insurance Corporation), and 50 FR 10,207 (March 14, 1985) (Office of the Comptroller of the Currency).

[4] For a detailed discussion of the Board's reasoning for originally including the items designated in this proposal as definitional capital as part of "regulatory net worth" *see* 50 FR 20,550 (May 17, 1985) (subordinated debt); 50 FR 46,739 (Nov. 13, 1985) (redeemable preferred stock); 45 FR 82,154 (Dec. 15, 1980) (mutual capital certificates); and 47 FR 58, 219 (Dec. 30, 1982) (net worth certificates)

items and to prospectively require insured institutions to account for such items under GAAP. The Board recognizes, however, that insured institutions currently may be accounting for these items under existing RAR and that treatment under proposed RAR may affect the amounts includable in regulatory capital for a period of years. For example, an insured institution may have elected in 1984 to accrete discounts on certain securities in accordance with RAR over a ten-year period. Under the proposal, the institution would be allowed to include in regulatory capital the amount representing the RAR/GAAP differential for the accretion of the discounts with respect to those securities through 1994. However, no future elections of RAR for these items would be permitted after the effective date of a final rule. The Board specifically seeks public comment on the appropriateness of including the RAR/GAAP differential amount of these miscellaneous items in the computation of insured institutions' regulatory capital.

4. Risk Analysis Reporting Post—[Effective Date of Final Rule]

The Board is also proposing to allow insured institutions to continue to include in their regulatory capital after the effective date of any final rule an amount which represents the difference between the treatment of certain items under GAAP and the treatment of those same items under RAR. Under the proposal, an insured institution would compute the items in this category under both RAR and GAAP for purposes of regulatory capital. The amount which represents the RAR/GAAP differential for a particular item would be added to or substracted from equity capital to arrive at regulatory capital. The Board believes that continuing to supplement GAAP with RAR with respect to these items will provide the Board with a more effective tool for analyzing risk of loss to the FSLIC.

First, this category would include amounts reflecting the RAR/GAAP differential treatment of loan origination and commitment fees pursuant to 12 CFR 563.23–1(f)(3) (1985.[5] The Board notes that the Financial Accounting Standards Board ("FASB") is in the process of changing GAAP for loan origination and commitment fees. However, the extent of the FASB's proposed changes and their resultant effect on the industry are unknown at this time. The proposal therefore authorizes continued use of the accounting procedures set forth in § 563.23–1(f)(3) with respect to these fees for purposes of determining regulatory capital until such time as the Board reevaluates the practicality of its continued use.

The second item in this proposed category is the amount of the RAR/GAAP differential in the treatment of gains or losses realized on options transactions pursuant to 12 CFR 563.17–5(g). *See* 50 FR 53,336, 53,340 (Dec. 31, 1985). The Board is proposing to allow the continued use of RAR with respect to options transactions because GAAP in this regard has not yet been defined by an authoritative body, such as the FASB or the AICPA. While the Board proposes to continue to specify regulatory accounting procedures in this area, the Board notes that the comment period for its proposed rule on accounting for options (50 FR 53,336 (Dec. 31, 1985)) has expired and that a final rule may change existing accounting procedures in this area.

The Board also proposes to continue use of RAR with respect to recordation of loss reserves pursuant to its classification of assets rule,[6] reevaluation of assets; adjustment of book value; and adjustment charges [7] and accounting for uncollectible interest with respect to 1–4 family mortgage loans pursuant to 12 CFR 563c.11. The Board's regulations in these areas are more restrictive than GAAP, and, consequently, an institution may be required to record a larger loss reserve than that required under GAAP.[8] In the Board's experience, GAAP understates the loss exposure to the FSLIC with respect to these items and, therefore, the Board believes that retention of RAR will serve to reduce the risk of loss to the FSLIC.

For example, § 563c.11 provides that any uncollected interest on certain loans [9] which have any portion due but uncollected for a period in excess of 90 days shall be classified as uncollectible, and, therefore, not included in an institution's net income or regulatory capital. Under GAAP, the accrual of interest on delinquent loans is discontinued when it is probable that the interest will not be received. GAAP relies heavily on management's judgment as to the probability of collection of delinquent interest. The Board believes that its regulations represent a conservative, objective accounting practice which provides insured institutions, their accountants, and the Board with uniform standards to evaluate uncollected interest on an industry-wide basis. In its experience, the Board has found that the regulation assists in the analysis of loan portfolio quality and institution collection policy. Additionally, the regulation prevents overstatement of income through long-term accrual of uncollected interest, which potentially could undermine the integrity of financial statements and reports. Thus, the Board proposes to retain its regulatory guidelines in this area.

While the Board has initially determined to permit continued adjustments to regulatory capital for these items, it may determine at a later date to adjust RAR to include or exclude certain other items as the Board determines to be appropriate for risk analysis.

5. Risk Analysis Reporting—Forbearances

The Board is also proposing to allow insured institutions to include in their regulatory capital after the effective date of a final rule additional items reflecting forbearances previously authorized, or which may be authorized in the future, by the Corporation, the Board, or the Principal Supervisory Agents. Most of the forbearances included in this category result from FSLIC merger transactions. In order to facilitate the acquisition of a troubled insured institution, the Principal Supervisory Agent or the Corporation, with Board approval, will in certain cases approve regulatory treatment for specific transactions which departs from GAAP. The Board believes that such forbearances are often required to facilitate the acquisition of a failed institution. Such forbearances are directly relevant to effective supervision and monitoring of risk to the FSLIC, and should be governed by risk analysis reporting. Thus, the Board believes it is in the best interests of the FSLIC fund and the thrift industry to continue to allow RAR in those instances where forbearance is authorized.

C. Elimination of Certain Risk Analysis Reporting Requirements

The Board proposes to eliminate altogether prospective authority for insured institutions to rely on five other accounting procedures heretofore permitted by the Board which represent departures from GAAP. By requiring

[5] The Board's accounting procedures with respect to loan origination and commitment fees are currently set forth in § 563.23–1(g)(3). If this proposal is adopted in final, paragraph (g) would be redesignated as paragraph (f).

[6] 50 FR 53,275 (1985) (to be codified at 12 CFR 561.16c, 571.1a).

[7] 50 FR 53,275 (1985) (to be codified at 12 CFR 563.17–2).

[8] *See e.g.*, 50 FR 53,275, *supra*.

[9] *See* 12 CFR 563c.11(b) (1985).

insured institutions to report the following items in accordance with GAAP, the proposal will afford the Board a more effective means of monitoring the effect of such transactions on institutions' condition for the reasons discussed below.

1. Sales of Real Estate Developed by the Association or its Subsidiary

The proposal would eliminate the Board's accounting regulations at 12 CFR 563.23–1(f) and require insured institutions and their service corporations to account for the sales of such real estate in accordance with GAAP. When the Board promulgated regulatory accounting procedures for this area, insured institutions were subject to more rigid downpayment requirements due to regulatory restrictions on loan-to-value ratios. Consequently, RAR was more restrictive than GAAP. The Board noted at the time that it would continue to review its accounting procedures in this area as GAAP evolved. Subsequently, the Board eased its loan-to-value requirements for real estate loans and, as a result, RAR became more liberal than GAAP. (*See* 48 FR 23,032, 23,037 (May 23, 1983)). The Board's supervisory experience indicates that GAAP now more consistently reflects the attendant risks to the FSLIC with respect to these sales of real estate. As a result, the proposal requires institutions to record the sale of such real estate in accordance with GAAP. *See FASB Statement of Financial Accounting Standards No. 66.*

2. Marketable Equity Securities

Under RAR (as set forth in the Board's "Examinations Objectives and Procedures" manual), institutions may record and carry marketable [10] equity securities at historical cost. GAAP, on the other hand, requires institutions to record and carry defined marketable equity securities at the lower of aggregate cost or market value. In the Board's experience, the variance from GAAP in this area does not result in increased protection to the FSLIC. The Board believes that GAAP more accurately reflects the risk to the FSLIC attendant in such transactions and therefore proposes that insured institutions record marketable equity securities in accordance with GAAP. *See FASB Statement of Financial Accounting Standards No. 12.*

3. Futures Transactions

The Board is proposing that institutions determine gains or losses arising from futures transactions in accordance with GAAP. When the Board developed RAR in this area, GAAP for such transactions had not been established. Because GAAP now provides definitive rules with respect to futures transactions, continued reliance on RAR is no longer appropriate. Accordingly, the Board is proposing to amend 12 CFR 563.17–4(g) to remove the accounting procedures for futures transactions. *See FASB Statement of Financial Accounting Standards No. 80.*

4. Accretion of Discounts on Securities and Amortization of Premiums on Securities

The Board is proposing to eliminate RAR in this area. Under the Board's regulations, premiums and discounts must be amortized or accreted over the life of the security or 10 years, whichever is less. GAAP currently requires that such items be amortized or accreted over the estimated life of the security. The Board now believes that the distinction between GAAP and RAR in this area is inconsequential. The Board believes that, to the extent that GAAP fully addresses a particular transaction and the attendant risks to the FSLIC, use of GAAP is preferable in order to promote uniform reporting standards. Thus, the Board is proposing to amend 12 CFR 563.23–1 to require that such premiums and discounts be determined in accordance with GAAP. *See FASB Statement of Financial Accounting Standards No. 65.*

5. Accounting for Gains and Losses With Respect to Transactions in Securities

The Board also is proposing to remove the accounting procedures set forth in 12 CFR 563.23–2 (1985). This section was promulgated in 1969 and provided for the deferral and amortization of gains and losses on the disposition of securities made for purposes of meeting the Board's liquidity requirements during the period beginning on December 11, 1969 and ending December 31, 1971. The regulation permitted such deferral and amortization only for a period of ten years from the dates referenced above, and is therefore obsolete. Accordingly, the Board is proposing to amend Part 563 by removing section 563.23–2.

The Board is providing a 60-day comment period for this proposal. Comment is invited on all aspects of the proposal, including the appropriateness of greater reliance on reporting in accordance with GAAP by insured institutions, the elements of regulatory capital as proposed and any recommended revisions to the proposal which would further the Board's stated goals of enhancing industry stability, improving accounting disclosures and more effective supervision, and maintaining a consistent, comprehensive basis for evaluating risk to the FSLIC.

Initial Regulatory Flexibility Analysis

Pursuant to Section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603 the Board is providing the following regulatory flexibility analysis.

1. *Reasons, objectives and legal basis underlying the proposed rule.* These elements are incorporated above in the **SUPPLEMENTARY INFORMATION** regarding the proposal.

2. *Small entities to which the proposed rule would apply.* The proposed rule would apply to institutions whose accounts are insured by the FSLIC.

3. *Impact of the proposed rule on small institutions.* The proposed rule would not have a substantial impact on small insured institutions.

4. *Overlapping or conflicting federal rules.* There are no known federal rules that duplicate, overlap, or conflict with this proposal.

5. *Alternatives to the proposed rule.* There are no alternatives that would be less burdensome than the proposal in addressing the concerns expressed in the **SUPPLEMENTARY INFORMATION** set forth above.

List of Subjects in 12 CFR Parts 541, 545, 561, 563, and 570

Accounting, Bank deposit insurance, Consumer protection, Credit, Electronic funds transfers, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings and loan associations.

Accordingly, the Board hereby proposes to amend Parts 541 and 545 of Subchapter C; Parts 561, 563, and 570 of Subchapter D, Chapter V; and references contained in Chapter V, Title 12, Code of Federal Regulations, as set forth below.

CHAPTER V—FEDERAL HOME LOAN BANK BOARD

1. Amend this Chapter V by removing the phrases "net worth" and "regulatory net worth" wherever they appear in this Chapter and by inserting, in lieu thereof, the phrase "regulatory capital "

[10] "Marketable" means those securities for which prices are readily available on a national market or in the over-the-counter market. The Board notes that mortgage-backed securities are not considered to be marketable equity securities. *See FASB Statement of Financial Accounting Standards No. 12,* for a more detailed description of marketable equity securities.

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

PART 541—DEFINITIONS

2. The authority citation for 12 CFR Part 541 is revised to read as follows:

Authority: Sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425a); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402, 403, 48 Stat. 1256, 1257, as amended (12 U.S.C. 1725, 1726); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

3. Revise § 541.17 to read as follows:

§ 541.17 Regulatory capital.

Any reference to the terms "net worth" or "regulatory net worth" included in this subchapter shall mean "regulatory capital" as defined in § 561.13 of this Chapter.

§ 541.20 [Amended]

4. Amend § 541.20 by removing the authority citation located at the end of the section.

PART 545—OPERATIONS

5. The authority citation for 12 CFR Part 545 continues to read as follows:

Authority: Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); Reorg. Plan No. 3 of 1947, 3 CFR, 1943–1948 Comp., p. 1071, unless otherwise noted.

6. Amend § 545.115 by revising paragraph (b) to read as follows:

§ 545.115 Statement of condition.

* * * * *

(b) Format. The information set forth in a Statement of Condition shall be presented in accordance with generally accepted accounting principles and shall include a full and fair disclosure of the reconciliation of equity capital, as determined in accordance with generally accepted accounting principles, with regulatory capital, as defined in § 561.13 of this chapter.

* * * * *

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 561—DEFINITIONS

7. The authority citation for 12 CFR Part 561 continues ot read as follows:

Authority: Pub. L. 95–147 of Oct. 28, 1977, Sec. 4, 82 Stat. 856, sec. 4, 80 Stat. 824, sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1425a, 1425b, and 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 202, 96 Stat. 1469; sec. 409, 94 Stat. 160; secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071, unless otherwise noted.

8. Revise § 561.13 to read as follows:

§ 561.13 Regulatory Capital.

Regulatory Capital is the sum of:

(a) Equity capital, as determined in accordance with generally accepted accounting principles ("equity capital");

(b) Definitional Capital, which is the sum of:

(1) income capital certificates, mutual capital certificates (issued pursuant to § 563.7–4 of this subchapter), outstanding net worth certificates issued in accordance with Part 572 of this subchapter or which the Corporation is committed to purchase by virture of § 572.1(c), pledged certificates of deposit, and any other nonwithdrawable accounts (excluding any treasury shares held by the insured institution) to the extent such nonwithdrawable accounts are not included in equity capital. *Provided,* that for any non-permanent instrument qualifying as regulatory capital under this paragraph, either (i) the remaining period to maturity or required redemption (or time of any required sinking fund or other prepayment or reserve allocation, with respect to the amount of such prepayment or reserve) is not less than one year, or (ii) the redemption or prepayment is only at the option of the issuing insured institution and such payments would not cause the insured institution to fail or continue to fail to meet its regulatory capital requirement under § 563.13 of this subchapter; and *Provided further,* that capital stock may be included as regulatory capital without limitation if it would otherwise qualify but for either (A) a provision permitting redemption, in the event of a merger, consolidation, or reorganization approved by the Corporation where the issuing institution is not the survivor, or (B) a provision permitting a redemption where the funds for redemption are raised by the issuance of permanent stock;

(2) (i)Subordinated debt securities issued pursuant to § 563.8–1 of this subchapter: *Provided,* that an institution whose application to include subordinated debt in net worth pursuant to § 563.8–1 was approved prior to December 5, 1984, shall be permitted to continue to include 100 percent of the principal amount of such subordinated debt as regulatory capital until the remaining period to maturity (or time of any required sinking fund or other prepayment or reserve allocation, with respect to the amount of such prepayment or reserve) is less than one year; *Provided further,* that an institution that had filed a substantially complete application pursuant to § 563.8–1 prior to December 5, 1984, shall be permitted to include 100 percent of the subordinated debt issued pursuant to such application as regulatory capital until the remaining period to maturity (or time of any required sinking fund or other prepayment or reserve allocation, with respect to the amount of such prepayment or reserve) is less than one year if such subordinated debt otherwise is in compliance with the requirements of § 563.8–1 and if such application is not amended in any material respect subsequent to December 5, 1984; and *Provided further,* that except as otherwise provided in this paragraph (2)(i) and unless otherwise approved by the Corporation in writing, subordinated debt securities issued pursuant to § 563.8–1 after December 5, 1984, may be included as regulatory capital only in accordance with the following schedule:

Years to maturity of outstanding subordinated debt	Percent included in regulatory capital
Greater than or equal to 7	100
Less than 7 but greater than or equal to 6	86
Less than 6 but greater than or equal to 5	71
Less than 5 but greater than or equal to 4	57
Less than 4 but greater than or equal to 3	43
Less than 3 but greater than or equal to 2	29
Less than 2 but greater than or equal to 1	14
Less than 1	0

(ii) For purposes of determining the principal amount outstanding of an obligation issued at a discount which exceeds 10 percent of the face amount, the issuing institution shall treat as principal only the gross consideration actually received upon issuance plus the accrued interest not payable until maturity, as of the date of the computation. In the case of an instrument sold at a discount which exceeds 10 percent and which bears no stated rate of interest, the amount which can be added to principal each period is an amount equal to the accrued interest payable computed on the "level-yield" or "interest" method.

(iii) For purposes of computing the amount of subordinated debt includable as regulatory capital pursuant to this paragraph, the issuing institution must determine the effective maturity of each portion of the principal amount outstanding of the subordinated debt which is subject to required sinking-fund payments, other required prepayments and required reserve allocations, and calculate the percentage amount of each portion of the principal amount outstanding which may be included pursuant to the schedule set forth in this paragraph; and

(3) (i) Preferred stock that is redeemable at the option of the issuer

(A) which was issued prior to July 23, 1985, or (B) which was issued after July 23, 1985: *Provided,* that the form of the security was approved prior to issuance pursuant to § 563.1 of this subchapter and states that no redemption may be made by the issuing institution if, after giving effect to such redemption, the insured institution would fail to meet its regulatory capital requirement under § 563.13 of this subchapter;

(ii) Mandatorily redeemable preferred stock which (A) was issued prior to July 23, 1985, or (B) was issued pursuant to § 563.7–5 of this subchapter, after July 23, 1985, was approved as to its form prior to issuance pursuant to § 563.1 of this subchapter, and was approved in writing by the Corporation for inclusion as regulatory capital, before or after its issuance, pursuant to § 563.7–5: *Provided,* that unless otherwise approved by the Corporation in writing, mandatorily redeemable preferred stock issued after July 23, 1985, may be included as regulatory capital only in accordance with the schedule set forth in paragraph (2)(i) of this section and consistent with the provisions of paragraphs (2)(ii) and (2)(iii) of this section:

(c) The sum of the following items determined in accordance with risk analysis reporting in effect prior to [effective date of final rule], and which an insured institution has included in computing and reporting its regulatory capital to the Corporation prior to [effective date of final rule]:

(1) Appraised equity capital (as defined in § 563.13(c) of this subchapter);

(2) The amount of unamortized loan gains and losses the exclusion or inclusion of which was deferred pursuant to § 563c.14 of this subchapter; and

(3) The amount of the following items computed by an insured institution in accordance with risk analysis reporting in effect prior to [effective date of final rule] and included in its financial statements prior to [effective date of final rule]. An institution may include an amount which represents the sum of the differences between the treatment of the following items under generally accepted accounting principles and the treatment under risk analysis reporting after [effective date of final rule]:

(i) Sales of real estate developed by the association or its subsidiary;

(ii) Futures transactions; and

(iii) Accretion of discounts and amortization of premiums on securities;

(d) The amount which represents the sum of the differences between the treatment of the following items under generally accepted accounting principles and the treatment under risk analysis reporting after [effective date of final rule]:

(1) loan origination and commitment fees calculated pursuant to § 563.23–1(f)(3) of this subchapter;

(2) gains or losses realized on options transactions pursuant to § 563.17–5(g) of this subchapter;

(3) valuation allowances established pursuant to asset classification and appraisals under §§ 561.16c, 563.17–2, and 571.1a of this subchapter; and

(4) uncollectible interest determined pursuant to § 563c.11 of this subchapter; and

(e) Risk analysis reporting for forbearances which shall include all forbearances and other practices authorized by the Corporation, the Board, or its Supervisory Agents.

(f) Notwithstanding paragraphs (a), (b), (c), (d), and (e) of this section, the term "regulatory capital" does not include any capital instrument or security which may be included as regulatory capital pursuant to any of those paragraphs if such capital instrument or security is held by a service corporations or other subsidiary, regardless of the organizational form of that entity, in which the insured institution directly or indirectly, (1) owns, controls, or holds with power to vote, or holds proxies representing, ten percent or more of the voting shares or rights, or (2) invested or contributed more than ten percent of such entity's capital, unless inclusion of regulatory capital is specifically approved by the Corporation in writing.

(g) Unless the context indicates otherwise, the term "net worth" or "regulatory net worth" wherever used in this subchapter shall mean "regulatory capital" as defined in this section, except that the term as used in § 563.8–4 shall not include items permitted to be used pursuant to § 563.13(c).

PART 563—OPERATIONS

9. The authority citation for 12 CFR Part 563 continues to read as follows:

Authority: Pub. L. 95–147 of Oct. 28, 1977, Sec. 4, 82 Stat. 856, sec. 4, 80 Stat. 824, sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1425a, 1425b, and 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 202, 96 Stat. 1469; sec. 409, 94 Stat. 160; secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071, unless otherwise noted.

§ 563.17–4 [Amended]

10. Amend § 563.17–4 by removing paragraph (g).

11. Amend § 563.23–1 by revising paragraphs (a) and (b) to read as follows:

§ 563.23–1 Premiums, discounts, charges and credits with respect to loans; and related items.

(a) *Purchase at a premium.* A premium paid by an insured institutin in connection with acquisition of a loan shall be accounted for in accordance with generally accepted accounting principles.

(b) *Purchase at a discount.* If an insured institution purchases a loan at a discount, the discount shall be deferred by a credit to an account descriptive of deferred income and shall thereafter be credited to income in accordance with generally accepted accounting principles. For purposes of this section, a loan shall be deemed to have been purchased at a discount if the price paid by the institution for the loan is less than the amount of the loan balance. Any charges by the purchaser in connection with the purchase of a loan shall be deducted from the purchase price to determine the amount of the discount.

* * * * *

§ 563.23–1 [Amended]

12. Amend § 563.23–1 by removing paragraph (f) and redesignating paragraph (g) as paragraph (f).

§ 563.23–2 [Amended]

13. Amend Part 563 by removing § 563.23–2.

14. Amend § 563.23–3 by revising paragraph (c) to read as follows:

§ 563.23–3 Accounting Principles and Procedures.

* * * * *

(c) Prepare all financial statements and financial reports to the Corporation on the basis of generally accepted accounting principles and include in all such financial statements and reports a full and fair disclosure of the reconciliation of equity capital, as determined in accordance with generally accepted accounting principles, to regulatory capital, as defined in § 561.13 of this subchapter.

15. Amend § 563c.14 by adding a new paragraph (f).

§ 563c.14 Accounting for gains and losses on the sale or other disposition of mortgage loans, redeemable ground-rent leases, and certain securities; matching the amortization of discounts and losses.

* * * * *

(f) *'Sunset' and 'Grandfather' Provisions.* Authority to exclude the unamortized amount of gain deferrals

and to include the unamortized amount of loss deferrals pursuant to § 561.13 in computing an institution's regulatory capital will cease as of [effective date of final rule]. Any insured institution that has excluded gain deferrals and included loss deferrals in computing its regulatory capital as of [effective date of final rule], may continue to exclude the unamortized amount of such gain deferrals and include the unamortized amount of such loss deferrals in computing its regulatory capital after [effective date of final rule].

PART 570—BOARD RULINGS

16. The authority citation for Part 570 is revised to read as follows:

Authority: Secs. 552, 559, 80 Stat. 383, 388, as amended (5 U.S.C. 552, 559); sec. 11, 47 Stat. 733, as amended (12 U.S.C. 1431(e)(2)(C); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–403, 405, 407, 48 Stat. 1255–1257, 1259–1260, as amended (12 U.S.C. 1724–1726, 1728, 1730; sec. 414, as added by sec. 522, 94 Stat. 165, as amended (12 U.S.C. 1730g); Reorg. Plan No. 3 of 1947, 3 CFR, 1943–48 Comp., p. 1071.

17. Amend § 570.4 by revising paragraph (a) to read as follows:

§ 570.4 Regulatory Capital.

(a) The term "regulatory capital" is defined in § 561.13 of this subchapter to mean the sum of equity capital as determined in accordance with generally accepted accounting principles, definitional capital, certain other components of capital as the Board determines consistent with its risk analysis conventions, and risk analysis reporting forbearances. To the extent regulatory capital would include reserves (except specific or valuation reserves), the rules set forth in paragraphs (b) and (c) of this section shall apply.

* * * * *

§ 570.11 [Amended]

18. Amend § 570.11 and § 570.12 by removing the authority citations located at the end of the sections.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 86–9915 Filed 5–2–86; 8:45 am]

BILLING CODE 6720–01–M

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12 CFR Parts 561, 563 and Ch. V

[No. 86–426]

Federal Savings and Loan Insurance Corporation; Regulatory Capital Requirements of Insured Institutions

Dated: April 24, 1986.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed Rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as the operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), is proposed to amend its regulations pertaining to the level of and the method for calculating the minimum amount of regulatory capital [previously referred to as "regulatory net worth" or "net worth"] required for all institutions whose accounts are insured by the FSLIC ("insured institutions" or "institutions"). Based upon its supervisory experience and analysis of the industry's capital needs, the Board is proposing to revise and simplify the structure of its current net-worth regulation[1] to increase insured institutions' capital requirements to 6 percent of total liabilities over a six-year period with certain risk-related credits and incremental capital requirements (qualifying balance deductions and contingency components, respectively) applied to specified types of assets and liabilities. This proposed Board action would provide better protection for insured institutions, depositors, and the FSLIC deposit insurance fund from interest-rate risk, credit risk, and other conditions in the current financial environment that could compromise thrifts' financial stability.

If adopted as a final rule, this change would take effect beginning with the fourth quarter of this year (beginning October 1, 1986). Institutions would be required to satisfy these increased capital requirements for the first time on December 31, 1986, the last day of the fourth quarter of calendar year 1986. Institutions would be required to capitalize liability growth on or after October 1, 1986 at 6 percent, but could attain the 6 percent requirement for levels of liabilities existing prior to October 1, 1986 over six years.

DATE: Comments should be received by July 7, 1986.

ADDRESS: Send comments to the Director, Public Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552. Comments will be available for public inspection at the above address. Economic studies upon which this regulation relies in part also will be available for public inspection, and any additional relevant studies also will be made available upon completion.

[1] Board Res. No. 85–79B, 50 FR 6891 (Feb 19, 1985) ("net-worth regulation").

FOR FURTHER INFORMATION CONTACT:

Base and Liability Components: John F. Connolly, Attorney, Regulation and Legislation, Division, Office of General Counsel (202) 377–6455;

Contingency Component: Sandra L. Richardson, Assistant Director, Regulations and Legislation Division, Office of General Counsel (202) 377–6446;

Qualifying Balance Deduction: Wendy Samuel, Deputy Director, Regulations and Legislation Division, Office of General Counsel (202) 377–6445;

Redefinition of Regulatory Capital: Christina Gattuso, Attorney, Regulations and Legislation Division, Office of General Counsel, (202) 377–6649;

Economic Questions, Statistical Studies: Donald J. Bisenius; Research Economist; Office of Policy and Economic Research (202) 377–6766; and

All other aspects not specifically listed above: Gwenn L. Hibbs, Director (202) 377–7054, or John F. Connolly, Attorney (202) 377–6455, Regulations and Legislation Division, Office of General Counsel.

SUPPLEMENTARY INFORMATION: This regulation is revised pursuant to the Board's general authority under the National Housing Act ("NHA") and specifically under section 403(b), 12 U.S.C. 1726(b), as amended by the Garn-St Germain Depository Institutions Act of 1982 ("DIA").[2]

Overview

Adequate capital is a crucial factor in assuring the viability of insured institutions and shielding the FSLIC fund from excessive losses. First, adequate capital enhances stability by allowing thrifts to absorb losses in the value of their portfolios resulting from adverse economic factors. Furthermore, by limiting the extent of leveraging firms can undertake, higher capital ratios encourage prudent risk-taking. Higher capital requirements also stimulate more effective monitoring and control of management by thrifts' shareholders by forcing such shareholders to bear a higher proportion of the losses that result from risky investments or excessive growth.

The current net-worth regulation increased FSLIC-insured institutions' average regulatory capital requirements from approximately 1.8 percent as of December 31, 1984 to 2.9 percent as of December 31, 1985. The Board believes that further increasing this general

[2] Pub. L. 97–320, § 202(d) Stat. 1469, 1492.

capital requirement to 6 percent over time is appropriate to afford insured institutions, their depositors, and the FSLIC a more effective buffer against the risk inherent in the deregulated and highly competitive environment for thrift operations. The Board further believes that it is appropriate to adjust the 6 percent capital requirement to the extent that insured institutions reduce the risk (as reflected by their qualifying balances) or increase such risk (as reflected by their contingency factors and their rates of growth).

Immediate attainment of this level of capitalization is not feasible for a substantial number of institutions with the exception of those institutions that are currently required to have capital at or near the 6 percent level.[3] Accordingly, the proposal permits insured institutions to phase up to the 6 percent capital standard on their levels of liabilities existing prior to October 1, 1986 over a six-year period on a straight-line basis. To secure the maximum feasible benefits of increased capital on operations without undue disruption, this proposal requires institutions to capitalize liability growth over the institutions' levels as of October 1, 1986 at 6 percent. At moderate growth rates and current levels of profitability, the large majority of insured institutions should be able to meet the 6 percent regulatory capital requirement (before risk adjustment) over six years.

The Board is also proposing to modify the contingency factor of the current net-worth regulation to require: (1) 10 percent incremental capital on all direct investments; (2) 4 percent incremental capital on land loans and nonresidential construction loans; and (3) 2 percent incremental capital on letters of credit. The Board also proposes to recognize to a greater extent the risk reduction achieved by an institution holding a maturity-matched portfolio of housing-related investments with limited credit risk. Accordingly, the proposal modifies the qualifying balance deduction by decreasing an institution's capital requirement by an amount equal to the sum of: (1) 2 percent of the institution's eligible liquid assets; (2) 1 or 2 percent of the institution's qualifying adjustable-rate mortgages ("ARMs") depending on the ARMs' remaining adjustment level; (3) 2 percent of fixed-rate liabilities with remaining maturity of 3 years or more (the dollar weighted average remaining term-to-maturity of liabilities used in this exclusion must be at least 5 years) for which the institution has a corresponding amount of fixed-rate permanent 1–4 family residential mortgages or mortgage-backed securities (as defined in 12 U.S.C. 1464(c)(1)(S)) with equal or greater maturity; and (4) 2 percent of fixed-rate permanent 1–4 family residential mortgages or investment-grade mortgage-backed securities with remaining contractual term-to-maturity of two years or less.

The proposal also places a limitation on these qualifying balance deductions. For the first three years after the effective date of any final regulation adopted, an institution could not reduce its regulatory capital below 3 percent. During the fourth through sixth years, an institution could not reduce its minimum amounts of regulatory capital below 4 percent. After the sixth year an institution's minimum amount of regulatory capital could not drop below 5 percent.

The Board's proposal also would eliminate from its current net-worth regulation (1) the amortization factor; (2) the sliding-scale growth factor, (3) the current base factor calculation; and (4) the preferential growth treatment of institutions with assets of $100 million or less.

Related Regulatory Action

In addition to proposing this regulation, the Board today also is proposing amendments to its insurance regulations that would define regulatory capital in accordance with generally accepted accounting principles ("GAAP"), as modified by the Board to reflect regulatory risk. *See* Board Res. No. 86–427, published elsewhere in the Proposed Rule section of this issue. The proposal would also require insured institutions to prepare in accordance with GAAP all financial statements and financial reports which the Board requires to be issued to the public or submitted to the Board. Because defining regulatory capital is closely related to this proposed revision to the minimum required amount of regulatory capital, the Board will consider jointly comments filed on either proposal.

Prior Reserve and Net-Worth Regulations

From the time of its enactment in 1934 until 1980, Section 403(b) of the NHA, 12 U.S.C. 1726(b), contained a requirement that institutions establish a Federal insurance reserve of 5 percent of their insured accounts ("statutory reserve requirement"). Since the 1950's, the Board incorporated this statutory reserve requirement in its regulations and adopted its own regulatory reserve requirements. Most of the regulatory reserve accounts, plus other state-required reserves, could be used to satisfy the statutory reserve requirement. An institution could use five-year averaging and 20-year phase-in techniques to satisfy this requirement. One early regulatory reserve requirement, adopted by the Board in 1956, required institutions annually to credit 10 percent of their net income to reserves until their reserves equalled 12 percent of their insured accounts. Board Res. No. 9826, 21 FR 5483 (July 21, 1956). The requirement for a periodic net income credit to institutions' reserve accounts was preserved until 1972, but the criteria triggering the credit requirement were modified several times. In 1963, for example, the credit requirement was imposed when an institution's adjusted net worth was less than 12 percent of its "risk assets" (defined as total assets less cash, government obligations, Federal Home Loan Bank ("FHLB") stock, prepaid FSLIC premiums, and 60 percent of investments in insured and guaranteed loans). Board Res. No. 63–1712, 29 FR 45 (Jan. 3, 1964). Pursuant to that regulation, if an institution's adjusted net worth was less than 8 percent of its risk assets, its required credit-to-reserves ratio was the greater of 10 percent of its required net income or 6 percent of its growth in risk assets.

In 1972, the Board replaced the requirement to credit a portion of net income to reserves with a requirement that an institution maintain net worth equal to the greater of (1) 5 percent of insured accounts, plus 20 percent of scheduled items, or (2) the amount determined by the so-called Asset Composition and Net-Worth Index ("ACNWI"). The ACNWI assigned minimum net-worth percentages to specific types of assets, including real estate held for development or investment (7 percent) and investments in service corporations (10 percent). Board Res. No. 72–1415, 37 FR 26579 (Dec. 14, 1972).

In 1980, the Depository Institutions Deregulation and Monetary Control Act of 1980, [4] amended section 403(b) of the National Housing Act by replacing the former statutory reserve requirement of 5 percent of insured accounts with a range of 3 percent to 6 percent of insured accounts, with the specific percentage to be established by Board regulation. Following this amendment, the Board exercised its expanded discretion by establishing 4 percent of

[3] These include "de novo" institutions, and institutions that were previously insured by the Federal Deposit Insurance Corporation ("FDIC") or private-insurance systems and that converted to FSLIC insurance.

[4] Pub. L. No. 96–221, 94 Stat. 132.

insured accounts as the minimum reserve level needed to satisfy the statutory reserve requirement. Board Res. No. 80–694, 45 FR 76111 (Nov. 18, 1980), it simultaneously eliminated the former net-worth requirement of 5 percent of insured accounts and replaced it with a new liability-based test since the Board recognized that changed economic conditions, including greater competition for deposits, would cause institutions to issue securities and types of liabilities other than traditional deposits as sources of funds. That regulation required institutions to have net worth equal to at least 4 percent of liabilities. In 1982, the Board further exercised its statutory authority by reducing the reserve requirement to 3 percent of insured accounts and the net worth requirement to 3 percent of liabilities. Board Res. No. 82–19, 47 FR 3543 (Jan. 26, 1982). Both this 3 percent requirement and the earlier 4 percent requirement were calculated using 5-year-averaging and 20-year phase-in methods and permitted institutions to use the items in their net worth to satisfy their reserve requirements with the exception of subordinated-debt securities and specific-loss reserves. In adopting this reduction the Board found that it was unrealistic to impose higher reserve and net-worth requirements in the economic environment at that time and also stated that "many institutions are facing operating losses resulting almost exclusively from the disparity between the relatively low return received on their asset portfolio and the considerably higher return [paid] on their liabilities." The Board further concluded that "such losses are therefore largely beyond the current control of the institution." 47 FR at 3543.

The DIA gave the Board further discretion to set reserve standards by eliminating any specific statutory reserve range from 12 U.S.C. 1726(b) and left the Board discretion to establish such "adequate reserves" requirements as it considered satisfactory. DIA § 202(d). This action by Congress authorizes the Board to raise, as well as to lower, reserve requirements when necessary or appropriate.

These actions of Congress and the Board in the early 1980's in response to the industry's deteriorated financial condition directly resulted in significantly reducing the amount of capital that institutions were required to hold. The continued use of twenty-year phase-in and 5-year-averaging greatly exacerbated this situation. By December 1984, some institutions had minimum capital requirements of less than 1 percent of liabilities.

By adopting the current net-worth regulation in January 1985, the Board used its authority to reverse this trend. In response to the high-risk strategies and excessive leveraging that low levels of capital encourage, the Board increased its minimum net-worth requirements and structured the system of risk incentives and disincentives contained in the current regulation. The revised net-worth requirements were designed to enhance stability by discouraging growth at above-normal rates without sufficient capital to support such growth, and by discouraging excessive direct investments unsupported by adequate capital.

The Current Net-Worth Requirement

Insured institutions' minimum net-worth requirements are currently calculated using a four-factor formula. The four factors include a base factor, an amortization factor, a contingency factor, and a growth factor. Institutions' 1986 base factors are based on their minimum net-worth requirements as of December 31, 1985, including their 1985 growth factors and amortization factors but excluding their contingency factors and deductions for their qualifying balances. The amortization factors gradually eliminate the effects of using five-year-averaging and 20-year phase-in techniques on pre-1985 liabilities (these techniques were used in deriving the 1985 base factors from institutions' 1984 net-worth requirements). To phase out these techniques, the current rule requires institutions to have adequate net-worth to satisfy their amortization factors, which are calculated for each quarter (for twenty quarters beginning in March 1985) by adding 1/20 of the difference between 3 percent of their 1984 liabilities and their 1985 base factors. Their contingency factors are found by summing: (1) 2 percent of loans sold with recourse against the institution; (2) 10 percent of direct investments (excluding grandfathered investments) that exceed the greater of 10 percent of assets or twice regulatory net worth; and (3) 20 percent of scheduled items.

In general, under the current net-worth regulation growth factors vary on a sliding scale from 2.35 to 5 percent depending on an institution's size (treatment differs for an institution with $100 million or less of assets) and growth rate calculated on the basis of the institution's increase in total liabilities from the beginning of a calendar year to the end of the quarter for which the computation is made. If the institution has zero or negative growth, it receives a credit in the fourth quarter equal to the decline in liabilities multiplied by a fraction the numerator of which is the base factor at the beginning of the calendar year and the denominator of which is total liabilities as of the close of business of the last day of the preceding calendar year.

After summing these four factors (base, amortization, contingency, and growth factors) the institution makes a final adjustment to determine required net worth. This adjustment is called the qualifying balance deduction. Qualifying balances include interest-bearing liquid assets, one-half of adjustable-rate mortgages, and fixed rate liability sources that have remaining term to maturity of more than five years. An institution can reduce its minimum net-worth requirement by 3 percent of qualifying balances but cannot reduce it by more than ten percent of its requirement computed absent deduction of qualifying balances.

Board's Policy Rationale for Increasing Capital Requirements

After evaluating a number of factors, the Board believes that the current capital level of the industry is too low to serve as an adequate buffer against the economic and financial risk confronting insured institutions and the FSLIC.

First, institutions' capital reserves must be large enough to withstand "normal" variations in institutions' earnings. Since most financial institutions earnings are closely related to interest-rate movements, the increased volatility in interest rates since 1979 is reflected in correspondingly increased volatility in institutions' "normal" earnings. Thus, such institutions' capital buffers must protect the institutions, depositors, and the FSLIC against increased risk of financial loss stemming from interest-rate mismatches in institutions' portfolios. This risk from interest-rate fluctuations is exacerbated further by the nature of thrift portfolios, which have traditionally been composed of long-term fixed-rate assets and short-term liabilities.[5] Given the current

[5] Adjustable-rate mortgages ("ARMs") are key assets for insured institutions seeking to protect themselves from the effects of interest-rate risk, but there has been great fluctuation in their issuance and market acceptance in the last several years. Such ARMs represented approximately 45 percent of all single family conventional mortgages originated by insured institutions in January 1982. This figure dropped to about 26 percent in May 1983, but dramatically increased to 75 percent in August 1984. In March 1986, they represented about 37 percent of such mortgage originations.

interest-rate environment, the Board is concerned that unless institutions have an increased incentive to maturity match their portfolios, institutions may mismatch their return on assets and cost of funds in the same manner that led them to their financial difficulties in the early 1980s. The proposal would provide such incentives by requiring higher capital to induce management to protect their portfolios against future losses from interest-rate fluctuations, by permitting institutions to decrease their required regulatory capital through qualifying balance deductions that recognize investment and financing strategies undertaken to decrease interest-rate risk.

Second, the Board's decision to reduce reserve and capital requirements in the 1980 to 1983 period was in response to the major financial problems of insured institutions resulting from substantial negative spreads between institutions' asset yields and liability costs during that period. Current interest rates and the interest-rate spreads between institutions' assets and liabilities, however, have returned to 1978 levels thereby making it feasible for the large majority of institutions to attain a higher capital requirement over a six year period. For example, in 1981 and 1982 thrifts' average annualized cost of funds were 10.42 and 11.38 percent respectively, while their average annualized return on mortgages was 9.91 and 10.65 respectively. On the other hand, for 1984 and 1985 their average annualized cost of funds was 10.03 and 9.20 percent respectively, while their average annualized return on mortgages was significantly higher, 11.66 and 11.53 percent respectively. Furthermore, as a result of the improvement in thrifts' profits, a favorable market for thrift equity issues and the effects of the current net-worth regulation, the regulatory net worth of thrifts rose to $46.6 billion at the end of 1985, increasing thrifts' average regulatory net worth-to-assets ratio to 4.36 percent from 3.87 percent at the end of 1984. Although current spreads between thrifts' assets and liabilities are favorable to thrifts and their average net-worth ratios have increased, the fact that the interest-rate environment remains highly volatile by historical standards damands that increased capital cushions be developed while feasible to protect against future adverse interest-rate movements.

Third, the far more competitive environment in which thrifts operate necessitates greater minimum capital requirements. Insured institutions have in recent years been required to compete with other types of financial institutions by offering high investment yields in order to attract and retain deposits and capital. This competitive environment reduces operating margins and increases the need for additional capital to buffer potential losses.

Fourth, the new expanded asset powers of federally–and state–chartered insured institutions have provided beneficial diversification opportunities for insured institutions, but have also increased the risk-taking opportunities of such institutions. Some institutions that have exercised these expanded asset powers without adequate risk evaluation or protection have developed severe asset-quality problems that until recently had not existed to any substantial extent in the thrift industry. Four years ago roughly 80 percent of FSLIC's cases were primarily caused by interest-rate-problems, while 20 percent were due primarily to asset-quality problems. Recently that ratio has almost completely reversed itself to 30 percent interest-rate-spread problems and 70 percent asset-quality problems. This is particularly significant because resolution of asset-quality problems is substantially more costly for the FSLIC. Given the crucial role that capital plays in influencing firms' risk-taking behavior, the Board believes that higher capital requirements will result in prudent use of expanded asset powers.

Finally, raising industry capital requirements is appropriate in view of the commercial lending powers granted to insured institutions by the DIA and state legislation. Currently, commercial banks are required to maintain significantly higher capital ratios than thrifts. The Federal bank supervisory agencies (the Federal Reserve Board, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation) all generally require ratios of total capital to total assets of not less than 6 percent, with required ratios of primary capital to total assets of not less than 5.5 percent. The FDIC, as did the other banking regulators in adopting these standards, fully considered and discussed the needs of insured commercial banks for the levels of capital in the interest of bank safety and soundness. *See* 50 FR 11136 (March 19, 1985). The Board's current proposal would raise thrifts' capital ratio requirements toward parity with the capital ratio requirements for commercial banks. Furthermore, attaining such parity was recommended by the Bush Task Group on Regulation of Financial Services,[6] which concluded that comparable capital requirements for federally-insured banks and thrifts were appropriate to improve the overall safety and soundness of the financial system.

Liability Component

The Board is proposing to require insured institutions to have, after a six-year phase-in period, regulatory capital equal to 6 percent of all liabilities ("liability component") before adjustment for institutions' qualifying balances or contingency components, as discussed below. Institutions would have six years to achieve this capitalization rate on their level of liabilities on the proposed October 1, 1986 effective date of this regulation ("base liabilities").[7] The proposal would require institutions immediately to capitalize at 6 percent growth over their levels of total liabilities existing on October 1, 1986 ("increased liabilities"). Institutions would be required to calculate and satisfy the increased requirement both as to the first phase-in for base liabilities, as well as the 6 percent requirement on growth over base liabilities, for the first time on December 31, 1986.

Base Liabilities Amount

Institutions would determine their minimum required amount of regulatory capital for their base liabilities for a quarter ("base liabilities amount") by multiplying their base liabilities by the liability factor for that quarter. The liability factor is a percentage rate increasing from the initial rate of 3 percent by .125 percent per quarter (.5 percent per year) until reaching 6 percent in six years. For example, an institution with $100 million of liabilities on October 1, 1986, would compute its base liabilities amount for its first-quarter computation by multiplying $100 million (its base liabilities) times 3 percent (the first quarter's liability factor).

The proposal would require an institutional to maintain a base amount of regulatory capital equal to the greater of (1) 3 percent of its total liabilities or (2) the sum of its base factor, growth factor (adjusted to reflect any decrease in liabilities in 1986 computed pursuant to § 563.13(g)(4)(b)), and amortization factor under the current net-worth

[6] Blueprint for Reform: The Report of the Task Group on Regulation of Financial Services 83–84 (1984).

[7] Base liabilities would equal the book value of an institution's total liabilities on the proposed October 1, 1986 effective date and does not refer to specific liabilities on an institution's balance sheet.

regulation as of October 1, 1986 ("October base"). Certain institutions, because of relatively higher rates of growth, will have an October base requirement exceeding 3 percent of total liabilities. The proposal would require such an institution to meet the schedule for attaining 6 percent capitalization on base liabilities only when the quarterly increase in the liability factor reaches a level that makes such an institution's required base liabilities amount exceed its October base requirement. For example, institution A may have an October base requirement of 4 percent for total liabilities. Based on increases of .5 percent a year in the liability factor, the standard industry liability factor will reach 4 percent for the quarter beginning October 1, 1988. Thus, beginning with the quarter commencing January 1, 1989, Institution A will be required to increase its liability factor at .125 per quarter and correspondingly increase its base liabilities amount to track the phase-in schedule for those institutions that would have been required initially to maintain a 3 percent base liabilities amount of regulatory capital assuming that the regulation becomes effective on October 1, 1986. Until that time, it would be required to maintain a 4 percent level.

Amortization Factor Elimination

Under the current net-worth regulation, this factor would be eliminated by 1990; the Board's proposal would eliminate it immediately. In the Board's view, continued retention of an amortization factor would inhibit progress toward the goal of 6 percent required capital. The proposed six year phase-in for requiring 6 percent capital on base liabilities provides ample time for most institutions to comply. Preserving the factor would, in effect, unjustifiably allow the five-year averaging and twenty-year phase-in techniques (the effects of which are being eliminated over five years by the amortization factor) to continue to decrease capital requirements.

Retaining this provision also would increase the need for rapid capital accumulation in the later years of the transition period. By eliminating the current amortization factor, the Board's proposal provides for an orderly transition to more appropriate capital rates.

Increased Liabilities

A. General

The Board believes that it is essential for institutions immediately to capitalize at 6 percent all liabilities in excess of their levels existing on the proposed October 1, 1986 effective date. Requiring 6 percent capital for all such increased liabilities would immediately encourage more prudent risk-taking and sounder risk underwriting, and provide better portfolio protection with regard to such growth. Furthermore, requiring institutions to capitalize all net increments to their liability bases at 6 percent would reduce the need to raise an even larger amount of capital at the end of the six year transition period for liabilities incurred during the transition period. Board experience indicates that raising such a level of capital in a short period could cause significant industry problems, especially for institutions growing at slower rates, who could be forced to raise large amounts of capital in a relatively brief time period. Such institutions might be forced to make asset sales on terms less favorable than would otherwise be deemed satisfactory. On the other hand, efforts to rapidly accumulate capital through the issuance of a high volume of securities could create a temporary market glut of such securities significantly exceeding the market demand for such securities, and thereby adversely affecting the price and marketability of such securities. The proposal averts the necessity for such a rapid accumulation of capital by requiring six percent capitalization of institutions' liability increases over current levels, as well as phasing in over six years the 6 percent requirement on current liability levels.

B. Neutral Treatment of all Institutions

The Board also is proposing to delete the special lower capital requirement for institutions with assets of $100 million or less. Under the current rule, such institutions growing at an annual rate not exceeding 15 percent may continue to use five-year averaging in computing their minimum net-worth requirements. This computation method allows institutions to average their liabilities over a five year period and to apply their capitalization requirements to this averaged number, thereby understating real growth, decreasing the institutions' capital requirements and allowing increased leverage of investments. Institutions having $100 million or less in assets are also exempt from the preapproval requirement for growth at annual rates exceeding 25 percent. The Board's supervisory experience reflects the problems that can be caused by unrestrained growth, particularly when combined with risky investments, by even very small institutions. Furthermore, the supervisory records of such institutions reflect considerable manipulation of the $100 million threshold by some of them. By eliminating preferential treatment for such institutions, the proposal will better serve the Board's goal of ensuring adequate capital levels and enhanced safety and soundness throughout the industry.

C. Pre-approval for Certain Growth Rates

The Board is concerned that a 6 percent capital requirement augmented by the contingency component, but offset by the qualifying balances deduction, may not be sufficient to prevent the harmful effects of high growth levels and to induce prudent risk-taking by insured institutions growing at high rates. Accordingly, the Board is also proposing to supplement the basic increase in capital requirements with the retention of its current growth regulation, § 563.13–1, which requires prior approval by institutions' Principal Supervisory Agents ("PSAs") for growth by institutions at rates higher than 25 percent annually (i.e., institutions with ending total liabilities on a given quarterly report that are more than 12.50 percent above total liabilities as of the beginning of that two-quarter period). The amended language of the proposed regulation would rephrase the prior requirement to prohibit institutions from increasing their total liabilities within any two quarter period at a rate greater than 12.50 without prior approval of the institution's PSAs. In addition, the proposal authorizes the PSAs of institutions growing at faster rates to require such institutions to have up to 4 percent incremental capital for such growth.

The Board believes that retaining its growth regulation, as amended, is necessary to address its continuing concerns about the inherent riskiness of rapid growth unaccompanied by an adequate capital buffer. The Board discussed extensively in the preamble to the net-worth regulation the dangers of such highly leveraged growth. *See* 50 FR at 6894–6897. Between December 1983 and December 1984, the industry's liability base grew at a rate of 19.46 percent. At the same time, its capital base grew only 11.74 percent. Most alarming was the rapid growth of institutions with low net worth. Institutions with less than 1 percent net worth at year-end 1984 had average growth in 1984 of 20.6 percent. Those with between 1 and 3 percent net worth grew at a 22.2 percent rate. The current net worth rule focused on curbing such practices by requiring institutions to earn their growth. The trend towards

unrestrained, highly leveraged growth was halted in 1985: The 1985 industry-wide rate of growth was 7.9 percent. Institutions hving less than 1 percent net worth at year-end 1984 shrunk during 1985 by 3.4 percent. Institutions with between 1 and 3 percent net worth grew by only 4.6 percent. At the other end of the spectrum, institutions with over 5 percent net worth grew at an 11.7 percent rate, down only slightly from their 15 percent rate in 1984. The Board seeks to benefit the industry by continuing to restrain highly leveraged growth.

Combining the growth regulation with a 6 percent capital requirement as adjusted for risk also will assure evenhanded treatment of all institutions during and after the six-year phase-in period and will also achieve the stated goal. In fact, the combination of the increased capital requirements and the growth regulation moots the need for a sliding scale growth factor. The proposal simply deals with varying rates of growth by different methods. First, the proposal would retain the growth regulation requiring PSA approval for growth over 12.5 percent in a two-quarter period and would authorize PSAs to require up to four percent incremental capital on growth over this level by such institutions. Institutions that grew rapidly and were subject to a 5 percent marginal capital requirement under the current net-worth regulation would have this fact reflected in their October bases. As noted previously, if an institution's October base exceeds 3 percent, it may not reduce its base liabilities amount below that level. Finaly, and most importantly for the Board's goals, institutions would have to capitalize at 6 percent any growth over existing levels on October 1, 1986. Institutions growing more rapidly than other institutions after that date would have a correspondingly higher capital requirement resulting from such incremental growth. Therefore, the Board believes that its proposal has adequate provisions to restrain highly leveraged, undercapitalized growth.

The Board specifically requests comment, however, on whether Supervisory Agents should be authorized to notify institutions within ten days of the filing of a growth plan required by § 563.13–1(b) that all requested information has been filed or that additional information is necessary. The Board has become aware that in some instances requiring PSAs to act within this ten day timeframe can be logistically difficult or create undue pressure.

De Novo Institutions

As stated above, the Board has preliminarily decided to implement a gradual transition over six years to 6 percent capital levels for all insured institutions. Given this Board goal, the Board believes that it would be inappropriate to allow institutions already required to maintain capital ratios exceeding 3 percent to retreat before moving toward 6 percent. Consistent with this preliminary determination, "de novo" institutions' liability components (*i.e.* required amount of regulatory capital on base liabilities) shall be the higher of their "de novo" requirements pursuant to § 563.13(b)(2) or six percent of total liabilities. The proposal also requires "de novo" institutions to continue to satisfy the incremental capital requirements under their contingency components and permits them to continue to incorporate the benefits of qualifying balance deductions. However, consistent with the Board's goal for all insured institutions at the end of the transition period, the proposal would not allow the minimum required regulatory capital of "de novo" institutions to fall below 5 percent after qualifying balances deductions.

For the same reasons, the proposal also mandates that other institutions currently required to meet net worth standards exceeding three percent (*i.e.*, institutions formerly insured by the Federal Deposit Insurance Corporation or by privately-funded insurance systems) maintain their liability components at the higher of their current requirements or their minimum required amounts of regulatory capital under this regulation.

Growth Through Merger or Acquisition

The Board would treat mergers (i.e. mergers, consolidations, or purchases of assets and assumptions of liabilities) and branch acquisitions (acquisitions of less than substantially all of the liabilities of institutions in which the selling institutions continue in operation as separate entities, which includes but is not limited to branch acquisitions) (hereafter referred to as "branch acquisitions") consistently with their treatment under the current net worth regulation, with modifications for consistency with changes that would be made by the proposed regulation. The minimum regulatory capital requirement, beginning in the quarter the transaction becomes effective, would be equal to the sum of each of the institutions' liability components (consisting of their base liabilities amounts plus increased liabilities amounts) and contingency components minus any qualifying balance deductions [subject to the applicable minimum requirements (three, four, or five percent depending on the number of years after the regulation's effective date, if adopted)] set forth in § 563.13(b)(1)]. "De novo" institutions and other types of institutions not subject to the standard regulatory requirements (*i.e.* former FDIC- or privately-insured institutions) will calculate their minimum required regulatory capital after mergers by combining the institutions' liability-based requirements (such as seven percent or six percent of total liabilities for "de novo" institutions) plus their contingency components minus their qualifying balances. For example, excluding contingency components and qualifying balances, if a "de novo" institution with a capital requirement of 6 percent of $300 million in total liabilities (amounting to an $18 million capital requirement) merged with another "de novo" institution with a 7 percent requirement on total liabilities of $200 million (amounting to a $14 million capital requirement) on December 31, 1986, the merged institution would have a $32 million capital requirement on combined liabilities of $500 million, for a liability-based capital requirement of 6.4 percent. The minimum required amounts of regulatory capital of such institutions, however, would not be allowed to drop below 5 percent of total liabilities after adding their contingency component amounts and subtracting their amounts of qualifying balance deductions.

In computing the minimum regulatory capital of an insured institution after it has made a branch acquisition, the base liabilities of the acquiring institution beginning in the quarter in which the transaction becomes effective shall be the base liabilities of the acquiring institution calculated to include the amount of liabilities acquired. Using that level of base liabitities, the acquiring institution would compute its minimum required amount of regulatory capital pursuant to § 563.13(b)(1). For example, if an institution with base liabilities on January 1, 1987 of $100 million (and a base liabilities amount of $3 million) acquired $10 million of liabilities on February 1, 1987, the acquiring institution's base liabilities would increase to $110 million and be subject to the 3.125 percent liability factor on March 31, 1987.

For purposes of computing institutions' growth pursuant to § 563.13–1, institutions' total liabilities as of the beginning of a two-

consecutive-quarter period ("beginning liabilities") shall be computed as follows for branch acquisitions and mergers. First, beginning liabilities shall be deemed to include any increases in total liabilities from branch acquisitions during the two-quarter period. Second, in the case of mergers occurring during the two-quarter period, the beginning liabilities of the combined institution would be deemed to include the total liabilities of the merged and continuing institutions as of the first day of that two-quarter period.

Contingency Component

The current net-worth regulation includes a contingency factor which requires incremental capital, above, and beyond that required by application of the base factor, for certain assets that pose additional risk to insured institutions and the FSLIC. 50 FR 6891, 6911 (1985) (to be codified at 12 CFR 563.13(g)(5)). The contigency factor presently requires additional capital equal to the sum of 2 percent of recourse liabilities (as that term is defined in 50 FR 38636, 38639 (1985) (to be codified at 12 CFR 561.8)), 20 percent of scheduled items (as that term is defined in 50 FR 53275, 53282 (1985) (to be codified at 12 CFR 561.15)), and 10 percent of total direct investments made after December 10, 1984, which exceed the greater of 10% of an institution's total assets or twice its regulatory net worth. *Id.*

The Board is proposing substantial modifications to the contingency factor, and redesignating it the "contingency component", based upon its determination that the current provision does not provide a sufficient capital reserve against the risks posed by certain types of investments. The current incremental capital requirements for scheduled items and recourse liabilities would remain unchanged. The Board is proposing, however, to amend the direct-investment component of the contingency component to require 10 percent incremental capital for all direct investments, except certain "granfathered" investments made prior to December 10, 1984, by deleting from the contingency component the current provision that excludes direct investments which are less than or equal to 10 percent of an institution's total assets or twice its regulatory net worth. The Board is also proposing to include in the contingency component a 4 percent capital requirement on loans for unimproved land, developed building lots, and acquisition and development of land ("ADL") (collectively referred to as "land loans"), a 4 percent capital requirement on nonresidential-construction loans, and a 2 percent capital requirement applicable to letters of credit.

1. Direct Investment

The Board is proposing to require a 10 percent capital reserve against aggregate direct investment as defined in 50 FR 6912, 6928 (1985) (to be codified at 12 CFR 563.9–8(b)(1)). Under the current regulation, the amount of direct investment that must be included in the net worth calculation depends on the amount of such investments held by the institution on the December 10, 1984 date of publication of the proposal in the **Federal Register**. If direct investments at that time exceeded a threshold amount, direct investments made after that date are subject to a 10 percent reserve requirement. Otherwise, the current regulation asseses no capital requirement on aggregate direct investments up to the threshold amount, but direct investments in excess of such an amount require a ten percent capital reserve. On the basis of more than one year's experience with the direct investment component of the contingency factor, and statistical studies indicating that high levels of direct investments are associated with high FSLIC costs from failed institutions even if such institutions had less than the greater or twice net worth or 10 percent of assets in direct investments, the Board is proposing to extend the 10 percent reserve requirement to all direct investments, no matter when made.

The Thrift Failures Study, performed by the Bank Board's Office of Policy and Economic Research ("OPER"),[8] found that the greater the direct investments of a failed institution, the greater the losses incurred by the FSLIC. These results were statistically significant at a 95 percent confidence level. The study covered 31 institutions (all the institutions for which there were complete data on FSLIC costs) that had failed in 1982 and 1983 and which required FSLIC outlays to resolve. A second study, the FSLIC Losses Study, completed in February 1986,[9] expanded the Thrift Failures Study to include an examination of 88 institutions that failed between 1982 and 1984 and required FSLIC outlays to resolve. Again the study found that the greater the level of direct investments, the greater were the FSLIC losses when an institution failed. A study completed in April 1986, the Updated FSLIC Losses Study, used an expanded sample that included 324 institutions that failed between 1982 and October 1985 and obtained results similar to those of the earlier studies.[10] Because most of the institutions surveyed in these studies had direct investments significantly less than 10 percent of assets, the findings suggest that regardless of their level, direct investments are associated with higher FSLIC costs.

Statistical studies done by OPER also indicate that more prudent selection of direct investments—even for nondistressed thrift institutions—may be neded. In order to evaluate the effect of direct investments on the performance of thrift institutions, OPER statistically examined the effect of direct investments on net worth for a sample of 488 randomly selected thrift institutions in 1982–1984.[11] The results, again significant at a 95% confidence level, suggest that direct investments pose a threat to net worth in nondistressed as well as distressed institutions.

A further statistical study examined the effects of direct investment on net worth in 1985.[12] A study of the 1985 period is important because the 1984 adoption of the quarterly financial report ("Quarterly Report") and the 1985 requirement to report as direct investments certain ADL loans that had characteristics more like direct

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[8] "Thrift Institution Failures: Causes and Policy Issues," presented at the Conference on Bank Structure and Competition of the Federal Reserve Board of Chicago, May 1985, and published in the 1985 *Proceedings of A Conference on Bank Structure and Competition*, pp. 184–216 (hereafter referred to as "Thrift Failures Study").

[9] "Empirical Evaluation of the Determinants of Losses for the Federal Savings and Loan Insurance Corporation 1982–1984," forthcoming OPER Working Paper #125, February 28, 1986 (hereafter referred to as "FSLIC Losses Study").

[10] "Failure Costs of Government-Regulated Financial Firms: the Case of Thrift Institutions", proposed OPER Working Paper, April 1986 (hereafter referred to as "Updated FSLIC Losses Study").

[11] "Empirical Evaluation of the Determinants of Net Worth for the Thrift Institutions Insured by the Federal Savings and Loan Insurance Corporation 1982–1984," forthcoming OPER Working Paper No. 127, March 5, 1986 hereafter referred to as "Net Worth Study"). In this study, the OPER evaluated the effect of different variables upon four measures of net worth, including net worth as defined by regulatory accounting principles ("RAP"), and generally accepted accounting principles ("GAAP"); tangible net worth (calculated by adjusting GAAP net worth to omit intangible assets); and a proxy for market value net worth (calculated by adjusting tangible net worth for the market value of an institution's fixed rate mortgage portfolio based on prevailing interest rates).

[12] Memorandum from R. Dan Brumbaugh, Director, Policy Analysis Division, OPER to Robert J. Sahadi, Acting Director, OPER (April 22, 1986) ("1985 Net Worth Study"). In this study, the proxy for market value net worth was calculated by using the interest-rate gaps reported in Section H of institutions' Quarterly Reports. The other measures of net worth utilized in this study were the same as those used in OPER's Net Worth Study discussed above. Because this study used information from the entire industry (*i.e.*, the total population), reference to confidence intervals is inappropriate.

investments than loans [13] meant that for 1985 better data were available than in the past regarding the effect of direct investments, land loans and nonresidential-construction loans on net worth. In addition, the study used data for all FSLIC-insured thrift institutions whereas all previous studies used a smaller sample of institutions. The study found that in 1985 increases in direct investments were associated with a decline in Section H market-value net worth, suggesting that for the period studied direct investments posed a threat to thrift industry net worth. The results of this study with regard to land loans and non-residential construction loans are discussed *Infra*.

In addition to statistical studies, evidence from the Board's supervisory experience with direct investments of particular institutions has demonstrated the tremendous potential of such investments to damage net worth irreparably. For example, in an institution placed in receivership in 1985, direct real estate investments close to $240 million contributed to a negative net worth of $4 million. Another institution placed in receivership in 1985 has been required to recognize losses of more than $60 million on direct real estate investments of $170 million. Also in 1985, FSLIC made contributions to capital of an institution that had direct real estate investments of over $200 million, which required loss reserves of up to $100 million. In a large institution that was placed in receivership in 1986, direct investments constituted 8.8% of assets. The exclusion of direct investments under 10 percent of assets from the net worth calculation permitted $6.8 million to be excluded from the institution's calculation of required net worth. A higher net worth requirement reflecting these investments would have provided a significantly larger cushion for the institutions and the FSLIC.

The problem of losses associated with direct investments identified by these studies and supervisory experience is addressed to a certain extent by the classification of assets regulation recently adopted by the Board. Board Res. No. 85–1154, 50 FR 53275 (Dec. 31, 1985). This regulation requires additional net worth or the establishment of reserves for those assets which, upon examination, are found to be either nonperforming or exhibiting substantial weakness. Classification is a method for identifying, at an earlier date than is otherwise possible, assets that may result in losses, but it does not provide significant incentive for more than prudent investments. Nor does it require the institution to provide a cushion of extra capital before losses occur, at a time when the institution is more likely to have resources to absorb losses that may be realized at a later date. Furthermore, investments in securities, a significant component of direct investment, are excluded entirely from the classification of assets regulation. The Board has as a result determined that the classification of assets regulation is not a substitute for requiring increased capital reserves against direct investments.

Because both statistical and supervisory evidence have lent support to the connection between even small amounts of direct investment and thrift and FSLIC losses, the Board is proposing to require further protection in the form of additional capital reserves against direct investments. The Board believes that, as an initial step in this direction, the exemption for the first ten percent of direct investments should be deleted. As a result, the contingency factor component of regulatory capital would include 10 percent of all direct investments.

The current net worth regulation effectively grandfathers direct investments made prior to the December 10, 1984 date of publication of the proposal in the **Federal Register**. The Board believes that imposing a capital requirement on these previously exempt investments would unduly disrupt operations, and consequently is grandfathering these investments. Consequently, the new requirement would apply only to direct investments acquired after December 10, 1984.

Because the net worth regulation permits consolidated treatment for direct investments of service corporations and finance subsidiaries as an alternative to considering investment in the subsidiary a direct investment, the proposal would retain this exclusion for direct investments in subsidiaries, provided that all investments made by the subsidiary which would be subject to the contingency component if made by the parent are aggregated with those of its parent for purposes of computing the parent's contingency component.

2. Land Loans and Nonresidential-Construction Loans

As indicated above, the Board is proposing to include in the contingency component a 4 percent incremental capital requirement for land loans and nonresidential-construction loans. It is the Board's view that additional risks inherent in each of these types of assets necessitate an incremental capital requirement.

More specifically, the Board's examination experience has demonstrated that land loans are inherently more risky than residential mortgage loans because the land providing collateral for such loans generates no income or cash flow and has substaintial carrying costs in the form of debt service and property tax. Because of the absence of any cash flow associated with such loans, these loans pose a high degree of credit risk. Further, land, as a commodity, is subject to very wide fluctuations in value depending on any number of factors, including trends in the local economy.

The Board's concern with land loans and nonresidential-construction loans also stems from the nature of the underlying product. Because these types of assets are associated with nonstandard and nonfinished product, it is inherently more difficult to obtain an accurate appraisal of the value of the anticipated final product. In fact, the Board's supervisory experience is replete with cases which demonstrate that virtually any institution can obtain a grossly inflated appraisal for a project of this type, if it so desires.[14] The collateral for these types of loans, however, rests primarily on the value of the final product. Lack of an accurate appraisal, therefore, leads to significant uncertainty regarding the value of the collateral. As a result, these assets are subject to more uncertainty in their returns.

These assets are also associated with projects that require substantial time to complete. The need for long lead times between initial loan commitments and completion of the final products results in substantial market risk. Further, uncertainties regarding possible market absorption, performance of the developer or builder, possible interest-rate risk, and appraisal of such projects

[13] See 50 FR 18233, 18236 (1985) (to be codified at 12 CFR 571.17).

[14] One institution, placed in FSLIC receivership in 1984, grew from $22.6 million in assets to $320.2 million in one year. This growth was due in part to an expansion in land loans secured by the underlying properties. The institution committed to provide all or substantially all of the necessary funds to acquire the properties. The land loans typically had a one year term and were made to shell corporations with investors guaranteeing the loans. In many instances, the land was sold and resold many times in one day to artificially inflate prices. Often the loans were based on appraisals that used the inflated price of the last sale, and they covered full purchase price, loan fees, interest and closing costs. One hundred nineteen of these land loans were made by the institution, totalling $73,843,000. Losses to the FSLIC were estimated at $48,436,000 on these loans. Independent appraisals were received on 42 additional land loans, which indicated a loss of $31 million or 76.4 percent on the $40.6 million of land loans.

when future demand is unclear are inherent characteristics of these types of assets.

The risks and uncertainties associated with these types of loans are exacerbated by the fact that the actual life of these loans may be longer than the initial term. Thus, it has been the Board's experience that the evolving practice in nonresidential construction lending is not to insist on a firm take-out from another lender to provide the permanent financing. Instead, the lender may be forced to provide interim financing by committing to extend a "mini-perm" loan, which is an intermediate-term balloon note, until long-term financing can be arranged. This can effectively convert a three year loan into, *e.g.*, a six or seven year loan. This practice exposes a lender to substantial credit risk associated with extending a loan beyond the originally contemplated term, market risk arising due to the extended period between conception and completion of such projects and the possibility that the project may be sold or leased for less than the projected price, and interest-rate risk where the lender is forced to extend the mini-perm at a fixed or concessionary interest rate.

Studies performed by the OPER, which are described above, strongly indicate that problems associated with these types of loans are a relatively recent phenomenon for insured institutions, first identified in 1984 and becoming a significant problem in 1985.[15] These studies suggest that, since 1984, these types of loans have been associated with reductions in the market value of institutions and have negative effects on other measures of new worth.

More specifically, the Net Worth Study discussed above also evaluated the effect of construction loans on net worth in 1984[16] and the effect of land loans on net worth for the period 1982 to 1984. The results regarding construction loans indicated that increases in levels of construction loans were statistically associated with a decline in estimated market-value net worth. The results were significant at a 95 percent confidence level.[17]

The Net Worth Study also found that in 1984 increased levels of land loans[18] were statistically associated with a decline in net worth calculated under RAP and GAAP, as well as tangible net worth. These results were significant at 90 and 95 percent confidence levels. As with the results for the construction loan variable, these results suggested that land loans posed a threat to net worth which developed in 1984.

The effect of land loans on FSLIC losses was separately examined in the original FSLIC Losses Study and the Updated FSLIC Losses Study. Both studies showed at a 95 percent confidence level that land loans were associated with higher costs to the FSLIC. These results confirm that land loans became a significant problem for insured institutions in 1985.

The 1985 Net Worth Study described above also examined the effects of land loans and nonresidential-construction loans on net worth of FSLIC-insured institutions. The results of this study overwhelmingly confirmed the results derived in the prior Net Worth Study of the 1982 to 1984 period. The updated study found that increases in land loans and nonresidential-construction loans in 1985 were associated with a decline in market-value net worth. These results indicate that for the period studied land loans and nonresidential-construction loans posed a threat to thrift-industry net worth.

Statistics computed by the OPER also show that thrifts with very high levels of land loans and nonresidential-construction loans reported substantially higher levels of problem assets (real-estate owned ("REO") and loans to facilitate sale of REO ("LTFS")) than other institutions.[19] More specifically, as of December 31, 1985, all insured institutions with January 1, 1985 assets of $100 million or more had a ratio of REO and LTFS to assets of 1.324 percent. The 40 institutions in the country with assets of at least $100 million and the highest proportion of nonresidential-construction loans had a ratio of REO and LTFS to assets of 2.304 percent, a statistically significant departure from the industry average.

The Board's supervisory experience supports these statistics and confirms that a number of institutions have experienced severe financial difficulties because of these types of loans. The institutions that have failed recently and caused the largest losses to the FSLIC have all involved substantial losses from land and nonresidential-construction loans (collectively referred to as "ADC-type loans"). Examples include Mainland Savings Association of Houston, Texas, Bell Savings and Loan Association of San Mateo, California, and State Federal Savings and Loan Association of Corvalis, Oregon. The bank regulatory agencies also have increasingly experienced similar problems with commercial real-estate loans.[20]

Examination of the FSLIC's experience at an institution, for which the FSLIC was appointed receiver in 1986, illustrates the risk associated with ADC-type loans and the potential for substantial losses to the FSLIC fund due to such loans. The assets of this institution increased 224 percent between December 1983 and February 1985, from $340 million to $780 million. It net worth, however, during this period declined precipitiously from $10,913,284 (or 3 percent of assets) to negative $4,453,000 (or −.7 percent of assets). The institution's rapid decline into insolvency was due primarily to its decision to invest 76 percent of its assets in high-risk ADC-type loans. It is estimated at this time that the decision of this institution to pursue a high-risk asset portfolio—in essence gambling at the FSLIC's expense—will result in losses to the FSLIC of up to $400 million. The Board believes that the incentive to gamble at the expense of the FSLIC, which at this time is shared by all institutions with low net worth, would be removed by requiring an adequate capital reserve against such high-risk assets as proposed in this rule *before* an institution may make such investments.

The Board has found that increased supervision cannot adequately curb the risk posed by these loans. The problems associated with these loans are often masked by the very nature of the loans. These assets are often characterized by high fee income, the payment of interest through an interest reserve, and the establishment of associated loan-in-process accounts. Because such loans often have nominal periodic "paper" payments from an interest reserve, such loans cannot become delinquent as long as the interest reserve lasts.

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[15] FSLIC Losses Study, *supra;* Net Worth Study, *supra;* and Updated FSLIC Losses Study, *supra.*

[16] Data regarding construction loans were derived from the Quarterly Reports filed with the Office of Examinations and Supervision, the first of which were filed in March, 1984. Prior to this time, data were not available to separately analyze the effect of construction loans on net worth.

[17] Although the results indicated that construction loans pose a threat to market-value net worth, the availability of only one period's data suggested the need for further study of the correlation between these variables.

[18] While the OPER studies (the FSLIC Losses, Net Worth, and Updated FSLIC Losses Studies) refer to the land loan variable as "ADL", the data analyzed in the ADL variable for each of these studies included all information set forth in the relevant Quarterly Reports for line item A050, which includes developed building lot, unimproved land and ADL loans.

[19] Memorandum from Joseph A. McKenzie and Connie Young to Robert Sahadi, Acting Director, OPER, dated April 14, 1986.

[20] *See, e.g.*, "Guidelines for Troubled Real Estate Loans," Examining Circular of the OCC (Oct. 30, 1985).

Indeed, ADC-type loans and similar assets can allow thrifts to report dramatic profitability from large up-front fees and high interest rates credited from an interest reserve at the same time that the underlying project becomes a disaster. For example, one institution, for which the FSLIC was appointed received in 1985, reported profits, due to large self-funded fees, just before it in fact became hopelessly insolvent. Thus, reported profits at thrifts with high levels of ADC-type loans and similar assets can be grossly exaggerated.[21]

As indicated above, these problems are addressed to a certain extent by the classification of assets regulation recently adopted by the Board. Board Res. No. 85–1154, 50 FR 53275 (Dec. 31, 1985). Classification of assets, however, is an after-the-fact measure which, by itself, clearly does not sufficiently protect the FSLIC fund for two reasons. First, the validity of classification of assets cannot be determined until an examination is conducted; these examinations can only be performed on a periodic basis. The Board's supervisory experience indicates, however, that the overall financial stability of an institution and the performance of assets can change drastically between one examination and another and even between submissions of financial reports.

A second reason the classification of assets regulation alone is inadequate to fully address the risks associated with these types of assets is the fact that the establishment of loss reserves for specific assets to protect the FSLIC from losses quickly becomes meaningless where adjustments to income, and establishment of loss reserves under that regulation render an institution insolvent, due to inadequate capital reserves to absorb the realization of such losses. Two institutions for which FSLIC recently was appointed conservator illustrate this problem. Each of these institutions reported total net assets as of December 1985 of $665,755,000 and $306,455,000, respectively. Each institution had heavy concentrations of ADC-type loans. As a result of an examination which commenced in June 1985, it became apparent that between January 1984 and September 1985 the institutions had jointly originated 95 ADC-type loans, in excess of $1 million each, totaling $350 million.

After a review of loan appraisals by examiners, it was determined that many of these ADC-type assets should have been classified as loss or doubtful pursuant to the classification of assets regulation. Classification of the problem assets and establishment of specific loss reserves for these assets revealed that each institution was in fact insolvent. If, however, these institutions had been required to support their heavy asset concentration in ADC-type loans (29 percent and 58 percent of total net assets, respectively) with incremental capital, insolvency and potential losses to the FSLIC may have been avoided.

In these circumstances, the Board believes that it is essential that an insured institution accumulates a certain level of capital to absorb potential losses *before* it embarks upon lending strategies that entail an above-average degree of risk to it and to the FSLIC. For this reason, the incremental capital requirement proposed by the Board for such loans as part of the regulatory capital contingency factor would be in addition to any reserve required pursuant to the classification of assets regulation.

An additional problem inherent in ADC-type assets is that these assets can be improperly reported by thrifts as loans when, under proper accounting procedures, they are direct investments. To the extent that loans such as these are properly classified as direct investments, the 10 percent capital requirement proposed for all direct investments, which is discussed above, would address risk associated with such loans. However, it has been the Board's supervisory experience that even though classification problems with these types of assets should be diminished due to issuance of the Board's accounting guidelines (50 FR 18233, 18236 (1985) (to be codified at 12 CFR 571.17)), distinguishing between these types of loans and direct investments continues to be a difficult exercise. Furthermore, while examining institutions, examiners have routinely encountered ADC-type direct investments which were either intentionally or unintentionally misclassified as loans. The Board is considering issuing new accounting guidelines to address this problem; it is not clear, however, that issuance of such guidelines will be sufficient to prevent this misclassification.

The critical effect of such misclassification upon the net worth of an institution and the FSLIC fund in general is demonstrated in the examination reports of a number of failed institutions and can be illustrated by reference to an institution which required FSLIC assistance in 1985. The institution became insolvent during January, 1985, when it reported a deficit net worth of $433,151 which declined rapidly to $9.16 million. The majority of this decline was due to imprudent acquisition, development, and construction lending.

In an audit of this institution performed for the fiscal year ended June 30, 1984, pursuant to GAAP the auditors reclassified 37 ADC-type assets totalling $76,612,840 as direct investments rather than loans. That amount represented 17.1 percent of total assets for the period, and was considered to be an extremely high concentration in projects in which the institution had assumed virtually all of the economic risk. Moreover, that reclassification required corresponding adjustments to income—a reduction of $1.9 million for interest and fees not actually received from the loans and interest capitalization in the amount of $1.2 million at the institution's weighted average cost of funds—thus further reducing the institution's net worth. In addition to the auditors' findings, the examiners found $32.4 million in loans which were required to be reclassified as direct investments, with a corresponding income adjustment of $594,000.

In the Board's view, failure to require additional capital for these ADC-type assets could result in the FSLIC alone assuming the risk of misclassification and adjustments of an institution's income and net worth. In fact, failure to require additional capital for these types of loans could provide an incentive to institutions to misclassify direct investments as ADC-type loans in order to avoid the 10 percent capital requirement for direct investments.

It has been the Board's examination experience that unlike losses from the realization of adverse interest-rate risk, which often are due to changes in the macroeconomic operating environment and which may be beyond the control of individual institutions, losses on ADC-type loans stem largely from the underwriting and investment policies ("operating policies") of individual institutions. The examples discussed above reveal severe loan underwriting and loan administration deficiencies with regard to these types of loans, including failure to verify project progress prior to disbursing draws,

[21] Indeed, by growing rapidly, an institution can run a variant of a pyramid scheme whereby it keeps its reported net income positive even after the earlier real estate loans begin to go into default and the thirft plummets into even greater insolvency in reality (but not on its books). This situation was virtually out of control before the Board adopted the current net-worth rule. Even after the effective date of the current rule, however, thrifts with very large ADC portfolios grew roughly 220% faster than other thrifts. Memorandum from Joseph A. McKenzie and Connie Young to Robert Sahadi, Acting Director, OPER, dated April 14, 1986.

appraisals not conforming with the Board's Memorandum R-41b, and little or no management analysis of project feasibility or the ability of the borrower to repay the loan.

In the present deregulated environment, the operating policies adopted by each institution often assume much greater importance as the major determinant of overall performance. The Board recognizes that a principal element of deregulation is greater freedom for an individual institution to select its own operating policy.[22] Further, detailed regulation of each institution's operating policies is neither feasible due to staffing limitations nor necessary—most institutions are capable of selecting prudent operating policies if motivated to do so.

The Board also recognizes that institutions with low net worth do have an incentive to invest heavily in ADC-type loans or other high-risk investments and gamble on the return on these assets at the FSLIC's risk; in a very real sense these institutions have nothing to lose. Implementing additional capital requirements for such loans, however, would provide motivation for each institution to make prudent operating decisions and to set prudent operating policies by giving it a significant stake in adverse as well as positive outcomes for its decisions. Conversely, requiring additional capital would discourage irresponsible operating policies because the first brunt of losses from "bad" operating policies would fall on the institution's capital reserve rather than on the FSLIC insurance fund. For these reasons, the Board has preliminarily concluded that, while selection and implementation of operating policies are in an institution's discretion (with Board oversight where necessary), the freedom to set such policies should be contingent upon the institution maintaining adequate regulatory capital to assure that the brunt of "bad" operating decisions is borne first by the institution and not the FSLIC fund.

Because, as discussed above, the threat of loss to the FSLIC fund due to these types of loans is a relatively recent phenomenon and the threat, at this time, is not perceived to be as great for these loans as for direct investments, the Board is proposing a 4-percent additional capital requirement applicable to these assets. It may well be, however, that the potential threat posed to the FSLIC by these assets is as great as that posed by direct investments, and that a comparable capital requirement (10 percent) should, therefore, be assessed. The Board specifically requests comment regarding the sufficiency of a 4-percent additional capital requirement for these assets.

3. Letters of Credit

The Board is proposing a 2-percent capital requirement on letters of credit. The Board of Governors of the Federal Reserve System recently proposed a rule requiring supplemental capital on letters of credit issued by state member banks. *See* 51 FR 3976 (Jan. 31, 1986).

A letter of credit is a contingent liability of the issuer. Most letters of credit unconditionally obligate the issuer to immediately honor the letter of credit when presented for payment. While some letters of credit, namely, standby letters of credit, are written with the expectation that they will never have to be honored, they will be presented for payment only if the party that obtained the letter of credit defaulted on an obligation. Since some act of default triggers the presentation of such a letter of credit, the honoring of this type of letter of credit amounts to the extension of credit to a borrower that is in default. Letters of credit which are not triggered by an act of default, such as trade or standard letters of credit, also amount to an extension of credit to the person or entity seeking the letter of credit.

For this reason, the Board believes that it is appropriate to require a modest capital holding against these contingent liabilities. The Board specifically solicits comment regarding the appropriateness and sufficiency of a 2-percent additional capital requirement for all letters of credit.

Reduction in Required Capital for Certain Classes of Assets and Liabilities

The current net-worth requirement permits an institution to reduce its minimum required capital by deducting specified "qualifying balances". Board Res. No. 85-79B, 50 FR 6891, 6909 (1985) (to be codified at 12 CFR 563.13(b)(4)). The Board is proposing to expand the qualifying balance deduction by including additional items as eligible for this deduction and raising the maximum amount that may be deducted; it is also proposing to alter the proportion of these items eligible for the deduction. The Board believes that these changes are appropriate to more accurately reflect the reduction in an institution's risk exposure associated with a maturity-matched portfolio that has limited credit risk.

Specifically, the Board is proposing to define qualifying balances to include the institution's liquid assets as defined in 12 CFR 523.10,[23] plus its qualifying ARMs, plus one-to-four family residential mortgages represents permanent rather than construction financing or investment-grade mortgage-related securities with remaining contractual term-to-maturity of two years or less, fixed-rate liabilities with remaining term-to-maturity of three years or more (the dollar weighted average term to maturity of liabilities used in this exclusion must be at least five years) for which the institution has a comparable amount fixed-rate permanent one-to-four family residential mortgages and/or investment-grade mortgage backed securities of equal or greater maturity. This increase in the qualifying balance deduction would be subject to the limitation that for the first three years after the effective date of the regulation, if adopted in final form, an institution would not be allowed to reduce its overall capital requirement below three percent. After the third year, an institution would not be allowed to reduce its overall requirement below four percent and after the sixth year the minimum would be five percent. Because this cap is substantially higher than the current maximum deduction of ten percent of the amount of net worth that would otherwise be required, the Board is proposing to reduce from three percent to two the proportion of qualifying balances that may be deducted from the net worth requirement, except that only one percent of the amount of ARMS with lifetime caps less than 250 basis points above the rate may be excluded.

The original rationale for the qualifying balance deduction was to recognize the lessened interest rate and credit risk associated with certain types of investments and to give institutions some incentive to reduce risk. At the time that the qualifying balance deduction was adopted, the Board noted:

As proposed, the Board has adopted a reduction of the net worth requirements for insured institutions holding certain qualifying balances. The reduction is structured to

[22] In a policy statement adopted by the Board on June 21, 1984, the Board specifically recognized that the duties of boards of directors of insured institutions include overseeing the management of the various types of risk which affect their institutions. 12 CFR 571.3 (1985).

[23] A proposed amendment to the liquidity requirements, Board Res. No 86-428, published elsewhere in the Proposed Rule section of this issue, if adopted in final might result in a numbering change and could also affect the substance of the definition. When adopting any final amendments to the net worth requirement, the Board will take into account the impact of any amendments to the definition of liquid asset.

reflect the lower reserve needs, due to reduced risk, of institutions that hold such qualifying balances.

* * * * *

In the past, restricted asset and liability powers made it difficult for many insured institutions to alleviate maturity imbalances. At present, however, due to expanded borrowing authority, flexible-yield mortgage authority, and a growing control over deposit composition resulting from the phase-out of deposit rate controls, the Board believes these associations have the ability to begin to alleviate their maturity imbalances. Through this amendment, the Board seeks to structure the net worth requirements to reflect the reserve needs of institutions holding maturity-balancing assets and liabilities and to provide institutions with maturity imbalance problems with an incentive for restructuring their holdings of assets and liabilities to make cyclical fluctuations in profitability more manageable.

Board Res. No. 80–694 p. 6–7, 45 FR 76,111 (Nov. 6, 1980). The intervening years have demonstrated that the management of interest-rate risk through maturity matching, and credit risk through prudent investment, is imperative, and that it is incumbent on the Board to promote prudent risk management strategies by insured institutions.

Furthermore, the three Federal regulators for commercial banks have proposed a system for adjusting their current capital requirements according to the degree of risk of certain bank assets. Various types of assets, including certain off-balance sheet items, are assigned one of four broad risk categories, which are then weighted. The regulation proposed by the Federal Reserve Board ("FRB"), for example, cited the need for certain changes:

While there may be a number of reasons for these balance sheet adjustments, the Board is concerned that they may be, in part, a response to the imposition of capital requirements that do not distinguish explicitly among various risk categories of assets and that do not make explicit allowance for the lessened threat to capital inherent in low-risk activities. Thus, some banking organizations appear to be reducing their holdings of low-risk assets and deemphasizing their conduct of low-risk activities in an effort to meet more stringent capital requirements. Although these adjustments may improve or otherwise maintain capital ratios at what appear to be acceptable levels, they do not, especially in conjunction with the growth in off-balance-sheet risks, strengthen an organization's risk profile. Indeed, such adjustments could, under certain circumstances, undermine an organization's financial condition.

51 FR 3976, 3977 (Jan. 31, 1986). The Office of the Comptroller of the Currency's ("OCC") advance notice of proposed rulemaking explains the basic components of the system. This document states that this system shall not increase the capital requirements of most institutions, but could well decrease the OCC's capital requirements of 6 percent total capital and 5.5 percent primary capital. Although the risk-related elements (qualifying balances and contingency component) of the Board's current proposal differ from the FRB's and the OCC's proposed system by recognizing the land and housing-related character of thrifts' traditional assets, the risk-related considerations of the proposals are similar. *Id.*

The Board recognizes that by expanding the qualifying balance deduction it will establish an effective minimum net-worth requirement of less than six percent for some institutions. The Board wishes to encourage institutions to make loans and investments with low levels of both credit risk and interest-rate risk. Market conditions, however, may be such that institutions specializing in low-risk housing-related investments may be unable to achieve a competitive rate of return on their equity if minimum regulatory capital is set at six percent of liabilities. In expanding the qualifying balance deduction, the Board is proposing to allow institutions specializing in low-risk investments to achieve higher leverage and thereby generate a competitive rate of return on equity.

Specifically, the Board is proposing to allow inclusion in the qualifying balance of all "qualifying" adjustable-rate mortgages. This would replace the current regulation permitting qualifying balance treatment for half of all adjustable-rate mortgages. A qualifying adjustable-rate mortgage is one that meets *all* the following criteria:

- It is secured by an owner-occupied, one-to-four family dwelling;
- The initial loan-to-value ratio is 80 percent or less, or amounts in excess of 80 percent are covered by private mortgage insurance;
- The first rate-change date is no more than 24 months after closing;
- Subsequent rate-change dates are at intervals no greater than one year;
- Limitations on the amount of annual rate-change, if included, permit annual changes of at least one percent;
- If a maximum lifetime rate is included, it must be at least five percent above the fully indexed initial rate (this is what the first-year rate would be without any initial rate concession);
- The rate on the loan is not at its life-of-loan maximum rate, provided that if the rate is less than 250 basis points below the maximum, the deduction is limited to one percent of the amount of the loan.

A mortgage that meets these conditions has the limited credit risk usually associated with home mortgages, and is protected from interest-rate risk by the adjustment feature.

Second, the Board is proposing to include in the qualifying balance deduction certain one-to-four family mortgage loans. This deduction would be limited to loans secured by first liens, not including loans for construction or home improvement. The proposal also includes investment grade mortgage-backed securities (as defined in 12 U.S.C. 1464(c)(1)(S))[24] that have a contractual remaining term to maturity of two years or less. These securities are generally backed by one-to-four family mortgages, or guaranteed by a government agency such as the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation. Securities that are backed by nontraditional mortgages, such as mortgages on commercial property, are overcollateralized as much as 250% in order to secure the investment-grade rating, thus making credit risk to the purchaser of the security slight [25]. Therefore, these mortgages and mortgage-backed securities generally are intrinsically safe investments with little credit risk; the short time to maturity reduces interest-rate risk to acceptable levels.

The Board is also proposing to impose new limits on one aspect of qualifying balances. The current credit for fixed-rate liabilities with remaining maturity of more than five years will be revised so that the remaining maturity is three years or more but the weighted average is at least five years. Also, the deduction will be allowed only so long as the institution has one-to-four family residential mortgages or investment-grade mortgage-related securities of equal or greater maturity. This recognizes the appropriate match already existing at many institutions between these assets and liabilities.

Finally, the Board is proposing that during the first three years after the effective date of this amendment, an institution could not use the deduction to reduce its overall capital requirement

[24] Section 5(c)(1)(S) of the Home Owners' Loan Act, 12 U.S.C. 1464(c)(1)(S) (1982 & Supp. II 1984) permits investment by federally-chartered associations in mortgage-backed securities, defined to include mortgage-related securities as defined in section 3(a)(41) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(41)). This definition generally encompasses collateralized mortgage obligations.

[25] As noted below, overcollateralization may indicate some risk to the issuer of such a security.

below three percent. For years four through six , the minimum would be four percent, and thereafter the deduction for qualifying balances could not reduce an institution's overall requirement below five percent. The Board believes that this phased approach will encourage lower-risk investment without permitting net worth to be impaired.

The rationale for these changes is to recognize the low level of interest-rate risk associated with these assets and liabilities. The Board believes the approach of giving credit for certain categories is the best practicable operational scheme.

The most comprehensive measure of interest-rate risk is duration gap. [26] This is the difference between duration of assets and duration of liabilities. Duration is a concept of corporate finance, and it is a time-denominated summary measure of the receipt of the cash flows from an asset. For example, since mortgages have periodic interest payments, repayments, an prepayments, the duration of a mortgage is much less than its stated maturity.

While duration gap is the ideal interest-rate risk measure, it is operationally difficult to compute. It would require institutions to report the information currently required on section H of the Board's Quarterly Report in much more detail. This would impose an additional reporting burden, and the data would be difficult to verify. Furthermore, the calculation of duration requires a set of explicit assumptions regarding the rate of prepayment of every coupon class of mortgages.

Alternatively, the Board could use a hedged gap figure it now computes from the section H data from each institution. The hedged gap is the difference between the dollar value of assets maturing or repricing within a set time period and the corresponding liabilities, all divided by assets; the data are adjusted for hedging activities. The hedged gap, like duration, depends upon explicit prepayment assumptions. Unlike duration, the hedged gap is not a summary measure; rather it is a one-year gap, a two-year gap, and a forth. However, the Board believes that to select a specific gap to be the key element in net worth calculation would decrease an association's inclination and responsibility to monitor all gaps. The limiting effect of a rigid decision to determine a single point above which extra capital is required and beneath which less capital is required is also a consideration. Consequently, the Board has, for pruposes of this proposal, adopted the approach of recognizing matches between specific assets and liabilities rather than a gap analysis approach.

The Board specifically solicits comments on whether to give consideration to hedging techniques and/or interest-rate swaps that may significantly reduce an institution's interest-rate risk exposure. The Board is concerned with the feasibility of monitoring the use of these techniques to assure that they are effectively reducing an institution's interest-rate risk.

Miscellaneous

Finance Subsidiary Exclusions. Section 563.13–2(c)(1) of the Board's regulation excludes from computation of a parent institution's total liabilities for net worth purposes the amount of new proceeds of certain securities issued through finance subsidiaries and certain other designated subsidiaries, if the securities issuance and the supporting collateral are substantilly duration matched. Board Res. No. 85–1155, 50 FR 53260 (Dec. 31, 1985). This exclusion was justified on the grounds that this duration-matching virtually eliminated any interest-rate risk for the parent institution from the finance subsidiary's securities issuance. While the Board still believes that such an exclusion gives institutions greater flexibility in financing, the Board is concerned that the finance subsidiary may subject the parent to credit risk without a corresponding capital requirement. Many securities issuances issued directly or indirectly by finance subsidiaries are collateralized at rates of between 103 and 105 percent by mortgage-backed securities issued by, or guaranteed as to principal and interest by the Federal Home Loan Mortgage Corporation, Federal National Mortgage Corporation or Government National Mortgage Corporation. However, a limited number of securities issuances backed by other types of mortgages and receivables are collateralized (as authorized by the regulation) at up to 250 percent of the gross proceeds of the securities issued. Such overcollateralization can reflect market concern for the quality of the underlying collateral. Therefore, investors may demand concessions on price, collateral level, and collateral substitution that will cause significant credit risk to be absorbed by the issuing finance subsidiary and its parent institution. The Board also seeks to remove any regulatory incentive for institutions to originate or purchase assets of dubious quality. For these reasons, the Board is hesitant to exclude from an institution's total liabilities the new proceeds of issuances that require substantial overcollateralization.

Accordingly, the Board proposes to limit the execlusion under § 563.13–2(b)(1) to those securities that are substantially duration-matched and that are collateralized by assets whose market value is less than 110 percent of the gross proceeds of the securities issuance. The Board solicits comment on the appropriateness of this overcollateralization maximum for duration-matched securities issuances and on other means of addressing the credit risk of such issuances.

Solicitation of Comments

The Board solicits comments on all aspects of this proposed regulation. The Board specifically requests comments on the relationship of this proposal with the rule also proposed today defining regulatory capital in accordance with GAAP as modified by the Board to reflect regulatory risk and requiring insured institutions to prepare all Board-required financial statements and financial reports in accordance with GAAP. Commenters also should address alternative methods of addressing the Board's concerns and achieving the Board's goals set forth in either regulation in an equally effective manner.

Finally, the Board wishes to reiterate that if this proposed regulation is adopted substantially as proposed, the Board anticipates that it would become effective on October 1, 1986. If adopted in final, insured institutions would be required to compute their regulatory capital requirements under this regulation for the first time on December 31, 1986. As under the current regulation, insured institutions would be required to meet this regulatory capital requirement on the date it is computed, in this case on December 31, 1986.

Initial Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Board is providing the following regulatory flexibility analysis.

1. *Reasons, objectives and legal basis underlying the proposed rule.* These elements are incorporated above in the **SUPPLEMENTARY INFORMATION** regarding the proposal.

2. *Small entities to which the proposed rule would apply.* The proposed rule would apply to institutions whose accounts are insured by the FSLIC.

[26] See Macauley, F.R. *Some Theoretical Problems Suggested by the Movement of Interest Rates, Bond Yields, and Stock Prices in the U.S. Since 1856.* New York: National Bureau of Economic Research (1938).

3. *Impact of the proposed rule on small institutions.* The proposed rule would eliminate for insured institutions with assets of $100 million or less preferential treatment in calculating the growth factor under § 563.3(g)(4) of the Board's regulations and the exemption for such institutions from § 563.13–1 for the reasons discussed above in the **SUPPLEMENTARY INFORMATION** regarding the proposal. The proposed regulations would treat all institutions identically regardless of their size.

4. *Overlapping or conflicting federal rules.* There are no known federal rules that duplicate, overlap, or conflict with this proposal.

5. *Alternatives to the proposed rule.* There are no alternatives that would be less burdensome than the proposal in addressing the concerns expressed in the **SUPPLEMENTARY INFORMATION** set forth above.

List of Subjects in 12 CFR Parts 561 and 563.

Bank deposit insurance, Investments, Reporting and recordkeeping requirements, Savings and loan associations.

Accordingly, the Board hereby proposes to amend Parts 561 and 563 of Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

CHAPTER V—FEDERAL HOME LOAN BANK BOARD

1. Amend this Chapter V by removing the phrases "net-worth" or "regulatory net worth" wherever they appear in this chapter and by substituting the phrase "regulatory capital".

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORRPORATION

PART 561—DEFINITIONS

2. The authority citation for Part 561 continues to read as follows:

Authority: Pub. L. 95–147 of Oct. 28, 1977, Sec. 4, 82 Stat. 856, sec. 4, 80 Stat. 824, sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1425a, 1425b, and 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 202, 96 Stat. 1469; sec. 409, 94 Stat. 160; secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071, unless otherwise noted.

3. Amend Part 561 by adding new §§ 561.18 and 561.19 to read as follows:

§ 561.18 Land loan.

The term "land loans" means a loan:

(a) Secured by real estate upon which all facilities and improvements have been completely installed, as required by local regulations and practices, so that it is entirely prepared for the erection of structures thereon;

(b) To finance the purchase of land and the accomplishment of all improvements required to convert it to developed building lots; and

(c) Secured by land upon which there is no structure.

§ 561.19 Nonresidential construction loan.

The term "nonresidential construction loan" means a loan for the construciton of structures other than one-to-four family residences.

PART 563—OPERATIONS

4. The authority citation for Part 563 continues to read as follows:

Authority: Pub. L. 95–147 of Oct. 28, 1977, Sec. 4, 82 Stat. 856, sec. 4, 80 Stat. 824, sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1425a, 1425b, and 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 202, 96 Stat. 1469; sec. 409, 94 Stat. 160; secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071, unless otherwise noted.

5. Amend § 563.13 by revising paragraph (a)(1), (b)(1), (2), (3)(i), (ii), (b)(4) and (5), and paragraphs (g) and (h) to read as follows:

§ 563.13 Regulatory Capital Requirement.

(a) *Scope.* (1) This section sets forth the requirements for the maintenance of regulatory capital, as defined in § 563.13 of this subchapter, by insured institutions. Compliance with the requirements of this section shall be considered to be compliance with the reserve requirements of section 403(b) of the National Housing Act (12 U.S.C. 1726(b)). Any reference to "net worth" or "regulatory new worth" in this subchapter shall be deemed to be a reference to regualtory capital.

* * * * *

(b) *Minimum required amount.*—(1) *General Rule.* Except as provided in paragaphs (b)(2) and (b)(3) of this section, the minimum regulatory capital requirement for any calendar quarter (commencing with the quarter ending December 31, 1986) shall be an amount equal to the sum of the following:

(i) The liability component; and

(ii) The contingency component

minus any deduction for qualifying balances (as defined in paragraph (b)(4) of this section).

An institution's required amount of regulatory capital under this computation method shall not be less than three percent of total liabilities for the period from December 31, 1986 until December 31, 1989; and shall not be less than four percent of total liabilities for the period from December 31, 1989 until December 31, 1992; and shall not be less than five percent of total liabilities on or after January 1, 1993.

(2) *Exceptions for de novo and other institutions.* (i) The minimum regulatory capital requirement for *de novo* institutions shall be an amount computed in accordance with paragraph (b)(1), but the liability component for such an institution shall be seven percent of its total liabilities from its commencement of operations through its first full fiscal year, and six percent of total liabilities thereafter: *Provided,* that the mininim required amount of regulatory capital for such institutions shall not be less than five percent of their total liabilities.

(ii) *De novo* institutions which elect to have their applications for insurance of accounts processed in accordance with the policy set forth in § 571.6(a)(2) of this subchapter, but that do not additionally qualify under § 571.6(a)(3), shall have a minimum amount of regulatory capital computed in accordance with paragraph (b)(1), but the liability component for such an institution shall be seven percent of its total liabilities for the period between the commencement of operations through its first three full fiscal years, and six percent of liabilities thereafter: *Provided,* that the minimum required amount of regulatory capital for such institutions shall not be less than five percent of their total liabilities.

(iii) Institutions other than *de novo* institutions that are required to meet regulatory capital requirements exceeding the initial minimum three percent requirement under paragraph (b)(1) of this section (including institutions formerly insured by the Federal Deposit Insurance Corporation or by privately funded insurance systems) shall have liability components equal to the higher of the liabilities-related portion of their specifically mandated capital requirements or the minimum amount of regulatory capital required under paragraph (b)(1).

(3) *Mergers, consolidations, or purchases of assets and assumption of liabilities.* (i) Except as provided in paragraph (b)(3)(ii) and (iii), for any merge, consolidation, or purchase of assets and assumption of liabilities, the minimum regulatory capital requirement, beginning in the quarter in which the transaction became effective, shall be equal to the sum of each of the institutions' liability components (which for *de novo* institutions and other types of institutions not subject to the initial minimum three percent requirement

shall constitute the liability-based portion of their minimum regulatory capital requirements) and contingency components minus any qualifying balance deductions, and subject to the applicable minimum requirements (three, four or five percent depending on the time period) set forth in paragraph (b)(1).

(ii) For any acquisition of less than substantially all of the liabilities of an institution in which the selling institution continues in operation as a separate entity (including, but not limited to, branch acquisitions), the base liabilities of the acquired institution beginning in the quarter in which the transaction becomes effective shall be the base liabilities of the acquiring institution calculated to include an amount equal to the liabilities so acquired. The acquiring institution's minimum amount of regulatory capital shall be computed by the method set forth in paragraph (b)(1) of this section.

(iii) * * *

(4) *Qualifying Balance Deduction.* (i) The amount of the minimum regulatory capital requirement imposed by paragraphs (b) (1), (2), (3) or (4) of this section will be reduced by two cents for each dollar of "qualifying balances" held by an institution: *Provided,* that the total amount of deductions allowed pursuant to this paragraph shall not reduce an institution's minimum regulatory capital requirement otherwise imposed by paragraphs (b) (1), (2), (3) of (4) below three percent of total liabilities for any period until December 31, 1989; below four percent of total liabilities for the period from December 31, 1989, until December 31, 1992; and shall not be less than five percent of total liabilities on or after January 1, 1993.

(ii) "Qualifying balances," as used in this paragraph means

(*a*) Interest-bearing liquid assets, as described in § 523.10 of this Chapter (including accrued interest on unpledged assets that qualify as liquid assets within that definition or that would so qualify except for their maturities), provided that they will mature within one year;

(*b*) All "qualifying" adjustable-rate mortgages, which include only those adjustable-rate mortgages that meet all of the following criteria: (*i*) are secured by owner-occupied, one-to-four family dwellings, (*ii*) incorporate a first rate-change date no more than 24 months after closing, (*iii*) establish subsequent rate-change dates at intervals no greater than one year with permissible rate-changes of at least one percent, (*iv*) include a maximum life-of-loan rate at least five percent above the fully indexed first-year initial rate, excluding any initial rate concession, (*v*) include a maximum loan-to-value ratio of 80 percent or private mortgage insurance on the difference between the loan amount and 80 percent of value, and (*vi*) the current rate of the loan is not at its life-of-loan maximum rate, *Provided,* that if the current rate is less than 250 basis points below the maximum rate, the qualifying balance deduction pursuant to subparagraph (b) will be limited to one percent of the amount of the loan;

(*c*) All one-to-four family residential mortgage loans secured by first liens that are not for the purpose of financing construction, and investment-grade mortgage-backed securities (as defined in 12 U.S.C. 1464(c)(1)(S)) with a remaining term to maturity of two years or less; and

(*d*) Fixed-rate liability sources of funds (including outside borrowings and Federal Home Loan Bank advances but excluding certificate accounts permitting withdrawal of account funds prior to maturity) that have a remaining term to maturity of more than three years (the dollar weighted average term-to-maturity of liabilities used in this exclusion must be at least 5 years) only so long as such sources of funds are offset by permanent one-to-four family residential mortgages or investment-grade mortgage-backed securities (as defined in 12 U.S.C. 1464(c)(1)(S)) of equal or greater maturity.

(5) *Calculation period and maintenance requirement.* An institution shall calculate its minimum regulatory capital requirement pursuant to this section as of the end of each calendar quarter commencing with the quarter ending December 31, 1986 and shall maintain regulatory capital in an amount not less than the minimum requirement so calculated from the end of the quarter for which the minimum requirement was calculated until the end of the next succeeding calendar quarter.

* * * * *

(g) *Definitions.* For purposes of this section.

(1) "Total liabilities" means total assets net of loans in process, specific reserves and deferred credits other than deferred taxes, minus regulatory capital as defined in § 561.13 of this subchapter.

(2) "Base liabilities amount" means an amount of capital which equals the higher of

(i) An institution's base liabilities multiplied by the liability factor for that quarter, or

(ii) The sum of an institution's base factor, growth factor (adjusted for decreases in liabilities in accordance with § 563.13(g)(4)(i)(*b*)), and amortization factor as of October 1, 1986 (its "October base").

(3) "Base liabilities" means an institution's level of total liabilities on [the effective date of this regulation] or the institution's total liabilities at the end of a quarter for which regulatory capital is being computed if less than its total liabilities on [the effective date of this regulation].

(4) "Increased liabilities amount" means an amount of capital equal of six percent of an institution's total liabilities in excess of its base liabilities.

(5) "Liability component", except as otherwise provided in paragraph (b)(2) and (b)(3) of this section, means an amount of capital equal to

(i) For the period commencing October 1, 1986 and ending December 31, 1992 an institution's base liabilities amount plus its increased liabilities amount;

(ii) For the period commencing January 1, 1993 six percent of total liabilities.

(6) "Liability factor" means a percentage rate of base liabilities that will be three percent in the first quarter that this regulation is effective and that will increase by .125 percent per quarter (.5 percent per year) until equal to six percent.

(7) "Contingency Component" is the sum of:

(i) Two percent of recourse liabilities (as that term is defined in § 561.8 of this subchapter) resulting from the sale of any loan;

(ii) Twenty percent of the institution's scheduled items (as that term is defined in § 561.15 of this subchapter);

(iii) Subject to the provisions of paragraph (g)(7)(iii)(*b*) of this section,

(*a*) An amount equal to ten percent of the dollar amount of aggregate direct investment as defined in § 563.9–8(b)(1) of this subchapter made after December 10, 1984;

(*b*) For the purposes of paragraph (g)(7)(iii)(*a*) of this section,

(*1*) "Made after December 10, 1984" excludes such investments to which the institution was legally committed on or before that date, or such projects for which definitive plans were in existence on or before that date;

(*2*) Investments made in any service corporation or operating subsidiary may be excluded *Provided,* that any investment made by such service corporation or operating subsidiary which if made by the parent would be included in the parent's contingency component shall be included in the total

of such investments of the parent institution.

(iv) Four percent of all land loans and nonresidential construction loans;

(v) Two percent of all letters of credit.

(8) "De novo institution" means a savings and loan association, building and loan association, homestead association, cooperative bank or savings bank which has filed with the appropriate Federal Home Loan Bank and application for insurance of accounts, or a request for a commitment to insure accounts, or an application to organize a Federal association, which was not approved prior to December 2, 1983, and the business of which has not been conducted previously under any charter.

(h) *Transactions for purpose of evasion.* An institution's Principal Supervisory Agent may disregard any transaction entered into primarily for the purposes of reducing an institution's minimum required amount of regulatory capital, or otherwise evading the requirements of this section. An institution may seek review and final decision by the Corporation of any such determination.

6. Revise § 563.13–1 to read as follows:

§ 563.13–1 Liability growth.

(a)(1) No insured institution shall increase its total liabilities within any two-quarter period at a rate greater than 12.50 percent without prior approval of the institution's Principal Supervisory Agent.

(2)(i) The rate of increase in liability growth requiring prior approval under paragraph (a)(1) shall be computed by subtracting an institution's total liabilities as of the beginning of a two-consecutive-quarter period from its total liabilities as of the end of the two-consecutive-quarter period. This amount shall not exceed 12.5 percent of the institution's total liabilities as of the beginning of the two-consecutive-quarter period, unless expressly approved in advance by the institution's Principal Supervisory Agent.

(ii) The method of computation set forth in paragraph (a)(2)(i) of this section shall be used by an institution commencing operations as an insured institution or initially becoming subject to this regulation, although such an institution's first computation under this section must be made at the end of the second quarter during which the institution operates or is subject to this regulation for all or a portion of the quarter. If an institution commences operation or initially becomes subject to this regulation within a quarter, the institution shall be permitted to grow up to 6.25 percent during that quarter.

(iii) For purposes of computing an institution's growth pursuant to paragraph (b)(i) and (ii) of this section, an institution's total liabilities as of the beginning of a two-consecutive-quarter period shall include (*a*) any increases in liabilities during the two-quarter period resulting from the acquisition of substantially less than all of the liabilities of an institution after which the selling institution continues in operation as a separate entity (including, but not limited to, branch acquisitions), and (*b*) the total liabilities of the merged and continuing institutions as of the beginning of the two-quarter period in the case of a merger, consolidation, or purchase of assets and assumption of liabilities that occur during the two-quarter period.

(3) Nothwithstanding the provisions of paragraphs (a)(1) or (2) of this section, an insured institution which increases its liabilities through merger, consolidation, or purchase of assets and assumption of liabilities, for which prior review and approval under $563.22 of this part is required, shall not be required to file an application under paragraph (b) unless such institution otherwise increases its liabilities by an amount in excess of 12.50 percent within any two consecutive quarter period.

(b) To obtain the prior written approval from its Principal Supervisory Agent, an institution shall submit a written growth plan. A growth plan shall cover a period of time not to exceed one year, and shall include the following information:

(1) The institution's regulatory capital as of the end of the preceding calendar quarter and its estimated regulatory capital as of the end of the period covered by the growth plan;

(2) The amount of liabilities the institution expects to obtain;

(3) A listing of the proposed sources of and the methods by which the liabilities will be obtained;

(4) The costs, rates, and maturities of liabilities sought to be obtained; and

(5) The planned uses of any liabilities obtained.

(c) No institution shall alter a written growth plan upon which approval has been granted or materially diverge from such a plan without the prior approval of its Principal Supervisory Agent.

(d) Within ten days of the filing of a growth plan or any additional information, the Principal Supervisory Agent shall notify the applicant in writing either that all information required under paragraph (b) of this section has been filed or that additional specified information must be filed. Unless the Principal Supervisory Agent takes objection to, or conditionally approves the plan within 30 days of the date of written notice that all required information has been filed, the plan shall be deemed to be approved. Based on the institution's growth plan, the Principal Supervisory Agent may require an institution to maintain not more than four percent additional regulatory capital over that required by § 563.13(b)(1) on all or a portion of the institution's growth over the 12.50 percent rate computed in accordance with paragraph (a) of this section. In determining whether to take objection to a growth plan, to conditionally approve a growth plan, or to require additional regulatory capital, the Principal Supervisory Agent shall consider the following factors:

(1) The impact of the plan upon the institution's regulatory capital;

(2) The risk of the corresponding investments, the likelihood of obtaining the projected return, the level of diversification, and the ability of the institution to underwrite the incremental volume of investments;

(3) The relative maturities of the liabilities and corresponding investments;

(4) The extent to which the liabilities are derived from or through a single source;

(5) Whether the interest to be paid on the liabilities corresponds with generally prevailing rates for similar liabilities;

(6) The financial strength of the institution, including the level of its regulatory capital which shall not be less than that required by § 563.13(b);

(7) The stability of the institution's earnings over the six preceding calendar quarters;

(8) The extent to which the institution's overall policies are consistent with economical home financing, as evidenced by whether the institution would comply with the definition of "qualified institution" set forth in § 584.2–2(b) of this chapter; and

(9) Whether the overall policies, conditions, and operation of the applicant afford a basis for supervisory objection.

§ 563.13–2 [Amended]

7. Amend § 563.13–2(c)(1) by adding after the word "management" the phrase "and collateralized by assets whose market value (exclusive of the reduction of such market values for credit considerations) is less than 110 percent of the gross proceeds of the securities issuance."

By the Federal Home Loan Bank Board.
Jeff Sconyers,
Secretary.
[FR Doc. 86-9914 Filed 5-2-86; 8:45 am]
BILLING CODE 6720-01-M

FEDERAL TRADE COMMISSON

16 CFR Part 13

[File No. 821-0143]

Liithium Corporation of America; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Gastonia, North Carolina chemical company from entering into any agreements fixing prices or restricting sales of any lithium product. Additionally, respondent would be prohibited from acting as an agent for any lithium producer when such action might unreasonably restrain competition.

DATE: Comments will be received until July 7, 1986.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: FTC/G-402, Jerry Philpott, Washington, DC 20580. (202) 254-7051.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Chemicals, Trade practices.

Before Federal Trade Commission

[File No. 821-0143]

Agreement Containing Consent Order

In the Matter of Lithium Corporation of America, a corporation.

The Federal Trade Commission (Commission) has initiated a non-public investigation of certain aspects of the structure and conduct of the market for lithium and certain producers and sellers thereof including Glithco Energy Corporation (Glithco), formerly Lithium Corporation of America, a wholly owned subsidiary of Gulf Resources and Chemical Corp. On or about July 19, 1985, Lithium Corporation of America (LCA), a new corporate entity, acquired substantially all of the assets of Glithco Energy Corporation. LCA and Glithco having been furnished with a copy of a draft complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would have charged Glithco with violating the Federal Trade Commission Act; and it now appearing that counsel for the Commission and for LCA are willing to enter into an agreement containing an Order in settlement of that complaint:

It is hereby agreed by and between LCA, by its duly authorized officer and attorney, and counsel for the Commission, that:

1. Lithium Corporation of America (LCA) is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware maintaining its principal offices at 449 North Cox Road, Gastonia, North Carolina 28052.

2. On or about July 19, 1985, LCA acquired substantially all of the assets of Glithco Energy Corporation, formerly Lithium Corporation of America, a wholly owned subsidiary of Gulf Resources and Chemical Corporation.

3. LCA admits all of the jurisdictional facts set forth in the draft complaint attached hereto.

4. LCA waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seeks judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and,

(d) Any claim under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify LCA, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by LCA that the law has been violated as alleged in the draft complaint attached hereto.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to provisions of § 2.34 of the Commission's Rules, 16. CFR 2.34, the Commission may, without further notice to LCA, (1) issue its complaint corresponding in form and substance with the draft complaint attached hereto and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service upon LCA. Delivery by the U.S. Postal Service of the complaint and decision containing the following order to LCA's address as stated in this agreement shall constitute sufficient service. LCA waives any right it may have to any other manner of service.

8. The complaint contemplated hereby may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

9. LCA has read the complaint and order contemplated hereby. LCA understands that once the order has been issued, it will be required to file one or more compliance reports showing it has fully complied with the order. LCA further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

For the purpose of this Order, the following definitions shall apply:

1. "LCA" means Lithium Corporation of America, as well as its officers, employees, divisions, subsidiaries, successors, assigns and the officers or employees of LCA's divisions, subsidiaries, successors and assigns.

2. "Lithium product(s)" means any lithium chemical mined, extracted or milled from a natural resource including but not limited to: (a) Lithium ore (petalite, lepidolite or spodumene); (b) lithium carbonate; (c) lithium hydroxide; (d) lithium chloride; and (e) lithium sulfate.

3. "Person" means any natural person, corporate entity (including subsidiaries thereof), partnership, joint venture, trust, association, governmental or other legal entity whether foreign or domestic.

4. "Lithium seller" means any person engaged in the mining, extracting, milling or sale of any lithium product.

5. "Lithium producer" means any person engaged in the production of any lithium product by mining, extracting, or milling such product from a natural resource, or the exclusive or substantially exclusive agent or distributor of such person in the sale or distribution of such lithium product. Lithium producer does not include any joint venture between LCA and other persons none of which is engaged in the production by mining, extracting or milling of any lithium product or is the exclusive or substantially exclusive agent or distributor of such person in the sale or distribution of such lithium product.

6. "Nonpublic information" means trade secrets or commercial or financial information which is confidential and has not been disseminated to the public.

7. "Sub-HSR transaction" means acquiring, directly or indirectly, the stock, share capital or assets of or any other interest in any lithium seller that is not reportable under the provisions of Section 7A of the Clayton Act, 15 U.S.C. 18a, and the rules promulgated thereunder but would be reportable if:

A. the Size-of-the-Parties Test as set forth in Section 7A(a)(2) of the Clayton Act were deemed inapplicable; and

B. five (5) million dollars were substituted for fifteen (15) million dollars in the size of transaction test set forth in Section 7A(a)(3)(B) as well as The Minimum Dollar Value Exemption set forth in Rule § 802.20(a).

8. "Tolling" means the secondary-recovery of any lithium chemical by a person for which such services are compensated.

I.

It is ordered that LCA shall cease and desist, directly or indirectly, or through any corporate or other device in connection with the offering for sale, sale or distribution of any lithium product in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, as amended, from, directly or indirectly:

A. Entering into, cooperating in or carrying out any agreement, combination, conspiracy, understanding or planned common course of action between or among itself and any lithium producer to:

1. Adopt, establish, fix or maintain, directly or indirectly, the price, terms or conditions of sale for the sale of any lithium product to any third person; or

2. Refuse to deal with any third person seeking to purchase any lithium product from any lithium producer.

B. Soliciting, inducing, coercing, intimidating or compelling any lithium producer to refuse to deal with any person seeking to purchase any lithium product.

C. Taking any action to communicate, furnish, exchange, receive or discuss, directly or indirectly, with any lithium producer any nonpublic information relating to:

1. The price, terms or conditions of sale for any lithium product;

2. The costs of mining, extracting, milling, or selling any lithium product;

3. Forecasts of sales or supply of any lithium product; or

4. Plans for marketing any lithium product.

Provided, however, that nothing contained in Subparagraph C of this Paragraph shall prohibit LCA from:

Providing to or receiving from any lithium producer such information as is reasonably necessary for and solely related to the good faith negotiating for, entering into, or carrying out (a) a purchase, sale or tolling agreement of any lithium product between LCA and such lithium producer; (b) acquisition of LCA or a substantial portion of its business or the acquisition by LCA of all or a substantial part of any lithium producer; and (c) any joint venture involving another lithium producer that is not reportable under Paragraph IV of this Order.

II.

It is further ordered that LCA shall cease and desist, directly or indirectly, or through any corporate or other device in connection with the offering for sale, sale or distribution of any lithium product in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, as amended, from purchasing from any lithium producer and reselling, or acting as an agent for any lithium producer in the sale of, any lithium product where such purchase, resale or agency unreasonably restrains competition.

III.

Paragraphs I and II of this Order do not prohibit conduct that is permitted by the Export Trading Company Act of 1982, 15 U.S.C. 4001–4021 (1982), or the Webb-Pomerene Act, 15 U.S.C. 61–66 (1982), or any amendments thereto, or conduct to which Subsection (a) of Section 5 of the Federal Trade Commission Act does not apply under the Foreign Trade Antitrust Improvements Act of 1982, Public Law 97–290, Title IV, or any amendments thereto. If within five (5) years from the date this Order becomes final, an application is made by LCA under Title III of the Export Trading Company Act of 1982 for an Export Trade Certificate of Review relating to any lithium product, copies of the application and all documents filed by LCA in support thereof shall be filed simultaneously with the Commission.

IV.

It is further ordered that for a period of five (5) years from the date this Order becomes final, LCA shall within twenty (20) days after entering into any sub-HSR transaction provide the Federal Trade Commission written notification of such transaction and provide such information for LCA and the acquired party as required by the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations, as amended.

V.

It is further ordered that LCA shall, within sixty (60) days after service upon it of this Order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this Order. LCA also shall submit such further written reports as the staff of the Commission may from time to time request in writing to assure compliance with this Order.

VI.

It is further ordered that LCA shall notify the Commission at least thirty (30)

days prior to any proposed corporate change, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation that may affect compliance with the obligations arising out of this Order.

Analysis of Proposed Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Lithium Corporation of American (LCA).

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Complaint

LCA is a Delaware corporation that mines lithium ore and processes it into lithium chemicals, which it sells in the United States and elsewhere. The complaint prepared for issuance by the Commission with the proposed order alleges that since at least 1980 and continuing at least until June 1984, Glithco Energy Corporation [1] agreed with two Chinese companies to restrain trade in lithium products. According to the complaint, Glithco agreed with China Metallurgical Import and Export Corporation (CMIEC) and Xinjiang Non-Ferrous Metals Corporation (XNMC) that Glithco would purchase lithium hydroxide from CMIEC and that CMIEC would refuse to deal with chemical traders seeking to purchase lithium. XNMC manufactured, and CMIEC sold, lithium in competition with Glithco.

As a result of this conduct, the complaint alleges, competition between Glithco, CMIEC, and XNMC in the sale of lithium products was reduced or eliminated. Competition between Glithco and other chemical traders of lithium products was also reduced or eliminated as a result of Glithco's exclusive distribution agreement with CMIEC and its actions to ensure that CMIEC would refuse to deal with such traders. The complaint also alleges that consumers of lithium products have been deprived of free and open competition in the trading of those products and that the importation of lithium products into the United States has been restrained.

The Proposed Order

The proposed order is intended to prohibit LCA from restraining competition in lithium products and thereby to assure that the market is open to competition by the Chinese firms, chemical traders, and others who wish to sell lithium products in United States commerce.

Paragraph I of the order prohibits LCA from entering into or carrying out any agreement involving any other lithium producer to fix the price of any lithium product or to refuse to deal with any third person that seeks to purchase any lithium product. LCA is also prohibited by this paragraph from soliciting or coercing any such agreement to refuse to deal and from exchanging certain categories of non-public information with any other lithium producer.

Paragraph II of the order prohibits LCA from purchasing and reselling any lithium product, or acting as an agent in the sale of any lithium product, where its activities unreasonably restrain competition.

Paragraph III of the order provides that Paragraphs I and II do not prohibit conduct permitted under the Export Trading Company At of 1982 or the Webb-Pomerene Act.

Paragraph IV of the order requires that for a five-year period, LCA must notify the Commission within twenty days after it enters into certain acquisitions of lithium sellers that would not be reportable under the Hart-Scott-Rodino Act's premerger notification provisions.

Paragraphs V and VI are procedural. Paragraph V requires LCA to file a compliance report within sixty days of service of the order. Paragraph VI requires LCA to notify the Commission at least thirty days in advance of any important changes in its corporate structure, such as dissolution or sale.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Emily H. Rock,

Secretary.

[FR Doc. 86-9907 Filed 5-2-86; 8:45 am]

BILLING CODE 6750-01-M

[1] Glithco was formerly Lithium Corporation of America, as wholly owned subsidiary of Gulf Resources and Chemical Corporation. On or about July 19, 1985, LCA, a new corporate entity, acquired substantially all of the assets of Glithco.

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD786-12]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, SC

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the South Carolina Department of Highways and Public Transportation and local government representatives the Coast Guard is considering changing the regulations governing the Ben Sawyer Bridge, mile 462.2 at Sullivans Island, by permitting weekend openings to be further limited. This proposed is being made because of reports of vehicular congestion. This action should accommodate the needs of vehicular trafic yet still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before June 19, 1986.

ADDRESSES: Comments should be mailed to Commander (oan), Seventh Coast Guard District, 51 SW. 1st Avenue, Miami, Florida 33130. The comments and other materials referenced in this notice will be available for inspection and copying at 51 SW. 1st Avenue, Room 816, Miami, Florida. Normal office hours are from 7:30 a.m. to 4 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Paskowsky, (305) 536-4103.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Seventh Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Mr. Walt Paskowsky, Bridge Administration Specialist, project officer, and

Lieutenant Commander Ken Gray, project attorney.

Discussion of Proposed Regulations

The bridge presently opens on signal on Saturdays, Sundays, and federal holidays except from 2 p.m. to 6 p.m. when it need open only on the hour and half hour. The proposed rule would extend this time period by six hours (9 a.m. to 7 p.m.) and limit routine openings to one per hour during this period. This change was temporarily implemented in the summer of 1985 for evaluation purposes (50 FR 31367) and generated no complaints from mariners. This change is intended to space draw openings and virtually eliminate "back to back" openings which can contribute significantly to vehicular traffic delays during these periods.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the regulations exempt tugs with tows. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

PART 117—DRAWBRIDGE OPERATION REGULATIONS

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. Section 117.911 is proposed to be amended by revising paragraph (c) to read as follows:

§ 117.911 Atlantic Intracoastal Waterway, Little River to Savannah River.

* * * * *

(c) *Ben Sawyer (SR 703) bridge across Sullivans Island Narrows, mile 462.2 between Sullivans Island and Mount Pleasant.* The draw shall open on signal; except that, the draw need not open from 7 a.m. to 9 a.m. and from 4 p.m. to 6 p.m., Monday through Friday, except federal holidays. On Saturdays, Sundays, and federal holidays from 9 a.m. to 7 p.m. the draw need open only on the hour.

* * * * *

Dated: April 21, 1986.

R.P. Cueroni,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 86–10034 Filed 5–2–86; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Cambarus Zophonastes

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine a cave crayfish, *Cambarus zophonastes*, to be an endangered species under the authority contained in the Endangered Species Act of 1973, as amended. This obligate cave dweller has been found only in one cave in Stone County, Arkansas. The species does not have an acepted common name. Groundwater contamination, collecting, and low population levels represent major potential threats to *Cambarus zophonastes*. Groundwater contamination is especially important because most of the stream channels in the cave's recharge area are sinking streams, which can readily introduce pollutants or contaminants into the cave system. This proposal, if made final, will implement the protection of the Endangered Species Act of 1973, as amended, for this cave crayfish. The Service seeks relevant data and comments from the public.

DATES: Comments from all interested parties must be received by July 7, 1986. Public hearing requests must be received by June 19, 1986.

ADDRESS: Comments and materials concerning this proposal should be sent to the Endangered Species Field Station, U.S. Fish and Wildlife Service, Jackson Mall Office Center, Suite 316, 300 Woodrow Wilson Avenue, Jackson, Mississippi 39213. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis B. Jordan at the above address (601/960–4900 or FTS 490–4900).

SUPPLEMENTARY INFORMATION:

Background

Cambarus zophonastes is an albinistic cave crayfish endemic to the White River Basin in north-central Arkansas (Smith 1984). This obligate cave crayfish was first collected in 1961 and described in 1964 from five specimens takens from the type locality (Hobbs and Bedinger 1964). *Cambarus zophonastes* lacks pigment in the body and eyes, which are reduced, and the overall body length reaches about 65mm. It can be distinguished from related species by the following features of its carapace: the rostrum has strongly convergent margins bearing spines, and the areola is more than 29 times longer than wide. The species is known from only the type locality and only eight specimens are known to exist in zoological collections. Over 170 additional caves in north-central Arkansas have been searched without *Cambarus zophonastes* being found. A survey of 436 caves and ten springs in Missouri revealed two closely related species *(Cambarus hubrichti* and *Cambarus setosus)* but failed to reveal *Cambarus zophonastes* (Smith 1984).

The type locality is situated in the Ozark Mountains, and the cave is formed in the Plattin Limestone (Hobbs and Bedinger 1964). This cave is a solution channel, most of which is wet year-round. It contains much mud, and many of its passages are flooded during storms and wet seasons. About 150 feet (45 meters) inside the cave is a pool ranging from 1 to at least 20 feet (0.3–7 meters) in depth with a narrow, shallow stream entering it from the cave's interior. This stream flows through 1,400 feet (425 meters) of cave passage (Smith 1984). Water from the cave emerges as three springs located about 150 feet (45 meters) from the cave entrance. The crayfish has been found only in the cave pool. The Arkansas Natural Heritage Commission and The Nature Conservancy recently purchased a 160-acre (65-hectare) tract that includes the cave's entrance. The primary recharge area consists of 3.51 square miles (9 square kilometers) (Aley and Aley 1985) and is largely privately owned. Population trends for *Cambarus zophonastes* have not been documented. The largest number of individuals sighted during a single trip was 15 crayfish recorded by a scuba diver in 1983. The toal population is estimated to be fewer than 50 individuals (Smith 1984).

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Carbarus zophonastes* (no common name) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Groundwater contamination represents a major threat to *Cambarus zophonastes.* The only known population is in a geographic area characterized by sinking streams. A sinking stream is a surface water course that loses significant quantities of water into the subsurface in very localized areas. Sinking streams are of extreme importance in supplying water and nutrients to caves. This rapid flow of water into caves also allows the easy introduction of pollutants. A hydrological study of the area (Aley and Aley 1985) has identified threats to this system. An electrical transmission line crosses the recharge area for this cave. The use of herbicides to clear the right-of-way for this line could contaminate the cave. A State highway borders the recharge area for the cave and is a potential source for accidental spills of materials hazardous to water quality. A 4,000 gallon (15,140 liter) spill of gasoline occurred on the highway in March 1985. There are three industrial operations within the cave recharge area that threaten the water quality. All three industries store petroleum products that could spill or leak into the cave. One of the industries, a concrete plant, contributes silt to the cave when its sediment ponds overflow (Aley and Aley 1985). The City of Mountain View has grown rapidly and will likely expand into the topographic basin, within which some subdivision roads have already been built. Continuing development presents a major threat to water quality in the cave from the use of septic tanks to dispose of wastewater.

B. *Overutilization for commercial, recreation, scientific, or educational purposes.* Obligate cave species characteristically live longer and have considerably lower reproductive capacities than their surface relatives. Cooper (1975), in his study of crayfish in Shelta Cave, Alabama, found the cave species *Orconectes australis* to have only 10 to 60 attached ova, while surface species of *Orconectes* had up to 574 attached ova. *Cambarus zophonastes* probably also has low reproductive capabilities. The removal of adults from a limited population with a likely low reproductive potential would seriously endanger the existence of the population. With a maximum of 15 individuals of *Cambarus zophonastes* ever observed and with a total population estimate of 50 individuals, the removal of any reproducing females would dramatically impact and could eliminate a year's recruitment. The limited habitat and population size make the species vulnerable to vandalism and taking.

C. *Disease or predation.* Disease and predation have not been documented for this species.

D. *The inadequacy of existing regulatory mechanisms.* This species is not recognized or protected as a rare species by any existing Federal or State regulation. Arkansas requires a scientific collecting permit for collecting any species, except taking for fish bait under other State regulations. This affords very limited protection owing to the difficulty of apprehending violators and limited resources for law enforcement.

E. *Other natural or manmade factors affecting its continued existence.* Obligate cave species apparently have very low reproductive rates, as evidenced by the limited information available on other cave species (Poulson 1961). This low reproductivity is partially due to the limited energy availability in caves. This cave likely served as a maternity roost site for gray bats (*Myotis grisescens),* a species listed as endangered, at one time in the past (Harvey *et al.* 1981). The abandonment of this roost site represents a loss of energy input, in the form of guano, to the cave's aquatic community. This loss of energy reduces the available food supply and may have limited or reduced the population size of *Cambarus zophonastes.* Reproduction of *Cambarus zophonastes* is further impacted by low numbers of mature individuals, which reduces genetic diversity and the likelihood of successful mating encounters. Low reproductive capabilities and the small, single population naturally limit this species' ability to recover from any adversity.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Cambarus zophonastes* as endangered. Endangered status was chosen because this species is known from only one cave system with an estimated population of only 50 individuals. The species is especially vulnerable to water quality degradation at this site. It therefore requires the greatest possible protection available under the Act. The reason critical habitat is not being proposed is discussed in the next section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extend prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. As discussed under Factor B in the "Summary of Factors Affecting the Species," *Cambarus zophonastes* is endangered by taking, an activity difficult to prevent. Publication of critical habitat descriptions would make this species even more vulnerable and increase enforcement problems. All involved parties and land owners will be notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will be addressed through the recovery process and through the section 7 jeopardy standard (see below). Therefore, it would not be prudent to determine critical habitat for *Cambarus zophonastes* at this time.

Available Conservation Measures

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

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being

designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Federal involvement with this species is expected to be minimal. The continuing development of this region could lead to sub-surface water degradation that may involve the Environmental Protection Agency or other agencies with jurisdiction over groundwater. The Federal Housing Authority may be required to consult with the Service on Federal loans for housing development within the cave's recharge area.

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

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

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Cambarus zophonastes;*

(2) The location of any additional populations of *Cambarus zophonastes* and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on *Cambarus zophonastes.*

Final promulgation of the regulation on *Cambarus zophonastes* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Endangered Species Field Supervisor (see **ADDRESSES** section).

National Environmental Policy Act

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

Literature Cited

Aley, T., and C. Aley. 1985. Water Quality Protection Studies Hell Creek Cave, Arkansas. A contract report for the Arkansas Natural Heritage Commission.

Cooper, J.E. 1975. Ecological and Behavioral Studies in Shelta Cave, Arkansas, with Emphasis on Decapod Crustaceans. Ph. D. Dissertation, University of Kentucky.

Harvey, M.J., J.J. Cassidy, and G.G. O'Hagan. 1981. Endangered Bats of Arkansas: Distribution, Status, Ecology, and Management. A report to Arkansas Game and Fish Commission, Little Rock.

Hobbs, H.H., Jr., and M.S. Bedinger. 1964. A New Troglobitic Crayfish of the Genus *Cambarus* (Decapoda, Astacidae) from Arkansas with a Note on the Range of *Cambarus cryptodytes* Hobbs. Proc. Biol. Soc. Wash., 77:9–15.

Poulson, T.L. 1961. Cave Adaptation in Amblyopsid Fishes. Ph. D. Dissertation, University of Michigan.

Smith, K.L. 1984. The Status of *Cambarus zophonastes* Hobbs and Bedinger, An Endemic Cave Crayfish from Arkansas. A status survey report for the U.S. Fish and Wildlife Service.

Author

The primary author of this proposed rule is James Stewart (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, Subchapter B of Chapter I, Title 50 of the Code Federal Regulations, as set forth below:

1. The Authority citation for Part 17, continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under CRUSTACEANS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
CRUSTACEANS							
Crayfish (no common name)	*Cambarus zophonastes*	U.S.A. (AR)	NA	E		NA	NA

Dated: March 28, 1986.

P. Daniel Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-9984 Filed 5-2-86; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 51, No. 86
Monday, May 5, 1986

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

Animal and Plant Health Inspection Service

[Docket No. 86-318]

USDA Cooperative Gypsy Moth Suppression and Regulatory Projects—1985: Availability of Site-Specific Environmental Analysis; Finding of No Significant Impact; and Decision to Cooperate

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document provides notice that site-specific environmental impact statements have been prepared for proposed gypsy moth treatment areas in Minnesota and Oregon. The States of Minnesota and Oregon have decided to initiate gypsy moth eradication programs using *Bacillus thuringiensis (B.t.)*. Based on the evaluation of the Final Environmental Impact Statement, as Supplemented—1985 (EIS) and the site-specific environmental analysis prepared for the proposed treatment areas in Minnesota and Oregon, the Animal and Plant Health Inspection Service (APHIS) has determined that the proposed treatments pose no significant adverse impact on the environment of those areas and, accordingly, has decided to cooperate with the States of Minnesota and Oregon in gypsy moth eradication programs.

ADDRESSES: Copies of this site-specific environmental analysis prepared for the proposed treatment area(s) in Minnesota and Oregon are available for public inspection in a State office in the State where the analysis was conducted. Addresses of these State offices are as follows:

Minnesota Department of Agriculture, Division of Plant Industry, 90 West Plato Boulevard, St. Paul, Minnesota 55107;

Oregon Department of Agriculture, Plant Division, Agriculture Building, Salem, Oregon 97310.

Copies are also available for public inspection at the Field Operations Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 663, Federal Building, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Gary Moorehead, Staff Officer, Field Operations Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 663, Federal Building, Hyattsville, MD 20782, (301) 436-8295.

SUPPLEMENTARY INFORMATION: The final Environmental Impact Statement (FEIS), as supplemented 1985, on the Gypsy Moth Suppression and Eradication Projects was filed with the U.S. Environmental Protection Agency (EPA) on March 18, 1985. A notice was published in the **Federal Register** on February 18, 1986 (51 FR 5750-5751) announcing the availability of the final addendum to the FEIS. A notice was published in the **Federal Register** on April 7, 1986 (51 FR 11769) announcing that the Animal and Plant Health Inspection Service had decided to adopt Alternative 4, Integrated Pest Management (IPM), for gypsy moth eradication projects. The document of April 7, 1986, also stated that decisions concerning APHIS participation in cooperating with States on eradication projects will be on the basis of site-specific environmental analyses prepared for proposed treatment areas in the States in accordance with the National Environmental Policy Act (NEPA) regulations, APHIS guidelines implementing NEPA, and other applicable laws.

The States of Minnesota and Oregon have prepared a separate site-specific environmental analysis for proposed treatment areas in their States for 1986. The site-specific environmental analyses are available upon request (see "**ADDRESSES**"). Site-specific environmental analysis were prepared for each of the following proposed treatment areas:

Minnesota: approximately 225 acres in the city of Apple Valley;

Oregon: approximately 195,000 acres in the county of Lane, and approximately 5,000 acres in the county of Douglas.

Each site-specific environmental analysis discusses the environmental effects of the program for those areas that are proposed to be treated. Based on a review of these site-specific environmental analyses, it has been determined that there are no unique characteristics or aspects of or within the proposed treatment areas or any treatment options discussed for possible use in the site-specific environmental analysis that would place any of these areas or treatment options outside the scope of considerations addressed in the EIS.

Further, the Department has been notified by the State Departments of Agriculture for the States of Minnesota and Oregon that each of these States have decided to conduct aerial spray treatment programs using *B.t.* and appropriate other tools.

Based on the Department's review of the EIS and each site-specific analysis, and in accordance with the National Environmental Policy Act and the Department's EIS, the Department has decided to cooperate with the States of Minnesota and Oregon in the conduct of these programs.

The Organic Act of September 21, 1944, as amended (7 U.S.C. 147a), authorizes APHIS to cooperate with States to retard the artificial, long-range spread of the gypsy moth and to eradicate isolated infestations of the pest.

B.t., in accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136 *et. seq.*), are registered by the Environmental Protection Agency (EPA) for use against gypsy moth. They will be applied according to the label directions and APHIS operating procedures.

Done at Washington, D.C., this 30th day of April, 1986.

A. P. Ford,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 86-9994 Filed 5-2-86; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 85-042]

Interstate Transportation of Animals and Animal Products; Laboratories Approved To Conduct Official Pseudorabies Tests

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document gives notice of laboratories approved under the pseudorabies regulations (9 CFR Part 85) to conduct official pseudorabies tests.

FOR FURTHER INFORMATION CONTACT: Dr. L.W. Schnurrenberger, VS, APHIS, USDA, Room 820, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8487.

SUPPLEMENTARY INFORMATION:

The pseudorabies regulations (contained in 9 CFR Part 85 and referred to below as the regulations) include provisions concerning the use of official pseudorabies tests for determining the disease status of swine and certain other livestock. Under the regulations, a test may be designated as an official pesudorabies test if the test is approved by the Deputy Administrator of Veterinary Services (referred to below as the Deputy Administrator) and if the test is conducted in a laboratory approved by the Deputy Administrator.

Laboratories have been approved by the Deputy Administrator to conduct the Microtitration Serum-Virus Neutralization Test (referred to in the list below as SN), the Enzyme-Linked Immunosorbent Assay Test (referred to in the list below as ELISA), or both tests. The regulations also state that such approved laboratories will be listed in a Federal Register notice. Accordingly, this notice lists those laboratories which are approved by the Deputy Administrator and indicates the test or tests for which they are approved.

Laboratories Approved to Conduct Official Pseudorabies Tests

Alabama

Alabama Veterinary Diagnostic Laboratory, P.O. Box 2209, Auburn, AL 36830—SN

Arkansas

Arkansas Livestock and Poultry Commission, Diagnostic Laboratory, #1 Natural Resources Drive, Little Rock, AR 72205—SN

Arizona

Arizona Veterinary Diagnostic Laboratory, University of Arizona, Tucson, AZ 85721—SN

California

Department of Food and Agriculture, Veterinary Laboratory Services, 2789 South Orange Avenue, Fresno, CA 93725—SN

Colorado

College of Veterinary Medicine, Diagnostic Laboratory, Building 115, Colorado State University, Fort Collins, CO 80523—SN

Florida

Division of Animal Industry, Kissimmee Diagnostic Laboratory, P.O. Box 460, Kissimmee, FL 32741—SN

Georgia

College of Veterinary Medicine, Diagnostic Laboratory, University of Georgia, Athens, GA 30602—SN

Diagnostic Laboratory, University of Georgia, Tifton, GA 31794—SN and ELISA

Hawaii

Department of Agriculture, Veterinary Laboratory, 99-762 Moanalua Road, Aiea, HI 96701—SN

Idaho

Bureau of Animal Laboratories, 2230 Old Penitentiary Road, P.O. Box 7249, Boise, ID 83707—SN

Illinois

Illinois Department of Agriculture, Animal Disease Laboratory, P.O. Box 587, Shattuc Road, Centralia, IL 62801—SN or ELISA

Illinois Department of Agriculture, Animal Disease Laboratory, 1801 North Seminary Street, Galesburg, IL 61401—SN and ELISA

Indiana

Purdue Animal Disease Diagnostic Laboratory, West Lafayette, IN 47906—SN

Iowa

Veterinary Diagnostic Laboratory, Iowa State University, Ames, IA 50011—SN and ELISA

Kansas

Veterinary Diagnostic Laboratory, Veterinary Medical Science, Kansas State University, Manhattan, KS 66506—SN and ELISA

Kentucky

Murray State University Diagnostic Laboratory, North Drive, Hopkinsville, KY 42240—SN

Central Kentucky Animal Disease Diagnostic Laboratory, RR #6, Newton Pike, Lexington, KY 40505—SN

Louisiana

Louisiana Veterinary Medical Diagnostic Laboratory, School of Veterinary Medicine, Louisiana State University, Baton Rouge, LA 70803—SN

Maryland

Animal Health Laboratory, 4901 Calvert Road, College Park, MD 20740—SN

Michigan

Michigan Department of Agriculture Laboratory, Division, 1615 South Harrison Road, East Lansing, MI 48823—SN

Minnesota

College of Veterinary Medicine, University of Minnesota, St. Paul, MN 55108—SN

Mississippi

Veterinary Diagnostic Laboratory, 2531 North West Street, Jackson, MS 39216—SN

Missouri

Veterinary Medical Diagnostic Laboratory, College of Veterinary Medicine, University of Missouri, Columbia, MO 65201—SN and ELISA

Montana

Diagnostic Laboratory, State-Federal Bureau Laboratory, P.O. Box 997, Bozeman, MT 59715—SN

Nebraska

Veterinary Diagnostic Center, Department of Veterinary Service, Fair Street and East Campus Loop, University of Nebraska-Lincoln, Lincoln, NE 68503—SN and ELISA

New Jersey

State of New Jersey, Department of Agriculture, P.O. Box 1888, Trenton, NJ 08625—SN

New Mexico

New Mexico Veterinary Diagnostic Services, 700 Camino de Salud NE, Albuquerque, NM 87106—ELISA

New York

Diagnostic Laboratory, Cornell University, New York State Veterinary College at Cornell University, Box 786, Ithaca, NY 14850—SN and ELISA

North Carolina

Rollins Animal Disease Diagnostic Laboratory, Box 12223, Cameron Village Station, Raleigh, NC 27605—SN and ELISA

North Dakota

Department of Veterinary Science, North Dakota State University, Fargo, ND 58102—SN

Ohio

Ohio Department of Agriculture, Animal Disease Diagnostic Laboratory, 8995 East Main Street, Reynoldsburg, OH 43068—SN

Oklahoma

State-Federal Laboratory, 50 Northeast 23rd Street, Oklahoma City, OK 73105—SN and ELISA

Oklahoma Animal Disease Diagnostic Laboratory, College of Veterinary Medicine, Oklahoma State University, Stillwater, OK 74074—SN and ELISA

Oregon

Oregon State Veterinary Diagnostic Laboratory, Oregon State University, Corvallis, OR 97331—SN

State-Federal Laboratory, 635 Capitol Steet, NE, Salem, OR 97310—ELISA

Pennsylvania

Pennsylvania Department of Agriculture, Bureau of Animal Industry, Summerdale Laboratory, Box 1430, Harrisburg, PA 17105—SN and ELISA

South Carolina

Clemson University Livestock-Poultry Health Department, P.O. Box 218, Elgin, SC 29045—SN

South Dakota

Animal Disease Reseafch and Diagnostic Laboratory, Veterinary Science Department, South Dakota State University, Brookings, SD 57006—SN and ELISA

Tennessee

C.E. Kord Animal Disease Diagnostic Laboratory, Ellington Agricultural Center, Box 40627, Melrose Station, Nashville, TN 37204—SN

Texas

Texas Veterinary Medical Diagnostic Laboratory, Drawer 3040, College Station, TX 77841—SN

Texas A&M Veterinary Diagnostic Laboratory, S.B. Whittenburg Building, 6610 Amarillo Boulevard West, Amarillo, TX 79106—SN and ELISA

Utah

Utah State Veterinary Diagnostic Laboratory, Utah State University, Logan, UT 84321—SN

Virginia

Virginia Department of Agriculture, Animal Health and Diagnostic Laboratory, 1 North 14 Street, Room 161, Richmond, VA 23219—SN

Washington

Diagnostic Laboratory, College of Veterinary Medicine, Washington State University, Pullman, WA 99163—SN

Wisconsin

Central Animal Health Lab, 6101 Mineral Point Road, Madison, WI 53705—SN.

Dated: April 29, 1986.

Gerald J. Fichtner,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 86-9996 Filed 5-2-86; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Stabilization and Conservation Service

Virginia Sun-Cured, Maryland, Cigar-Filler (Type 41) and Cigar Binder (Types 51 and 52) Tobaccos; Referenda Results for 1986 Through 1988 Crops

ACTION: Notice of Results of Marketing Quota Referenda for 1986 Through 1988 Crops of Virginia Sun-Cured, Maryland, Cigar-Filler (Type 41) and Cigar Binder (Types 51 and 52) Tobaccos.

SUMMARY: This notice proclaims the results of marketing quota referenda for Virginia sun-cured, Maryland, cigar-filler (type 41), and cigar binder (types 51 and 52) tobaccos which were held during the period February 24 through February 27, 1986, in accordance with section 312(c) of the Agricultural Adjustment Act of 1938, as amended.

The referenda were conducted in order to determine whether producers of these kinds of tobacco favor or oppose marketing quotas. Since Virginia sun-cured tobacco producers did not disapprove national marketing quotas, such quotas will be in effect for the three marketing years 1986–1987, 1987–1988, and 1988–1989. Since Maryland, cigar-filler (type 41) and cigar binder (type 51 and 52) tobacco producers opposed national marketing quotas, such quotas will not be in effect for the three marketing years 1986–1987, 1987–1988, and 1988–1989.

EFFECTIVE DATE: May 5, 1986.

FOR FURTHER INFORMATION CONTACT: Donald M. Blythe, Tobacco and Peanuts Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, 20013, (202) 447–2715.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Secretary's Memorandum 1512–1 and has been classified "not major". This notice has been classified as "not major" since it will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or a geographic region; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of Federal Assistance Program to which this notice applies as set forth in the Catalog of Federal Domestic Assistance are: Title: Commodity Loan and Purchases; Number: 10.051.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice of determination since the Agricultural Stabilization and Conservation Service is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, Published at 48 FR 29115 (June 24, 1983).

On January 31, 1986, the Secretary of Agriculture announced that national marketing quotas would be in effect for Virginia sun-cured, Maryland, cigar-filler (type 41) and cigar binder (types 51 and 52) tobaccos for the three marketing years beginning on October 1, 1986, subject to approval by producers of each of these kinds of tobaccos in separate referenda.

During the period February 24 through February 27, 1986, referenda for Virginia sun-cured, Maryland, cigar-filler (type 41) and cigar binder (types 51 and 52) tobaccos were conducted. Section 312(c) of the 1938 Act provides that if more than one-third of such producers voting in the referenda oppose national marketing quotas such results shall be proclaimed by the Secretary and national marketing quotas shall not be in effect.

Since the only purpose of this notice is to announce the results of referenda, it is hereby determined that no further public rulemaking is required. Accordingly, the results of such referenda are set forth below:

Notice

Results of the national marketing quota referenda for the 1986 through 1988 crops Virginia sun-cured, Maryland, cigar-filler (type 41) and cigar binder types 51 and 52) tobaccos.

(1) Referenda period. The national marketing quota referenda for the 1986–1987, 1987–1988, and 1988–1989 marketing years for Virginia sun-cured, Maryland, cigar-filler (type 41) and cigar binder (types 51 and 52) tobaccos were held during the period February 24 through February 27, 1986, in accordance with 7 CFR Part 717.

(2) *Farmers Voting.* The following is a summary, by State, of the results of each referendum:

State	Yes	No	Total
VIRGINIA SUN-CURED [2]			
Virginia	96	5	101
Totals	96	5	101
MARYLAND [3]			
Maryland	202	641	843
Pennsylvania	20	191	211
Virginia	2	2	4
Totals	224	834	1,058
CIGAR-FILLER (TYPE 41) [4]			
Pennsylvania	46	296	342
Totals	46	296	342
CIGAR-BINDER (TYPES 51 AND 52) [5]			
Connecticut	1	59	60
Massachusetts	6	18	24
Totals	7	77	84

[2] Of those voting, 96 producers, or 95.05 percent, favored Virginia sun-cured tobacco marketing quota and 5 producers, or 4.95 percent, opposed quotas.

[3] Of those voting, 224 producers, or 21.17 percent, favored Maryland tobacco marketing quotas and 834 producers, or 78.83 percent, opposed quotas.

[4] Of those voting, 46 producers, or 13.45 percent, favored cigar-filler (type 41) tobacco marketing quotas and 296 producers, or 86.55 percent, opposed quotas.

[5] Of those voting, 7 producers or 8.33 percent favored cigar binder (types 51 and 52) tobacco marketing quotas and 77 producers, or 91.67 percent, opposed quotas.

(3) *Marketing quotas will be in effect for the 1986 through 1988 crops for Virginia sun-cured tobacco.* Since less than one-third of the producers of Virginia sun-cured tobacco voting in the referenda voted to disapprove marketing quotas and since the 1985–1986 marketing year is the last of three consecutive years for which marketing quotas previously proclaimed will be in effect, national marketing quota shall be in effect for Virginia sun-cured tobaccos for the marketing years 1986–1987, 1987–1988, and 1988–1989.

(4) *Marketing quotas will not be in effect for the 1986 through 1988 crops of Maryland, cigar-filler (type 41) and cigar binder (type 51 and 52) tobaccos.* Since more than one-third of the producers of Maryland, cigar-filler (type 41) and cigar binder (types 51 and 52) tobacco voting in the referenda opposed quotas, national marketing quotas shall not be in effect for Maryland, cigar-filler (type 41) and cigar binder (types 51 and 52) tobaccos for the marketing years 1986–1987, 1987–1988, and 1988–1989.

Authority: Secs. 312(c), 52 Stat. 46, as amended, 7 U.S.C. 1312(c).

Signed at Washington, DC, on April 29, 1986.

Milt Hertz,

Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 86–9993 Filed 5–2–86; 8:45 am]

BILLING CODE 3410–05–M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

April 28, 1986.

The USAF Scientific Advisory Board Ad Hoc Committee on Appropriate Air Force Technology efforts to Complement the Strategic Defense Initiative Program will meet at the Pentagon, Washington, DC, on May 19, 1986, from 1:30 pm to 5:00 pm and on May 20, 1986, from 8:00 am to 3:30 pm.

The purpose of the meeting will be for the Directed Energy Weapons (DEW) Subpanel to review and discuss Air Force space-related DEW programs.

The meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202–697–8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86–10045 Filed 5–2–86; 8:45 am]

BILLING CODE 3910–01–M

Department of the Air Force, USAF Scientific Advisory Board; Meeting

April 28, 1986.

The USAF Scientific Advisory Board Ad Hoc Committee on Appropriate Air Force Technology efforts to Complement the Strategic Defense Initiative Program will meet at the Pentagon, Washington, DC, on May 19, 1986, from 1:30 pm to 5:00 pm and on May 20, 1986, from 8:00 am to 3:30 pm.

The purpose of the meeting will be for the Directed Energy Weapons (DEW) Subpanel to review and discuss Air Force space-related DEW programs.

The meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202–697–8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86–10136 Filed 5–2–86; 8:45 am]

BILLING CODE 3910–01–M

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 the Committee: Army Science Board (ASB).

Dates of Meeting: Friday, 23 May 1986.

Times of Meeting: 0830–1630 hours.

Place: Pentagon (Room 2E715B), Washington, DC.

Agenda: The Army Science Board Ad Hoc Subgroup on Chemical/Biological Warfare Intelligence will meet for its initial meeting to discuss CBW intelligence research and development needs, intelligence gaps, and current analytic efforts in the CBW arena. 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 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 86–10011 Filed 5–2–86; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Thursday & Friday, 22–23 May 1986.

Times of Meeting: 0900–1700 (Thursday), 0800–1500 (Friday).

Place: Pentagon, Room 2E715B, Washington, DC 20310.

Agenda: The Army Science Board Ad Hoc Subgroup on Ballistic Missile Defense will meet for discussions on interactive discriminations study and targets for SDI test program. 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 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 86–10012 Filed 5–2–86; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Supplemental Environmental Impact Statement (DSEIS) for the Agana River Flood Control Improvements, Agana, Territory of Guam.

AGENCY: US Army Corps of Engineers, DOD Honolulu District.

ACTION: Notice of intent to prepare draft Supplemental Environmental Impact Statement (DSEIS).

SUMMARY: 1. The US Army District, Engineer, Honolulu is studying the feasibility of constructing flood control improvements of the Agana River, Territory of Guam. The purpose of the project is to eliminate the flooding problems which occur in Agana during heavy rains.

2. The Corps published a final Environmental Impact Statement (EIS) for the project in March 1977. This DSEIS will address impacts associated with changes to the project, and will

include new information developed since the original FEIS.

3. As part of the original EIS process, the Corps held meetings and workshops in Agana. They have participated with Government of Guam agencies in an additional workshop held in June 1985. Local interest groups, private organizations and parties, and Federal and local agencies have been contacted during the course of the study. At this time, the DSEIS will address the effects of the proposed changes to the project on fish and wildlife resources, historic sites, water resources, parks and social considerations identified by local residents at the public workshops. The U.S. Fish and Wildlife Service will provide their opinion of the project effects on fish and wildlife resources for inclusion in the DSEIS. Consultation with the US Advisory Council on Historic Preservation, National Park Service, Territorial Historic Preservation Officer, Guam Environmental Protection Agency, US Environmental Protection Agency, National Marine Fisheries Services, Guam Division of Aquatic and Wildlife Resources and the Guam Coastal Management Program will be competed during the study as appropriate.

4. Scoping meetings were held in 1984 and 1985 and additional meetings are not planned at this time.

5. The DSEIS will be made available for public review about May 15, 1986.

Questions about the proposed action and DSEIS can be answered by: Mr. James Pennaz, Project Manager, US Army Engineer District, Honolulu, Building T-1, Fort Shafter, Hawaii, 96858-5440. Telephone: (808) 438-1907.

Dated: April 18, 1986.

John O. Roach, II,

Army Liaison Officer with the Federal Register.

[FR Doc. 86-9991 Filed 5-2-86; 8:45 am]

BILLING CODE 3710-NN-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Proposed Variable Industrial Rate; Close of Comment Deadline

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of Close of Comment. *BPA File No.:* VI-86. BPA requests that all comments submitted in response to this notice contain the file number designation VI-86.

SUMMARY: On December 18, 1985, BPA published a notice of Proposed Variable Industrial Rate and Opportunity for Public Review and Comment in the **Federal Register** (FR 51577). The notice included a request for comments on the variable industrial rate proposal, and stated that a deadline for submitting comments to BPA would be announced in a subsequent published notice.

BPA is now announcing the close of comment date. Comments must be received by 5 p.m., May 16, 1986, in order to be considered and included in the Official Record on the development of the variable industrial rate. Address comments to Ms. Donna L. Geiger, BPA Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 98212.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen S. Johnson, Public Involvement office at the address above. Telehone numbers, voice/TTY, for the Public Involvement office are: 503-230-3478 in Portland; toll-free 800-452-8429 for Oregon outside of Portland; 800-547-6048 for Washington, Idaho, Montana, Wyoming, Utah, Nevada, and California.

Issued in Portland, Oregon, on April 24, 1986.

Peter T. Johnson,

Administrator.

[FR Doc. 86-10177 Filed 5-2-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER85-644-004 et al.]

Duke Power Co. et al.; Electric Rate and Corporate Regulation Filings

April 28, 1986.

Take notice that the following filing have been made with the Commission:

1. Duke Power Company

[Docket No. ER85-644-004]

Take notice that on April 23, 1986 Duke Power Company tendered for filing a refund report in compliance with the Commission's letter order date March 13, 1986. Refunds were made to Duke Power Company's wholesale customers.

Comment date: May 12, 1986, in accordance with Standard Paragraph H at the end of this notice.

2. New England Electric Transmission Corporation, Vermont Electric Transmission Company

[Docket No. ER86-421-000]

Taken notice that New England Electric Transmission Corporation (NEET), and Vermont Electric Transmission Company (VETCO) on April 24, 1986 tendered for filing executed amendments to two existing agreements relating to the transmission of electricity between Hydro-Quebec and the New England Power Pool.

The amendments are: (i) Amendment No. 3 to the Phase 1 Terminal Support Agreement between NEET and the participating New England utilities; and (ii) Amendment No. 3 to the Phase I Vermont Transmission Line Support Agreement between VECTO and the participating New England utilities. According to the applicants, the Amendments are necessary to (i) make changes and clarifications needed to prevent the loss of investment tax credits, and (ii) extend the initial terms of the agreement. The proposed effective date of the amendments is June 30, 1986.

Comment date: May 12, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. Kansas Gas and Electric

[Docket No. ER85-432-003]

Take notice that in April 21, 1986, Kansas Gas and Electric Company tendered for filing a report of refunds made to Chanute, Fredonia, and Iola, Kansas. The refund amount reflects the final settlement rates for Service Schedule E.

The refund amounts include interest from the date payment was received through April 18, 1986 at the appropriate interest rate.

Comment date: May 12, 1986, in accordance with Standard Paragraph H 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, NE., Washington D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

H. Any person desiring to be heard or to protest ths filing should file comments with the Federal Energy Regulatory Commission 825 North Capitol Street, NE., Washington, D.C. 20426, on or before the comment date. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on

file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-10006 Filed 5-2-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER86-418-000 et al.]

Electric Rate and Corporate Regulation Filings; Black Hills Corp. et al.

April 25, 1986.

Take notice that the following filings have been made with the Commission:

1. Black Hills Corporation dba Black Hills Power and Light Company

[Docket No. ER86-418-000]

Take Notice that Black Hills Corporation, doing business as Black Hills Power and Light Company (Black Hills) on April 21, 1986, tendered for filing an agreement between Black Hills and the City of Gillette, Wyoming which provides for an amendment and extension of Black Hills Rate Schedule FERC No. 28 and its Supplement No. 1 to provide for the continued sale of seasonal non-firm power and energy.

The reasons for the proposed changes are to extend the term until September 30, 1988, provide for the extension of the term for additional seasons, if not cancelled by either party, and provide rate changes which reflect the competitive market for non-firm power deliveries.

Copies of the filing were supplied to City of Gillette, Wyoming and the regulatory commissions of the states of Wyoming, South Dakota, and Montana.

Comment date: May 8, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Central Illinois Public Service Company

[Docket No. ER86-420]

Take notice that Central Illinois Public Service Company (Central Company) on April 21, 1986, tendered for filing an Interconnection Agreement dated June 1, 1986, and a Facilities Agreement dated October 1, 1982 and amended on November 1, 1985, between Central Illinois Public Service Company (Central Company) and Northern Indiana Public Service Company (Northern Company).

The Interconnection Agreement provides for coordinated interconnection operation including the interchange of Power and Energy under Service Schedule A, Emergency Service, Service Schedule B, Short Term Power Service Schedule C, Interchange Power, Service Schedule D, Coordination of Scheduled Maintenance of Generating Facilities, and Service Schedule E, Limited Term Power.

The Facilities Agreement and Amendment No. 1 cover a 138 KV interconnection being established between Central Company and Northern Company with an inservice date of June 1, 1986.

Copies of this filing have been sent to Northern Indiana Public Service Company, the Public Service Commission of Indiana and the Illinois Commerce Commission.

Comment date: May 8, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. Illinois Power Company

[Docket No. ER86-419-000]

Take notice that on April 21, 1986, Illinois Power Company ("Illinois Power") tendered for filing Amendment No. 16 dated April 1, 1986 to the Interconnection Agreement dated March 1, 1964 between Illinois Power and Commonwealth Edison Company ("Edison").

Amendment No. 16 incorporates a new Service Schedule F, Term Energy; replaced existing Service Schedule B, Interchange Power with a new Service Schedule B, Economy Energy and Service Schedule E, General Purpose Energy; amends Serivce Schedules A, Emergency Energy, C, Short-Term Power and D, Maintenance Energy to include specific energy charges when a third party is involved in the interchange transaction; and also amends Service Schedule C, Short-Term Power to include flexibility in the demand charge.

The parties request an effective date of June 15, 1986.

Illinois Power states that a copy of this filing was served upon Commonwealth Edison Company and the Illinois Commerce Commission.

Comment date: May 8, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. El Paso Electric Company

[Docket No. EC86-18-000]

Take notice that on April 21, 1986, El Paso Electric Company ("EPEC") filed, pursuant to Rule 207 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission") and section 204 of the Federal Power Act, a combined Petition for Order Disclaiming Jurisdiction and Application for Authorization of the Issuance of Securities and Assumption of Liabilities. In its Petition for Order Disclaiming Jurisdiction, EPEC requests that the Commission (i) issue an order disclaiming jurisdiction over a proposed sale and leaseback of up to all of EPEC's undivided ownership interest in Unit 2 at the Palo Verde Nuclear Generating Station ("PVNGS") and up to all or a proportionate share of EPEC's interest in one-third of certain of the common facilities at PVNGS (the "PVNGS Unit 2 Facilities") for the reason that the PNGS Unit 2 Facilities are nonjurisdictional generating facilities and (ii) issue an order disclaiming jurisdiction over the proposed institutional investors, who would be owner participants under the lease documents (the "Equity Investors") and owner trustees (the "Lessors") of the PVNGS Unit 2 Facilities and determining that the Equity Investors and the Lessors will not, as a result of their acquiring an ownership interest in PVNGS or the leaseback of such interest to EPEC, become "public utilities" as that term is defined in section 201(e) of the Federal Power Act. In its petition, EPEC states that the Equity Investors and the Lessors of the PVNGS Unit 2 Facilities will purchase and leaseback such Facilities solely as an investment and that the Equity Investors and the Lessors will assert no operating control over the PVNGS Unit 2 Facilities and that such Facilities will be used for the same purposes as previously by EPEC.

In its Application under section 204 of the Federal Power Act for Authorization of the Issuance of Securities and Assumption of Liabilities, EPEC seeks authorization from the Commission to issue securities and assume obligations and liabilities in connection with the proposed sale and leaseback transactions.

EPEC is an electric utility incorporated and existing under the laws of the State of Texas, with its principal place of business at 303 North Oregon Street, El Paso, Texas 79901. It is authorized to transact business as a foreign corporation in the State of New Mexico adn Arizona. EPEC owns a 15.8% undivided ownership interest in the PVNGS Unit 2 Facilities.

Under the construction and completion schedule established for PVNGS Unit 2, Unit 2 is expected to be synchronized with EPEC's main transmission grid on or about April 29, 1986. The purchase price for the PVNGS Unit 2 Facilities is estimated at up to approximately $700,000,000. EPEC requests that the Commission issue its orders and authorizations in this proceeding on or before June 15, 1986 in order for the proposed transactions to be closed on or before July 15, 1986.

Comment date: May 8, 1986, in accordance with Standard Paragraph E at the end of this notice.

5. Western Massachusetts Electric Company

[Docket No. ER86-416-000]

Take notice that on April 18, 1986, Western Massachusetts Electric Company (WMECO) tendered for filing Notices of Termination of the folloiwng rate schedules:

Purchase Agreement With Respect to Doreen and Woodland Road Gas Turbine Units between Western Massachusetts Electric Company and Vermont Electric Generation and Transmission Cooperative, Inc. ("VEG&T"), effective date November 1, 1982 (WMEC) rate schedule number 212).

Agreement With Respect to Gas Turbine Units located at Doreen and Woodland Road Substations between Western Massachusetts Electric Company and Vermont Electric Generation and Transmission Cooperative, Inc., effective date December 1, 1982 (WMEC rate schedule number 219).

Comment date: May 6, 1986, in accordance with Standard Paragraph E at the end of this notice.

6. Tampa Electric Company

[Docket No. ER86-294-000]

Take notice that on February 11, 1986, Tampa Electric Company (Tampa Electric) tendered for filing Service Schedule J providing for negotiated interchange service between Tampa Electric and Florida Power Corporation (Florida Power). Tampa Electric submitted Service Schedule J for inclusion as a supplement under the existing contract for interchange service between Tampa Electric and Florida Power, designated as Tampa Electric's Rate Schedule FPC No. 6, and Florida Power's Rate Schedule FPC No. 80. Tampa Electric's filing includes a Certificate of Concurrence submitted by Florida Power in lieu of an independent filing.

Tampa Electric also tendered for filing, as a supplement to the Service Schedule J under its rate schedule, a Letter of Commitment providing for the sale by Tampa Electric to Florida Power of energy from up to 300 megawatts of reserved, coal-fired capacity. On April 21, 1986, Tampa Electric tendered for filing supplemental information with respect to the reservation charge under the Letter of Commitment.

Tampa Electric proposes an effective date of February 6, 1986 for the Service Schedule J and Letter of Commitment, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing, as amended, have been served on Florida Power and the Florida Public Service Commission.

Comment date: May 8, 1986, 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, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-9967 Filed 5-2-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP86-441-000 et al.]

Natural Gas Certificate Filings; Northwest Pipeline Corp. et al.

Take notice that the followings filings have been made with the Commission:

1. Northwest Pipeline Corporation

[Docket No. CP86-441-000]

April 24, 1986.

Take notice that on April 14, 1986, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP86-441-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate certain natural gas facilities for the sale and delivery of natural gas to The Washington Water Power Company (WWP), an existing customer of Northwest's under the certificate issued to Northwest in Docket No. CP82-433-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

It is stated that Northwest proposes to provide an additional 6-inch tap on its 16-inch Spokane sales lateral adjacent to an existing WWP sales delivery point, the Kettle Falls meter station.

Northwest further states that in maintaining various mainline facilities along the Spokane lateral, it plans to install a 16-inch block value adjacent to the existing Kettle Falls Tap which would permit isolation of that segment of the pipeline. Northwest says the Spokane lateral has gas supply inputs at both ends. It is explained that the proposed tap would be located on the opposite side of the block valve from the existing tap thus enabling Northwest to provide back-up service to the Kettle Falls meter station should the block valve be closed due to line failure or maintenance requirements in the segment of the pipeline serving the existing tap. Northwest states it would pay for all construction costs associated with the tap. Northwest estimates that the total cost of the proposed construction would be approximately $12,800, including the Commission filing fee.

Northwest intends to provide firm service to the proposed tap by utilizing quantities of natural gas presently authorized for sale and delivery to WWP at the Kettle Falls meter station, under the existing ODL-1 Rate Schedule now in effect.

Northwest states that the proposed service is conditioned upon the availability of pipeline capacity sufficient to provide such service without detriment or disadvantage to Northwest's existing customers who are dependent on Northwest's general system supply.

Comment date: June 9, 1986, in accordance with Standard Paragraph G at the end of this notice.

2. Northern Natural Gas Company, Division of InterNorth, Inc.

[Docket No. CP86-435-000]

April 25, 1986.

Take notice that on April 11, 1986, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street Omaha, Nebraska 68102, filed in Docket No. CP86-435-000 an application pursuant to section 7(c) of the Natural Gas Act and § 284.221 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of others, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern states that it intends to transport natural gas on behalf of shippers and elects to become a transporter under the terms and conditions of the Commission's Order No. 436, in Docket No. RM85-1, as

amended. Northern states that it accepts and will comply with the conditions in paragraph (c) of § 284.221, which paragraph references Subpart A of Part 284 of the Commission's Regulations. Northern notes that its transportation rates to be charged under Part 284 of the Commission's Regulations are set forth in the stipulation and agreement as filed in Docket No. RP85–206–000 currently pending before the Commission. Northern further states that acceptance of a blanket certificate would be contingent upon the Commission's approval of the stipulation and agreement as filed in Docket No. RP85–206–000.

Comment date: May 20, 1986, in accordance with Standard Paragraph F at the end of this notice.

3. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP86–443–000]

April 24, 1986.

Take notice that on April 14, 1986, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP86–443–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Olin Corporation (Olin), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee requests authorization to transport up to 32 billion Btu equivalent of natural gas per day on an interruptible basis for Olin. Tennessee states that the gas to be transported is produced from reserves located within Louisiana which Olin has the right to purchase. Tennessee proposes to receive these quantities for the account of Olin at the tailgate of the Acadia processing plant, Acadia Parish, Louisiana (Acadia), and the existing interconnections between the facilities of Tennessee and United Gas Pipe Line Company at Tennessee's Meter No. 2–0391 in Jefferson Davis Parish, Louisiana (Iowa), at Tennessee's Meter No. 1–0864 in Ouachita Parish, Louisiana (West Monroe), at Tennessee's Meter No. 2–0500 in St. Mary's Parish, Louisiana (Centerville), and at Tennessee's Meter No. 2–0538 in Terrebonne Parish, Louisiana (Lirette). Tennessee states that it would, in turn, transport and deliver thermally equivalent quantities of gas, less any quantities retained for Tennessee's fuel and uses and gas lost and unaccounted for, to Olin at a point of delivery located at the Gabe extraction plant, in Gabe, Kentucky (Gabe). Tennessee states that it would have the right but not the obligation to accept quantities of gas in excess of the transportation quantity, provided that such excess quantity not exceed 25 percent of the 32 billion Btu transportation quantity.

Tennessee proposes to charge a rate for this transportation service consisting of the following charges:

Point of receipt	Rate per million btu's (cents)	GRI (cents)	Fuel percent
Acadia	32.72	1.32	3.31
Iowa	32.72	1.32	3.31
West Monroe	24.68	1.32	2.53
Centerville	32.72	1.32	3.31
Lirette	32.72	1.32	3.31

Tennessee states that the applicable rate, indicated above, plus the applicable GRI surcharge, would be multiplied by the total quantity of million Btu's of gas delivered by Tennessee for the account of Olin during the month. Tennessee further states that Olin would provide to Tennessee, at no cost to Tennessee, a daily quantity in million Btu's of gas for Tennessee's system fuel and uses and gas lost and unaccounted for equal to the applicable percentage indicated above. Tennessee states that it may, at its sole option, elect to provide the applicable fuel quantities to Olin at Tennessee's weighted average cost of gas.

Tennessee explains that Olin's Doe Run Plant, an organic chemicals plant at Brandenburg, Kentucky, was built and historically operated using as its raw materials low cost ethane and higher hydrocarbons extracted by Tennessee at Tennessee's stripping plant near Gabe, Kentucky. Tennessee asserts that the continued viability of the Gabe plant as a source of ethane depends on access to lower priced gas available on the spot market and the ability to have that gas transported to Gabe.

Comment date: May 16, 1986, in accordance with Standard Paragraph F at the end of this notice.

4. Southern Natural Gas Company

[Docket No. CP86–432–000]

April 25, 1986.

Take notice that on April 10, 1986, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP86–432–000 an application pursuant to section 7 of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing the transportation of natural gas for Alabama Gas Corporation (Alagasco), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern proposes to transport up to 17 billion Btu of natural gas per day for Alagasco, as agent for Gulf States Steel (Gulf States), on an interruptible basis, for a one-year term. It is indicated that Gulf States would purchase the gas from Consolidated Fuel Supply, Inc. (Consolidated) for its Gadsden, Alabama, plant. Southern states that it would receive the gas for the account of Alagasco at various existing points on Southern's contiguous pipeline system. Southern proposes to redeliver equivalent volumes of gas, less 3.25 percent for fuel and company-use gas, at an existing delivery point to Alagasco at the Gadsden area delivery point.

Southern proposes to charge Alagasco a transportation rate of 39.9 cents per million Btu where the aggregate of the volumes transported by Southern for Alagasco under any and all transportation agreements between Southern and Alagsco, when added to the volumes delivered under Southern's Rate Schedule OCD, does not exceed Alagasco's daily contract demand from Southern. For those volumes that exceed Alagasco's daily contract demand, Southern proposes to charge 64.9 cents per million Btu. In addition Southern proposes to collect the GRI surcharge of 1.35 cents per Mcf.

Southern also requests flexible authority to add delivery points in the event that Gulf States obtains alternative sources of supply of natural gas. It is stated that the redelivery point, the recipient, and the maximum daily transportation volume would remain unchanged. It is further stated that providing certain information with regard to the addition of any delivery points.

Southern states that the transportation arrangement would enable Gulf States to diversify its natural gas supply sources and to obtain gas at competitive prices. In addition, it is indicated that Southern would obtain take-or-pay relief on all volumes transportation pursuant to the agreement.

Comment date: May 16, 1986, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Regulatory Commission, 825 North Capitol Street, NE., 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 385.211 and 385.214) 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 jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules and Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-9969 Filed 5-2-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID 2218-000]

Robert E. Boardman; Notice of Application

April 28, 1986.

Take notice that on April 21, 1986, Robert E. Boardman filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Director, Green Mountain Power Corporation

Director, National Life Insurance Company

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, D.C. 20426, in accordance with the Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before 5/12/86. 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-10004 Filed 5-2-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-8-003, et al.]

Canyon Creek Compression Co., et al.; Filing of Pipeline Refund Reports and Refund Plans

April 25, 1986.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports or refund plans. The date of filing, docket number, and type of filing are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports and plans. All such comments should be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before May 12, 1986. Copies of the respective filings are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

APPENDIX

Filing date	Company	Docket No.	Type filing
12/26/85	Canyon Creek Compression Co.	RP85-8-003	Report.
12/30/85	Lawrenceburg Gas Transmission Corp.	RP78-37-016	Do.
2/25/86	Inter-City Minnesota Pipelines, Ltd.	RP85-152-003	Do.
4/14/86	South Georgia Natural Gas Co.	RP73-49-007	Do.
4/21/86	Lawrenceburg Gas Transmission Corp.	RP78-37-017	Do.

[FR Doc. 86-9963 Filed 5-2-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-54-001]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

April 25, 1986.

Take notice that Florida Gas Transmission (FGT) on April 23, 1986, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets:

Substitute Original Sheet No. 50A

Substitute Original Sheet No. 50B

The above listed tariff sheets are being filed pursuant to the Commission's order issued March 28, 1986 accepting and suspending subject to refund and conditions, the proposed tariff sheets filed on February 28, 1986 in Docket No. RP86-54-000. FGT states these tariff sheets are in full compliance with the Commission's order of March 28, 1986. The proposed effective date is April 1, 1986, the date previously approved by the Commission.

Copies of the filing were served on FGT's jurisdictional customers, interested state commissions and parties on the official service list in the instant docket.

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, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before May 2, 1986. 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 Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-9964 Filed 5-2-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-11815-000, et al.]

Marathon Oil Co. (Operator), et al.; Application for Certificates, Abandonments of Service and Petitions to Amend Certificates [1]

April 25, 1986.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before May 13, 1986, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price Per Mcf	Pressure base
G-11815-000, E, Apr. 10, 1986	Marathon Oil Company (Operator), P.O. Box 3128, Houston, Texas 77253.	Transcontinental Gas Pipe Line Corp., North Markham-North Bay City Field, Matagorda County, Texas.	(1)	
G-14143-002, D, Apr. 14, 1986	Sun Exploration & Production Co., P.O. Box 2880, Dallas Texas 75221-2880.	Northern Natural Gas Company, Northeast Glenwood Field, Beaver County, Oklahoma.	(2)	
G-16134-000, D, Apr. 14, 1986	....do	Natural Gas Pipeline Company of America, Guymon-Hugoton Field, Beaver County, Oklahoma.	(3)	
CI-62-387-000, D, Apr. 14, 1986	....do	Arkansas Louisiana Gas Company, Vixen Field, Caldwell Parish, Louisiana.	(4)	
CI63-1407-002, D, Apr. 14, 1986	....do	Kansas-Nebraska Natural Gas Co., Inc., Various Fields, Hamilton County, Kansas.	(5)	
CI65-1327-004, D, Apr. 14, 1986	....do	ANR Pipeline Company, Mocane-Laverne Gas Area Field, Harper County, Oklahoma.	(5)	
CI66-470-007, D, Apr. 14, 1986	....do	Arkla Energy Resources, South Bokoshe Field, Le-Flore County, Oklahoma.	(6)	
CI67-230-001, D, Apr. 14, 1986	....do	Trunkline Gas Company, Shoats Creek Field, Beauregard Parish, Louisiana.	(7)	
CI67-557-001, D, Mar. 17, 1986	ARCO Oil & Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, Texas 75221.	Trunkline Gas Company, East Lake Arthur Field, Jefferson Davis Parish, Louisiana.	(8)	
CI68-1435-000, Feb. 1, 1985	Diamond Shamrock Exploration Company, et al	Arkla Energy Resources, a division of Arkla, Inc., Coronado "A" No. 1 well, Pittsburgh County, Oklahoma.	(9)	
CI71-825-001, D, Apr. 14, 1986	Sun Exploration & Production Co.	Arkansas Louisiana Gas Company, Witcherville Field, Sebastian County, Arkansas.	(10)	
CI75-171-001, D, Apr. 11, 1986	ARCO Oil & Gas Company, Division of Atlantic Richfield Company.	Tennessee Gas Pipeline Company, East Gueydon Field, Vermilion Parish, Louisiana.	(8)	
CI83G-305-001, D, Apr. 10, 1986	Texaco Inc., P.O. Box 52332, Houston, Texas 77052.	Bridgeline Gas Distribution Co., Vermilion Blocks 30, 12 & 29, and certain portions of OCS-G-0310, Offshore Louisiana.	(11)	
CI86-320-000 (CI84-129-000), B, Apr. 4, 1986.	Matagorda Island Development Corp., P.O. Box 1330, Houston, Texas 77251-1330.	Amoco Gas Company, Matagorda Island Block 623, Offshore Texas.	(12)	
CI86-321-000 (CI75-95), B, Apr. 8, 1986.	Diamond Shamrock Exploration Co., LTV Center—Suite 1500, 2001 Ross Avenue, Dallas, Texas 75201.	Transcontinental Gas Pipe Line Corp., State Tract 22-L, Jefferson County, Offshore Texas.	(13)	
CI86-322-000 (CI69-25), B, Apr. 8, 1986.	....do	Transcontinental Gas Pipe Line Corp., Midland Field, Acadia Parish, Louisiana.	(14)	
CI86-323-000, F, Apr. 9, 1986	ARCO Oil & Gas Company, Division of Atlantic Richfield Company (Partial Succ. to Sun Exploration & Production Co.), P.O. Box 2819, Dallas, Texas 75221.	Michigan Wisconsin Pipeline Company, Zoldoske Unit, Lizzie E. Howell Unit, Harper County, Oklahoma.	(15)	
CI86-327-000, B, Apr. 9, 1986	Darrell G. Goe	Consolidated Gas Supply, Albion Field, Erie County, Pennsylvania.	(16)	
CI86-328-000, B, Apr. 9, 1986	Darrell Goe, Dodds, et al	....do	(16)	
CI86-329-000, B, Apr. 9, 1986	....do	....do	(16)	
CI86-330-000, B, Apr. 9, 1986	Darrell G. Goe	....do	(16)	
CI86-331-000, B, Apr. 9 1986	....do	....do	(16)	
CI86-332-000 (G-6683), B, Apr. 10, 1986.	Union Texas Petroleum Corp., P.O. Box 2120, Houston, Texas 77252-2120.	Texas Eastern Transmission Corporation, Fain-Beck Unit, San Domingo Field, Bee County, Texas.	(17)	
CI86-333-000 (CI75-575), B, Apr. 14, 1986.	....do	Northern Natural Gas Company, Louise Field, Gaines County, Texas.	(18)	
CI86-334-000 (CI62-1395), B, Apr. 14, 1986.	Triton Oil & Gas Corp., 1000 Two Energy Square, 4849 Greenville Avenue, Dallas, Texas 75206.	Texas Gas Transmission Corporation, Chacahoula Field, LaFourche Parish, Louisiana.	(19)	
CI86-335-000, B, Apr. 14, 1986	Ran Ricks, Jr. & George B. Kaiser, 5600 N. May—Suite 350, Oklahoma City, Okla. 73112.	Panhandle Eastern Pipeline Company, Oakdale Field, Woods County, Oklahoma.	(20)	
CI86-336-000 (CI78-564), B, Apr. 14, 1986.	Cities Service Oil and Gas Corp., P.O. Box 300, Tulsa, Okla. 74102.	Northern Natural Gas Company, Overocker Field, Comanche County, Kansas.	(21)	
CI86-337-000 (CI62-387), B, Apr. 14, 1986.	Sun Exploration & Production Co., P.O. Box 2880, Dallas, Texas 75221-2880.	Arkansas Louisiana Gas Company, Vixen Field, Caldwell Parish, Louisiana.	(4)	
G-12334-000, CI84-202-005, D, Apr. 16, 1986.	Phillips Petroleum Company, 336 HS&L Bldg., Bartlesville, Okla. 74004.	Southern Natural Gas Company, Eloi Bay Field Bernard Parish, Louisiana.	(22)	

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price Per Mcf	Pressure base
G-4690-000, D, Apr. 21, 1986	ARCO Oil & Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, Texas 75221.	Arkansas Louisiana Gas Company, Sentell Field, Bossier Parish, Louisiana.	([9])	
G-5013-002, D, Apr. 17, 1986	Shell Western E&P Inc., *et al.*, P.O. Box 4684, Houston, Texas 77210.	El Paso Natural Gas Company, Wasson (San Andres) Field, Gaines and Yoakum Counties, Texas.	([23])	
G-6837-001, D, Apr. 21, 1986	Sun Exploration & Production Co.	Tennessee Gas Pipeline Company, Grand Chenier & Midland Fields, Cameron and Acadia Parishes, Louisiana.	([24])	
G-14348-001, D, Apr. 17, 1986	Shell Western E&P Inc.	West Texas Gathering Company, Emperor Field, Winkler County, Texas.	([25])	
G-17520-000, D Apr. 17, 1986	Conoco Inc., P.O. Box 2197 Houston, Texas 77252	Southern Natural Gas Company, North Bayou Long Field, Iberia Parish, Louisiana.	([26])	
CI68-197-000, D, Apr. 21, 1986	ARCO Oil & Gas Company, Division of Atlantic Richfield Company.	Southern Natural Gas Company, Bayou Gentilly Field, Plaquemines Parish, Louisiana.	([8])	
CI75-353-001, D, Apr. 21, 1986	Sun Exploration & Production Co.	Transcontinental Gas Pipe Line Corp., Live Oak Field, Vermilion Parish, Louisiana.	([8])	
CI86-338-000, A, Apr. 16, 1986	Matagorda Island Development Corp., P.O. Box 1330, Houston, Texas 77251-1330.	Texas Eastern Transmission Corporation, Matagorda Island Block 623 (OCS-G3088), Offshore Texas.	([27])	
CI86-367-000, B, Apr. 17, 1986	Shell Western E&P Inc.	Texas Transmission Corporation Sligo Field, Bossier Parish, Louisiana.	([28])	

[1] By Partial Assignment and Bill of Sale executed 1-13-86, effective 12-1-85, Sun Exploration and Production Company assigned all of its interest in the Ohio-Sun Unit to Marathon Oil Company.
[3] Property sold to Oilsearch Corporation.
[5] Property sold to Vernon E. Faulconer, Inc.
[4] Property sold to Combined Resources Corporation.
[5] Property sold to Childress Royalty Company.
[6] Property sold to Kaiser-Francis Oil Company.
[7] Property sold to Source Petroleum, Inc.
[8] Deletion of acreage. Leases have been released and ARCO no longer owns an interest in acreage to be deleted.
[9] By Assignment effective 10-1-73, Diamond Shamrock assigned acreage to RPL Oil Company, small producer certificate holder in Docket No. CS84-41.
[10] Property sold to Thomas C. Mueller Oil & Gas.
[11] Federal Lease OCS-G-5398 (Vermilion Blocks 12 & 29) was released on 12-31-85, when no longer deemed to be capable of producing gas in paying quantities.
[12] Pursuant to Article XII, Paragraph F of the Agreement dated 10-12-83, MIDCO elected to terminate the Agreement as of 6-15-86 due to Amoco's imposition of an unacceptable alternate price as well as a lack of concurrence as to the construction of certain key contractual provisions, particularly, the market-tracking pricing mechanism.
[13] Gas depleted and wells were plugged and abandoned in August 1985. The Contract has been terminated effective 2-14-86.
[14] Gas depleted and the Contract has been terminated effective 1-27-86.
[15] Applicant acquired certain interests in the Lizzie E. Howell Unit and Zoldoske Unit from Sun Exploration and Production Company, under two instruments entitled "Partial Assignment and Bill of Sale" executed on 10-17-85, effective 6-1-85.
[16] Not economically feasible to produce at this rate.
[17] Effective 2-13-86 applicant assigned its interest in the leases and wells dedicated to the contract filed in Docket No. G-6683 to Mr. W. S. (Bill) Chesnutt.
[18] Contract Expired 1-19-85. There have been no deliveries of gas to the purchaser since January 1983. Purchaser removed sales meter in May 1985. No gas production from fields dedicated to the contract and rate schedule is anticipated.
[19] The natural gas reserves are depleted to the extent that continuance of service is unwarranted.
[20] To market gas to Union Texas Petroleum in order to increase sale volumes. Due to oversupply of gas, Panhandle Eastern has been unable to market gas at an acceptable rate.
[21] By Assignment of Oil and Gas Lease and Bill of Sale effective 7-15-85, Cities Service Oil and Gas Corporation sold and assigned to W. L. Kirkman, Inc., all of its interest in the Hinkhouse A Lease, Comanche County, Kansas, Lease No. 6-1547404, limited to the Morrow Formation.
[22] Phillips Petroleum Company assigned its interest in a portion of State Lease Nos. 2220 and 2221, and in TIPCO Lease No. LA 622-01, and State Lease No. 11423 to TIPCO Offshore Development by assignment dated 11-15-85.
[23] The wells contain a heavy concentration of carbon dioxide.
[24] Property sold to Delaware Royalty Company, Inc.,
[25] A portion of Shell Western E&P Inc. acreage, has been assigned to BILL C. Cotner dba Meadco Properties effective 11-1-85.
[26] Partial surrender of acreage back to lessor(s).
[27] Applicant is filing under Gas Purchase Contract dated 2-26-85.
[28] All acreage has been assigned to Rosewood Resources Inc.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 86-9968 Filed 5-2-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP86-68-000]

Northwest Central Pipeline Corp.; Proposed Changes in FERC Gas Tariff

April 25, 1986.

Take notice that on April 22, 1986 Northwest Central Pipeline Corporation (Northwest Central) tendered for filing Eighth Revised Sheet No. 6 to Original Volume No. 1 and Second Revised Sheet No. 2A, Second Revised Sheet No. 91 and Second Revised Sheet No. 219 to Original Volume No. 2 of its FERC Gas Tariff. The proposed effective date of these revised tariff sheets is May 23, 1986.

Northwest Central states that the filing proposes a change in its currently effective rates which would result in an increase in annual revenues of approximately $25.3 million, inclusive of transportation and gathering services, based on the test period (the twelve months ended December 31, 1985, adjusted for known changes through September 30, 1986). Northwest Central states that the increased rates are required to reflect an overall rate of return of 14.61 percent, increases in administrative and general expenses and a decline in sales volumes.

Northwest Central also states that Second Revised Sheet No. 2A reflects an increase in the presently effective Rate Schedule T-1 interruptible transportation rates, and Second Revised Sheet Nos. 91 and 219 reflect an increase in the gathering rate in Rate Schedule X-12 and X-21. Further, the Company indicates that the new Rate Schedule T-1 rates have been designed in accord with 18 CFR 284.7, promulgated in Order Nos. 436, *et seq.*, so as to permit the continuation on the Company's system of certain "grandfathered" transportation.

Northwest Central states that this filing was served on each of its customers and affected state commissions pursuant to § 154.16(b) of the Commission's Regulations.

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, 385.214). All such motions or protests should be filed on or before May 2, 1986. 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.

Kenneth F. Plumb

Secretary.

[FR Doc. 86-9965 Filed 5-2-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP86-428-000]

Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

Applications; April 24, 1986.

Take notice that on April 9, 1986, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP86-438-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Tenngasco Corporation (Tenngasco), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee requests authorization to transport up to 32 billion Btu equivalent of natural gas per day on an interruptible basis for Tenngasco, as agent for Olin Corporation (Olin), pursuant to the terms of a gas transportation agreement dated April 4, 1986. Tennessee states that, in those instances where interim transportation agreements are not utilized, Tennessee would receive the natural gas from Tenngasco at various receipt points upstream of its station 95 (see appendix [1]) and would deliver a thermally equivalent quantity of gas, less quantities for Tennessee's fuel and uses, gas lost and unaccounted for, and plant thermal reduction due to processing, to Tenngasco at the Gabe delivery point. It is stated that, where interim transportation agreements are utilized, Tennessee would receive the natural gas from Tenngasco at the receipt points and would transport an equivalent quantity to the interim delivery points set forth in the agreement with Tenngasco. Tennessee requests the right but not the obligation to accept quantities of gas in excess of the proposed 32 billion Btu but not to exceed 25 percent of the 32 billion Btu transportation quantity. Tennessee states that Tenngasco would provide to Tennessee, at no cost to Tennessee, a daily quantity of gas for Tennessee's system fuel and uses and gas lost and unaccounted for.

Tennessee proposes to charge for this transportation service the product of the rate set forth in the appendix hereto and the total million Btu of gas delivered by Tennessee for the account of Tenngasco during the month from each source. Tennessee also proposes to charge Tenngasco a GRI surcharge of 1.32 cents per million Btu of gas delivered to the Gabe delivery point.

Tennessee states that it would accept the associated liquid hydrocarbons (exclusive of oil) produced with the transportation quantity, when applicable, and transport and deliver such liquid hydrocarbons for the account of Tenngasco or to Tenngasco's producers' separation and storage facilities. Tennessee proposes to charge Tenngasco for the transportation of liquids the applicable charges set forth in the appendix hereto. Tennessee states that it may, at its sole option, elect to provide the applicable fuel quantities to Olin at Tennessee's weighted average cost of gas. Tennessee further states that it would charge for plant thermal reduction (PTR), when applicable, a rate equal to that specified in the appendix multiplied by the total million Btu for PTR delivered.

Tennessee explains that Olin's Doe Run plant, an organic chemical plant at Brandenburg, Kentucky, was built and historically operated using as its raw materials low cost ethane and higher hydrocarbons extracted by Tennessee at Tennessee's stripping plant near Gabe, Kentucky. Tennessee asserts that the continued viability of the Gabe plant as a source of ethane depends on access to lower priced gas available on the spot market and the ability to have that gas transported to Gabe.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 16, 1986, 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 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 is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Tennessee to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-10005 Filed 5-2-86; 8:45 am]

BILLING CODE 6717-01-M

[1] The appendix is available from the Commission's Division of Public Information.

[Docket No. RP86-53-001]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

April 25, 1986.

Take notice that Transwestern Pipeline Company (Transwestern) on April 23, 1986, tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Substitute First Revised Sheet No. 76D
Substitute Original Sheet No. 76E

The above listed tariff sheets are being filed pursuant to the Commission's order issued March 28, 1986 accepting and suspending subject to refund and conditions, the proposed tariff sheets filed on February 28, 1986 in Docket No. RP86-53-000. Transwestern states these tariff are in full compliance with the Commission's order of March 28, 1986. The proposed effective date is April 1, 1986, the date previously approved by the Commission.

Copies of the filing were served on Transwestern's jurisdictional customers, interested state commissions and parties on the official service list in the instant docket.

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. All such motions or protests should be filed on or before May 2, 1986. 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.

Kenneth F. Plumb,

Secretary.

[FR. Doc. 9966 Filed 5-2-86; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures and solicitation of comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the disposition of $748,515.01 in court-ordered settlement funds obtained from Southland Royalty Company, a crude oil producer. This money is being held in escrow following the settlement of litigation involving Southland Royalty Company and the Department of Energy.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the Federal Register and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585. All comments should conspicuously display a reference to case number HEF-0582.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Dependence Avenue, S.W. Washington, D.C. 20585.

SUPPLEMENTARY INFORMATION: In accordance with the procedural regulations of the Department of Energy (DOE), 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision concerns funds obtained as a result of a December 5, 1984 Agreed Final Judgment entered by the United States District Court for the Western District of Oklahoma in settlement of litigation between Southland Royalty Company and the DOE. In that litigation, Southland challenged the DOE's interpretation of the "newly discovered crude oil" regulations.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to dispose of the contents of an escrow account funded by the firm pursuant to the court order. The decision proposes to place the money into a pool of crude oil moneys pursuant to the DOE's Statement of Restitutionary Policy for crude oil claims. *See* 50 FR 27400 (1985), Fed. Energy Guidelines ¶ 90,508 (1985).

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday thorugh Friday, except Federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, Independence Avenue SW., Washington, D.C. 20585.

Dated: April 22, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

April 22, 1986

Name of Firm: Southland Royalty Company

Date of Filing: May 10, 1985

Case Number: HEF-0582

Pursuant to the procedural regulations of the Department of Energy (DOE), 10 CFR Part 205, Subpart V, the Economic Regulatory Administration (ERA) filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) in connection with a court order involving Southland Royalty Company (hereinafter referred to as Southland). The petition requests that OHA formulate and implement procedures to distribute funds obtained pursuant to the court order to remedy the effects of alleged violations of DOE regulations. Pursuant to the order, Southland remitted $748,515.01 in principal and interest to the DOE as restitution for violations of the DOE pricing and certification regulations. Those funds are being held in an interest-bearing escrow account under the jurisdiction of the DOE pending receipt of instructions from the OHA regarding their final distribution.

I. Jurisdiction

The Subpart V regulations set forth general guidelines by which the OHA may formulate and implement a plan to distribute funds received as a result of an enforcement proceeding. The Subpart V process may be used in situations where the DOE is unable to identify readily the persons who may be eligible to receive refunds or to ascertain readily the amounts that such persons should receive. 10 C.F.R. § 205.280. For a more detailed discussion of Subpart V and the OHA's authority to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981) *(Coline)* and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) *(Vickers)*.

We have reviewed the record in the present case and have concluded that it would be difficult to identify the parties who may be entitled to receive restitution from the funds paid to the DOE pursuant to the court order and to determine the amounts such persons should receive. Therefore, we accept jurisdiction over the funds at issue.

II. Background

A. History of the Proceedings

In 1981, Southland joined Seneca Oil Company and others in a lawsuit against the Department of Energy challenging the DOE's interpretation of the "newly discovered crude oil" regulations. *Seneca Oil Co. v. DOE*, Civil Action No. 81-215-T (W.D. Okla.). The Temporary Emergency Court of Appeals upheld the DOE's interpretation of those regulations and directed the District Court to grant the DOE's motions for appropriate orders to secure recovery of overcharges from Southland and the other plaintiffs. *Seneca Oil Co. v. DOE*, 712 F.2d 1384 (Temp. Emer. Ct. App. 1983). Accordingly, the United States District Court for the Western District of Oklahoma entered an Agreed Final Judgment in favor of the DOE in the *Southland* proceeding. The judgment settled all matters between the DOE and Southland concerning Southland's pricing and certification of crude oil produced and sold from four properties (Jordan, Frazier, Reay, and Simmons) as newly discovered crude oil. The judgment provided that the amount remitted to the DOE pursuant to the court order was to be distributed in a Subpart V proceeding.

B. Regulatory Background

Southland, like other producers of crude oil, was subject to the Mandatory Petroleum Price Regulations set forth in 6 C.F.R. Part 150 and 10 CFR Part 212. The DOE regulations, in effect from August 19, 1973 until January 27, 1981, governed prices charged in crude oil sales to first purchasers by defining ceiling prices for various tier classifications of crude oil. The regulations permitted producers to sell certain crude oil, such as "newly discovered crude oil" and crude oil

produced from a "stripper well property" at market price levels. When a producer sold crude oil, it was required to certify in writing to the purchaser the respective volumes of crude oil belonging to each tier classification in each purchase. 10 CFR § 212.131. When a refiner processed the crude oil, it was required to report these certifications to the DOE to enable the agency to administer the Crude Oil Entitlements Program. 10 CFR 211.67.

Under the Entitlements Program, refiners with above-average access to price-controlled oil made cash payments, through the purchase of entitlements, to refiners with below-average access to price-controlled oil. The program was intended generally to equalize access to the benefits of crude oil price controls among all domestic refiners and among all consumers of petroleum products. Because of the way the program worked, it also had the effect of dispersing overcharges resulting from crude oil miscertifications throughout the domestic refining industry. This aspect of the Entitlements Program is discussed at length in *Union Oil Co. v. DOE*, 688 F.2d 797 (Temp. Emer. Ct. App. 1982), *cert. denied*, 459 U.S. 1202 (1983), and in the OHA's report to the District Court in the Stripper Well Exemption Litigation, *Report of the Office of Hearings and Appeals, In re The Department of Energy Stripper Well Exemption Litigation*, MDL No. 378 (D. Kan., filed June 21, 1985); 13 DOE ¶ 90,507 (1985) (hereinafter referred to as "OHA Stripper Well Report"). Thus, to the extent that Southland miscertified old crude oil as newly discovered crude oil, the impact of the violations was spread throughout the domestic refining industry by the operation of the Entitlements Program.

C. DOE Policy regarding Crude Oil Overcharges

The OHA Stripper Well Report was issued on June 19, 1985. As a result of the findings in the Report, the DOE issued a Statement of Restitutionary Policy regarding overcharge funds associated with entitlements-period crude oil miscertifications whose impact was spread through the Entitlements Program. 50 FR 27400 (July 2, 1985), Fed. Energy Guidelines, § 90,508 (1985). The statement, issued on June 21, 1985, announced that no claims for direct restitution would be accepted in such cases, and the Department would maintain such overcharges in escrow to afford the Congress the opportunity to select the means of making indirect restitution *Id.*

In light of the DOE policy statement, the OHA issued an order announcing that it would apply the policy in special refund proceedings involving overcharge funds attributable to entitlements-period crude oil certification violations. 50 FR 27402 (July 2, 1985). After soliciting comments from potentially aggrieved parties regarding the application of the policy to pending refund proceedings, the OHA stated in *Amber Refining, Inc.*, 13 DOE § 85,217 (1985) that it will apply the DOE policy in crude oil refund cases.

III. Proposed Procedures

In view of the Departmental restitutionary policy regarding entitlements-period crude oil certification violations, we propose that no claims be allowed with respect to the Southland crude oil overcharges and that the funds be pooled with other crude oil funds for disposition in accordance with departmental policies. *See* 50 FR 27402 (July 2, 1985); 50 FR 27400 (July 2, 1985); 50 FR 1919 (January 14, 1985).

It Is Therefore Ordered That: The refund amount remitted to the Department of Energy by Southland Royalty Company on January 4, 1985, pursuant to the court's order in *Seneca Oil Company v. DOE*, Civil Action No. 81-215-T shall be distributed in the manner set forth in the foregoing Decision.

[FR Doc. 86-10007 Filed 5-2-86; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPPE FRI-3011-7]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicittion and the expected impact, and where appropriate includes the actual data collection instrument. The following ICRs are available for review and comment.

FOR FURTHER INFORMATION CONTACT: Patricia Minami, (202) 382-2712 or FIS 382-2712.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Development of New Source Performance Standards for Large Boilers (EPA ICR #1294). (This request is for a new, one-time collection.)

Abstract: The purpose of this ICR is to grather information to respond to anticipated public comments addressing the effect of a New Source Performance Standard (NSPS) for industrial-commercial-institutional steam generating units on the number of steam generating units constructed or refurbished.

Respondents: Owners of large boilers (over 100 million BTUs).

Office of Policy, Planning and Evaluation

Title: Radon Information Effectiveness Survey (EPA ICR #1296). (This is a request for a new survey.)

Abstract: EPA will obtain data from respondents in New York State on how well different information formats and delivery methods lead those at higher risks from radon to seek more corrective measures than those at lower risks. The Agency will evaluate the effectiveness of the information program in reducing the risks from radon as an alternative to regulatory actions.

Respondents: Two thousand households in New York State which have been measured for radon levels.

Office of Pesticides and Toxic Substances

Title: Tolerance Petitions and New Inert Ingredient Clearance (EPA ICR #0597). (This is a request to renew a previously approved ICR; it now includes the clearance or exemption from clearance for inert ingredients.)

Abstract: The Federal Food, Drug, and Cosmetic Act requires that an acceptable level of pesticide residue be established before it can be used on food or feed crop. Information and data are developed in support of the requested tolerance, exemption, or new inert ingredient clearance.

Respondents: Pesticide manufacturers.* * *

Comments on all parts of this notice may be sent to:

Nanette Liepman, U.S. Environmental Protection Agency, Office of Standards and Regulations (PM-223), Information and Regulatory Systems Division, 401 M Street, SW., Washington, DC 20460

and

Wayne Leiss (ICRs #1294 and 1296), or Carlos Tellez (ICR #0597), Office of Management and Budget, Office of Information and Regulatory Affairs,

New Executive Office Building (Room 3228), 726 Jackson Place, NW., Washington, DC 20593

Dated: April 28, 1986.

Daniel J. Fiorino,

Acting Director, Information and Regulatory Systems Division.

[FR Doc. 86-9904 Filed 5-2-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-66129; FRL-3004-4]

Pesticide Products Containing Carbon Tetrachloride; Notice of Intent To Cancel Registrations and Notice of Transmittal and Availability of Draft Notice To Cancel

Correction

In FR Doc. 86-8606 beginning on page 15372 in the issue of Wednesday, April 23, 1986, make the following corrections:

1. On page 15372 in **SUPPLEMENT INFORMATION,** in the second column, in the fifteenth line from the bottom, and in the third column, in the second full paragraph, first and seventeenth lines, "$CC1_4$" should read "CCl_4"; and

2. On page 15373, in the first column, in the fourth line of the third complete paragraph, "not" should read "now", and in the next line insert "not" after "chosen".

BILLING CODE 1505-01

[OPTS-51621; FRL-3012-5]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of twenty-seven PMNs and provides a summary of each.

DATES: Close of Review Period:

P 86-922, 86-923, 86-924, 86-925, 86-926 and 86-927—July 16, 1986;

P 86-928 and 86-929—July 19, 1986;

P 86-930, 86-931, 86-932, 86-933, 86-934, 86-935, 86-936, 86-937, 86-938 and 86-939—July 20, 1986;

P 86-940, 86-941, 86-942, 86-943 and 86-944—July 21, 1986;

P 86-945, 86-946, 86-947 and 86-948—July 22, 1986.

Written comments by:

P 86-922, 86-923, 86-924, 86-925, 86-926 and 86-927—June 16, 1986;

P 86-928 and 86-929—June 19, 1986;

P 86-930, 86-931, 86-932, 86-933, 86-934, 86-935, 86-936, 86-937, 86-938 and 86-939—June 20, 1986;

P 86-940, 86-941, 86-942, 86-943 and 86-944—June 21, 1986;

P 86-945, 86-946, 86-947 and 86-948—June 22, 1986.

ADDRESS: Written comments, identified by the document control number "[OPTS-51621]" and the specific PMN number should be sent to: Document Control Officer (TS-790), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M Street, SW, Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW, Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 86-922

Manufacturer. Confidential.

Chemical. (G) Rubber modified epoxy.

Use/Production. (G) Intermediate. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86-923

Manufacturer. E.I. du Pont de Nemours and Company.

Chemical. (G) Zirconium (4+) alkanolamine complex.

Use/Production. (G) An additive; non-dispersive, destructive use. Prod. range: Confidential.

Toxicity Data. Irritation: Skin—Slight; Eye—Mild; LC_{50} 96 hr (Fathead minnow): 388 mg/L.

Exposure. Manufacture: dermal.

Environmental Release/Disposal. Release to water and land. Disposal by on-site waste water treatment facility.

P 86-924

Manufacturer. Confidential.

Chemical. (G) Acrylate ester.

Use/Production. (S) Site-limited monomer. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: a total of 10 workers, up to 4 hrs/da, up to 10 da/yr.

Environmental Release/Disposal. Release unknown. Disposal by publicly owned treatment works (POTW), approved landfill or heat recovered, Resource Conservation and Recovery Act (RCRA), Clean Air Act, and Clean Water Act.

P 86-925

Importer. Marubeni America Corporation.

Chemical. (G) Modified polyvinyl alcohol.

Use/Import. (S) Stabilizer and dispersed stabilizer of emulsion and developer for industrial and commercial use. Import range: 60,000-300,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

P 86-926

Manufacturer. Confidential.

Chemical. (S) 1 H-isoindole-5-carboxylic acid, 2,2'-(methylene di-4, 1-phenylene)bis[2,3-dihydro-1,3-dioxo-].

Use/Production. (G) Component in a coating material. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 10 workers, up to 6 hrs/da, up to 18 da/yr.

Environmental Release/Disposal. Less than 0.01 to <10 kg released to air with ~ 6.0 kg to land. Disposal by biological treatment system, incineration, municipal landfill and privately owned treatment work.

P 86-927

Manufacturer. Confidential.

Chemical. (G) Organo nickel complex.

Use/Production. (G) Component in an additive. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 8 workers, up to 9 batch/da, up to 12 day/yr, and up to 6 persons/shift, 3 hrs/shift.

Environmental Release/Disposal. 0.5 to 15 kg released to water. Disposal by incineration, degradation and privately owned treatment plant.

P 86-928

Manufacturer. Confidential.

Chemical. (G) Alkyl aryl phosphine.

Use/Import. (S) Site limited to industrial catalyst. Import range: Confidential.

Toxicity Data. Acute oral: >5,000 mg/kg; Acute dermal: 2,500 mg/kg; Irritation: Skin—Moderate; Eye—Minimal.

Exposure. Processing: dermal, a total of 7 workers, up to 12 hrs/da, up to 360 da/yr.

Environmental Release/Disposal. Trace release to air. Disposal by burning (as waste or fuel in plant).

P 86-929

Importer. Confidential.

Chemical. (G) Amps copolymer.

Use/Import. (G) Consumptive use. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal Confidential.

P 86-930

Manufacturer. Southland Corporation.

Chemical. (G) Mono amide of a disubstituted carboxyalkene.

Use/Production. (S) Surfactant compounds. Prod. range: 1,000–2,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 5 workers, up to 2 hrs/da, up to 2 da/yr.

Environmental Release/Disposal. 40 kg/batch released to water. Disposal by POTW, approved landfill and waste treatment facility.

P 86-931

Manufacturer. Southland Corporation.

Chemical. (G) Diamide of a disubstituted carboxyalkene.

Use/Production. (S) Surfactant compounds. Prod. range: 1,1000–2,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 5 workers, up to 2 hrs/da, up to 2 da/yr.

Environmental Release/Disposal. 40 kg/batch released to water. Disposal by POTW, approved landfill and waste treatment facility.

P 86-932

Manufacturer. Southland Corporation.

Chemical. (G) Mono amide of a disubstituted carboxyalkene.

Use/Production. (S) Surfactant compounds. Prod. range: 1,000–2,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 5 workers, up to 2 hrs/da, up to 2 da/yr.

Environmental Release/Disposal. 40 kg/batch released to water. Disposal by POTW, approved landfill and waste treatment facility.

P 86-933

Manufacturer. Southland Corporation.

Chemical. (G) Diamide of a disubstituted carboxyalkene.

Use/Production. (S) Surfactant compounds. Prod. range: 1,000–2,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 5 workers, up to 2 hrs/da, up to 2 da/yr.

Environmental Release/Disposal. 40 kg/batch released to water. Disposal by POTW, approved landfill and waste treatment facility.

P 86-934

Manufacturer. Confidential.

Chemical. (G) Ethylene vinyl fatty ester copolymer.

Use/Production. (G) Consumption use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86-935

Manufacturer. Confidential.

Chemical. (S) Polymer of methyl methacrylate, butyl acrylate, hydroxy ethyl acrylate.

Use/Production. (G) An open use. Prod. range: 60,000–500,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 6 workers, up to 2 hrs/da, up to 300 da/yr.

Environmental Release/Disposal. Minimal release to air. Disposal by biological treatment lagoons and licensed landfill.

P 86-936

Manufacturer. Confidential.

Chemical. (G) Polyester urethane methacrylate blocked.

Use/Production. (G) Industrial component of radiation cure elastomeric printing plate resin. Prod. range: 50,000–200,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 18 workers, up to 6 hrs/da, up to 50 da/yr.

Environmental Release/Disposal. 1 to 8 kg/batch released to control technology. Disposal by incineration.

P 86-937

Manufacturer. Confidential.

Chemical. (G) Industrial lubricant additive. Prod. range: Confidential.

Toxicity Data. Acute oral: >5 g/kg; Acute dermal: >2 g/kg; Irritation: Skin—Moderate, Eye—Moderate; Ames test: Negative.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by POTW.

P 86-938

Manufacturer. Confidential.

Chemical. (G) Polyisobutenylsuccinimide.

Use/Production. (G) Destructive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 30 workers, up to 4 hrs/da, up to 72 da/yr.

Environmental Release/Disposal. Release unknown. Disposal by approved landfill, RCRA, heat recovered, in plant treatment, Clean Air Act, and Clean Water Act.

P 86-939

Importer. Confidential.

Chemical. (G) Polyester/polyamide copolymer.

Use/Import. (G) Dispersing agent. Import range: Confidential.

Toxicity Data. Acute oral: >5,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Mild; Ames test: Negative; Skin sensitization: Non-sensitizer.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

P 86-940

Manufacturer. Wilmington Chemical Corporation.

Chemical. (G) Aromatic methyl oxirane.

Use/Production. (G) Open, non-dispersive and destructive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86-941

Manufacturer. Confidential.

Chemical. (G) Functionalized styrenated acrylic polymer.

Use/Production. (G) Industrial coating. Prod. range: 60,000–300,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal and ocular, a total of 31 workers, up to 8 hrs/da, up to 82 da/yr.

Environmental Release/Disposal. 5 to 96 kg/batch released to land. Disposal by incineration and approved landfill.

P 86-942

Manufacturer. Confidential.

Chemical. (G) Copolymer of methacrylic and acrylic esters.

Use/Production. (S) Pressure sensitive, modifier for coatings, inks and

adhesives for industrial, commercial and consumer use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86-943

Importer. Shin-Etsu Silicones of America, Inc.
Chemical. (S) Ethenyl tris[(1-methylethenyl)oxy]silane.
Use/Import. (S) Industrial cross-linking agent for one part silicone RTV rubber. Import range: 60-800 kg/yr.
Toxicity Data. LC_{50} 48 hr (Orange-red killifish): >1,000 mg/1; Bioaccumulation test: Low potential.
Exposure. Processing: dermal.
Environmental Release/Disposal. 6 to 100 gm released.

P 86-944

Importer. Shin-Etsu Silicones of America, Inc.
Chemical. (S) Tris[(1-methylethenyl)oxy]phenyl silane.
Use/Import. (S) Industrial cross-linking agent for one part silicone RTV rubber. Import range: 60-800 kg/yr.
Toxicity Data. No data submitted.
Exposure. Processing: dermal.
Environmental Release/Disposal. 5 to 100 gm released.

P 86-945

Manufacturer. Sylvachem Corporation.
Chemical. (G) Ester of long chain fatty acids.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 8 workers, up to 8 hrs/da.
Environmental Release/Disposal. 0.5 to 2 lbs released to land. Disposal by approved landfill.

P 86-946

Manufacturer. Confidential.
Chemical. (G) Perfluoroalkyl propoxy polyalkyl ethers.
Use/Production. (G) Fluorinated surfactant. Prod. range: Confidential.
Toxicity Data. Acute oral: >5/kg; Irritation: Skin—Irritant, Eye—Non-irritant.
Exposure. Manufacture: dermal.
Environmental Release/Disposal. 0 to 1 kg/batch released. Disposal by waste treatment plant.

P 86-947

Manufacturer. Confidential.
Chemical. (G) Perfluoroalkyl propoxy polyalkyl ethers.
Use/Production. (G) Fluorinated surfactant. Prod. range: Confidential.
Toxicity Data. Acute oral: >5g/kg; Irritation: Skin—Irritant, Eye—Non-irritant.
Exposure. Manufacture: dermal.
Environmental Release/Disposal. 0 to 1 kg/batch released. Disposal by waste treatment plant.

P 86-948

Manufacturer. Confidential.
Chemical. (G) Perfluoroalkyl propoxy polyalkyl ethers.
Use/Production. (G) Fluorinated surfactant. Prod. range: Confidential.
Toxicity Data. Acute oral: >g/kg; Irritation: Skin—Irritant, Eye—Non-irritant.
Exposure. Manufacture: dermal.
Environmental Release/Disposal. 0 to 1 kg/batch released. Disposal by waste treatment plant.

Dated: April 28, 1986.

Denise Devoe,

Acting Director, Information Management Division.

[FR Doc. 10015 Filed 5-2-86; 8:45 am]
BILLING CODE 6560-50-M

[OPTS-59763 FRL-3012-4]

Alkyd; Certain Chemical Premanufacture Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of one such PMN and provides a summary of it.

DATES: Close of Review Period:

Y 86-127—May 14, 1986.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemption received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday excluding legal holidays.

Y 86-127

Manufacturer. Confidential.
Chemical. (G) Alkyd.
Use/Production. (G) Coating. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

Dated April 28, 1986.

Denise Devoe,

Acting Director, Information Management Division.

[FR Doc. 86-10016 Filed 5-2-86; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

April 29, 1986.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received on or before May 20, 1986.

ADDRESS: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, D.C. 20551, or delivered to room B–2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B–1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Martha Bethea—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202–452–3822).

Proposal to approve under OMB delegated authority the extension without revision of the following reports:

1. Report title: Statement Regarding Security Devices that do not meet the Minimum Requirements of Regulation P.

Agency form number: FR 4003

OMB Docket number: 7100–0112

Frequency: On occasion

Reporters: State member banks.

Small businesses are affected.

General description of report: This recordkeeping requirement is mandatory [12 U.S.C. 1882(b)]; no confidentiality issues arise since the information is maintained in the files of the State member banks.

Any state member bank not meeting the minimum standards for security devices, as outlined in Regulation P, must maintain in its files a record outlining the reasons for not meeting the standards.

2. Report title: Written Security Program for State Member Banks as Required by Regulation P.

Agency form number: FR 4004

OMB Docket number: 7100–0112

Frequency: One-time

Reporters: State member banks.

Small businesses are affected.

General description of report: This recordkeeping requirement is mandatory [12 U.S.C. 1882(b)]; no confidentiality issues arise because the records are maintained in the files of the state member banks.

All state member banks must maintain in their files a written security program outlining procedures to deter external crime and to assist in the apprehension of persons who commit these crimes.

3. Report title: Annual Statement of Compliance with the Bank Protection Act of 1968.

Agency form number: FR 4005

OMB Docket number: 7100–0112

Frequency: Annually

Reporters: State member banks.

Small businesses are affected.

General description of report: The annual statement is mandatory [12 U.S.C. 1882(b)] and is given confidential treatment [5 U.S.C. 552(b)(4)].

State member banks are required by the Federal Reserve Board to file with the appropriate Federal Reserve Bank an annual statement of compliance with Regulation P.

Board of Governors of the Federal Reserve System, April 29, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–9989 Filed 5–2–86; 8:45 am]

BILLING CODE 6210–01–M

Bankers Trust New York Corp., New York, NY; Propose to Underwrite and Deal in Certain Securities to a Limited Extent

Bankers Trust New York Corporation, New York, New York, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), for permission to engage through BT Securities Corporation ("Company"), in the activities of underwriting and dealing in, to a limited extent, the following securities which are eligible for purchase by banks for their own account but not eligible for banks to underwrite and deal in (hereinafter "ineligible securities"):

(1) Commercial paper;

(2) Municipal revenue bonds (obligations issued or guaranteed by a state or any political subdivision thereof, including industrial development bonds as to which the issuer or the governmental unit on behalf of which the industrial development bonds are issued is treated for federal tax purposes as the owner of the facility financed by bond proceeds);

(3) Mortgage-related securities (certificates representing fractional, undivided beneficial ownership interests in promissory notes secured by residential real estate mortgages and obligations collateralized by pass-through certificates of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association or the Government National Mortgage Association or by residential mortgage whole loans, where the debt service requirement for these obligations are met by the cash flow from the pledged mortgage collateral); and

(4) Consumer-receivable-related securities (obligations secured by or representing an interest in loans or receivables of a type generally made to or due from consumers) (hereinafter "CRRs").

Company has previously applied for approval under § 225.25(b)(16) of Regulation Y (12 CFR 225.25(b)(16)) to underwrite and deal in securities and money market instruments that banks are expressly authorized to underwrite and deal in under section 16 of the Glass-Steagall Act (12 U.S.C. 24 Seventh), including U.S. government obligations and general obligations of states and their political subdivisions. The foregoing activities are presently conducted by Applicant and Applicant's principal banking subsidiary, Bankers Trust Company, but would be transferred to Company. Thereafter and upon consummation of the proposal, Company would commence underwriting and dealing in ineligible securities subject to the limitations set forth in the application. The activities would be performed through Company's offices in New York, serving customers in the United States and abroad.

Section 4(c)(8) of the Bank Holding Company Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." The Board has not previously approved the proposed activities for bank holding companies.

Applicant states that the proposed activitis are so closely related to banking or managing or controlling banks as to be a proper incident thereto

on the basis of its belief that banks engage in activities that it believes are functionally and operationally similar to those involved in the application, including discounting commercial paper; underwriting and dealing in eligible U.S. government and municipal securities, mortgage-backed securities and money market instruements; assessing credit and interest rate risk; and purchasing and pooling mortgage loans.

In determining whether a particular activity is a proper incident to banking, the Board considers whether the performance of the activity by an affiliate of a holding company 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 interest or unsound banking practices. Applicant maintains that permitting bank holding companies to engage in the proposed activities would be procompetitive and would enable holding companies to provide increased services to customers. In addition, Applicant believes the proposal would not result in adverse effects.

The application also presents issues under section 20 of the Glass-Steagall Act (12 U.S.C. 377). Section 20 of the Glass-Steagall Act prohibits the affiliation of a member bank, such as Bankers Trust Company, with a firm that is "engaged principally" in the "underwriting, public sale or distribution" of securities.

Applicant states that it would not be "engaged principally" in such activities on the basis of restrictions that would limit the amount of the proposed activity relative to the total business conducted by Company and relative to the total market in such activity.

During any two-calendar-year period, the Company's underwriting and dealing in ineligible securities ("ineligible activity") will account for no more than 15 percent of its total activities, measured by compliance at any time with two of the three indicia set forth below:

(1) The dollar volume of underwriting commitments (or underwriting sales if larger) and dealer sales attributable to ineligible activities as a percentage of the total dollar volume of all of Company's activities;

(2) The average assets acquired in connection with ineligible activity as a percentage of the average assets acquired in connection with all of Company's activities; and

(3) The gross income (*i.e.*, income, including gross interest income, before expenses and taxes) from ineligible activities as a percentage of the gross income from all of Company's activities.

In addition, Applicant will limit Company's involvement in the market for ineligible activity so that:

(1) The amount of commercial paper outstanding at any time underwritten by Company, and the amount of commercial paper held in inventory by Company on any day, will not exceed 10% of the average amount of dealer-placed commercial paper outstanding during the prior four calendar quarters (Applicant would reduce this limit from 10 percent to 3 percent if the Board determines that such a reduction in market share is legally required);

(2) With respect to the municipal securities covered by this Application, the volume of such securities underwritten domestically by Company in each calendar year will not exceed 3% of the total amount of such securities underwritten domestically by all firms during the prior calendar year, and the amount of such securities held by Company for dealing would not exceed at any time 3% of the total amount of such securities underwritten domestically by all firms during the prior year;

(3) With respect to the mortgage-related securities and CRRs covered by the application, taken together, the volume of such securities underwritten domestically by Company in each calendar year will not exceed 3% of the total amount of such securities underwritten domestically by all firms during the prior calendar year, and the amount of such securities held by the Company for dealing would not exceed at any time 3% of the total amount of such type of security underwritten domestically by all firms during the prior year.

While the Board has decided to publish Bankers Trust's proposal for comment, the Board does not thereby take any position on the "engaged principally" issue under the Glass-Steagall Act or other issues raised by the proposal under the Bank Holding Company Act. Publication of the proposal has been ordered by the Board solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal is consistent or inconsistent with the Glass-Steagall Act or that the proposal meets or is likely to meet the standards of the Bank Holding Company Act. The Board previously published for comment applications by Citicorp (50 FR 20847) and J.P. Morgan & Co. Incorporated (50 FR 41025) to underwrite and deal in the proposed ineligible securities.

Comments are requested on the scope of activity permitted by the phrase "engaged principally" under the Glass-Steagall Act, including whether the phrase contemplates the type of limitations involved in this application, which are based on the Applicant's market share and on a percentage of the affiliate's total business activities. The Board also seeks comment on whether the term "engaged principally" in section 20 would preclude a member bank affiliate from engaging in activities restricted by this section on a substantial and regular or non-incidental basis and without regard to the amount of other activities conducted by the affiliate.

Comments are also requested on whether the proposed activities are "so closely related to banking or managing or controlling banks as to be a proper incident thereto," and whether the proposal as a whole 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."

Upon the expiration of the public comment period, depending upon the comments received, the Board may wish first to consider the legal issue presented by the application under the Glass-Steagall Act in order to determine whether there is a legal basis for considering whether the activities could be permitted for a bank holding company under the Bank Holding Company Act.

Any request for a hearing on these questions must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why 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.

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than June 2, 1986.

Board of Governors of the Federal Reserve System, April 30, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-10035 Filed 5-2-86; 8:45 am]

BILLING CODE 6210-01-M

First Colonial Bankshares Corp., 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 225.24) 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 May 27, 1986.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Colonial Bankshares Corporation,* Chicago, Illinois; to acquire 91.02 percent of Avenue Bancorporation, Oak Park, Illinois, and thereby indirectly acquiring 86.3 percent of the voting shares of Avenue Bank and Trust Company of Oak Park, Oak Park, Illinois, and 88.0 percent of the voting shares of Avenue Financial Corporation, Oak Park, Illinois, and thereby indirectly acquire 88.7 percent of the voting shares of Avenue Bank Northwest, Niles, Illinois; 94.5 percent of the shares of Avenue Bank of Elk Grove, Elk Grove Village, Illinois; and 98.1 percent of the voting shares of The Northlake Bank, Northlake, Illinois.

Board of Governors of the Federal Reserve System, April 29, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-9986 Filed 5-2-86; 8:45 am]

BILLING CODE 6210-01-M

First Corp.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 23, 1986.

A. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Corporation,* Henderson, Kentucky; to engage *de novo* through its subsidiary in the offering and sale of insurance by a finance company to a borrower to insure tangible personal property, except household goods, offered as security for a loan exceeding $300 against any substantial risk of loss, damage, or destruction for an amount not to exceed the actual value of such property or the approximate amount of the loan, whichever is greater, pursuant to § 225.25(b)(8)(i)(A) of the Board's Regulation Y and section 4(c)(8)(B) of the Bank Holding Company Act. These activities will be conducted in Madisonville, Kentucky and at loan branch offices in the cities of Madisonville, Owensboro, Henderson, Hopkinsville, Paducah, Central City, Franklin, Bowling Green and Glasgow, Kentucky.

Board of Governors of the Federal Reserve System, April 29, 1986.

James McAfee,

Associated Secretary of the Board.

[FR Doc. 86-9987 Filed 5-2-86; 8:45 am]

BILLING CODE 6210-01-M

Security Pacific Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) 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, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such

as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 23, 1986.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Security Pacific Corporation*, Los Angeles, California; to acquire 100 percent of the voting shares of Arizona Bancwest Corporation, Phoenix, Arizona, and thereby indirectly acquire The Arizona Bank, Phoenix, Arizona. In connection with this application, SPC Acquisition Inc. has applied to become a bank holding company by acquiring Arizona Bancwest Corporation.

Security Pacific Corporation, Los Angeles, California, and SPC Acquisition Inc., have also applied to acquire:

(1) Bancwest Life Insurance Company, Phoenix, Arizona, and thereby engage in the reinsurance of life insurance issued by others in respect of credit extended by SPC affiliates to the extent authorized by § 225.25(b)(9) of the Board's Regulation Y;

(2) Bancwest Insurance Agency, Inc., Phoenix, Arizona, and thereby engage in business as an agent for the sale of credit life and disability insurance in respect of credit extended by SPC affiliates to the extent authorized by § 225.25(b)(8) of the Board's Regulation Y; and

(3) Bancwest Financial Services Company, Phoenix, Arizona, and thereby engage in commercial finance and leasing to the extent authorized by § 225.25(b)(1)(iv) and (b)(5) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 29, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-9988 Filed 5-2-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 86E-0096]

Determination of Regulatory Review Period for Purposes of Patent Extension; Mexitil

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Mexitil and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims this human drug product.

ADDRESS: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Michael W. Cogan, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) generally provides that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under that act, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Mexitil, an antiarrhythmic indicated for supression of symptomatic ventricular arrhythmias. Following FDA's approval, Boehringer-Ingelheim International GmbH filed a patent term restoration application with the U.S. Patent and Trademark Office, which then requested FDA's assistance in determining the patent's eligibility for patent term restoration. In a letter dated March 24, 1986, FDA advised the Patent Office that the product had undergone a regulatory review period and that Mexitil represented the first commercial marketing or use of its active ingredient, mexiltine hydrochloride. Shortly thereafter, the Patent Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Mexitil is 5,588 days. Of this time, 4,401 days occurred during the testing phase of the regulatory review period, while 1,187 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* September 14, 1970. FDA records show that the investigational new drug application (IND) became effective on September 14, 1970 (30 days after its receipt by the agency; see 21 CFR 312.1(b)(4)). The applicant refers to a later IND more directly relied upon by the sponsor seeking marketing approval of Mexitil. However, because some data essential to the agency's approval of Mexitil were gathered under the earlier IND, FDA has used the effective date of the earlier IND to calculate the regulatory review period.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* October 1, 1982. FDA has verified that the new drug application (NDA 18-873) was initially submitted on October 1, 1982.

3. *The date the application was approved:* December 30, 1985. FDA has verified that NDA 18-873 was approved on December 30, 1985.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations

of the actual period for patent extension. In its application for patent extension, this applicant seeks 2 years of patent extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before July 7, 1986, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before October 31, 1986, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 29, 1986.

Allen B. Duncan,

Deputy Associate Commissioner for Health Affairs.

[FR Doc. 86–9978 Filed 4–30–86; 11:50 am]

BILLING CODE 4160–01–M

[Docket No. 86E–0111]

Determination of Regulatory Review Period for Purposes of Patent Extension; Wellbutrin

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Wellbutrin and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims this human drug product.

ADDRESS: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Michael W. Cogan, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) generally provides that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under that act, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Wellbutrin, an antidepressant for treatment of depression in patients who fail to respond adequately to or who cannot tolerate alternative antidepressant treatments. Following FDA's approval, Burroughs Wellcome Co. filed a patent term restoration application with the U.S. Patent and Trademark Office, which then requested FDA's assistance in determining the patent's eligibility for patent term restoration. In a letter dated March 26, 1986, FDA advised the Patent Office that the product had undergone a regulatory review period and that Wellbutrin represented the first commercial marketing or use of its active ingredient, bupropion hydrochloride. Shortly thereafter, the Patent Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Wellbutrin is 5,634 days. Of this time, 4,165 days occurred during the testing phase of the regulatory review period, while 1,469 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* July 30, 1970. FDA has verified that the investigational new drug application (IND) became effective on July 30, 1970 (30 days after its receipt by the agency; see 21 CFR 312.1(b)(4)). The applicant refers to a later IND more directly relied upon by the sponsor seeking marketing approval of Wellbutrin. However, Because some of the data essential to the agency's approval of Wellbutrin were gathered under the earlier IND, FDA thus used the effective date of the earlier IND to calculate the regulatory review period.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* December 23, 1981. FDA has verified that the new drug application (NDA 18–644) was initially submitted on December 23, 1981.

3. *The date the application was approved:* December 30, 1985. FDA has verified that NDA 18–644 was approved on December 30, 1985.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In it application for patent extension, this applicant seeks 2 years of patent extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before July 7, 1986, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before October 31, 1986, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit burden, the petition must contain an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the

Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 29, 1986.

Allen B. Duncan

Deputy Associate Commissioner for Health Affairs.

[FR Doc. 86-9981 Filed 4-30-86; 11:50 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Meetings; Alaska Land Use Council

As required by the Alaska National Interest Lands Conservation Act (ANILCA), Pub. L. 96-487, dated December 2, 1980, section 1201, Paragraph (h), the Alaska Land Use Council will meet at 9:00 a.m., Monday, June 9, 1986, in the room 117, U.S. Federal Building and Court House, 701 C Street, Anchorage, Alaska.

The tentative agenda will include Council consideration of:

—Alaska Land Use Council Work Program Recommendations for 1986-87
—Aniakchak National Monument and Preserve General Management Plan
—Bering Land Bridge National Preserve General Management Plan
—Cape Krusenstern National Monument General Management Plan
—Katmai National Park and Preserve General Management Plan
—Kobuk Valley National Park General Management Plan
—Noatak National Preserve General Management Plan
—Wrangell/St. Elias National Park and Preserve General Management Plan
—State Cultural Assistance Directory
—Stikine River Access Study Report, and
—Other items as may be appropriately considered by the Council.

Any individual desiring to appear before the Council to address any of the above matters or matters of general concern to the Council should contact either Cochairman's office before the close of business Tuesday, May 27, 1986.

For further information contact:

Alaska Land Use Council, Office of the Federal Cochairman, P.O. Box 100120, Anchorage, Alaska 99510, (907) 272-3422, (FTS) 271-5485

Alaska Land Use Council, Office of the State Cochairman Designee, Pouch AM, Juneau, AK 99811, (907) 465-3562

2600 Denali St, Suite 700, Anchorage, AK 99503, (907) 274-1581.

The public is invited to attend.

William P. Horn,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-9997 Filed 5-2-86; 8:45 am]

BILLING CODE 4310-10-M

Bureau of Land Management

Nevada: Proposed Withdrawal and Reservation of Lands

Correction

In FR Doc. 86-8157, appearing on page 12574, in the issue of Friday, April 11, 1986, make the following correction.

In the third column, second line, after the first W½ insert a "comma".

BILLING CODE 1505-01-M

Bureau of Reclamation

[INT—DES 86-21]

Kesterson Program; Merced and Fresno Counties, CA.; Availability of Draft Environmental Impact Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior has prepared a draft environmental impact statement (DEIS) addressing alternative plans for the cleanup of Kesterson Reservoir and the San Luis Drain (SLD). This DEIS has been prepared in cooperation with the Fish and Wildlife Service and the Army Corps of Engineers.

Kesterson Reservoir and the SLD are contaminated with selenium originating from drainwater discharges that are scheduled to cease on June 30, 1986. This DEIS describes the environmental impacts of four alternative plans, in addition to a No-Action Alternative, for Kesterson Reservoir and SLD cleanup and disposition, and potential offsite wetland mitigation. Alternative plans for reservoir cleanup consist of: 1) Vegetation harvesting, maintaining the ponds wet or dry and monitoring (Flexible Response Plan); 2) using a water or soil cover to immobilize selenium in the reservoir sediments (Immobilization Plan); 3) onsite disposal of contaminated sediments and vegetation, and restoring the majority of the reservoir to wetland habitat (Onsite Disposal Plan); and 4) offsite disposal of contaminated sediments and vegetation, and creating upland habitat on the majority of the reservoir (Offsite Disposal Plan). Each of the four plans includes complementary alternatives for the SLD and potential offsite mitigation for loss of Kesterson Reservoir wetland habitat.

Reclamation's proposed action is a phased approach. The Flexible Response Plan (wet option) would be implemented first. If water quality or biological monitoring indicates the plan is unsuccessful, the Immobilization Plan would be implemented. If monitoring indicates the Immobilization plan is also unsuccessful, the Onsite Disposal Plan would be implemented.

Copies are available for inspection at the following locations:

Director, Office of Environmental Affairs, Room 7429, Bureau of Reclamation, Washington, DC 20240, Telephone: (202) 343-4991

Regional Director, Bureau of Reclamation, Mid-Pacific Region, 2800 Cottage Way, Sacramento, CA 95825, Telephone: (916) 978-5046

Division of Acquisition and Property Management, Document Systems Management Branch, Library Section, Code 823, Engineering and Research Center, Denver Federal Center, Denver, CO 80225, Telephone: (303) 236-6963.

Single copies of the statement may be obtained on request to the Director, Office of Environmental Affairs, or the Regional Director at the above addresses. Copies will also be available for inspection in libraries in the project vicinity. Review comments must be received by the date indicated on the cover sheet of the document.

Public Hearings will be held at the following times and places:

June 17, 1986, 7:00 p.m., Merced county Fairgrounds (Floral Bldg.), 4th and F Streets, Los Banos, CA

June 18, 1986, 7:00 p.m., Fresno Convention Center (Wine Room), 700 M Street, Fresno, CA

June 19, 1986, 7:00 p.m., Gustine Elementary School Gymnasium, Highway 33 and Grove Street, Gustine, CA.

Individuals and representatives of interested organizations will have an opportunity to make oral presentations for the record on the DEIS at the hearings. Those persons intending to testify should limit their oral presentation to 10 minutes. A sign-up sheet for presentations will be provided at each hearing. Written statements from those unable to attend and from those wishing to supplement their oral presentation at a hearing should be received at the Bureau of Reclamation's Sacramento, California, office by June 26, 1986, for inclusion in the hearing record.

Dated: April 30, 1986.

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 86-10009 Filed 5-2-86; 8:45 am]

BILLING CODE 4310-09-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[V-85-2]

Variance Applications; AMAX Lead Company of Missouri

AGENCY: Occupational Safety and Health Administration, Labor Department.

ACTION: Notice of Cancellation of Hearing on Application for Permanent Variance.

SUMMARY: This notice announces cancellation of the hearing scheduled for May 6, 1986, on the application of AMAX Lead Company of Missouri for a permanent variance from Table II of the standard prescribed in 29 CFR 1910.1025(f)(2). The variance application concerns the limitation on the use of half-mask, air-purifying respirators to areas where the lead concentration in air is less than 10 times the permissible exposure limit (PEL). The Occupational Safety and Health Administration has determined, after additional investigation, that a permanent variance will be granted in this matter.

DATES: The hearing had been scheduled to begin at 9:30 a.m. on May 6, 1986, at the Federal Building, Courtroom No. 2, Room 502, U.S. court of Appeals, U.S. Courthouse and Custom House, 1114 Market Street, St. Louis, Missouri 63101.

FOR FURTHER INFORMATION CONTACT: James J. Concannon, Director, Office of Variance Determination, U.S. Department of Labor, Room N-3656, 200 Constitution Avenue, NW., Washington, D.C. 20210, telephone: 202-523-7193.

Authority: This document was prepared under the direction of Patrick R. Tyson, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210 (Sec. 6, 84 Stat. 1593 (29 U.S.C. 655); 29 CFR Part 1911; and Secretary of Labor's Order No. 9-83 (48 FR 35736)).

Signed at Washington, D.C. this 30th day of April, 1986.

Patrick R. Tyson,

Acting Assistant Secretary.

[FR Doc. 86-10160 Filed 5-2-86; 10:59 am]

BILLING CODE 4510-26-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-155]

Consumers Power Co., Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the approval of disposal of approximately 5300 cubic feet of contaminated soil by leaving it in place proposed by Consumers Power Company (the licensee) for the Big Rock Point Plant, located in Charlevoix County, Michigan.

Environmental Assessment

Identification of Proposed Action: The proposed action by the NRC would approve the disposal of contaminated soil by leaving it in place at the facility, as proposed by the licensee's request dated August 16, 1985. The request for approval is submitted pursuant to 10 CFR 20.302. The total volume of contaminated soil is estimated to be 5300 cubic feet.

The Need for the Proposed Action: In May of 1984, soil underneath the turbine building was contaminated by a leak of condensate from a 2-inch diameter aluminum pipe also located under the floor of the turbine building. The pipe normally carries condensate to the condensate storage tank. Approximately 3×10^{-3} Ci of Co-60, Mn-54, Cs-134 and Cs-137, plus shorter-lived radionuclides, may have been released into the soil. After removal of eight 55-gallon drums of contaminated soil, and reduction by radioactive decay, the quantities remaining as of July 1985 are estimated by the licensee to be about 7×10^{-6} Ci of Co-60, 2×10^{-5} Ci of Mn-54, 1.1×10^{-5} Ci of Cs-134 and 1.0×10^{-5} Ci of Cs-137, totalling about 3×10^{-5} Ci.

Environmental Impacts of the Proposed Action: In the attachment to the letter of August 16, 1985, the licensee provided information on the geology and hydrology of the area, on behavior of currents in the adjacent waters of Lake Michigan, and on the soil sampling done to determine the extent of the contamination. The licensee also provided an assessment of the potential radiological impacts of leaving the soil in place.

The staff has reviewed the information submitted by the licensee. Considering the size of storage tanks involved and measured concentrations of radionuclides, the staff judges that the licensee's estimates of the quantity of water and the quantities of radionuclides leaked to the soil are reasonable but subject to some uncertainty. The analyses of soil samples show that the concentrations of radionuclides remaining in the soil are small. The staff judges the licensee's estimates of the volume of soil contaminated and of the total quantities of radionuclides remaining in the soil to be only approximate. However, based on review of the submitted information on the site geology and hydrology and the results of soil sampling, the staff considers the concentrations of radionuclides in the soil and the potential extent of the soil contamination to be adequately defined.

The staff has evaluated the impacts of leaving the contaminated soil in place, and finds that the potential environmental impacts are insignificant. For conservatism, the staff based its estimates of doses from the soil on the radioactivity concentrations in the soil at the sampling point (outside of the excavated area) showing the highest concentrations of contamination.

The average concentrations of the significant radionuclides at this location, with some correction for background, are:

Mn-54	2.5×10^{-7} Ci/m³	2.6×10^{-11} Ci/m³
Co-60	3.2×10^{-7} Ci/m³	7.3×10^{-9} Ci/m³
Cs-134	2.0×10^{-8} Ci/m³	4.3×10^{-9} Ci/m³
Cs-137	2.4×10^{-6} Ci/m³	1.9×10^{-6} Ci/m³
	5.0×10^{-6} Ci/m³* (July 10, 1984)	2.6×10^{-6} Ci/m³* (10 years from now)

*For comparison, radioactive K-40 occurs naturally in soil at an average concentration of 1.6×10^{-3} Ci/m³.

For its estimates of the potential impacts of any release of the radioactivity to the waters of Lake Michigan, the staff used the licensee's estimate of the total quantities leaked. The total quantities of the more important radionuclides leaked were estimated by the licensee to be, as of May 30, 1984:

Mn-54	1.30×10^{-4} Ci
Co-60	2.40×10^{-4} Ci
Cs-134	1.22×10^{-4} Ci
Cs-137	1.74×10^{-3} Ci
	3.33×10^{-3} Ci

Results of the staff's evaluation of the impacts are provided in Table 1.

TABLE 1.—Potential Impacts of Leaving the Soil in Place

	Estimated dose rate*
Occupational Radiation Exposure:	
Working above the contaminated soil, 1000 hours/year.	1.0 mrem
Working in a hole in the soil, per week	(*)
Inhalation of contaminated dust, dose to the lung, per year.	(*)

TABLE 1.—Potential Impacts of Leaving the Soil in Place—Continued

	Estimated dose rate *
Potential Exposure of the Public:	
Living above the contaminated soil, per year	(b,c)
Eating vegetables grown in the soil, per year	(c,d)
Shoreline recreation	(e)
Eating fish	(e)
Drinking water	(e)

*=All doses are radiation dose to the total body of an individual unless otherwise specified. Dose estimates are primarily based on the methodology of U.S. NRC Regulatory Guide 1.109, Rev. 1, and on the concentrations of radionuclides in the soil at the maximum sampling point outside the excavated area.
[b]=Less than 1.0 mrem.
[c]=Less than 0.1 mrem.
[d]=With 10 more years' radioactive decay, but no further removal by groundwater transport or other processes.
[e]=Less than 0.1 mrem to any individual if all leaked quantities were released to Lake Michigan at once; release by groundwater transport through the soil will result in smaller doses.

These results show that exposure rates due to leaving the contaminated soil in place are at most only about 3 mrem per year to the total body. For perspective, the radiation from the naturally occurring radionuclides in soils and rocks plus cosmic radiation give a person in Michigan a whole-body dose rate of about 89 mrem per year outdoors, which may be altered as much as 20 mrem per year by the type of construction of the person's residence (e.g., wood frame or brick) and the amount of time spent in it. The staff's estimate of about 3 mrem per year is highly conservative because the soil sampling indicates that at most only a few hundred square feet are so highly contaminated, and that most of the contamination is at depths where the overlying soil and concrete would shield people from the radioactivity more effectively than is assumed in the staff's calculations. It is unlikely that a member of the general public would be exposed to the contaminated soil until after the plant decommissioning, 10 years or more in the future, since most of the contaminated soil is located under the turbine building. The staff's estimates of potential exposures from release of the contamination to the waters of Lake Michigan are conservative because they are based on the modeling assumption of an instantaneous release of all the leaked quantities (as of May 30, 1984) of radionuclides into Lake Michigan, with no allowance for the retention of contamination in the soil which is evidenced by the results of analysis of soil samples.

With regard to the nonradiological impacts, the staff judges that leaving the soil in place has the smallest impact.

Based on our review and evaluation of the proposed disposal, we find that:

(1) The radiation exposures to the nuclear station workers involved in the disposal are small compared to the routine occupational exposures at the Big Rock Point Plant.

(2) The possible radiation risks to members of the general public as a result of such disposal are well below regulatory limits and small in comparison to the doses they receive each year from natural background radiation.

(3) The nonradiological environmental impacts of the proposed procedure are minor.

Alternatives to the Proposed Action: The principal alternative to leaving the contaminated soil in place would be to dig it up, package it in 55-gallon drums or other suitable containers and ship it to a disposal facility licensed to dispose of low level radioactive waste. This would be costly, requiring, for example, the shipping of more than 700 55-gallon drums. It could also require the disruption of the overlying turbine building. On the basis of the above analysis and evaluations and after weighing the environmental, technical, and other benefit against the environmental costs, the staff concludes that the action called for under NEPA and 10 CFR Part 51 is the issuance of an approval of the proposed waste disposal procedure.

Alternative Use of Resources: The principal result of this action does involve the use of resources beyond the scope used during normal plant operations; however, this new use of land is not significant, as the land involved is located, and will remain in place, underneath the floor of the turbine building. This action involves no other critical materials or resources.

Agencies and Persons Consulted: The Commission's staff reviewed the licensee's request and has not consulted other agencies or persons.

Finding of no Significant Impact

The Commission has determined not to prepare an evnironmental impact statement for the proposed action.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the licensee's request for approval dated August 16, 1985, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555 and at North Central Michigan College, 1515 Harvard Street, Petosky, Michigan 49770.

Dated at Bethesda, Maryland, this 29th day of April 1986.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, BWR Project Directorate No. 1, Division of BWR Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 86-10028 Filed 5-2-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-498 and 50-499]

Houston Lighting and Power Co.; Availability of Safety Evaluation Report for the South Texas Project, Units 1 and 2

The Office of Nuclear Reactor Regulation has published its Safety Evaluation Report related to the proposed operation of the South Texas Project, Units 1 and 2, nuclear plants located near Bay City, Texas. Notice of receipt of Houston Lighting and Power Company's application for facility licenses for the South Texas Project, Units 1 and 2 was published in the **Federal Register** on December 20, 1977 (42 FR 63826).

The report is being referred to the Advisory Committee on Reactor Safeguards and is being made available at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the Local Public Document Rooms in the Wharton County Junior College, J.M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488 and in the Austin Public Library, Austin Travis County Collection, Austin History Center, 810 Guadalupe Street, P.O. Box 2287, Austin, Texas 78701 for inspection and copying. Copies of NUREG-0781 may be purchased through the U.S. Government Printing Office by calling (202) 275-2060 or by writing to the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082. Copies may also be purchased from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Bethesda, Maryland, this 29th day of April 1986.

Leonard N. Olshan,

Acting Director, PWR Project Directorate No. 5, Division of PWR Licensing-A.

[FR Doc. 86-10027 Filed 5-2-86; 8:45 am]

BILLING CODE 7590-01-M

Draft Regulatory Guide; Issuance and Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide planned for its Regulatory Guide Series together with a draft of the associated value/impact statement. This

series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, WM 407–4 (which should be mentioned in all correspondence concerning this draft guide), is entitled "Methods for Estimating Radioactive and Toxic Airborne Source Terms for Uranium Milling Operations" and is intended for Division 3, "Fuels and Materials Facilities." It is being developed to provide guidance acceptable to the NRC staff on methods, models, data, and assumptions for estimating airborne emissions of radioactive and toxic materials from uranium mills to be used in preparing environmental reports. NUREG/CR–4088, "Methods for Estimating Radioactive and Toxic Airborne Source Terms for Uranium Milling Operations," provides additional information on radioactive and toxic material releases.

This draft guide and the associated value/impact statement are being issued to involve the public in the early stages of the development of a regulatory position in this area. They have not received complete staff review and do not represent an official NRC staff position.

Public comments are being solicited on both drafts, the guide (including any implementation schedule) and the draft value/impact statement. Comments on the draft value/impact statement should be accompanied by supporting data. Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. Comments will be most helpful if received by July 7, 1986.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement in an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at this 28th day of April 1986.

For the Nuclear Regulatory Commission.

Karl R. Goller,

Director, Division of Radiation Programs and Earth Sciences, Office of Nuclear Regulatory Research.

[FR Doc. 86–10029 Filed 5–2–86; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–382]

Louisiana Power & Light Co.; Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (The Commission) has granted the request of Louisiana Power and Light Company (the licensee) to withdraw a portion of its December 2, 1985 application for a proposed amendment to Facility Operating License No. NPF–38, which authorizes operation of the Waterford Steam Electric Station, Unit No. 3, located in St. Charles Parish, Louisiana. The proposed amendment would have changed a reference in Administrative Control 6.4.1 of the Technical Specifications from section 5.2 of ANSI 3.1–1978 to section 5.5 of the same ANSI Standard. The Commission issued a Notice of Consideration of Issuance of Amendment in the Federal Register on January 29, 1986 (51 FR 3715). By letter dated April 15, 1986, the licensee withdrew this portion of its application for the proposed amendment. The Commission has considered the licensee's April 15, 1986 letter and has determined that permission to withdraw this portion of the December 2, 1985 application for amendment should be granted.

For further details with respect to this action, see (1) the application for amendment dated December 2, 1985; and (2) the licensee's letter dated April 15, 1986, withdrawing a portion of the application for license amendment. The above documents are available for public inspection at the Commission Public Document Room, 1717 H Street NW., Washington, DC and at the University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Dated at Bethesda, Maryland, this 28 day of April, 1986.

For the Nuclear Regulatory Commission.

George W. Knighton,

Director, Project Directorate No. 7, Division of PWR Licensing-B.

[FR Doc. 86–10030 Filed 5–2–86; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–275–OLA and 50–323–OLA; ASLBP No. 86–523–03–LA]

Atomic Safety and Licensing Board, Order Designating Location of Prehearing Conference; Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2)

April 29, 1986.

Before Administrative Judges: B. Paul Cotter, Jr., Chairman Glenn O. Bright, Dr. Jerry Harbour.

Please take notice that th prehearing conference in the above-identified proceeding scheduled for May 13, 1986, commencing at 9:30 a.m. local time, will be held in: Cabana Room, San Luis Bay Inn Avila Beach, California 93424.

The date of the prehearing conference, but not the location or time, were announced in the Board's Memorandum and Order of March 28, 1986.

Limited appearances will not be entertained at that time but will be scheduled to take place at a future date.

Dated at Bethesda, Maryland, his 29th day of May, 1985.

For the Atomic Safety and Licensing Board.

B. Paul Cotter, Jr.,

Chairman, Administrative Judge.

[FR Doc. 86–10038 Filed 5–2–86; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

White House Science Council; Meeting

The White House Science Council, the purpose of which is to advise the Director, Office of Science and Technology Policy (OSTP), will meet on May 15 and 16, 1986 in Room 5104, New Executive Office Building, Washington, D.C. The meeting will begin at 6:00 p.m. on May 15, recess and reconvene at 8:00

a.m. on May 16. Following is the proposed agenda for the meeting:

(1) Briefing of the Council, by the Assistant Directors of OSTP, on the current activities of OSTP.

(2) Briefing of the Council by OSTP personnel and personnel of other agencies on proposed, ongoing, and completed panel studies.

(3) Discussion of composition of panels to conduct studies.

The May 15 session and a portion of the May 16 session will be closed to the public.

The briefing on some of the current activities of OSTP necessarily will involve discussion of material that is formally classified in the interest of national defense or for foreign policy reasons. This is also true for a portion of the briefing on panel studies. As well, a portion of both of these briefings will require discussion of internal personnel procedures of the Executive Office of the President and information which, if prematurely disclosed, would significantly frustrate the implementation of decisions made requiring agency action. These portions of the meeting will be closed to the public pursuant to 5 U.S.C. 552b(c) (1), (2), and 9(B).

A portion of the discussion of panel composition will necessitate the disclosure of information of a personal nature, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, this portion of the meeting will also be closed to the public, pursuant to 5 U.S.C. 552b(c)(6).

Because of the security in the New Executive Office Building, persons wishing to attend the open portion of the meeting should contact Annie L. Boyd, Secretary, White House Science Council at (202) 456–7740, prior to 3:00 p.m. on May 14. Ms. Boyd is also available to provide specific information regarding time, place and agenda for the open session.

Jerry D. Jennings,

Executive Director, Office of Science and Technology Policy.

April 30, 1986.

[FR Doc. 86–10114 Filed 5–2–86; 8:45 am]

BILLING CODE 3170–01–M

PEACE CORPS

Agency Information Collection Activities Under OMB Review

AGENCY: Peace Corps.

ACTION: Notice of submission of public use form review request to the Office of Management and Budget.

SUMMARY: Pursuant to the Paperwork Reduction Act of 1981 (44 U.S.C. Chapter 35), the Peace Corps has submitted to the Office of Management and Budget a request to approve the use of the Peace Corps Volunteer Delivery System Questionnaire through July 31, 1989. The form is completed voluntarily by those invited to attend a staging event prior to Peace Corps training and by those attending a stateside training. The Questionnaire provides information concerning individual experiences in being processed through the Volunteer Delivery System. This information is necessary for Peace Corps to evaluate the effectiveness of the Volunteer Delivery System. Though there are demographic questions, such questions will not/cannot be used to identify specific individuals who have filled out the Questionnaire. Information about the form:

Agency Address: Peace Corps, 806 Connecticut Avenue, NW., Washington, DC 20526

Title of Request: Approval of use

Frequency of Collection: On occasion

General Description of Respondents: Individuals who attend pre-training stagings prior to becoming a Peace Corps Volunteer

Estimated Number of Responses: 3,000 annually

Estimated Hours for Respondents to Furnish Information: Thirty (30) minutes each

Respondents Obligation to Reply: Voluntary

Comments: Comments on this form request should be directed to Francine Picoult, Desk Officer, Officer of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

A copy of the form may be obtained from Phillip Seder, Office of Placement, 806 Connecticut Avenue, NW., Room 906, Washington, DC 20526. Mr. Seder may be called on area code 202–632–6595.

This is not a request to which 44 U.S.C. 3504(h) applies.

This notice is issued in Washington, DC, on April 30, 1986.

Linda Rae Gregory,

Associate Director for Management.

Robert E. McClendon,

Certifying Officer, Peace Corps.

[FR Doc. 86–9992 Filed 5–2–86; 8:45 am]

BILLING CODE 6051–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–23187; File Nos. SR–PSDTC–84–16; SR–PCC–85–04; and SR–PSDTC–83–09]

Self-Regulatory Organizations; Pacific Securities Depository Trust Co. and Pacific Clearing Corp.; Order Approving and Withdrawing Proposed Rule Change

The Pacific Securities Depository Trust Company ("PSDTC"), on December 17, 1984, filed a proposed rule change (File No. SR–PSDTC–84–16) under section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"). The Pacific Clearing Corporation ("PCC"), PSDTC's sister clearing agency, on June 5, 1985, filed a companion proposed rule change (File No. SR–PCC–85–04) under that Section of the Act. The Commission published notice of the proposals in the **Federal Register** on January 24 and June 17, 1985, respectively, to solicit public comment.[1] No public comment was received. This Order approves the proposals.[2]

I. Introduction

PSDTC's proposal would establish a bearer municipal bond program. Specifically, the proposal would make certain bearer municipal bonds eligible for deposit at PSDTC and would establish procedures for their book-entry processing. The proposed procedures, among other things, govern deposits of certificates, book-entry deposits, book-entry deliveries, pledges, interest collection and payment, call and maturity processing and withdrawals in bearer or, in some cases, registered form.[3]

PCC's proposal would authorize PCC to provide services to PSDTC participants using the bearer municipal bond program. Specifically, PCC securities proceesing windows could be used to deposit and withdraw bonds. Also, interest payable to PSDTC participants with respect to bearer

[1] Securities Exchange Act Release No. 21656 (January 14, 1985), 50 FR 3440 (January 24, 1985) and Securities Exchange Act Release No. 22132 (June 1, 1985), 50 FR 25144 (June 17, 1985).

[2] The Commission also is granting PSDTC's request to withdraw File No. SR–PSDTC–83–09, which was published for comment in Securities Exchange Act Release No. 20340 (November 2, 1983), 48 FR 51391 (November 18, 1983). The proposals approved today replace File No. SR–PSDTC–83–09.

[3] Because PCC/PSDTC already provide almost identical services for registered municipal securities, PCC/PSDTC participants now will be able to use the same processing system to handle all municipal securities transactions, rather than dual systems depending upon form of issuance.

bonds on deposit at PSDTC will be reflected on PCC transaction blotters, settlement sheets and pay/collect reports.

II. Description

Under the proposals, all processing must occur in special PSDTC Bearer Municipal Bond Accounts. Participants may make deposits to these accounts by delivering certificates, in good deliverable form,[4] to a PCC or PSDTC processing window at any of PCC/PSDTC's offices. Similarly, participants may withdraw certificates from these accounts or convert book-entry positions in bearer bonds to registered form (when conversion is authorized by the issuer) by submitting appropriate instructions to one of PCC/PSDTC's offices.

PSDTC's proposed system would enable PSDTC's participants to make book-entry deliveries and pledges of bearer bond positions to other participants, including pledgee-participants banks. PSDTC participants could effect free and valued book-entry deliveries of bearer bond positions by manual or PCC/PSDTC's Pacific Participant Terminal System ("PPTS") instructions. Participants could instruct PSDTC to make book-entry deliveries to their accounts or to third parties' accounts at other registered securities depositories, *i.e.*, the Depository Trust Company ("DTC") the Midwest Securities Trust Company ("MSTC") and the Philadelphia Depository Trust Company ("Philadep"). Participants would effect pledges by forwarding instructions to PSDTC on a special pledge deposit form or by entering an appropriate instruction on PPTS.

The proposals would provide participants with several important ancillary services. First, PSDTC would provide a coupon clipping, collection and payment service. PSDTC participants would receive coupon interest payments for deposited bearer municipal bonds automatically (*i.e.*, without any participant instruction). On record dates, PSDTC will advise participants of their account positions and projected interest payments. PSDTC will forward clipped bond coupons to issuer's paying agents. On payable date, PCC will include the interest payments in participants' next-day settlement reports. On the following day, the interest payments will be included in participants' PCC Net Settlement Sheets and reflected on participants' PCC Pay/Collect Reports. PSDTC plans to pay interest to participants, even if PSDTC does not receive interest payments from paying agents prior to paying interest to participants. In that case, PSDTC will recover any finance costs by changing each participant a daily finance charge on the uncollected balance.[5] This charge will be reflected as Bearer Interest Charges on nonthly billing statements.

Second, PSDTC would provide bond call processing services. PSDTC will monitor and be responsible for processing calls published in the *Standard and Poor's Called Bond Report, Wall Street Journal (West Coast Edition)* and *Los Angeles Times.* Participants will remain responsible for monitoring bond call notices in other financial publications. PSDTC will be responsible for processing these other calls if a participant advises PSDTC of the pending call at least five business days before the call date. PSDTC will submit called certificates to the redemption agent, cancel participants' positions in redeemed bonds, collect redemption proceeds and disburse proceeds to participants by issuing checks.[6] For whole issue calls and redemptions, PSDTC will submit to the issuer's redemption agent all positions in the called security issue and will make the security issue ineligible for continued and future deposit at PSDTC. For partial redemptions, PSDTC will use an impartial lottery to allocate the call among all participants' positions.[7]

Third, PSDTC will process maturing bonds. PSDTC will submit maturing certificates to the appropriate paying agent. On maturity date, maturity values will be reflected on PSDTC Member Position and Cash Reports and all participants' positions in the maturing bond issue will be cancelled. PSDTC will issue checks for maturing bonds on the business day after maturity date. Like uncollected interest payments, maturity payments not collected by PSDTC from paying agents prior to PSDTC's payment to participants will result in daily finance charges to participants.

PSDTC's proposal includes a fee schedule for these proposed services. The fees cover account dues,[8] book-entry movements,[9] custody services,[10] deposits[11] and withdrawals.[12] Incidental expenses and research costs associated wtih special requests will be passed through to participants.

PSDTC plans initially to operate the program on a limited basis with a small number of bearer municipal bond issues eligible for deposit. To be included in the initial operation of the program, certificates must be in multiples of $1000 and must have imprinted CUSIP numbers. PSDTC intends gradually to increase eligible issues to meet its participants' needs. (In fact, participants can request that PSDTC make an issue eligible.) In addition, PSDTC and the other depositories hope to standardize their eligibility criteria. In any event, PSDTC currently is receiving daily computer tapes from DTC containing a listing of all DTC-eligible issues. PSDTC compares this report to its eligibility list and any issues not yet PSDTC-eligible are made eligible immediately.

Under an agreement between PSDTC and Security Pacific Clearing and Services Corporation ("Security Pacific"), Security Pacific will perform most custodial and certificate handling services for PSDTC's bearer municipal securities bond program. Security Pacific at all times will maintain custody of deposited bonds in California. Security Pacific will collect interest, redemption and maturity payments from paying agents and will pay PSDTC these amounts in next-day funds on applicable payable dates. If Security Pacific experiences delays in collecting payments from paying agents, Security Pacific will charge PSDTC a daily financing charge for payments advanced to PSDTC.[13] If, however, Security

[4] A security is in "good deliverable form" under PSDTC's procedures if: (1) The issue must be eligible for deposit as bearer bond; (2) an appropriate deposit must be correctly completed; (3) the CUSIP number must be printed on the certificate; (4) the par value of the certificates must equal the share quantity on the deposit form; (5) deposits presented up to and on payable date, minus one month, must have all the current coupons attached in correct sequence and not mutilated or cancelled; (6) legal opinions must be printed on the bond or attached to the certificate and (7) certificates for which a call notice has been published on or prior to delivery date will not constitute good delivery.

[5] PSDTC will calculate finance charges by averaging the daily high and low New York broker call rate in the Los Angeles edition of the *Wall Street Journal.*

[6] Participants that do not want PSDTC to process their called bonds must withdraw them from PSDTC prior to a date to be specified for each call.

[7] *See* Part X(B) of the proposed procedures in File No. SR-PSDTC-84-16 for a detailed description. PSDTC's lottery procedures are similar to those used by other registered clearing agencies.

[8] Dues are $250 per month for the first bearer municipal bond account and $50 per month for each sub-account.

[9] Most book-entry movement fees are $1.50.

[10] Custody service fees are $1.95 per issue per month, plus $0.01 per CUSIP value on deposit each month (as of the second to last day of the month).

[11] Deposit fees range from $5 to $13, depending on time of deposit.

[12] PSDTC would assess $5 for each withdrawal instruction (per issue), plus $0.04 per $1000 par value, up to $20. In addition, PSDTC would assess participants requesting certificates in registered form $2.50 per transfer.

[13] The finance charge will be based on the broker call rate in the Los Angeles edition of the *Wall Street Journal.*

Pacific fails timely to present bonds for call or maturity payments or to make interest payments to PSDTC, Security Pacific will pay PSDTC the applicable daily finance charges. PSDTC and Security Pacific each will bear the risk of damages arising out of their own acts or omissions. Moreover, Security Pacific's performance under the Agreement, including the full and prompt payment of all monies due PSDTC (after due notice from PSDTC), would be guaranteed by Security Pacific's parent, Security Pacific Corporation ("SPC"), a regulated bank holding company.

PCC/PSDTC and Security Pacific have created an elaborate safeguarding system designed to ensure the safeguarding of securities and finds in their possession or for which they are responsible. First, access to Security Pacific's securities processing area will be restricted to employees with security badges and visitors who must be "signed in" by appropriate Security Pacific personnel. All securities processing areas will be monitored by cameras. Similarly, access to Security Pacific's vault will be restricted to certain employees and elaborate vault control procedures have been developed for opening and closing the vault. Furthermore, Security Pacific will microfilm (in duplicate) and verify all deposited securities. PSDTC and Security Pacific will reconcile their bearer municipal bond positions each week and all activity will be monitored daily. The reconciliation will be done automatically and breaks will be immediately researched. Any needed adjustments will be researched and completed by PCC/PSDTC's Stock Record department in San Francisco. Security Pacific plans to audit vault contents at least three times per year, and SPC will continue to audit Security Pacific each year, focusing on securities processing controls. Finally, PSDTC, on request, will be able to inspect, during regular business hours, Security Pacific's facilities and audit its books and records as they relate to Security Pacific's PSDTC processing activities.

III. PCC/PSDTC's Rationale

PCC/PSDTC believe that the proposals are consistent with the Act because they would reduce physical deliveries of bearer municipal securities, enhance the safekeeping of those securities, and enhance the interface between registered securities depositories. PCC/PSDTC also believe that the proposals are consistent with the Act because they equitably allocate fees and other charges among participants.

IV. Discussion

As discussed below, the Commission is approving PCC/PSDTC's proposals. The Commission believes that the proposals promote the prompt and accurate processing of municipal securities transactions and are consistent with PCC/PSDTC's duty to safeguard securities and funds under Section 17A of the Act. The Commission also believes that the proposed fees are equitably allocated consistent with that Section of the Act.

Under the proposal, PSDTC will make its automated depository services available to participants for bearer municipal bonds for the first time. Currently, PSDTC participants must process and settle their bearer municipal securities transactions outside the depository environment using labor-intensive, inefficient and costly procedures or by becoming direct or indirect participants in one of the securities depositories with a bearer municipal bond processing program (DTC or MSTC). PSDTC's new program should enable PSDTC participants to compare and settle eligible bearer municipal securities trades in an automated, centralized system using procedures that generally are far more efficient than physical processing. Indeed, the proposed program should promote the increased immobilization of bearer municipal bonds that, until now, have remained outside the automated, safe and efficient National Clearance and Settlement System (the "National System").[14] In fact, certain classes of institutional investors in California for the first time will have the opportunity to use National System facilities for their large municipal bearer bond holdings.[15]

These proposals also will enable PSDTC participants to access the entire National System. That is, they now will have a door through which they can compare and book-entry settle their bearer municipal bond transactions with remote municipal securities dealers. For the first time, PSDTC participants will be able to compare and book-entry settle promptly and accurately their transactions in those securities with DTC participants in New York or MSTC participants in Chicago.[16] Moreover, the addition of PSDTC should enhance competition among depositories for bearer municipal bond business and, as a result, encourage more efficient bearer municipal securities processing systems.

With respect to the safeguarding of securities and funds, the Commission believes that PCC/PSDTC have chosen to rely on a subcustodian that has extensive experience safekeeping bearer instruments and processing payments related to those instruments, particularly interest payments made in exchange for bearer certificate coupons. This experience is particularly significant regarding bearer securities because of their ready negotiability. Moreover, the subcustodian's performance will be guaranteed by SPC, thereby reinforcing the elaborate system of protections and internal controls established under the proposal. As described above, this specially designed system should protect PSDTC and its participants against the risk of loss inherent in bearer securities.[17] The Commission notes, however, that PSDTC's determination to utilize a subcustodian in no way releases PSDTC of its securities and funds safeguarding and other responsibilities under section 17A of the Act. In this regard, the Commission believes that the reporting, auditing and related oversight measures

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[14] The proposals will promote municipal dealer compliance with Municipal Securities Rulemaking Board ("MSRB") Rules G–12 and G–15. Since February 1, 1985, those Rules have required municipal securities dealers that participate in a registered clearing agepcy to use that clearing agency's automoated comparison and book-entry settlement services for certain transactions. *See* Securities Exchange Act Release No. 20365 (November 14, 1983, 48 FR 52531 (November 18, 1983), approving these amendments to MSRB Rules G–12 and G–15.

[15] The Commission understands that California-domiciled insurance companies are unable to deposit portfolio and special deposit securities (including bearer municipal bonds) in out-of-state depositories. *See* Letter dated February 4, 1986, to Bruce Bunner, Commissioner, California Insurance Department from Richard Ketchum, Director, Division of Market Regulation. The proposal would enable these insurance companies to deposit eligible bearer municipal securities in PSDTC, an important depository component of the National System, and to take advantage of such services as the National Institutional Delivery System, which provides automated customer-side confirmation, affirmation and book-entry settlement capabilities.

[16] Both MSTC and DTC have bearer municipal bond processing systems in place. *See* File No. SR–MSTC–83–2, Securities and Exchange Act Release No. 19888 (June 20, 1983), 48 FR 29083 (June 24, 1983) and File No. SR–DTC–81–03, Securities Exchange Act Release No. 18034 (August 14, 1981), 46 FR 42559 (August 21, 1981).

[17] As described above, PSDTC (and several other depositories) advance to participants municipal bond interest and maturity payments on payment date in next-day funds, even when an issuer's paying agent failes to pay PSDTC on time. While PSDTC charges its participants interest on these extensions of credit from payment date, PSDTC remains exposed to financial risk for the entire amount of the advanced funds if an issuer first delays paying PSDTC and then becomes insolvent and defaults in its payment obligations and a participant to whom PSDTC advances funds uses them and also becomes insolvent. The Commission requests PSDTC (and the other depositories) to reconsider the risks of this payment policy and to analyze whether existing financial safeguards meet this risk.

with respect to Security Pacific that have been incorporated into the proposed rule change, if carefully followed, should enable PSDTC to determine whether Security Pacific is discharging its subcustodial responsibilities.

The Commission also agrees with PCC/PSDTC that its decision to limit the number of municipal securities issues eligible for deposit during intitial phases of its program is consistent with PCC/PSDTC's obligation to safeguard securities and funds under the Act. The Commission, however, encourages PCC/PSDTC to expand the number of eligible issues as expeditiously as possible, consistent with its statutory obligations, to provide uniform eligibility in the National System. Uniform eligibility enables dealers and custodians that participate in more than one depository to settle all transactions conveniently through a single settlement account, without additional expense or delays associated with monitoring different depository eligibility lists.[18]

Finally, the Commission believes that PSDTC's proposed fees for bearer municipal securities processing services are equitably allocated among PDSTC's participants using those services. Although the proposal would establish higher fees for deposits close to PCC/PSDTC cut-off times, those fees may encourage participants to deposit securities earlier in the day when PCC/PSDTC can process them more efficiently. As most recently discussed in Securities Exchange Act Release No. 23080,[19] the Commission believes that a registered clearing agency, consistent with the Act, may impose graduated service fees that encourage participants to use clearing agency services efficiently.

V. Withdrawal of File No. SR-PSDTC-83-09

PSDTC requested that the Commission order the withdrawal of File No. SR-PSDTC-83-09 because the proposals approved today were to replace it. The Commission is granting that request.

VI. Conclusion

On the basis of the foregoing, the Commission finds the proposed rule changes (File Nos. SR-PSDTC-84-16 and SR-PCC-85-04) consistent with the Act and, more specifically, with section 17A of the Act.

Accordingly, it is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule changes (SR-PSDTC-84-16 and SR-PCC-85-04) be, and they hereby are approved.

It is also ordered, pursuant to section 19(b)(2) of the Act, that File No. SR-PSDTC-83-09 be, and hereby is, withdrawn.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: April 29, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-10033 Filed 5-2-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 15075; File No. 812-6316]

Freedom Investment Trust; Application for Order Relating to Contingent Deferred Sales Loads and Quarterly Distributions of Long-Term Capital Gains

April 28, 1986.

Notice is hereby given that Freedom Investment Trust ("Applicant"), Three Center Plaza, Boston, MA 02108, filed an application on March 11, 1986, and an amendment thereto on April 15, 1986, for a Commission order pursuant to section 6(c) of the Investment Company Act of 1940 (the "Act") exempting Applicant from the provisions of (i) sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and Rule 22c-1 thereunder, to permit assessment of a contingent deferred sales load ("CDSL") on certain redemptions of shares of Freedom Equity Value Fund ("Equity Series"), Freedom Government Plus Fund ("Government Series") and any subsequent similar series (collectively, "Funds"); (ii) section 22(d) to permit waiver or deferral of any otherwise applicable CDSL; and (iii) section 19(b) of the Act and Rule 19b-1 thereunder to permit the Government Series to make quarterly distributions of long-term capital gains on certain options and futures transactions. All interested person are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for the text of the applicable provisions.

Applicant represents that it is registered under the Act as a diversified, open-end, management investment company. Applicant's shares are offered to the public through broker-dealers pursuant to distribution agreements with Tucker, Anthony & R. L. Day, Inc. ("Tucker Anthony"). Applicant's principal underwriter. Applicant's investment adviser is Tucker Anthony Management Corporation.

Applicant proposes to offer Fund shares without the imposition of a front-end sales load and proposes instead to impose a CDSL upon redemption, with certain exceptions described in the application. Applicant represents that no CDSL will be imposed upon redemption on amounts derived from: (1) Increases in the value of an account, including reinvestment of dividend income and capital gains distributions, above the total cost of shares being redeemed due to increases in the net asset value per share of the Fund; or (2) purchases made more than three years prior to the redemption. Applicant states that the amount of the CDSL, if any, will depend upon the year during which the shares being redeemed were purchased; the CDSL will be 3.0% if redemption occurs within twelve-months of purchase, 2.0% if redemption occurs during the next twelve-month period, 1.0% if redemption occurs during the third twelve-month period, and 0% if redemption occurs thereafter. The CDSL imposed upon redemption would not, in the aggregate, exceed 3% of the aggregate purchase payments made by the investor. Applicant also states that in determining the amount of the CDSL, shares held the longest will be assumed to be the first redeemed. According to the application, this will result in any CDSL being imposed at the lowest possible rate.

Applicant proposes to assist in financing the distribution of shares pursuant to plans adopted under Rule 12b-1 under the Act (the "Plans"). The Plans currently provide that the Value Series and the Government Series will accrue daily and pay monthly to Tucker Anthony a distribution fee calculated at the rate of .75% and 50%, respectively, of average daily net assets. Tucker Anthony also will receive the proceeds of any unwaived CDSL. Applicant represents that its Board of Trustees, in their periodic review of the Plans, will consider the use by Tucker Anthony of revenues raised by the CDSL.

Applicant proposes to waive the CDSL under certain circumstances

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[18] *See* Division of Market Regulation, United States Securities and Exchange Commission, *Draft Staff Report, Progress and Prospects: Depository Immobilization of Securities and Use of Book-Entry Systems*, at 31 (June 14, 1985); Division of Market Regulation, United States Securities and Exchange Commission, *Report of the Division of Market Regulation 1984 Securities Processing Roundtable*, at 20-22 (May 31, 1984).

[19] *See* 51 FR 12415 at 12420 (April 10, 1986) (approval of similar above-cost deposit fees at DTC).

described in the application. Applicant also proposes to defer the CDSL on certain exchanges of shares between Funds. Any applicable CDSL will be payable when a shareholder redeems shares of the Fund acquired as a result of the exchange rather than at the time of exchange. The amount of the CDSL will be calculated from the date of the initial purchase of the exchanged shares. Applicant represents that it will comply with the provisions of Rule 22d-1 under the Act in connection with the proposed waivers and deferrals of the CDSL.

Applicant also requests permission for the Government Series to distribute quarterly net long-term capital gains on transactions in options, futures and options on futures. The Government Series will seek a high current return by investing in securities issued, guaranteed or otherwise backed by the United States Government ("Government Securities"), by writing covered call and put options on Government Securities and by purchasing put options on such securities. It also reserves the right to purchase and sell futures contracts with respect to Government Securities and options thereon for hedging purposes. The Government Series has been designed for investors who seek a high current return with frequent, periodic distributions and not for those who seek long-term capital appreciation. Its current return will be derived from interest income from Government Securities, premiums from expired put and call options on Government Securities, net gains from closing purchase and sale transactions with respect to certain options and futures contracts on Government Securities, premiums from expired put and call options on such futures contracts, net gains from closing purchase and sale transactions with respect to certain of those options and net gains from sales of Portfolio securities on the exercise of options or otherwise. The Government Series will pay dividends from net investment income monthly; distributions of net short-term capital gains will be made quarterly.

Applicant seeks an exemption that would allow the Government Series to distribute quarterly net long-term capital gains recognized on transactions in options, futures and options on futures. Distribution of any net long-term capital gains recognized or deemed recognized on other investments during a fiscal year will be made with the first quarterly distribution after the fiscal year closes. Applicant represents that under the Internal Revenue Code of 1954, options on Government Securities, futures contracts and options thereon are all considered "Section 1256 Contracts." In general, 60% of the realized gain or loss with respect to 1256 Contracts are treated as long-term capital gain or loss, and 40% are treated as short-term capital gain or loss ("60/40 rule"). Applicant submits that the 60/40 rule was devised to prevent possible tax abuses and not to limit the frequency with which registered investment companies may distribute capital gains from transactions in section 1256 Contracts. Applicant states that the Government Series objective of a high current return clearly contemplates the seeking of net gains from options on Government Securities and attempts to hedge its portfolio with futures contracts and options thereon. Further, Applicant states that permitting quarterly distributions of capital gains will not encourage more frequent trading in the Government Series portfolio than what is appropriate in light of the investment objective. Therefore, Applicant contends that whether the entire amount of these gains, as opposed to only the short-term portion, is distributed quarterly will not affect the investment decisions of the investment adviser. Applicant represents that it will clearly distinguish any distribution of capital gains from distribution out of net interest income in the notice to shareholders accompanying the distribution.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than May 23, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant(s) at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-10032 Filed 5-2-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-86-9]

Petition for Exemption; Summary of Petitions Received and Dispositions of Petitions Issued; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions; Correction.

SUMMARY: The issue of **Federal Register** on April 24, 1986 (51 FR 15568), in FR Doc. 86-9112, on page 15570 Docket No. 24626, The Airial Advantage, under the heading "Description of relief sought and disposition," after the word "areas." add the words "Denied 4/8/86."

Issued in Washington, D.C., on April 29, 1986.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

[FR Doc. 86-9970 Filed 5-2-86; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Wayne-Duplin-Sampson Counties, NC

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Wayne, Duplin and Sampson Counties, North Carolina.

FOR FURTHER INFORMATION CONTACT: Roy C. Shelton, District Engineer, Federal Highway Administration, 310 New Bern Avenue, P.O. Box 26806, Raleigh, North Carolina 27611, Telephone (919) 856-4330.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the North carolina Department of Transportation (NCDOT), will prepare an environmental impact statement (EIS) on a proposed highway project in Wayne, Duplin and Sampson Counties. The proposed action would be the construction of a fully controlled US 117 connector from the Mount Olive Bypass in Wayne County through Duplin County to proposed I-40 in Sampson County. The proposed project is needed to provide a connector to I-40 from the Mount olive-Goldsboro vicinity. This will allow quicker access to the

Wilmington area or the Raleigh area via I–40.

The project consists of widening the existing 2 lane US 117 to a 4 lane divided facility from NC 55 at Mount Olive to the existing 4 lane section at Calypso. From this point a 4 lane divided facility will be built on new location to connect with I–40.

Alternatives under consideration include (1) the "no-build," and (2) a fully controlled access highway, part of which will be on new location.

Letters describing the proposed action and soliciting comments are being sent to appropriate Federal, State and local agencies. A public meeting has been held in the study area. A public hearing will also be held. Information on the time and place of the public hearing will be provided in the local news media. The Draft EIS will be available for public and agency review and comment at the time of the hearing. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and questions concerning the proposed action should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of OMB Circular No. A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to this program)

Issued on April 25, 1986.

Roy C. Shelton,

District Engineer.

[FR Doc. 86–9975 Filed 5–2–86; 8:45 am]

BILLING CODE 4910–22–M

Weight-Distance Truck Tax Study; Workshop on Alternative Federal/State Administrative Plans for Administering a Weight-Distance Tax

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of workshop on Federal/State administrative plans.

SUMMARY: Section 933 of the 1984 Deficit Reduction Act (DRA), requires the Secretary of Transportation, in consultation with the Secretary of the Treasury to conduct a study to evaluate the feasibility and ability of a national weight-distance tax (WDT) to: (1) Provide the greatest degree of equity among users; (2) ease the costs of compliance for Federal highway use taxes; (3) improve the efficiency of administering highway use taxes; (4) evaluate the evasion potential; and (5) assess the benefits to interstate commerce.

Under the concept being evaluated, a national WDT would replace all Federal heavy vehicle highway use taxes other than fuel. The report is due to Congress by October 1, 1987.

The purpose of this notice is to announce a workshop, open to the public, at which Federal/State cooperative approaches for administering a national WDT will be presented and discussed.

DATE: The workshop will be held from 8:00 a.m. to 4:00 p.m. on June 4 and from 8:00 a.m. to 3:00 p.m. on June 5, 1986, in Washington, D.C.

ADDRESS: The workshop will be held in the auditorium of the Federal Aviation Administration, U.S. Department of Transportation, 800 Independence Avenue SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mr. James R. Link, Chief, Highway Revenue Analysis Branch, (202) 426–0570; or Mr. Michael J. Laska, Office of the Chief Counsel, (202) 426–0762, Federal Highway Administration, 400 Seventh Street SW., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION:

Background

Section 933 of the DRA of 1984 (Pub. L. 98–369, 98 Stat. 494) directs the Department of Transportation, in consultation with the Department of the Treasury to conduct a study of the feasibility and ability of weight-distance truck taxes to provide equity among highway users, to ease compliance costs, and improve administrative efficiency. Further, the study is to evaluate the evasion potential of such taxes and assess the benefits to interstate commerce of replacing all Federal heavy vehicle highway use taxes, except the fuel taxes, with a WDT.

The FHWA has explicitly structured the study to solicit pertinent information and to keep the public informed. An initial study plan was published in the **Federal Register** on April 17, 1985 (50 FR 15270), and comments were requested to be submitted to Docket 85–20 which is open until October 1, 1986. The FHWA has consulted with representatives of the trucking industry and State officials since the beginning of the study and will continue to do so in a variety of ways throughout the study.

Study Approach

The FHWA is the lead agency for the national WDT study. The overall technical approach is to:

—Prepare a working paper to analyze a wide range of alternative weight-distance tax options.
—Document procedures for administering the current Federal truck taxes (heavy vehicle use tax and excise taxes on truck and tire sales).
—Identify at least two specific WDT options and develop at least two plans for administering a national WDT. One plan would involve Federal agencies only; the other plan would be a Federal/State cooperative effort.
—Assess the feasibility of the tax options and administrative plans using the criteria provided by the Congress under Section 933 of the 1984 DRA.
—Compare the existing tax structure to alternative weight-distance taxes and the existing administrative structure to alternative WDT administrative plans.

Briefing Package

A briefing package describing the study approach in more detail was distributed to industry representatives and others in December 1985 by FHWA. The package contained four sections:

Section 1—Overall study approach;
Section 2—Chronology of completed work;
Section 3—Tasks underway and future direction of the study;
Section 4—Request for comments on the weight-distance tax study approach and activities presented.

Working Paper

The FHWA will make available shortly a working paper that describes the development and screening of alternative national weight-distance taxes. It discusses the following:

—Recent major WDT studies;
—Characteristics of State weight-distance taxes;
—Components of a national WDT;
—Criteria for screening tax options;
—Tax options recommended for detailed analysis to study the feasibility of a national WDT.

Public Meeting

A public meeting, as announced in the **Federal Register** January 31, 1986, was held March 19 in Washington D.C., to discuss the overall study approach and information requested in the briefing paper. Prepared statements were given by representatives of the Private Truck Council of America; American Retreaders' Association; Western Highway Institute; American Trucking Associations; and the Association of American Railroads. Two individuals

representing carriers made brief statements from the floor.

Workshop

Four Federal/State cooperative scenarios for administering a WDT will be presented and discussed at a workshop in Washington, D.C., on June 4 and 5, 1986.

Three scenarios are alternative approaches to administering a national WDT. A fourth scenario explores a two-tiered tax structure (heavy vehicle use tax and fuel tax) as an option to a national WDT.

The first Federal/State scenario assumes there is a strong Federal role in the administration of a national WDT. The Federal Government would be responsible for processing, auditing, and collecting a national WDT. The State role would be primarily checking for proof-of-payment of a national WDT.

The second scenario assumes a strong State role in the administration of a national WDT. States would process, audit, collect, and enforce a national WDT. The Federal Government would provide standards and guidelines to the States for the respective administrative activities. This scenario will be discussed from the perspective of States that do not have a WDT.

The third scenario is similar to the second except that it is to be discussed from the perspective of a State that has WDT and explicity considers how the administration of a national WDT might be combined with the administration of other State truck taxes such as registration, fuel, and a WDT.

The fourth scenario focuses on a two-tiered truck tax structure. The two taxes are assumed to be a heavy vehicle use tax and fuel tax. The Federal/State administration of this type of tax will be explored based first on a strong Federal and limited State role and then based on a strong State and reduced Federal role.

A paper is being written for each scenario that discusses the issues and probable impacts involved in administering a national WDT under a Federal/State approach. The papers will be made available at the workshop and summarized by the authors. Panelists representing State and Federal Government perspectives and the trucking industry will comment on each plan. Workshop attendees will be invited to comment on each plan in a general session as well as in small working groups.

The workshop is open to the public, but space is limited to about 200 people. There is no registration fee or pre-registration necessary for the workshop, however, participants will be asked to sign a register list between 8:00 and 8:30 a.m. on June 4 and will be assigned to a group to discuss one of the four scenarios.

Issued on: April 28, 1986.

R.A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

[FR Doc. 86-10039 Filed 5-2-86; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: April 29, 1986.

The Department of Treasury has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of this submission may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0184
Form Number: ATF F 5400.4 (4710)
Type of Review: Extension
Title: Explosives Transaction Record (non-license/non permittee)

OMB Number: 1512-0202
Form Number: ATF F 5110.34
Type of Review: Extension
Title: Notice of Change in Plant Status (Supplemental)

OMB Number: 1512-0204
Form Number: ATF F 5110.38
Type of Review: Extension
Title: Formula for Distilled Spirits under the Federal Alcohol Administration Act-Supplemental

OMB Number: 1512-0209
Form Number: ATF F 5110.50
Type of Review: Extension
Title: Tax Deferral Bond-Distilled Spirits (Puerto Rico)

OMB Number: 1512-0371
Form Number: ATF REC 5400/1
Type of Review: Extension
Title: Inventories: Licensed Explosives Importers, Manufacturers, Dealers, and Permittees

Clearance Officer: Robert G. Masarsky, (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7202, Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC 20226

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

U.S. Customs Service

OMB Number: 1515-0048
Form Number: CF 7529
Type of Review: Extension
Title: Carrier Certification and Release Order

Clearance Officer: Vince Olive, (202) 566-9181, U.S. Custom Service, Room 6321, 1301 Constitution Avenue NW., Washington, DC 20229

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Internal Revenue Service

OMB Number: 1545-0710
Form Number: IRS Forms 5500, 5500-C, 5500-R
Type of Review: Revision
Title: Annual Return/Report of Employee Benefit Plan, Return/Report of Employee Benefit Plan and Associated Schedules

OMB Number: 1545-0763
Form Number: LR-200-76
Type of Review: Extension
Title: Qualified Conservation Contributions

Clearance Officer: Garrick Shear, (202) 566-6150, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224

OMB Reviewer: Robert Neal, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Joseph F. Maty,

Departmental Reports Management Office.

[FR Doc. 86-10040 Filed 5-2-86; 8:45 am]

BILLING CODE 4810-25-M

Fiscal Service

[Dept. Circ. 570, 1985 Rev., Supp. No. 20]

Surety Companies Acceptable on Federal Bonds; Termination of Authority; Foremost Insurance Company

Notice is hereby given that the Certificate of Authority issued by the Treasury to Foremost Insurance Company, of Grand Rapids, Michigan, under the United States Code, Title 31, Sections 9304-9308, to qualify as an acceptable surety on Federal bonds is terminated effective this date.

The Company was last listed as an acceptable surety on Federal bonds at 50 FR 27115, July 1, 1985.

With respect to any bonds currently in force with Foremost Insurance Company, bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds. However, bonds that are continuous in nature should not be renewed at their anniversary date.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance division, Surety Bond Branch, Washington, D.C. 20226, telephone (202) 634–2319.

W.E. Douglas,

Commissioner, Financial Management Service.

[FR Doc. 86–9971 Filed 5–2–86; 8:45 am]

BILLING CODE 4810-35-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 86
Monday, May 5, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, May 7, 1986.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

—Rule Enforcement Review
—Enforcement Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 86–10060 File 5–1–86; 10:58 am]

BILLING CODE 6351–01–M

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COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, May 14, 1986.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

—Enforcement Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 86–10061 Filed 5–1–86; 10:58 am]

BILLING CODE 6351–01–M

3

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, May 20, 1986.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

—Fourth Quarter Objectives FY 1986
—Application of the New York Futures Exchange for designation as a contract market in the CRB Futures Price Index

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 86–10062 Filed 5–1–86; 10:58 am]

BILLING CODE 6351–01–M

4

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, May 21, 1986.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

—Enforcement Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 86–10063 Filed 5–1–86; 10:58 am]

BILLING CODE 6351–01–M

5

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Friday, May 30, 1986.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

—Options Sales Practices Reviews
—Enforcement Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 86–10064 Filed 5–1–86; 10:58 am]

BILLING CODE 6351–01–M

6

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: April 29, 1986, 51 FR 15995.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: April 30, 1986, 10:00 a.m.

CHANGE IN THE MEETING: The following docket number has been added to Item RP–2:

Item No., Docket No., and Company

RP–2
TA86–1–29–002, Transcontinental Gas Pipe Line Corporation

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–10072 Filed 5–1–86; 11:45 am]

BILLING CODE 6717–02–M

7

NATIONAL COUNCIL ON THE HANDICAPPED

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Council on the Handicapped. This notice also describes the functions of the Council. Notice of this meeting is required under section 522 (b)(10) of the "Government in Sunshine Act" (Pub. L. 94–409).

DATE: May 12, 1986, 9:00 a.m. to 4:00 p.m.; May 13, 1986, 2:00 p.m. to 4:00 p.m.; May 14, 1986, 9:00 a.m. to 3:30 p.m.

ADDRESS: Radisson Mark Plaza Hotel; 5000 Seminary Road West; Alexandra, Virginia.

FOR FURTHER INFORMATION CONTACT: Maureen McInerny, National Council on the Handicapped, 800 Independence Avenue, SW, Suite 814, Washington, DC 20591 (202) 453–3846.

The National Council on the Handicapped is an independent Federal agency comprised of 15 members appointed by the President of the United States and confirmed by the Senate. Established by the 95th Congress in Title IV of the Rehabilitation Act of 1973 (as amended by Pub. L. No. 95–602 in 1978), the Council was initially an advisory board within the Department of Education. In 1984, however, the Council was transformed into an independent agency by the Rehabilitation Act Amendments of 1984 (Pub. L. No. 98–221).

The Council is charged with reviewing all laws, programs, and policies of the Federal Government affecting disabled individuals and making such recommendations as it deems necessary to the President, the Congress, the Secretary of the Department of Education, the Commissioner of the

Rehabilitation Services Administration, and the Director of the National Institute of Handicapped Research (NIHR).

The meeting of the Council shall be open to the public. The proposed agenda includes:

Reports from the Chairman and the Executive Director Workplan Development
Committee Reports in the areas of research, adult services, children's issues, and public affairs
NIHR briefing
Communications seminar
Council's discussion of unfinished business
Council's discussion of new business

Records shall be kept of all Council proceedings and shall be available after the meeting for public inspection at the National Council on the Handicapped.

Signed at Washington, DC, on April 30, 1986.

Lex Frieden,

Executive Director.

[FR Doc. 86-10123 Filed 5-1-86; 3:32 pm]

BILLING CODE 6820-GS-M

8

TENNESSEE VALLEY AUTHORITY

TIME AND DATE: 10:30 a.m. (CDT), May 7, 1986.

PLACE: Hopkinsville Community College Auditorium, Academic Building, North Drive Hopkinsville, Kentucky.

STATUS: Open.

Agenda

Approval of minutes of meeting held on April 18, 1986.

Discussion Items

1. An Update on the Effects of the Tennessee Valley Drought.

Action Items

B—Purchase Awards

B1. Negotiation GG-459813—Indefinite quantity term agreement for genuine Ingersoll-Rand pump parts for any TVA fossil or hydro plant.

C—Power Items

C1. Memorandum of Understanding with United States of America, Department of the Army, covering arrangements for TVA to relocate certain of Army's electric power facilities located on the Redstone Arsenal reservation.

D—Personnel Items

D1. Creation of an Ungraded Executive Group titled the Senior Management Service within the Management and Specialist Schedule, which is to be initially established in the Office of Nuclear Power.

E—Real Property Transactions

E1. Grant of permanent easement to City of Huntsville, Alabama, for a sewerline affecting 0.87 acre of Wheeler Reservior land in Madison County, Alabama—Tract XTWR-94S.

E2. Sale of Permanent Easement to South Central Bell Telephone Company for the construction, operation, and maintenance of a telephone equipment building, affecting approximately 0.06 acre of Wheeler Reservoir land located in Limestone County, Alabama—Tract XWR-617B.

F—Unclassified

F1. Contract No. TV-69457A Between TVA and Center for Occupational Research and Development providing for cooperation in a skills retraining program for dislocated Tennessee Chemical Company workers in Copper Hill, Tennessee.

F2. Supplement to Agreement No. TV-42893A with the Alabama Elk River Development Agency providing for continued cooperation in the Elkmont rural village demonstration project in Limestone County, Alabama.

F3. Supplement to Cooperative Agreement among TVA, Agricultural Stabilization and Conservation Service, and Soil Conservation Service covering arrangements for a project to demonstrate the use of animal waste management systems to improve water quality in the Bear Creek floatway in Franklin and Marion Counties, Alabama (TV-66539A).

F4. Supplement to Contract No. TV-68199A with W.S. Fleming & Associates, Inc., providing for research activities by TVA in support of the Mountain Cloud Chemistry/Forest Exposure Study.

F5. Supplement to Interagency Agreement No. TV-61855A with the U.S. Department of Energy covering arrangements for a Southeastern Regional Biomass Energy Program.

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245-0101.

Dated: April 30, 1986.

John G. Stewart,

Manager of Corporate Administration and Planning.

[FR Doc. 86-10084 Filed 5-1-86; 12:04 pm]

BILLING CODE 8120-01-M

federal register

Monday
May 5, 1986

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Establishment of Airport Radar Service Areas; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 85-AWA-6]

Establishment of Airport Radar Service Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action designates Airport Radar Service Areas (ARSA) at the seven airports listed below. Each location designated is a public or military airport at which a nonregulatory Terminal Radar Service Area (TRSA) is currently in effect. Establishment of each ARSA will require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at each of the affected locations will reduce the risk of midair collision in terminal areas and promote the efficient control of air traffic.

EFFECTIVE DATE: 0901 U.t.c., June 5, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Burns, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

History

On April 22, 1982, the National Airspace Review (NAR) plan was published in the **Federal Register** (47 FR 17448). The plan encompassed a review of airspace use and the procedural aspects of the air traffic control (ATC) system. The FAA published NAR Recommendation 1-2.2.1, "Replace Terminal Radar Service Areas (TRSA) with Model B Airspace and Service (Airport Radar Service Areas)," in Notice 83-9 (48 FR 34286, July 28, 1983) proposing the establishment of ARSA's at Columbus, OH, and Austin, TX. Those locations were designated ARSA's by SFAR No. 45 (48 FR 50038, October 28, 1983) in order to provide an operational confirmation of the ARSA concept for potential application on a national basis. The original expiration dates for SFAR 45, December 22, 1984, for Austin and January 19, 1985, for Columbus were extended to June 20, 1985 (49 FR 47176, November 30, 1984).

On March 6, 1985, the FAA adopted the NAR recommendation and amended Parts 71, 91, 103 and 105 of the Federal Aviation Regulations (14 CFR Parts 71, 91, 103 and 105) to establish the general definition and operating rules for an ARSA (50 FR 9252), and designated Austin and Columbus airports as ARSA's as well as the Baltimore/Washington International Airport, Baltimore, MD (50 FR 9250). Thus far the FAA has designated 11 ARSA's as published in the **Federal Register** on November 1, 1985 (50 FR 45718), 11 ARSA's on December 9, 1985 (50 FR 50254), 12 on February 7, 1986 (51 FR 4872), 11 on March 10, 1986 (51 FR 8284), and 6 on May 8, 1986 (51 FR 11886) in the implementation of this NAR recommendation.

On September 30, 1985, the FAA proposed to designate ARSA's at 8 airports under Airspace Docket No. 85-AWA-6 (50 FR 39822). This rule designates ARSA's at seven of these airports. Interested parties were invited to participate in this rulemaking proceeding by submitting comments on the proposals to the FAA. Additionally, the FAA has held informal airspace meetings for each of the proposed airports. In response to public comments received the FAA has modified several of the proposals.

Related Rulemaking

In addition to the airports addressed here and those previously designated, the FAA published proposed ARSA designations for 4 additional airports on September 30, 1985 (50 FR 39822).

Discussion of Comments

The FAA received comments on the basic ARSA program as well as comments directed toward the proposed individual designations. Additionally, several of the comments on individual designations are common or speak to the basic program itself. Discussion of the comments is divided into two sections. The first addresses common and ARSA program comments, the second addresses comments on the proposals at particular locations.

ARSA Program Comments

Comments received from the Aircraft Owners and Pilots Association (AOPA) and several others claimed that the notification for some of the informal airspace meetings held for some of the candidate airports was inadequate. The schedule of the meetings was published in the Notice of Proposed Rulemaking (NPRM) on September 30, 1985 (50 FR 39822). Additionally, the FAA sent announcements to individuals, fixed-base operators, aviation user organizations, and to the news media organizations in each airport's area. The ARSA program has received considerable coverage in newsletters and official publications of aviation organizations and the schedule of the meetings mailed to members. Furthermore, a 182-day comment period was provided for Airspace Docket No. 85-AWA-6 in which the public could make comment to the public docket on the proposals. For the above reasons the FAA believes the opportunity was sufficient to permit full public comment on the proposals.

AOPA and others commented that, notwithstanding the statement by the FAA in the Regulatory Evaluation contained in the notice, increased air traffic controller personnel and equipment would be needed to handle the increased traffic expected due to the mandatory provisions of the ARSA. FAA's experience with the current ARSA's has been that while there is an increase in the amount of traffic being handled by controllers, this increase is significantly offset by the reduction in the amount of control instructions that must be issued under ARSA procedures as compared to TRSA procedures. However, the FAA recognizes that the potential exists for a need to establish additional controller positions at some facilities due to increased workload should the expected efficiency improvements in handling traffic not fully offset the increased number of aircraft handled. Further, FAA does not expect to incur additional equipment costs in implementing the ARSA program. In some instances, previously adopted plans to replace or modify older existing equipment may be rescheduled to accommodate the ARSA program. However, no new equipment is expected to be required as a result of the ARSA program.

Several commenters, including AOPA and the Experimental Aircraft Association (EAA), disagreed with the FAA's conclusion that the additional air traffic could be accommodated with existing manpower at locations where TRSA participation was low. The FAA's conclusion for the total program was in part based upon the fact that participation in the existing TRSA's was quite high and, therefore, an increase from the present levels to 100% would not be a significant change. The commenters, while not agreeing with this conclusion, claimed that the FAA's rationale did not apply where participation was low and thus additional manpower would be needed at these locations if ARSA was designated. The FAA recognizes that participation in the TRSA program is relatively low at some of the candidate

locations. However, this is in large part due to the controllers' walkout of 1981 and the subsequent reduction in fully qualified controllers which led to the discontinuance of TRSA services. A sufficient number of controllers is assigned at the facilities to which the commenters refer and those facilities are ready to provide the service to the increased number of pilots. This factor was considered by the FAA in its initial evaluation of the ARSA program.

AOPA claimed the staffing at one facility more than doubled in the year prior to implementation of their ARSA. The facility's authorized staffing of 28 controllers did not change. In the facility in question, on January 1, 1985, there were 27 controllers on board but in January 1986, there were the authorized 28 on board. The FAA finds the AOPA claim to be without merit.

The Soaring Society of America (SSA) objected to the ARSA program because it does not provide the same level of safety and service to all classes of aviation. As with other regulations, this rule affects different operators in different ways depending on their respective need to operate in controlled airspace or near the airports involved. The FAA does not agree that this variation in impact is reason not to adopt a rule which benefits the majority of users.

The SSR claims the FAA is changing the criteria that an operating control tower is the only requirement for an airport to be eligible for an ARSA. The FAA has not departed from the NAR criteria which would replace TRSA with ARSA at airports with an operating control tower served by a level III, IV, or V Radar Approach Control Facility.

The SSA claimed that the ARSA rule should state that the ultimate responsibility for separation from other aircraft operating in VFR conditions rests with the pilot. While the FAA agrees that such is the case, the agency does not agree that the ARSA rule must so state. Unless a new or amending provision to the Federal Aviation Regulations (FAR) specifically deletes, amends, or supersedes existing sections, the existing regulations still apply. The ARSA rule (50 FR 9252, 9257, March 6, 1985) did not alter the sections of the FAR that establish that level of responsibility.

AOPA faulted the FAA's implementation of the ARSA program. The FAA stated in the proposal that the benefits of standardization and simplicity were nonquantifiable, and that the safety benefits anticipated by the FAA were not attributable to any given candidate but were based upon implementation of the program on a national basis. According to AOPA this evidenced the need to further evaluate the program at the current locations so that benefits could be individually assessed and each candidate evaluated accordingly. The FAA does not agree. The benefits of standardization and simplicity would always be nonquantifiable regardless of the amount of evaluation, yet they received considerable emphasis by the NAR Task Group. Overall national midair collision accident rates are relatively low, and accident rates within individual categories of airspace are lower still. Additionally, accidents at specific locations are random occurrences. Therefore, estimates of potential reductions in absolute accident rates resulting from the ARSA program cannot realistically be disaggregated below the national level. Additionally, the FAA does not believe that these considerations should be cause for delaying a program that was recommended by a majority of the members of the National Airspace Review, and which has already produced positive results at most of the designate locations.

Numerous commenters also objected to the proposals based upon their belief that air traffic in several of the proposed locations was too great for the ARSA program. The FAA believes that such a point argues strongly for the establishment of an ARSA rather than the converse.

Some commenters, including AOPA , predicted that user costs incurred due to delays will be greater than was estimated by the FAA, and that these costs will be experienced more at some sites than at others. In the NPRM, FAA acknowledged that initial delay problems would vary from site to site, that estimates of delays were quite preliminary, that at some facilities the transition process is expected to go very smoothly, and that at other sites delay problems will dominate the initial adjustment period. These cost estimates are expected to be transitory in nature in that actual delays will be reduced as pilots and controllers become exprienced with ARSA procedures. This has been the case at the three locations where ARSA has been in effect for an appreciable period, and is the trend at those iocations more recently designated.

AOPA discounted the FAA delay estimates claiming that they were based upon a standard ARSA. The FAA does not agree. FAA's preliminary delay estimates were based upon the ARSA proposed for the individual locations, whether standard or modified.

Several commenters questioned the validity of FAA's estimates of the time savings expected to be realized as a result of the greater flexibility allowed air traffic controllers in handling traffic within an ARSA. FAA wants to reemphasize that its estimates of expected savings in time and money which will result from the greater flexibility allowed air traffic controllers in handling traffic within an ARSA are quite preliminary. These estimated savings may or may not offset the delay anticipated at some sites after initial establishment of an ARSA, but are expected to provide overall time savings to all traffic, IFR as well as VFR, which will exceed delay as controllers gain experience with ARSA operating procedures.

Other commenters questioned the operating cost and passenger time values used to calculate delay costs and time savings. The values used are weighted averages of overall activity within an aircraft category for various aircraft types, and represent a typical mix of air passengers. FAA recognizes that for some specific operations actual operating cost and passenger time values will exceed the average values used, while in other cases, the actual values will be less. However, weighted averages represent the most appropriate and equitable measure to use when assessing *overall* impacts. Further, because the delay resulting from implementing ARSA procedures is expected to be transitory and efficiency improvements in the movement of traffic are ultimately expected to result, those operators whose variable cost and passenger time values exceed the averages used in the regulatory evaluation may in fact realize above average benefits.

AOPA claimed that at least half the number of NORDO aircraft in the United States, or 20,900 aircraft, would have to purchase two-way radios in order to enter the ARSA and land at or depart from airports within the ARSA. This is well in excess of the number estimated by the FAA. The FAA does not agree with the AOPA conclusion because each airport receiving ARSA designation has an airport traffic area requiring two-way radio communications at the primary airport at present. Therefore, no additional cost will be incurred for purchase of radios for aircraft landing at or departing from primary airports receiving ARSA designation.

Further, some commenters, including AOPA, expressed concern that older 360 channel transceivers would not be adequate to operate within an ARSA. Frequencies compatible with 360

channel transceivers are available at all ARSA locations. Therefore, operators of 360 channel equipment will not need to install new radios to operate within an ARSA.

SSA claimed that some FAA field personnel had indicated that a transponder would be needed to enter an ARSA, and thus, the cost to implement the program was grossly underestimated. An operable two-way radio is the only avionics required for flight in an ARSA. A transponder is not required and the costing estimates are correct.

AOPA and other commenters stated that the proposed ARSA's would derogate rather than improve safety, as a result of increased frequency congestion, pilots concentrating on their instruments and placing too much reliance upon ACT rather than "see and avoid," and the compression of air traffic into narrow corridors as pilots elect to circumnavigate an ARSA rather than receive ARSA services. In addition to increasing the risk of aircraft collision, the commenters claimed that compression would increase the impact of aircraft noise on underlying communities and cause aircraft to be flown closer to obstructions.

As indicated above, while an increased number of aircraft will be using radio frequencies, the amount of "frequency time" needed for each aircraft is reduced in an ARSA compared to the current TRSA. This has been the experience of the FAA at the current ARSA facilities.

AOPA claims that since the communications and readback procedures in ARSA's do not differ from those utilized in TRSA's there would be no reduction in "frequency time" needed for each pilot to acknowledge instructions or information, and thus, the partial offset indicated by the FAA was not justified. The offset in based upon fewer as well as shorter transmissions for each pilot, thus the FAA does not agree with this claim.

The FAA evaluated the flow of air traffic around the Austin, TX, and Columbus, OH, ARSA's during the confirmation period to determine if compression was occurring. This evaluation was performed by observing the radar at Austin, TX, and by both radar observations and the use of extracted computer data at Columbus, OH. Following the designation of an ARSA at Baltimore/Washington International Airport (BWI), the FAA evaluated the flow of air traffic there for a period of 90 days by observing the radar and extracting computer data to determine if compression was occurring. Additionally, the FAA has continually monitored for the possibility of compression at all recently designated locations. Compression has not been detected at any of these locations. However, compression of air traffic is a site-specific effect that could occur at a particular location regardless of its absence elsewhere. Thus, although the FAA does not believe compression of traffic will occur at any of the proposed airports, the agency will continue to monitor each designated ARSA and make adjustments if necessary.

AOPA, SSA, and other commenters claimed that the FAA provided no demonstrable evidence that the ARSA program would improve aviation safety. The FAA continues to believe the implementation of the ARSA program will enhance aviation safety. The program requires two-way radio communication between ATC and all pilots within the designated areas. Air traffic controllers will thus be in a much improved position to issue complete traffic information to the pilots involved, and thus, safety will be improved.

AOPA, and several other commenters, requested that VFR corridors be established at several of the subject locations along routes that are currently contained within an airport traffic area (ATA). The NAR Task Group noted in their evaluation of the TRSA program that under FAR § 91.87 pilots operating under VFR to or from a satellite airport within an ATA are excluded from the two-way radio communications requirement. The Task Group noted that this was acceptable until the volume of air traffic at the primary airport dictated the installation of a radar approach control. The Task Group recommended, and the FAA adopted, the ARSA program as a safety improvement addressing this problem. Thus, the FAA does not believe provisions for VFR corridors that penetrate an ATA in most cases are warranted or in keeping with that recommendation.

SSA claimed that the grouping of ARSA's such as that adopted in the Sacramento Valley area would create "squeezing" of traffic in the corridors between the blocks of ARSA airspace. One area in question, between Sacramento and Beale Air Force Base (AFB), is approximately 20 miles wide. The FAA does not agree that "squeezing" will occur in this area. Additionally, other user organizations have requested VFR corridors between adjacent or grouped ARSA's and these ARSA's have been modified to accommodate this request.

AOPA and others commented that several of the proposals will require pilots to violate FAR § 91.79 (14 CFR 91.79) regarding minimum safe altitudes. The section states in part, "Except when necessary for takeoff or landing, no person may operate an aircraft below . . . an altitude of 1,000 feet above the highest obstacle within a horizontal radius of 2,000 feet of the aircraft [when over any congested area of a city, town, or settlement, or over any open air assembly of persons]." The commenters claim that the 1,200-foot base altitude of the 5- to 10-mile portion of the ARSA will force pilots to violate FAR § 91.79 where obstacles extend more than 200 feet above the ground. There are two alternatives available to pilots in such a situation which permit compliance with the regulation. Namely, pilots may participate in ARSA services and thus not be limited to the 1,200-foot base, and secondly, a pilot may deviate 2,000 feet horizontally from the obstacle.

Furthermore, AOPA claims that the above response does not adequately respond to the issue. They claim that deviations of 2,000 feet horizontally would increase workload and reduce the efficiency of see-and-avoid, and thus, potentially reduce safety. The FAA does not encourage deviation but encourages participation which will not require deviation and will result in controllers providing radar assistance for see-and-avoid.

SSA, and other commenters, claimed that designation of these ARSA's may negatively impact cross-country glider flights operating out of airports 20 miles, or more, from these ARSA's. While some deviations may be required, the FAA does not agree that the minor deviations that may be required will result in negatively impacting cross-country glider operations.

Several commenters noted that the proposal did not contain an environmental assessment. Under existing environmental regulations the proposed establishment of a Terminal Control Area (TCA) or a TRSA does not require an environmental assessment. The agency environmental regulations have not yet been amended to reflect ARSA procedures. However, because the potential environmental impact and regulatory effects of ARSA designation fall between those of the TCA and ARSA designations, the FAA finds that no environmental assessment is required for an ARSA designation.

AOPA, EAA, and other commenters indicated that the FAA had failed to demonstrate a need for the ARSA program itself, as well as a need for several of the individual proposed locations. Additionally, comments were received that faulted some of the features of the ARSA. Most of these comments went beyond the scope of the

subject proposal and were addressed when the FAA adopted the recommendation of National Airspace Review (NAR) Task Group 1–2.2 (50 FR 9252, March 6, 1985). However, the FAA believes the need for the ARSA program was adequately demonstrated by the task group that reviewed the TRSA program and recommended the ARSA as the former's replacement. The task group faulted the TRSA program in several of its aspects and through consensus agreement determined the preferred features of the ARSA prior to making their recommendation to the FAA. Justification for the ARSA program has been the subject of previous FAA rulemaking, and the program was adopted after consideration of public comment. Response to comments on ARSA's at particular locations is made below.

AOPA, EAA, SSA, and others commented that several of the proposed ARSA's failed to meet the criteria for designation. The criteria for this group of candidates was recommended by the NAR Task Group and adopted by the FAA. Namely, ". . . excluding TCA locations, all airports with an operational airport traffic control tower and currently contained within a TRSA serviced by a Level III, IV, or V radar approach control facility shall have [an ARSA] designated; unless a study indicates that such designation is inappropriate for a particular location." (49 FR 47184, November 30, 1984).

AOPA, EAA, and others commented that the existence of a TRSA in the above mentioned category should not be considered as justification for an ARSA. After a review of all comments received to the above referenced proposal, the FAA adopted that NAR recommendation (50 FR 9252, March 6, 1985). Therefore, absent a finding that designation would be inappropriate, the existence of a TRSA within that criteria is deemed sufficient for designation.

AOPA, EAA, and others indicated that several of the proposed locations do not meet the criteria that the FAA is considering for future ARSA candidates. The FAA has circulated proposed criteria for future application. However, whatever the nature of any criteria eventually adopted, this group of locations which qualify as ARSA candidates under the adopted NAR criteria would not be affected.

Several commenters suggested the top of the ARSA be lowered from 4,000 feet above field elevation. Absent strong justification for lowering this altitude, the FAA has not adopted these recommendations. The agency's rationale for nonadoption is set forth immediately above.

Several commenters, including AOPA and EAA, indicated that at several of the proposed ARSA's the TRSA was working quite well and that there was no need to change something that was working. The FAA acknowledges that TRSA's are functional and beneficial, to a point. However, the NAR Task Group did not fault individual TRSA locations but the TRSA program itself and recommended its replacement. The FAA concurred with the assessment and has determined that the ARSA program is an improvement over the TRSA program from the standpoints of both safety and service. Thus, the quality of service being provided at TRSA locations should not constitute a roadblock to improvement.

Several commenters claimed the reduced separation standards of the ARSA program would derogate rather than enhance safety. The elimination of the Stage III separation requirements was recommended by users, all of whom are vitally interested in aviation safety, and adopted by the FAA. This aspect of the ARSA program received considerable FAA attention during the confirmation period at Austin, TX, and Columbus, OH. The FAA agrees with the task group that the Stage III separation standards are not needed for safety in a mandatory participation area.

Several commenters requested that the ARSA be described in statute rather than nautical miles. Numerous user organizations and the NAR itself have recommended that the FAA adopt nautical-mile descriptions rather than statute. It is the intention of the FAA to establish all new descriptions according to that recommendation.

Several commenters objected to proposals where the ARSA was in proximity to other airports. According to these commenters pilots would not know whether they should be in contact with the ARSA approach control facility or in contact with the control tower at the secondary airport, or on unicom. The FAA does not view this situation as different from that existing at many of these locations today. Through pilot education programs and experience with ARSA procedures this situation will improve. Also, as at present, when a pilot contacts the wrong FAA facility the controllers will give appropriate instructions.

AOPA, SSA, and other commenters objected to several of the proposed ARSA's based upon the claim that the FAA had failed to evaluate the cumulative effect of the proposed ARSA's and other regulatory airspace. The evaluation for each ARSA included all factors known to the FAA, including the proximity of other regulatory airspace.

AOPA and SSA objected to the ARSA's based upon a claim that an insufficient amount of pilot education had been accomplished by the agency. AOPA cited South Bend, IN as an example where there were 19 days between the informal airspace meeting and the closing of the comment period, and SSA claimed that the comment period and a single informal airspace meeting were insufficient. The FAA does not agree. The example cited by AOPA and SSA referenced the comment period, not the total period to provide for pilot education. Pilot education will continue after the comment period has ended and beyond the effective date of the ARSA's. Further user meetings will be held for each designated location following implementation of the ARSA's.

Underlying a great many of the comments received was the idea that some provision should be made so that pilots could continue their current practices without contacting the responsible ATC facility. While the FAA has made modifications from the standard ARSA in cases where circumstances warrant, the basic thrust of the ARSA program is to require two-way communication with the responsible approach control facility, and not to make modifications in the program to provide for nonparticipation.

AOPA commented that FAA underestimated the one-time cost of distributing Letters to Airmen and the Advisory Circular, and neglected costs related to the informal public meetings. Both of these issues were discussed in the detailed regulatory evaluation of the NPRM, which has been available in the regulatory docket since publication of the NPRM. The availability of this detailed evaluation was indicated in the introductory paragraph of the regulatory evaluation summary included in the **Federal Register** NPRM (50 FR 39822, 39824, September 30, 1985). AOPA's comments assumed that every active pilot would be notified as least once. However, FAA intends to mail individual Letters to Airmen only to those pilots living in the vicinity of ARSA sites, and consequently its cost estimate is less than that of AOPA. The total one-time cost of distributing Letters to Airmen and the Advisory Circular was also prorated to reflect only those sites included in the notice, and both total and prorated cost estimates were provided in the notice. Further, as FAA indicated in the detailed regulatory evaluation, the expenses associated with public meetings will be incurred

regardless of whether or not an ARSA is ultimately established at a proposed site, and consequently these expenses are more appropriately considered sunken costs attributable to the rulemaking process rather than implementation costs of the ARSA program. Similarly, information on ARSA's following the establishment of a new site will also be disseminated at aviation safety seminars conducted throughout the country by various district offices. These seminars are regularly provided by the FAA to discuss a variety of aviation safety issues, and, therefore, will not involve additional costs strictly as a result of the ARSA program.

SSA faulted the FAA for using the aviation safety seminars for pilot education on ARSA's. They claim these seminars do not reach many pilots and the seminars are reserved during this year for the FAA "Back to Basics" program. The FAA does not agree. The aviation safety seminars are for all pilots and for education on all aspects of aviation which would include the ARSA program.

SSA, and other commenters questioned whether the FAA considered the impact of the proposed ARSA's on individuals in making its Regulatory Flexibility Determination, and whether the threshold for determining if a significant economic impact on a substantial number of small entities had been exceeded because some small entities might be impacted. The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. Small entities are independently owned and operated small businesses and small not-for-profit organizations. Individual citizens, as such, are not considered small entities under the terms of the RFA; however, an individual whose business is a sole proprietorship would be considered a small entity under the RFA. Some of the small entities which could be potentially affected by implementation of the ARSA program include the fixed-base operators, flight schools, agricultural operations and other small aviation businesses located at satellite airports located within 5 miles of the ARSA center. If the mandatory participation requirement were to extend down to the surface at these airports, where under current regulations participation in the TRSA and radio communication with ATC is voluntary, operations at these airports might be altered, and some business could be lost to airports outside of the ARSA core. Because FAA is excluding almost every satellite airport located within the 5-mile ring to avoid adversely impacting their operations, and in some cases will achieve the same purposes through Letters of Agreement between ATC and the affected airports establishing special procedures for operating to and from these airports, FAA expects to virtually eliminate any adverse impact on the operations of small satellite airports which potentially could result from the ARSA program. Similarly, FAA expects to eliminate potential adverse impacts on existing flight training practice areas, as well as, soaring, ballooning, parachuting, ultralight, and banner towing activities, by developing special procedures which will accommodate these activities through local agreements between ATC facilities and the affected organizations. For these reasons, a substantial number of small entities, defined in FAA Order 2100.14, "Regulatory Flexibility Criteria and Guidance," as more than one-third (but not less than eleven) of the small entities subject to a proposed rule, clearly will not be impacted by this rulemaking. Therefore, adoption of this final rule will not result in a significant economic impact on a substantial number of small entities.

Numerous commenters objected to the ARSA designations claiming they would simply provide the FAA with the basis for additional regulatory restrictions. The FAA does not believe this to be a valid objection. While the agency has no current plans for further regulatory action which imposes additional restrictions, such action if it should ever become a reality would be the subject of additional rulemaking and would of necessity be judged on its own merits, as should these proposals.

The Air Line Pilots Association concurred with the proposal as an improvement in operational efficiency and a significant contribution to a reduction of midair collision potential.

The Air Transport Association endorsed the proposed designations as an improvement in safety with specific comments indicated below.

The General Aviation Manufacturers Association endorsed the ARSA's as an improvement in safety and concurred with the FAA's philosophy regarding some deviation from the standard model.

Comments were received which were supportive of each of the ARSA's addressed here as an improvement in aviation safety, and stating that participation by all pilots was only equitable and that normal safety concerns dictated mandatory two-way communications. The FAA agrees.

Comments on Particular Locations

Albuquerque International Airport, NM

The manager of Double Eagle Aviation claims that aircraft departing Double Eagle II Airport who wish to proceed east or south will be in the ARSA before two-way radio communications can be established. The aircraft in question are primarily fast turboprop-powered aircraft. He also claims the ARSA shelf altitude of 6,900 feet will interfere with the traffic pattern altitude at Double Eagle II Airport. The FAA does not agree. Departures from Double Eagle II Airport routinely establish two-way communications with Albuquerque Approach Control before proceeding east or south because of the proximity to the final approach courses at Albuquerque International Airport. Therefore, the rule requiring two-way communications prior to entering the ARSA should cause no adverse impact over present operations. The base of the shelf area which begins approximately 1½ miles east of Double Eagle II Airport is 6,900 feet MSL which provides adequate relief for the traffic pattern. For these reasons, the FAA finds the operation at Double Eagle II Airport should not be adversely impacted by the ARSA.

The manager of Double Eagle Aviation offered to provide a location for a transceiver to allow two-way communications to be established prior to departure from the airport. The FAA appreciates the generous offer but will evaluate total operations prior to considering additional radio coverage for this area.

The Soaring Society of America stated that the proposed Albuquerque ARSA will not affect their training and towing routes but claimed their cross-country routes might be affected. As stated above, the FAA will watch this operation closely and, if necessary, enter into local agreements to minimize or eliminate adverse effects on the cross-country soaring operations.

The Air Transport Association commented supporting the proposed Albuquerque ARSA.

Greater Cincinnati International Airport, Covington, KY

Several commenters claimed the ARSA should be tailored by omitting the area beyond the Ohio River to the northwest to alleviate impact on present training areas. The FAA does not agree. As stated above, the FAA can enter into agreements with affected parties for the

use of training areas and practice areas within the ARSA.

The Chairman of the Aviation Administration Department of Northern Kentucky University, AOPA, and other commenters claimed that the floor of the outer core was too low and suggested raising the floor of the outer core to 2,500 feet. The FAA does not agree. The proposed altitude of 2,100 feet MSL provides more than the 1,200 feet above ground level base altitude provided for in the basic ARSA design.

The Lunken Airport Users Committee and other commenters requested a delay in implementation of the ARSA until runway repairs at Lunken Airport are completed. They claimed the runway construction requires use of an alternate runway that in turn will force pilots to fly under the ARSA shelf at unsafe altitudes in order to depart the traffic pattern, to avoid entering the ARSA within a mile of the departure end of the runway. The FAA does not agree. Lunken Airport has an operating control tower and use of the mutual airspace will be jointly agreed to between the facilities.

Indianapolis International Airport, IN

Several commenters claimed the ARSA would adversely affect the traffic pattern at Eagle Creek Airport which is located 6 miles north of Indianapolis International Airport. The FAA does not agree. The altitude of the outer core in the vicinity of Eagle Creek Airport is 2,100 feet MSL. The traffic pattern altitude at the airport is from 1,650 to 1,900 feet MSL. This is safely below the proposed altitude of the ARSA shelf.

Several commenters claimed it would be difficult to be informed of a letter of agreement dealing with operations in the traffic pattern at Speedway Airport. Other commenters claimed the ARSA would have an adverse impact on operations in the Speedway Airport traffic pattern. The FAA agrees. For these reasons, an airspace cutout of the inner core has been made to allow for operations in the traffic pattern at Speedway Airport.

A commenter claimed the ARSA would have an adverse effect on banner towing operations over Indiana University/Purdue University at Indianapolis (IUPUI). The FAA does not agree. IUPUI is located approximately 6½ miles east of the airport under the core shelf. Normal banner towing activities in this area would not require prior ATC approval.

The Indianapolis Airport Authority, AOPA, and others expressed concern that the proposed ARSA will adversely affect operations at the airports in the Greater Indianapolis area. The FAA has made allowances and modifications to the ARSA to allow operations to and from these airports to continue with little or no change from past operations.

The Air Transport Association supports the proposed Indianapolis ARSA.

Phoenix Sky Harbor International Airport, AZ

The Arizona Pilots Association (APA), AOPA, and the Scottsdale Pilots and Aviation Assocation (SPAA) objected to the ARSA as proposed for Phoenix stating it is unsafe and utilizes more airspace than necessary. The APA and SPAA submitted alternate proposals which proposed to raise the floor to the north of the airport by defining a new quadrant. The FAA does not agree that the proposed ARSA is unsafe. The FAA has studied both the APA and SPAA proposals in depth. The FAA agrees that portions of both proposals can meet the aviation community's needs and provide the safety intended in the ARSA. The SPAA proposal does not entirely conform to the basic ARSA configuration as adopted by the FAA. The APA proposal conforms to the ARSA criteria and will be adopted in part by the FAA. The FAA wishes to commend the SPAA and the SPA for their contributions to aviation safety in the ARSA program.

The Arizona Balloon Club and the Arizona Soaring Association objected to the meeting claiming that their members were not notified in the same manner as pilots with medical certificates. Investigation into this allegation disclosed that a special mailing to these balloon and glider pilots had been made. It was pointed out that some pilots may have moved and had not updated their current addresses either with the post office or the FAA.

The owner of an air freight company and AOPA objected to the proposal citing the possibility of delays into and out of the ARSA. As previously stated, the FAA recognizes that delays initially may occur but will vary from one airport to another. However, delays are expected to be transitory in nature and will decrease as both pilots and controllers gain more familiarity with the ARSA.

The United States Air Force and the Commanders of Luke and Williams AFB's objected to the implementation of an ARSA at Phoenix Sky Harbor International Airport at this time. All agreed with the basic ARSA program but requested a delay in implementation at Phoenix until such time as ARSA's at Luke and Williams AFB's could be implemented. The FAA does not agree. The AFB's in question do not qualify as ARSA candidates under existing criteria. The benefits derived from the proposed ARSA at Phoenix should not be withheld from users of the system until such time as the AFB's in question qualify for and are proposed as ARSA candidates. If at a future date these bases qualify for and are proposed as ARSA candidates, there is no assurance an ARSA would be implemented at either.

The United States Air Force Reserve based at Phoenix Sky Harbor International Airport supports the Headquarters United States Air Force position on the Phoenix ARSA.

The Arizona Hang Gliding Association opposed the proposed ARSA in areas of concern for their members claiming that the southwest segment encompassing South Mountain was not needed. The association requested that the 4,000 to 5,100 feet MSL area encompassing South Mountain be omitted from the ARSA. They claimed the area would restrict their flying and soaring in this area and that it is not necessary since it is only 1,100 feet from the base to the top. The FAA does not agree. The FAA believes the benefits of the ARSA are for all pilots and to deny this area of protection to those who traverse this area would not be consistent with the overall ARSA program. Local procedures may be agreed to whereby the hang gliding and soaring activities in this area may continue as usual. It will be in the best interest of all users for the FAA to be aware of specific activity in this area.

The City of Phoenix, Office of the Police Chief, claimed the ARSA may possibly have an adverse effect on the police fixed-wing aircraft response and surveillance activities over the city. The FAA, through local agreements if necessary, has and will continue to work with law enforcement agencies to eliminate most negative impact on necessary police activities.

The City of Casa Grande voiced opposition to the implementation of an ARSA at Phoenix. The concern of the city is appreciated but they should not be affected by the ARSA as the city is located approximately 30 miles southeast of Phoenix Sky Harbor Airport.

The City of Scottsdale and the Arizona Airspace Utilization Committee supported the Arizona Pilots Association position on the ARSA.

The Arizona Department of Transportation objects to the proposal as a safety detractor.

The Tucson Department of Transportation objected to the proposed

ARSA, citing altitudes to the north as a major safety concern.

Numerous individuals and corporations voiced approval of the ARSA program at Phoenix.

Standiford Field Airport, Louisville, KY

Letters to Airmen notifying pilots of the Informal Airspace Meeting and the proposed Standiford Field ARSA were scheduled to be mailed in mid-December, 1985. Due to the failure of the contractor to mail the notifications until approximately two weeks prior to the meeting, the FAA, in keeping with the policy to notify pilots of ARSA meetings at least 60 days in advance, has extended the comment period and will hold another Informal Airspace Meeting for Standiford Field Airport, Louisville, KY. Thus, no action on the proposed Louisville ARSA is being taken at this time.

Tucson International Airport, AZ, and Davis-Monthan AFB, AZ.

One commenter claimed the proposed ARSA would negatively impact balloon operations in the outer core in the vicinity of the Catalina Mountains particularly in the area of Tanque-Verde and Rillito washes. The commenter requested a blanket exemption for balloon operations in the outer core in the above areas. The FAA does not agree. As stated above, the local facility will make every effort to eliminate any adverse impact on these operations, through local agreements if necessary.

The Arizona Soaring Association opposed the proposed ARSA in the Tucson area. They stated that if an ARSA is implemented, the base altitude in the outer core should be raised to that of the present TRSA. The FAA does not agree. The proposed base altitude of 4,200 affords more terrain clearance than the TRSA.

The Soaring Society of America claims that although the Tucson and Davis-Monthan ARSA's will not impact local towing routes, training areas, and landing areas, there may be an impact on cross-country routes. As stated above, the FAA will monitor these operations and, if necessary, take positive steps to eliminate adverse effects on these routes.

AOPA and others objected to the ARSA's basing their claims on compression of air traffic and the lack of need for ARSA's at Tucson and Davis-Monthan AFB. These comments have been addressed above.

The Arizona Pilots Association, in its letter of January 15, 1986, endorsed the proposed ARSA in Tucson. However, in its letter of March 15, 1986, the Association claimed the Tucson ARSA was not needed, but stated that if an ARSA is to be implemented in Tucson, the proposed ARSA is both safe and workable.

The Cochise County Aviation Planning Commission endorsed the January 15, 1986, position of the Arizona Pilots Association.

The Arizona Airspace Utilization Committee supported the Tucson and Davis-Monthan proposals without reservation.

The United States Air Force fully supports the implementation of an ARSA at both Tucson International Airport and Davis-Monthan AFB.

Several commenters expressed thoughts that the ARSA was a good idea.

Wichita Mid-Continent Airport, KS

AOPA and other commenters claimed the ARSA as proposed at Wichita would serve no purpose as the TRSA is operating well. The FAA does not agree that an ARSA will serve no purpose at Wichita. As stated above, the NAR recommended and the FAA adopted the recommendation to propose to replace TRSA with ARSA.

The United States Air Force, the Commander 384th Air Refueling Wing, and the Director of Air Traffic Services, Strategic Air Command, support the ARSA concept and program. However, all opposed the implementation of an ARSA at Wichita Mid-Continent Airport at this time. They requested the implementation be delayed until an ARSA could be proposed and implemented simultaneously at McConnell AFB. McConnell AFB does not qualify as an ARSA candidate under existing criteria. To delay implementation of an ARSA at Wichita Mid-Continent Airport until criteria are developed, staff studies made and candidacy proposed for McConnell would deny the benefits of the ARSA to the majority of the airspace users in the Wichita area. For these reasons, the FAA does not agree.

AOPA, Beech Aircraft Corporation, and other commenters objected to the proposal citing the possibility of delays entering and leaving the ARSA. These comments have been addressed above.

The Beech Aircraft Corporation objected to the ARSA supporting, for the most part, the AOPA position.

AOPA claimed that six NORDO aircraft based at Westport Airport would have to install radios to operate in the ARSA. Aircraft operations at Westport Airport will be covered by a Letter of Agreement.

Other Comments

A number of other comments were received addressing matters beyond the scope of these proposals such as charting, the number of frequencies depicted on a chart, the general design features of an ARSA, etc. The FAA will give consideration to all of the points raised in these comments but will not address them as a part of this rulemaking.

Regulatory Evaluation

Those comments which addressed information presented in the Regulatory Evaluations of the notices for the dockets included in this final rule have been discussed above. A detailed Regulatory Evaluation of this final rule has been placed in the regulatory docket.

Briefly, the FAA finds that a direct comparison of the costs and benefits of this rule is difficult for a number of reasons. Many of the benefits of the rule are nonquantifiable, especially those associated with simplification and standardization of terminal airspace procedures. Further, the benefits of standardization result collectively from the overall ARSA program, and as discussed previously, estimates of potential reductions in absolute accident rates resulting from the ARSA program cannot realistically be disaggregated below the national level. Therefore, it is difficult to specifically attribute these benefits to individual ARSA sites. Finally, until more experience has been gained with ARSA operations, estimates of *both* the efficiency improvements resulting in time savings to aircraft operators, and the potential delays resulting from mandatory participation, will be quite preliminary.

ATC personnel at some facilities anticipate that the process will go very smoothly, that delays will be minimal, and that efficiency gains will be realized from the start. Other sites anticipate that delay problems will dominate the initial adjustment period.

FAA believes these adjustment problems will only be temporary, and that once established, the ARSA program will result in an overall improvement in efficiency in terminal area operations at those airports where ARSA's are established. These overall gains which FAA expects for the group of ARSA sites established by this rule typify the benefits which FAA expects to achieve nationally from the ARSA program. These benefits are expected to be achieved without any additional controller staffing or radar equipment costs to the FAA.

In addition to these operational efficiency improvements, establishment of these ARSA sites will contribute to a reduction in midair collisions. The quantifiable benefits of this safety

improvement could range from less than $100 thousand, to as much as $300 million, for each accident prevented.

For these reasons, FAA expects that the ARSA sites established in this rule will produce long term, ongoing benefits which will exceed their costs, which are essentially transitional in nature.

Regulatory Flexibility Determination

Under the terms of the Regulatory Flexibility Act, the FAA has reviewed this rulemaking action to determine what impact it may have on small entities. FAA's Regulatory Flexibility Determination was published in the NPRM, and those comments which addressed it have been discussed above. For the reasons presented in the NPRM and clarified in the Discussion of Comments, FAA has determined that this rulemaking action is not expected to affect a substantial number of small entities. Therefore, the FAA certifies that this regulatory action will not result in a significant economic impact on a substantial number of small entities.

The Rule

This action designates Airport Radar Service Areas (ARSA) at the seven airports listed below. Each location designated is a public or military airport at which a nonregulatory Terminal Radar Service Area is currently in effect. Establishment of each ARSA will require that pilots maintain two-way radio communication with air traffic control while in the ARSA. Implementation of ARSA procedures at each of the affected locations will reduce the risk of midair collision in terminal areas and promote the efficient control of air traffic.

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 "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 11034; February 26, 1979).

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a) and 1354(a); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. Section 71.501 is amended as follows:

Albuquerque International Airport, NM—[New]

That airspace extending upward from the surface to and including 9,400 feet MSL within a 5-mile radius of Albuquerque International Airport (lat. 35°02'30" N., 106°36'23" W.), and that airspace extending upward from 7,800 feet MSL to 9,400 feet MSL within a 10-mile radius of the airport from the 072° bearing from the airport clockwise to the 117° bearing from the airport and that airspace extending upward from 6,900 feet MSL to 9,400 feet MSL within a 10-mile radius of the airport from the 117° bearing from the airport clockwise to the 034° bearing from the airport at 10 miles thence southerly along a line direct to a point 7 miles from the airport on the 072° bearing from the airport then southwesterly along this 072° bearing from the airport to the 5-mile radius from the airport.

Davis-Monthan AFB, AZ—[New]

That airspace extending upward from the surface to and including 6,600 feet MSL within a 5-mile radius of the Davis-Monthan AFB (lat. 32°09'54" N., long. 110°52'54" W.) to the points where the 5-mile arc joins a 5-mile arc from the Tucson International Airport, AZ, (lat. 32°07'06" N., long. 110° 56'35" W.) Airport Radar Service Area (ARSA), and that airspace extending upward from 4,200 feet MSL to 6,600 feet MSL within a 10-mile radius of Davis-Monthan AFB to the points where the 10-mile arc joins a 10-mile arc from the Tucson International Airport ARSA.

Greater Cincinnati International Airport, Covington, KY—[New]

That airspace extending upward from the surface to and including 4,900 feet MSL within a 5-mile radius of the Greater Cincinnati International Airport (lat. 39°02'52" N., long. 84° 40'00" W.), and that airspace extending upward from 2,100 feet MSL to 4,900 feet MSL within a 10-mile radius of the Greater Cincinnati International Airport.

Indianapolis International Airport, IN—[New]

That airspace extending upward from the surface to and including 4,800 feet MSL within a 5-mile radius of the Indianapolis International Airport (lat. 39°43'28" N., long. 86°17'00" W.), excluding that airspace extending upward from the surface to but not including 1,700 feet MSL within a 1-mile radius of Speedway Airport (lat. 39°47'55" N., long. 86°21'20" W.); and that airspace extending upward from 2,100 feet MSL within a 10-mile radius of the Indianapolis International Airport.

Phoenix Sky Harbor International Airport, AZ—[New]

That airspace extending upward from the surface to and including 5,100 feet MSL within a 5-mile radius of the Phoenix Sky Harbor Airport (lat. 33°26'10" N. 112°00'32" W.); and that airspace within a 10-mile radius of Phoenix Sky Harbor Airport extending upward from 4,000 feet MSL to and including 5,100 feet MSL from the 166° bearing from the airport clockwise to the 243° bearing from the airport, and that airspace within a 10-mile radius of the airport extending upward from 2,300 feet MSL to and including 5,100 feet MSL from the 243° bearing clockwise to Grand Boulevard, and that airspace within a 10-mile radius of the airport extending upward from 2,800 feet MSL to and including 5,100 feet MSL from Grand Boulevard clockwise to lat. 33°30'00" N., and that airspace within a 10-mile radius of the airport extending upward from 2,300 feet MSL to and including 5,100 feet MSL from lat. 33°30'00" N., clockwise to the 166° bearing from the Phoenix Sky Harbor Airport.

Tucson International Airport, AZ—[New]

That airspace extending upward from the surface to 6,600 feet MSL within a 5-mile radius of the Tucson International Airport (lat. 32°07'06" N., long. 110°56'35" W.) to the points where the 5-mile arc joins a 5-mile arc from the Davis-Monthan AFB, AZ, (lat. 32°09'54" N., long. 110°52'54" W.) Airport Radar Service Area (ARSA), and that airspace extending upward from 4,200 feet MSL to and including 6,600 feet MSL to the points where the 10-mile arc joins a 10 mile arc from the Davis-Monthan AFB ARSA.

Wichita Mid-Continent Airport, KS—[New]

That airspace extending upward from the surface to and including 5,300 feet MSL within a 5-mile radius of the Wichita Mid-Continent Airport (lat. 37°39'00" N., long. 97°25'58" W.), and that airspace extending upward from 2,700 feet to 5,300 feet MSL within a 10-mile radius of the Wichita Mid-Continent Airport.

Issued in Washington, DC, on April 29, 1986.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86–9998 Filed 5–2–86; 8:45 am]

BILLING CODE 4910–13–M

federal register

Monday
May 5, 1986

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 630

Additional Standards for Viral Vaccines; Poliovirus Vaccine Live Oral; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 630

[Docket No. 86N-0027]

Additional Standards for Viral Vaccines; Poliovirus Vaccine Live Oral

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the biologics regulations governing the manufacture of Poliovirus Vaccine Live Oral. FDA has reviewed these regulations and is proposing amendments to update the regulations consistent with current scientific knowledge and to remove unnecessary regulatory burdens. FDA is also proposing amendments that will make its standards more consistent with the requirements for manufacturing and testing oral poliovirus vaccine issued by the World Health Organization (WHO). The proposed amendments would facilitate the licensure for U.S. distribution of oral poliovirus vaccine currently meeting international standards of safety and effectiveness.

DATES: Comments by July 7, 1986. FDA proposes that the effective date of any final rule based on this proposal be 30 days after the date of its publicatin in the **Federal Register**. For additional information concerning the proposed effective date, see section III.Y. "Proposed Effective Date" appearing in the preamble of this document.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Steven F. Falter, Center for Drugs and Biologics (HFN-364), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8046.

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I. History of the Manufacture and Regulation of the Vaccine

Poliovirus Vaccine Live Oral (hereafter referred to generically as oral poliovirus vaccine) is a preparation of live, attenuated, poliovirus grown either in monkey kidney cell cultures or in a cell line of human origin. The vaccine is prepared in a form suitable for oral administration. The vaccine currently is administered exclusively as Poliovirus Vaccine Live Oral Trivalent, containing the three types of poliovirus that may infect humans: Type 1, Type 2, and Type 3.

Oral poliovirus vaccine is a biological product subject to licensure under section 351 of the Public Health Service Act (the PHS act) (42 U.S.C. 262). Under the PHS act, oral poliovirus vaccine must meet standards prescribed in regulations designed to ensure the continued safety, purity, and potency of the product. The additional standards for Poliovirus Vaccine Live Oral, now codified under 21 CFR 630.10 through 630.17, originally were issued on March 25, 1961, and were subsequently recodified in Title 21 of the Code of Federal Regulations. The first of the monovalent forms of Poliovirus Vaccine Live Oral was licensed in the United States in August 1961. The trivalent form of the vaccine, first licensed in June 1963, is the principal vaccine for the prevention of poliomyelitis in the United States. The monovalent forms of oral poliovirus vaccine are no longer used for immunization purposes. Currently, one firm is licensed for the manufacture of Poliovirus Vaccine Live Oral Trivalent.

II. Reasons for the Rulemaking

FDA has reviewed the additional standards for Poliovirus Vaccine Live Oral and is proposing to revise the regulations for several reasons.

1. *To update the regulations consistent with current scientific knowledge and the standards of the World Health Organization (WHO).* During the past 20 years, FDA and other health agencies worldwide have gathered considerable information and scientific understanding concerning the manufacture, testing, and use of oral poliovirus vaccine. With this increased scientific knowledge, the world's health agencies have recognized the need to update the standards by which oral poliovirus vaccine is manufactured and tested. Accordingly, FDA and other health agencies have cooperated in the development of revised WHO standards concerning the manufacture and testing of any oral poliovirus vaccine. WHO published its revised standards in 1983 ("Requirements for Poliomyelitis Vaccine (Oral) (Requirements for Biological Substances No. 7)," *World Health Organization Technical Report Series*, No. 687, 1983). Most countries now will accept for domestic use oral poliovirus vaccine manufactured according to WHO standards. FDA has reviewed the revised WHO standards and believes that, for the most part, they are appropriate for assuring the safety and effectiveness of oral poliovirus vaccine licensed for use in the United States. FDA has also reviewed its standards, independent of the WHO review, to identify areas where the regulations could be updated based on current scientific knowledge. Accordingly, FDA is proposing to revise its additional standards for oral poliovirus vaccine to be more consistent with the WHO standards and is also proposing other amendments consistent with the findings of FDA's independent review of the current regulations. FDA discusses each of the changes individually later in this preamble.

Under this proposed rule, some differences between FDA's standards and WHO's standards would still remain; however, FDA believes the remaining differences will not inhibit the manufacture of a domestically and internationally acceptable vaccine.

2. *To facilitate the licensure of safe and effective vaccines.* Since 1979 only

one manufacturer has remained licensed for Poliovirus Vaccine Live Oral Trivalent. The one manufacturer has met consistently the Nation's needs for oral poliovirus vaccine. FDA recognizes, however, that dependence on a sole source for an essential vaccine leaves immunization programs vulnerable to any of a variety of circumstances that may disrupt vaccine supplies from the sole manufacturer. Occasional minor outbreaks of poliomyelitis occurring in unimmunized populations in the United States and abroad illustrate the need to continue, uninterrupted, immunization of children with oral poliovirus vaccine. Multiple sources of oral poliovirus vaccine would assure the continuation of immunization programs, even if supplies from one of the manufacturers were temporarily interrupted. Likely candidates for obtaining licensure of oral poliovirus vaccine include those manufacturers who are already supplying a safe and effective oral poliovirus vaccine to other countries. FDA believes that licensure of such vaccines will become feasible only if FDA's standards and international (WHO) standards are reasonably consistent. FDA has found that there are differences between FDA's standards and international standards which do not affect the assurances of safety and effectiveness of the vaccine, but which would preclude the U.S. licensure and sale of a scientifically acceptable poliovirus oral vaccine, manufactured and tested under international (WHO) standards. FDA believes that these existing differences may deter manufacturers from seeking licensure in the United States of oral poliovirus vaccine currently used safely and effectively in other countries. Accordingly, FDA is proposing to amend the additional standards to be more consistent with acceptable international standards so as to facilitate the U.S. licensure of oral poliovirus vaccine from multiple sources.

3. *To reduce the regulatory burdens of the regulations.* Under the Regulatory Flexibility Act (Pub. L. 96–354) and Executive Order 12291, FDA is required to systematically undertake a periodic review of its regulations to identify and appropriately revise or remove unduly burdensome regulations. FDA has systematically reviewed the regulations in §§ 630.10 through 630.17 and is proposing amendments to reduce or remove unduly burdensome regulations while assuring the continued safety and effectiveness of oral poliovirus vaccine. For example, the proposed requirements would reduce the number of primates used to test for vaccine safety without affecting adversely the reliability of the test.

4. *To improve the clarity of the regulations.* FDA is proposing numerous editorial amendments in the regulations. Except for amendments involving reorganization and redesignation of regulations, FDA does not discuss further in this preamble specific editorial amendments.

III. Proposed Amendments to the Regulations

In the **Federal Register** of December 6, 1984 (49 FR 47622), FDA proposed to amend its biologics regulations to establish general requirements for cell lines used for manufacturing any biological product for human use. In that proposed rule, FDA proposed to remove specific requirements concerning the use of cell lines from §§ 630.10, 630.12, and 630.13 of the additional standards for Poliovirus Vaccine Live Oral and, instead, reference in the additional standards the proposed general requirements for cell lines in 21 CFR 610.18. This proposed rule is consistent with the December 1984 proposed rule.

FDA is discussing below each significant proposed change to the regulations.

A. Proper Name and Definition

FDA proposes to amend § 630.10(a) to provide the proper name and definition of only the trivalent form of oral poliovirus vaccine. FDA is proposing related amendments in §§ 630.11 and 630.17(c) that would remove requirements affecting monovalent vaccines. For many years, monovalent oral poliovirus vaccine has not been manufactured as a final product in the United States. FDA believes that it is highly unlikely that there will be any indication for use of a monovalent vaccine in the future. Accordingly, FDA proposes that § 630.10(a) define oral poliovirus vaccine only in terms of the trivalent vaccine. For the same reason, FDA is proposing to amend § 630.11 by removing the references to monovalent vaccine and to amend § 630.17(c) (redesignated in this proposed rule as § 630.15(b)) by removing the potency requirements for the monovalent vaccines.

B. Criteria for Virus Strains and Seed Virus

FDA proposes to reorganize § 630.10 by including in paragraph (b) the criteria for acceptable virus strains and in paragraph (c) the criteria for qualification of the seed virus. Currently, the criteria for virus strains and for seed virus are both under § 630.10(b). FDA has found that the terms "virus strain" and "seed virus" are sometimes confused and, on occasion, have been misinterpreted by lay persons to be identical in meaning. The virus strain is the genetic variety of poliovirus used to make the vaccine. In most countries, a combination of the three types of the Sabin strains of poliovirus is used for vaccine manufacture. A seed virus is the virus culture, prepared from the virus strain, selected by a manufacturer for use in manufacturing vaccine. Thus, a licensed manufacturer will continually use the same virus strain but may repeatedly select a new seed virus for vaccine manufacture. The proposed amendments would clarify the differences in the meaning between the two terms and the differences in regulatory criteria governing the virus strain and the seed virus.

C. Acceptability of Sabin Strains of Attenuated Poliovirus

FDA proposes to amend § 630.10(b)(1) to specify the criteria that apply to the acceptance of Sabin strains and § 630.10(b)(2) to specify the criteria that would apply to the acceptance of other poliovirus strains. The acceptability of the Sabin strains of attenauted poliovirus for vaccine manufacture has been documented both by extensive studies at the time of the vaccine's initial licensure and by 25 years of safe and effective use in the United States and elsewhere. FDA is proposing that Sabin strains intended for vaccine manufacture meet the criteria specified in proposed § 630.10(b)(1) (i) through (vi). These criteria are intended to affirm the identity of the Sabin strains. FDA proposes to remove the criterion in current § 630.10(b)(1)(iv) which requires information concerning the pathogenicity of poliovirus strains in animals other than monkeys. This information has not proven useful in the past in assessing the safety of real poliovirus vaccine. Because of the extensive information already available which demonstrates the safety of the Sabin strains this information is no longer necessary.

D. Acceptance Criteria for Other Poliovirus Strains

In § 630.10(b)(2), FDA proposes to require that a poliovirus strain other than a Sabin strain be shown: (1) To meet the criteria of § 630.10(b)(1), also applicable to Sabin strains; (2) to be at least as safe as the corresponding Sabin strain; and (3) to produce a vaccine meeting the safety and potency requirements of §§ 630.11, 630.15, and 630.16.

Under current § 630.10(b)(2), a manufacturer must demonstrate the safety of a new viral strain by conducting a clinical study involving at least 1 million people shown to be susceptible to poliomyelitis. FDA believes that any new oral poliovirus vaccine must be shown to be at least as safe and effective as the current vaccine using Sabin strains. However, the specific type of clinical trial necessary to document safety may vary significantly. For example, different evidence may be required depending on whether the new viral strain has been genetically engineered to make it less likely to mutate and unable to replicate in the central nervous system or, in contrast, is a new, wild, attenuated strain with unstable genetic properties. Therefore, FDA cannot predetermine what laboratory and clinical evidence would be necessary to demonstrate the safety of an oral poliovirus vaccine using a new viral strain. Under the regulations governing the investigation of biological products (21 CFR Part 312), FDA would consider the type of clinical studies necessary to document the safety of a new oral poliovirus vaccine before initiation of any clinical study. Accordingly, FDA is proposing to remove the current requirement concerning clinical studies for determining vaccine safety and to replace it with the more general requirement that a vaccine using a new poliovirus strain be shown to be at least as safe as the current vaccine.

E. Preparation of Seed Virus in Monkey Kidney Cells

FDA is proposing to amend § 630.10(b)(3) (redesignated in this proposed rule as § 630.10(c)(1)) to require that seed virus be prepared in acceptable monkey kidney cell cultures.

FDA believes that the seed virus intended for use in vaccine preparation should be prepared only in a monkey kidney cell culture. In effect, the proposed amendment would prohibit the passage of the virus through human cell lines except, if the manufacturer so chooses and FDA agrees, for the one passage used for preparing the vaccine itself. There is evidence suggesting that repeated passages of the virus in human cells may increase the possibility of the virus reverting to a more neurovirulent state after ingestion. The virus for the currently licensed vaccine is grown solely in monkey kidney cell cultures and its manufacture would not be affected by proposed § 630.10(c)(1).

F. The Intramuscular Test in Monkeys

FDA is proposing to amend § 630 10(b)(4) (redesignated in this proposed rule as § 630.10(c)(2)) by removing the requirement that seed virus be tested for neurovirulence by an intramuscular test in monkeys.

During the 25 years of manufacture of oral poliovirus vaccine, no seed virus produced from a Sabin strain has failed the intramuscular test, even though vaccines produced from some seed virus preparations subsequently were found to have an unacceptable level of neurovirulence that precluded their use. Because of the minimal neuropathologic findings resulting from this test, FDA and manufacturers of oral vaccine have been unable to develop quantitative criteria for assessing the results of the intramuscular test. Because the test has not been useful in assessing product safety, elimination of the test requirements would not decrease the assurances of safety of oral poliovirus vaccine. Removal of this requirement would result in conservation of test monkeys and in reduced expenses for manufacturers.

G. Preparation of Seed Virus in a Virus Seed Lot System

FDA is proposing to add § 630.10(c)(4), which would require that seed virus be prepared in a virus seed lot system. The current manufacture of oral poliovirus vaccine in the United States uses a seed lot system for the preparation of seed virus. To assure the continued genetic integrity of the seed virus, a manufacturer prepares a "Master seed lot" from which new seed virus used for vaccine manufacture is prepared. A large number of lots of seed virus may be prepared from the same master seed lot. FDA is aware that theoretically a new seed virus may be prepared from a seed virus previously used for vaccine production. Use of a seed lot system avoids needless increases in the number of passages from the original virus strain, thereby decreasing the likelihood that the seed virus will vary genetically from the original virus strain.

H. Assessment of Seed Virus Neurovirulence

FDA is proposing several amendments relevant to the assessment of the neurovirulence of seed virus:

(1) FDA is proposing to remove § 630.10(b)(5), which requires the testing of the seed virus for neurovirulence in monkeys as often as necessary to establish that the seed virus used for vaccine manufacture has maintained its neurovirulence properties. FDA believes that when there is evidence that the seed virus may be producing vaccines with an unacceptable neurovirulence, a new seed virus should be prepared and qualified for vaccine production. Under proposed § 630.10(c)(5), discussed elsewhere in this preamble, FDA is proposing to require the disqualification of a seed virus when the rate of unacceptable neurovirulence for vaccine lots prepared from the seed virus is higher than predicted.

(2) FDA is proposing in § 630.10(c) (2) and (3) to require that a new seed virus and the first five consecutive monovalent virus pools prepared from that seed virus be of acceptable neurovirulence as determined by the intraspinal test in monkeys and that evidence showing acceptability of a new seed virus be submitted to FDA as a license amendment. The requirements in proposed § 630.10(c) (2) and (3) are consistent with the requirements in portions of current §§ 630.10(b)(4) and 630.17(b), which FDA is proposing to remove. The testing requirements of proposed § 630.10(c) (2) and (3) are necessary to demonstrate that the seed virus is of acceptable neurovirulence and is capable of consistently producing vaccine of acceptable neurovirulence. Once the new seed virus has been approved by FDA, the consistency of the neurovirulence properties of the vaccine produced from the seed virus would be monitored under § 630.10(c)(5), as discussed below.

(3) FDA is proposing to add new § 630.10(c)(5) to require the disqualification of a seed virus when the frequency of monovalent pools that exceed the criteria for neurovirulence in monkeys under § 630.16(b)(1)(ii) is higher than the predicted rate. Under the criteria in proposed § 630.16(b)(1), monovalent virus pools prepared with neurovirulence identical to the appropriate reference would be expected to fail the intraspinal test at a frequency of 1 in 100, when 1 group of monkeys is inoculated. The expected frequency of failure of 1 in 100 does not mean that, for any given number of tests, exactly 1 failure out of 100 tests will occur. Test failure of a monovalent virus pool, unrelated to an actual increase in neurovirulence, is a random event that may occur at any time. Therefore, after a limited number of tests, the failure rate may appear to be somewhat more than 1, but when enough tests are conducted, however, the frequency of failure should average 1 in 100.

To allow for the unpredictability of this event, FDA is proposing in § 630.10(c)(5) to require the use of a common statistical analysis to determine whether a rate of failure apparently exceeding 1 in 100 of monovalent virus pools from the same seed virus is readily explainable by

random variation of test results or is statistically significant, indicating that the seed virus is producing vaccine with a higher neurovirulence than the reference virus preparation. Under proposed § 630.10(c)(5), a manufacturer may continue to use a seed virus for vaccine preparation only if the frequency of test failures of monovalent virus pools prepared from the same seed virus does not exceed the predicted rate. If the predicted rate of failure is exceeded, FDA is proposing that the seed virus be disqualified from further use in manufacturing vaccine.

(4) FDA is also proposing to add new § 630.10(c)(6), which would allow existing seed virus prepared and tested under the current regulations to continue to be used in vaccine production without retesting under the revised regulations. The agency believes that both the current and the proposed regulations provide adequate assurances of the safety of the seed virus for use in oral poliovirus vaccine. Seed virus may be used acceptably for many years after it is first prepared and tested. Retesting existing seed virus under the revised regulations would entail needless use of monkeys and needless expense. The time necessary to complete such retesting might also result in delays in vaccine preparation that could lead to a shortage of supply.

Because the retesting is unnecessary to assure the safety of the vaccine products, FDA believes that it is most appropriate to allow continued use of seed virus properly tested under the current regulations. However, the agency also believes that it is appropriate to subject the existing seed virus to disqualification under § 630.10(c)(5) if the frequency of monovalent pools that exceed the criteria for neurovirulence in monkeys under § 630.16(b)(1)(ii) is higher than the predicted rate. Thus, if evidence should develop concerning either an existing seed virus or a new seed virus that suggests the seed virus may be producing vaccines with unacceptable neurovirulence, that seed virus could no longer be used.

I. Clinical Trials to Qualify for License

FDA is proposing to amend § 630.11 by removing one of two alternatives currently offered for assessing the antigenicity of oral poliovirus vaccine used in clinical trails to qualify for license.

Under current § 630.11, oral poliovirus vaccine administered in clinical trials to qualify for license must induce type specific neutralizing antibodies in at least 90 percent of susceptible recipients when administered as a single dose or at least 90 percent of recipients when administered in a series of doses. FDA believes that the dosage schedule used in clinical trials to qualify for licensure of a vaccine should be consistent with the intended dosage schedule of the licensed vaccine. Oral poliovirus vaccine is administered in a series of doses to assure maximum protective antibody production. Accordingly, FDA is proposing that the criteria for assessing the antigenicity of oral poliovirus vaccine be based only on clinical studies using a series of doses.

J. Acceptance Criteria for Human Cell Lines

FDA is proposing to remove § 630.12(b). In the December 6, 1984, proposed rule (49 FR 47622), with which this proposed rule is consistent, FDA proposed to remove § 630.12(b) (1) and (2) and replace these requirements with new requirements in § 610.18(c) that would apply to all biological products using cell lines, including oral poliovirus vaccine. FDA now is proposing to remove the remainder of § 630.12(b), which prescribes specific requirements for conducting clinical studies to demonstrate the safety and antigenicity of oral poliovirus vaccine manufactured from a human cell line. FDA believes that the appropriate design of such clinical studies would depend on the previous experience with, and available data on, the cell line when used for vaccine manufacture, and the availability of suitable test populations. Accoringly, FDA cannot predetermine what laboratory and clinical data would be necessary to demonstrate the safety and antigenicity of an oral poliovirus vaccine manufactured from a human cell line. Under regulations governing the investigation of biological products (21 CFR Part 312), FDA would consider the type of clinical studies appropriate for documenting the safety and effectiveness, including antigenicity, of any new oral poliovirus vaccine manufactured using a human cell line. Accordingly, FDA believes that § 630.12(b) is no longer necessary or appropriate.

K. Virus Passages From the Original Strain

FDA is proposing to amend § 630.13(a) by requiring that virus in the final vaccine may represent no more than five passages from the original strain or no more than five passages from a virus clone derived from one of the first five passages from the original strain. FDA is also proposing to amend § 630.13(a) by removing the requirement that each tissue culture passage be shown to meet the acceptability criteria of § 630.10(b) (redesignated in this proposed rule as § 630.10(c)).

Current § 630.13(a) requires that virus in the final vaccine represent no more than five passages from the original strain. FDA limits the number of virus passages through which poliovirus may pass to assure that the virus used in vaccine retains the characteristics of the original strain. FDA now believes that the restriction of five passages from the original strain is unnecessarily rigid. Using modern cloning techniques, a virus clone, derived from one of the first five tissue culture passages, can be developed that is equivalent to the original strain in its ability to produce safe and effective vaccine. A virus is cloned by isolating a single virus particle and propagating the single virus in tissue culture to producer a culture of genetically identical virus. Once seed virus prepared from the virus clone is determined to be acceptable by the criteria in proposed § 630.10(c) and shown to meet the other requirements of the proposed standards, the clone can be considered to have retained the properties of the original virus strain and up to five tissue culture passages from the virus clone may be used for vaccine manufacture.

Under current § 630.10(b) (proposed § 630.10(c)), each seed virus used for vaccine manufacture must meet specific acceptability criteria before use. Current § 630.13(a) requires that any tissue culture passage, including not only seed virus but also master seed lots used only for production of seed virus, meet the criteria of § 630.10(b). FDA believes that it is unnecessary to show that a master seed lot meets the acceptability criteria for seed virus. Under proposed § 630.10(c), the manufacturer would assure that any seed virus prepared from the master seed lot meets the acceptability criteria, thereby assuring that the seed virus is accepable for the manufacture of vaccine.

L. Inoculation of Cell Cultures; Ratio of Test Material to Culture Medium

FDA is proposing to amend §§ 630.13(b)(3) and 630.16(b) (5), (6), and (7) to make the terminology consistent with WHO requirements and current scientific usage. Each of the regulations above describes a test of vaccine material in one or more types of cell cultures for the detection of viable microbial agents. Currently, FDA requires that the ratio of test inoculum to culture medium be between 1:1 and 1:3. FDA is proposing to amend these requirements editorially to state that the dilution of test inoculum with culture medium shall be no greater than 1:4,

consistent with the terminology used in the WHO requirements. The current statements and the proposed statements are equivalent in meaning.

M. Temperature of Incubation of Kidney Cell Cultures After Virus Inoculation

FDA is proposing to amend § 630.13(b)(6) to require that production vessels be maintained at 33.0 to 35.0 °C during the course of virus propagation. Current § 630.13(b)(6) requires that production vessels be maintained at a temperature not to exceed 35 °C during virus propagation. The temperature at which poliovirus is grown may affect both the antigenicity and neurovirulence of the virus. Accordingly, FDA believes it important to propagate poliovirus at a consistent temperature shown to produce a safe and effective vaccine. The proposed amendment is consistent with current manufactuing practices and WHO standards.

N. Availability of Reference Virus Preparations

FDA is proposing to amend § 630.14 by reorganizing the section into paragraphs (a) and (b). In paragraph (a), FDA is proposing to include provisions of current § 630.14 that announce the availability of Reference Poliovirus, Live, Attenuated, for use as a control for correlation of virus titers in tissue cultures. In paragraph (b), FDA is proposing to require that manufacturers obtain either Reference Attenuated Poliovirus of the appropriate type from the Office of Biologics Research and Review or WHO reference virus preparations of the appropriate type for use as controls for the evaluation of monkey neurovirulence tests.

The reference virus preparations listed in proposed § 630.14(a) usually are used by manufacturers to establish in-house reference virus preparations which, in turn, are used as controls in the potency test required by § 630.15. FDA does not require that FDA's reference virus preparations be used as a control in the potency test, but the reference virus preparation in use must be calibrated against FDA's reference virus preparations. Under proposed § 630.14(b), FDA would require that manufacturers use the reference virus preparations provided by either FDA or WHO as controls for the neurovirulence test in monkeys required by § 630.16(b)(1). As discussed elsewhere in this preamble, FDA is proposing to amend § 630.16(b)(1) to require that the Reference Attenuated Poliovirus of the corresponding type be used as a control when testing a monovalent virus pool for neurovirulence by the intraspinal test in monkeys. Accordingly, FDA is listing reference virus preparations of all three types in proposed in § 630.14(b)(1).

O. Reorganization and Amendment of Potency Requirements

FDA is proposing to redesignate current § 630.15 as § 630.15(a); remove current § 630.16(b)(2), which is redundant with proposed § 630.15(a); redesignate current § 630.17(c) as § 630.15(b); and remove the infectivity titer standards for monovalent vaccine from redesignated § 630.15(b). The reorganization would place the standards for potency under one section in the regulations. FDA is proposing to remove the standards for potency of monovalent vaccine because it is highly unlikely that monovalent vaccine will be manufactured as a final product in the future.

FDA is proposing to amend § 630.15(a) to clarify that in-house reference preparations may be used as a control in the potency test and that the in-house reference preparations must be calibrated against FDA's reference virus preparations. The proposed amendment is consistent with current manufacturing practices.

FDA is proposing in § 630.15(b) to clarify that numerical values of potency equivalent to those specified in § 630.15(b) are acceptable. Any of several methods may be used for determining vaccine potency. FDA has found that at some laboratories the numerical values of potency for the same vaccine tested by two different methods will consistently differ by a set amount. Thus, a vaccine meeting FDA's potency requirements when tested by one method may appear to fail the potency test if tested by a different method, unless the numerical value is adjusted because of the known differences in test methods. FDA has previously approved these alternative potency test methods and adjusted potency values under the equivalent methods provisions of 21 CFR 610.9.

P. Testing of Monovalent Virus Pools for Adventitious and Infectious Agents

FDA is proposing to amend § 630.16(a) by removing the list of the specific microbial agents for the presence of which oral poliovirus vaccine must be tested. FDA is not proposing to change the methods for their detection. FDA is also proposing to amend § 630.16(a)(7) by substituting the more scientifically accepted name, cercopithecid herpesvirus 1, for the name in the current regulation, B virus. FDA believes it is unnecessary to list all the infectious agents for the absence of which oral poliovirus vaccine must be tested. Sections 630.16(a) (1) through (7) would continue to require specific tests for detecting significant infectious agents, many of which are also listed in current § 630.16(a).

Q. Safety Tests in Monkey Kidney and Human Cell Cultures

FDA is proposing technical amendments to § 630.16(a) (5) and (6), which prescribe safety tests by inoculation of monkey kidney tissue cultures and by inoculation of human cell cultures, respectively. The amendments would require that the antiserum used in the tests be prepared by using antigen grown in a cell line other than that used for the safety test. The proposed requirement would assure that the antiserum does not contain antibodies that may interfere with the performance of the test. The proposed amendment is consistent with current manufacturing practices and WHO requirements.

FDA is also proposing to amend § 630.16(a)(6)(iii) to clarify that a cell system used for detecting the presence of measles virus in a monovalent virus pool may be of human or nonhuman origin, provided the cell system is of comparable susceptibility to measles virus as the cell systems identified in § 630.16(a)(6) (i) and (ii).

R. Neurovirulence in Monkeys—Revised Test Method

FDA is proposing to amend § 630.16(b)(1) by removing the current methodology for conducting and evaluating the test for neurovirulence in monkeys and replacing it with updated methodology based upon the method recommended by WHO.

In 1982, WHO adopted its current test for determining the neurovirulence of oral poliovirus vaccine in monkeys. FDA, in cooperation with health agencies of other countries, aided in the development and validation of the WHO test method. The revised WHO test was developed as a standardized test to replace the various tests for neurovirulence used worldwide since the early 1960's. All countries except the United States now accept the WHO test for determining the neurovirulence of oral poliovirus vaccine in monkeys.

FDA is proposing to revise its required neurovirulence test procedures consistent with scientific knowledge. The proposed procedures are quite similar to those recommended by WHO; however, FDA's proposed method differs in some minor respects, consistent with FDA's experience and current good manufacturing practices. Despite these differences, a manufacturer will readily be able to test

oral poliovirus vaccine for neurovirulence in monkeys by a method that meets both FDA's and WHO's standards.

FDA's current test and the proposed test are similar, but several differences are significant. FDA discusses the proposed method in detail later in this preamble. In the following chart, FDA is comparing the significant differences between the current test and the test proposed to replace it in § 630.16(b)(1).

	Current test	Proposed test
A. Intrathalamic inoculation	Thirty monkeys injected intrathalamically for each monovalent pool.	Intrathalamic inoculation not required.
b. Intraspinal inoculation:		
(1) Inoculum	Median tissue culture infective dose ($TCID_{50}$) of at least $10^{7.0}$ and dilutions of 1:1,000 and 1:10,000.	$TCID_{50}$ of between $10^{6.5}$ and $10^{7.5}$, no dilutions tested.
(2) Number of monkeys inoculated	Fifteen monkeys injected for each monovalent virus pool	At least 12 monkeys inoculated if testing either Type 1 or Type 2 poliovirus, and at least 20 monkeys if testing Type 3 poliovirus.
(3) Reference attenuated poliovirus—type	Reference Attenuated Poliovirus, Type 1, used as control for test, regardless of virus type being tested.	Referenced attenuated poliovirus of corresponding type (Type 1, Type 2, or Type 3) used as control.
(4) Reference attenuated poliovirus—frequency of testing.	Reference attenuated poliovirus tested at least every 10 production lots of vaccine, but must be tested within 3 months of test of vaccine lots.	Reference attenuated poliovirus tested concurrently with testing of vaccine, certain exceptions provided.
(5) Basis of comparison	Comparative evaluation made of evidence of neurovirulence of poliovirus under test and reference attenuated poliovirus using histo-pathological criteria specified in the regulations.	Comparative evaluation made of magnitude of neurovirulence of polio virus under test with results of test using reference attenuated poliovirus by a mathematical method that is expected to reject poliovirus vaccine lots with neurovirulence identical to the reference at a frequency of not less than 1 in 100.

FDA is proposing to remove the requirements for intrathalamic inoculation of test vaccine and intraspinal inoculation of 1:1,000 and 1:10,000 dilutions of test vaccine. Experience has demonstrated that, when groups of 30 monkeys are inoculated by the intrathalamic route with monovalent virus pools prepared from a seed virus in current use, the frequency of monkeys developing specific lesions is so low that a meaningful assessment of the degree of neurovirulence of the pool cannot be made. Similarly, FDA has found that the 1:1,000 and 1:10,000 dilutions of poliovirus tested by intraspinal inoculation do not yield useful information for assessing vaccine neurovirulence. Thus, FDA is eliminating testing requirements that have not been useful in assessing vaccine neurovirulence. In addition, by removing these testing requirements, FDA would conserve the number of test monkeys, a scarce and expensive resource, without impairing the assurances of vaccine safety.

FDA is proposing that the inoculum for the intraspinal test contain between $10^{6.5}$ and $10^{7.5}$ $TCID_{50}$ per milliliter. The current regulation requires that the inoculum contain at least $10^{7.0}$ $TCID_{50}$ per milliliter, but does not limit the maximum level of infectivity. The proposed infectivity of the inoculum is based on data from a collaborative study involving FDA that showed no differences between the results of intraspinal tests carried out with the proposed upper and lower range of infectivity of inoculum. The proposed rule would assure comparability in inoculum infectivity of vaccine and reference, thereby controlling an important variable in the test procedure. With the proposed lower minimum infectivity, testing laboratories will be able to better conserve supplies of reference virus preparations, without affecting the reliability of the test.

FDA is proposing that each monovalent pool of oral poliovirus vaccine be tested and compared with the reference attenuated poliovirus of the corresponding type, i.e., Type 1, Type 2, or Type 3. FDA is also proposing that the monovalent virus pool and Reference Attenuated Poliovirus be tested concurrently, if possible. Under the current requirements, monovalent virus pools, regardless of type, are compared with Reference Attenuated Poliovirus, Type 1. In both the current and proposed tests, an acceptable monovalent virus pool should display neurovirulence in monkeys comparable to that displayed by the reference attenuated poliovirus. However, Type 2 poliovirus generally displays less neurovirulence than Type 1 poliovirus and always passes the current neurovirulence test when compared with a Type 1 reference. In contrast, Type 3 poliovirus displays a greater variability in neurovirulence in monkeys than Type 1. Accordingly, a Type 3 monovalent virus pool known to meet current neurovirulence requirements and used to manufacture safe vaccine could exceed the limits of acceptability if tested by the proposed method while using a Type 1 reference preparation. FDA believes that the proposed amendment provides a more precise and reproducible means of determining the neurovirulence of each type of poliovirus.

FDA is proposing that the monovalent virus pool and reference attenuated poliovirus be tested concurrently. Concurrent testing will allow the testing laboratory to determine whether the limits of acceptability for neurovirulence are satisfied in each test of a monovalent virus pool. As with most comparative biological assays, FDA believes it is important to test the vaccine and reference preparation concurrently to eliminate any variable related to time and environment that may affect test results. FDA is proposing to provide exceptions to this requirement when the monkeys used for the test are in short supply and are not available from any supplier.

FDA is proposing to require that manufacturers use either the reference virus preparations provided by FDA or WHO reference virus preparations as a control for evaluation of monkey neurovirulence tests. FDA has participated in a comparison of the reference virus preparations made available by FDA and WHO and found that they display equivalent neurovirulence in monkeys and are equally suitable for use as controls for evaluation of neurovirulence tests. No other reference virus preparations have been shown equivalent to FDA's reference virus preparation.

FDA is proposing to require that, whenever possible, the monkeys inoculated with a monovalent virus pool and reference virus preparation be from the same quarantine group and be distributed randomly between the two test groups. This requirement would assure that the test animals used in testing the vaccine virus and the reference virus preparations are uniform.

Consistent with current practice, FDA is proposing to require that the test monkeys be suitably anesthetized before inoculation. All testing laboratories rountinely anesthetize monkeys before inoculation. FDA believes that it is important that the

regulations reflect that the welfare of the animals is properly considered.

FDA is proposing several requirements concerning the number of monkeys that must be inoculated, survive the observation period, and evaluated for evidence of neurovirulence. The proposed requirements, as summarized below, apply equally to monkeys inoculated with a monovalent virus pool or with a reference virus preparation.

(1) For tests with Type 1 and Type 2 poliovirus, at least 12 monkeys shall be inoculated, and for Type 3 poliovirus, at least 20 monkeys shall be inoculated.

(2) At least 60 percent of the monkeys inoculated in a group shall survive 48 hours after inoculation. Those animals (up to 40 percent) that do not survive this period may be replaced by additional monkeys.

(3) If more than 20 percent of the monkeys in a group do not survive the observation period, excluding the first 48 hours after inoculation, for reasons unrelated to poliovirus infection, that portion of the test shall be considered invalid and shall be repeated.

(4) The evaluation of neurovirulence shall be based upon at least 11 positive monkeys for Type 1 and Type 2 virus pools and at least 18 positive monkeys for Type 3 virus pools.

As described in (1) above, FDA's proposed rule would increase the number of monkeys that are tested by the intraspinal test. Because FDA is proposing to remove the intrathalamic test and the intraspinal test of 1:1,000 and 1:10,000 dilutions, testing laboratories would be able to test additional monkeys in the proposed intraspinal test while experiencing a significant reduction in the overall number of monkeys tested for neurovirulence.

FDA is proposing to require that more monkeys be tested for Type 3 poliovirus than for Type 1 or Type 2 to compensate for the higher variability experienced when Type 3 virus is tested. FDA believes that the proposed requirements described in (1) and (4) above will assure adequate data to permit a precise and statistically valid comparison between the neurovirulence of vaccine virus and the reference virus preparation while conserving monkeys and reducing overall testing requirements. The term "positive monkey," as used in (4) above and as defined in proposed § 630.16(b)(1)(i), is an animal which either survives for at least 11 days after inoculation or succumbs or is sacrificed due to a severe poliovirus infection in which neural lesions specific for poliovirus are seen in the central nervous system.

Such "positive" monkeys may be used for assessing neurovirulence, regardless of whether microscopic evidence of inoculation is found in the gray matter of the spinal cord. Under current § 630.16(b)(1)(ii), only monkeys that show microscopic evidence of inoculation into the gray matter of the spinal cord may be considered properly inoculated. Through experience, FDA has found that only monkeys that are properly inoculated will develop specific lesions caused by poliovirus. Testing laboratories often experience difficulty in locating the injection site microscopically, especially if the site is obscured by lesions. Under current requirements failure to find the injection site would mean that the monkeys could not be considered as positive even though the presence of specific lesions is adequate evidence of proper inoculation.

FDA is proposing that the neuropathology of monkeys inoculated with a monovalent virus pool be quantified and compared with the neuropathology exhibited by monkeys in the concurrent test and all previous tests of the reference virus preparation of the corresponding type. FDA is proposing that the lumbar and cervical areas of the spinal cord, and the medulla and mesencephalon of the brain of each positive monkey, be examined for evidence of lesions caused by poliovirus. The thalamus and motor cortex would also be examined, primarily for nonspecific lesions caused by agents other than poliovirus. However, unlike the current test, the evaluation of the thalamus and motor cortex would not be part of the basis of comparison for determining neurovirulence. In the early days of testing, it was common that monkeys would carry lesion-causing diseases and these nonspecific lesions could be mistaken for lesions caused by poliovirus. Through careful selection and handling of test animals, this problem has been virtually eliminated. Accordingly, FDA is proposing to require that the monkeys' tissue be examined for nonspecific lesions but evaluation and comparison of the nonspecific lesions would no longer be required.

Because of the complexity of the specific method of determining and scoring the magnitude of neurovirulence, FDA is proposing not to include it in the regulations. However, FDA is proposing that the method of evaluation be equivalent to that recommended by WHO. A manufacturer would be required to describe the method of evaluating and scoring poliovirus lesions in an amendment to its product license. To determine the magnitude of neurovirulence, a testing laboratory would grade the severity of specific lesions in the specified tissue sections examined for each monkey and the grades would be converted into a numerical value or "lesion score." The mean lesion score assigned to neurovirulence displayed by monkeys inoculated with the monovalent virus pool can then be compared with the score assigned to the neurovirulence displayed by the reference virus preparation.

FDA is proposing that a monovalent virus pool is acceptable for vaccine use if (1) the numerical value assigned for neurovirulence of the monovalent virus pool is equal to or less than that of the reference virus preparation; or (2) if the value for the monovalent virus pool is greater than that of the reference virus preparation, the difference be not greater than that calculated by a mathematical method that is expected to reject a poliovirus preparation with neurovirulence identical to the reference virus preparation at a frequency of not less than 1 in 100 when 1 group of monkeys is tested. When the numerical value assigned for neurovirulence of the monovalent virus pool is greater than that of the reference virus preparation, the difference in numerical values may be due to the inherent variability of the assay and not due to any real difference in neurovirulence.

Under the proposed rule, a testing laboratory would be required to determine whether the difference is due to the variability of the test method, or whether the difference in scores indicates that the monovalent virus pool is more neurovirulent than the reference virus preparation and is unacceptable for vaccine manufacture. If the difference in scores is greater than that calculated, a monovalent virus pool would be unacceptable for use in vaccine manufacture, regardless of which reference preparation was used in the test. For example, if a manufacturer finds that a monovalent virus pool meets the neurovirulence requirements when tested with a WHO reference preparation but FDA finds that the monovalent virus pool does not meet the neurovirulence requirements when tested with the Office of Biologics Research and Review reference preparation, the monovalent virus pool would not be acceptable for use in vaccine manufacture.

Based on the experience of testing the reference virus preparation, a testing laboratory can calculate the upper limit of the range of values within which will fall the numerical values for

neurovirulence of 99 percent of poliovirus preparations with an actual neurovirulence equal to the reference virus preparation. If the upper limit of this range is exceeded by the numerical value assigned to the neurovirulence of a monovalent virus pool, FDA is proposing that the monovalent virus pool be considered unacceptable and not used for vaccine manufacture. Under the current regulations, the neurovirulence displayed by the monovalent virus pool is compared with records of all results obtained using the reference virus preparations. If the pattern of neurovirulence displayed in the test of the monovalent virus pool is equal to or less than the results obtained in the current test or any previous test of the reference virus preparation, the monovalent virus is considered acceptable for vaccine manufacture. The comparison does not include a mathematical method for determining the probability that the monovalent virus pool has an actual neurovirulence equal to or less than the reference virus preparation.

FDA is proposing to provide for the enlargement or extension of a test for neurovirulence in monkeys if the initial results are not within the required limits. The proposed rule would provide for the inclusion of one or two additional groups of monkeys by the method previously described. The acceptability of the monovalent virus pool would be determined by comparing the cumulative results of the testing of the initial group of monkeys and the one or two additional groups with the results of testing the reference virus preparation in the same number of groups.

With the inclusion of additional monkeys, the numerical value assigned to a monovalent virus pool of acceptable neurovirulence would be expected to be closer to the mean value assigned to the reference virus preparation and the criteria for determining acceptability when one group of monkeys is tested would not be appropriate. Accordingly, FDA is proposing to require more stringent criteria when additional groups of monkeys are tested. FDA is proposing that if a total of 2 groups are tested with the same monovalent virus pool, the frequency of rejection shall be not less than 5 in 100, and if a total of 3 groups of monkeys are tested, the frequency of rejection shall be not less than 10 in 100.

FDA is proposing to require that a testing laboratory perform a minimum of four tests of each reference virus preparation to provide sufficient experience to define the performance of the reference and establish the variability of the assay. FDA believes that a minimum of four tests is necessary to assure that the range of values defining the variability of the assay is statistically valid. Once established, the upper limit calculated from the range of values defining assay variability would be used to determine the acceptability of those monovalent virus pools assigned to a numercial value of neurovirulence higher than that assigned to the reference virus preparation. Each time a reference virus preparation is tested, assuming the results are statistically compatible with previous tests of the same reference preparation, the testing laboratory would add the results to the previous testing experience of that reference virus preparation and the variability of the assay adjusted accordingly.

S. Neurovirulence in Monkeys—Use of Medical Professionals in Assessing Test Results

FDA is proposing to amend § 630.16(b)(1) by removing the requirement that observation of test monkeys for abnormalities indicative of poliomyelitis be performed under the supervision of a qualified pathologist, physician, or veterinarian. Under 21 CFR 600.10(b), caretakers and attendants of animals used in the manufacture of a biological product must be of adequate number and abilities to assure adequate animal care and otherwise fulfill their assigned functions. FDA has decided that personnel who are qualified for the care and handling of monkeys used in the manufacture and testing of vaccine are competent to carry out the observation of monkeys for clinical evidence of poliomyelitis and other viral diseases, without the direct supervision of a veterinarian or other medical professional.

FDA is also proposing to amend § 630.16(b)(1)(iii) (redesignated in this proposed rule as § 630.16(b)(1)(ii) to require that the histopathologic examination of monkeys be performed by a qualified pathologist. The examination of tissue from the central nervous system of monkeys for neuropathy is a highly technical function which has always been peformed by qualified pathologists at establishments licensed for oral poliovirus vaccine. Consistent with current practice, FDA is proposing to require that a qualified pathologist perform the histopathologic examination.

T. Tests for rct/40 Marker and d Marker—Culture Vessels

FDA is proposing to amend § 630.16(b)(3) (i) and (ii) (redesignated in this proposed rule as § 630.16(b)(2) (i) and (ii)) by removing restrictions concerning what types of culture vessels may be used to culture poliovirus in the tests for the rct/40 Marker and the d Marker, respectively. With advances in laboratory technology, there are a number of types of vessels now available that are suitable for culturing poliovirus for these tests; therefore, the restrictions in § 630.16(b)(3) (i) and (ii) are no longer appropriate.

U. Exemption From Final Container Sterility Test

FDA is proposing to redesignate § 630.17(a) as § 630.16(c) and to redesignate the remaining paragraphs in § 630.17 to be consistent. Current § 630.17(a) provides an exemption for oral poliovirus vaccine from the final container sterility test required for certain biological products by § 610.12. Because the test for final container sterility is generally a safety test, FDA proposes that the exemption be included under § 630.16 *Tests for safety.*

V. Consistency of Manufacture

FDA is proposing to amend § 630.17(b) (redesignated in this proposed rule as § 630.17(a)) by removing the requirement that each monovalent virus pool contained in a trivalent vaccine be one of a series of five consecutive lots shown to meet the criteria of neurovirulence in monkeys (§ 630.16(b)(1)) and the criteria for in vitro markers (§ 630.16(b)(3)). When these additional standards were promulgated originally, FDA was concerned that the failure of a lot of poliovirus vaccine to meet the standards for acceptable neurovirulence could be related to a deficiency in the manufacturing process. Therefore, FDA required that each monovalent pool used in vaccine be one of five consecutive lots meeting neurovirulence requirements, as a demonstration of the manufacturer's ability to produce safe vaccine consistently. Each time a monovalent virus pool failed, the manufacturer was required to manufacture and test five additional monovalent virus pools before any vaccine could be released for distribution.

FDA has now determined that failure of the neurovirulence test in monkeys is a random event related to the genetic instability of the seed virus which may result in a slight increase in neurovirulence. Accordingly, FDA is proposing under § 630.10(c)(5) that the total history of neurovirulence test results for monovalent virus pools produced from the same seed virus be reviewed each time a new pool is tested and, if the rate of failure is higher than

predicted, that seed virus would be disqualified from further use in vaccine manufacture. FDA believes that § 630.10(c)(5) will assure the continued manufacture of safe vaccine and the consistency of manufacture requirements in § 630.17(b) are inappropriate and no longer necessary. FDA believes that the proposed rule will assure the continued low neurovirulence of oral poliovirus vaccine while not requiring interruption of trivalent vaccine production each time a single monovalent lot fails the neurovirulence test.

W. Submission of Protocols to FDA for all Monovalent Virus Pools

FDA is proposing to amend § 630.17(b) (redesignated in this proposed rule as § 630.17(a)) to require that protocols for all monovalent virus pools produced sequentially from the same seed virus be submitted to the Director, Office of Biologics Research and Review, FDA, regardless of whether the manufacturer is requesting release of the pool for further manufacturing into vaccine. Under current requirements, submission of a protocol for a monovalent virus pool is not required when the pool is not intended for further manufacture into oral poliovirus vaccine.

FDA believes that its review of the manufacturing history, including test results, of all monovalent virus pools grown from each seed virus is necessary for assuring the continued safety of oral poliovirus vaccine. For example, proposed requirements in § 630.10(c) (4) and (5) (see III. G. of this preamble) are pedicated on FDA's ability to review the history of results of the neurovirulence test in monkeys for each monovalent pool. FDA can accomplish this review only if protocols containing the manufacturing history of all monovalent virus pools are made available to the agency. FDA expects that the proposed rule would not increase the regulatory burdens imposed upon the manufacturer. The information to be included in a protocol is described in § 630.17(e)(1) (redesignated in this proposed rule as § 630.17(c)(1)).

X. Sample Volumes Submitted to FDA for Lot Release

In § 630.17(e) (2) and (3) (redesignated in this proposed rule as § 630.17(c) (2) and (3)), FDA specifies the sample volumes of each monovalent virus pool or trivalent vaccine that shall be submitted to FDA so that the agency may conduct confirmatory testing of the vaccine. FDA is proposing to add § 630.17(c)(4), which would provide for the submission of sample volumes other than those specified in the regulations upon the request or with the agreement of FDA. Occasionally, FDA requires less sample volume for testing because of modifications in test methods or changing testing priorities. In rare cases, FDA may require greater volumes for special testing programs. Proposed § 630.17(c)(4) would permit FDA to change the sample volumes requested without necessitating amendment of the regulations.

Y. Proposed Effective Date

FDA is proposing that any final rule based on this proposal be effective 30 days after its date of publication in the **Federal Register**. Except as described below, FDA is proposing that any monovalent virus pool or seed virus manufactured on or after the effective date be manufactured in accordance with any final rule resulting from this proposed rule. Because FDA believes that the current regulations provide adequate assurances of the safety and effectiveness of vaccine and in order to ensure that there is no period of time in which there might be a shortage of vaccine, the agency is proposing that the current regulations also remain in effect for 180 days after publication of the final rule amending those regulations. Therefore, during a transitional period of 150 days following the effective date of the amended regulations, a seed virus or monovalent virus pool could be manufactured in accordance with the provisions of either the current regulations or the amended regulations.

As discussed above, under new § 630.10(c)(6) FDA would permit the use for an indefinite period of time of any seed virus manufactured and tested in accordance with current requirements prior to 150 days after the effective date of the final rule.

Similarly, FDA is proposing in revised § 630.17(a) to permit the use of monovalent virus pools manufactured and tested in accordance with current requirements prior to 150 days after this effective date. Monovalent virus pools may be used over a period of several years to produce trivalent vaccines. Requiring manufacturers to retest these monovalent pools would be unnecessarily wasteful of animals, expensive, and time-consuming. Because the current regulations provide adequate assurances of the safety of the monovalent pools, the agency believes that it is most appropriate not to require retesting of the existing monovalent pools that have been properly manufactured and tested under current requirements.

IV. Environmental, Economic and Information Collection Considerations

The agency has determined under 21 CFR 25.24(c)(10) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

The agency has examined the economic consequences of this proposed rulemaking and has determined that it does not require either a regulatory impact analysis, as specified in Executive Order 12291, or a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96–354). Many of the amendments in the proposed rule would relieve minor burdens or increase the flexibility of the regulations, resulting in minor economic benefits for the manufacturer of oral poliovirus vaccine. FDA believes the proposed rule would promote the licensure of alternative sources of oral poliovirus vaccine. The availability of alternative sources of vaccine would benefit the public by assuring a continual supply of this necessary vaccine. FDA estimates that the proposed revised test for neurovirulence would reduce the number of primates required for the test by an average of 40 percent. Based on information from an international manufacturer of oral poliovirus vaccine, the proposed rule would result in savings related to the purchase and care of primates of $750,000 per year.

The agency concludes that the proposed rule is not a major rule as defined by Executive Order 12291. Further, the agency certifies that the proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act.

Section 630.17 of this proposed rule contains collection of information requirements already reviewed and approved by the Office of Management and Budget (OMB) under section 3507 of the Paperwork Reduction Act of 1980. OMB assigned these collection of information requirements approval number 0910–0206. In this proposal, FDA is continuing these collection of information requirements.

Interested persons may, on or before July 7, 1986, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy.

Comments are to be identified with the docket number in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 630

Biologics.

Therefore, under the Public Health Service Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that Part 630 be amended as follows:

PART 630—ADDITIONAL STANDARDS FOR VIRAL VACCINES

1. The authority citation for Part 630 continues to read as follows:

Authority: Secs. 215, 351, 58 Stat. 690 as amended, 702 as amended (42 U.S.C. 216, 262); 21 CFR 5.10.

2. Subpart B of Part 630 is revised to read as follows:

Subpart B—Poliovirus Vaccine Live Oral Trivalent

Sec.

630.10 Poliovirus Vaccine Live Oral Trivalent.
630.11 Clinical trials to qualify for license.
630.12 Animal source and quarantine; personnel.
630.13 Manufacture of Poliovirus Vaccine Live Oral Trivalent.
630.14 Reference virus preparations.
630.15 Potency test.
630.16 Tests for safety.
630.17 General requirements.

Subpart B—Poliovirus Vaccine Live Oral Trivalent

§ 630.10 Poliovirus Vaccine Live Oral Trivalent.

(a) *Proper name and definition.* The proper name of this product shall be "Poliovirus Vaccine Live Oral Trivalent." The vaccine shall be a preparation containing the three types of live, attenuated polioviruses grown in monkey kidney cell cultures, or in a cell line found by the Director, Office of Biologics Research and Review, to meet the requirements of § 610.18(c) of this chapter. The vaccine shall be prepared in a form suitable for oral administration.

(b) *Criteria for acceptable strains.* (1) The Sabin strains of attenuated poliovirus, Type 1 (LS-c, 2ab/KP_2), Type 2 (P712, Ch, 2ab/KP_2), and Type 3 (Leon $12a_1b/KP_3$), or derivatives from them, may be used in the manufacture of vaccine. These strains shall be identified by historical records including (i) origin, (ii) techniques of attenuation, (iii) antigenic properties, (iv) neurovirulence for monkeys, (v) pathogenicity for tissue cultures of various cell types, and (vi) established virus markers, including rct/40, and d.

(2) Other poliovirus strains may be used in the manufacture of Poliovirus Vaccine Live Oral Trivalent provided that (i) data specified in paragraph (b)(1) of this section are submitted to the Director, Office of Biologics Research and Review, along with other data that establish that each such strain is at least as safe as the Sabin strain of the corresponding type and (ii) that each such strain has been used to produce vaccines meeting the safety and potency requirements of §§ 630.11, 630.15, and 630.16.

(3) The Director, Office of Biologics Research and Review, may prohibit the use of a specified strain whenever the Director finds that it is practicable to use another strain of the same type that will produce a vaccine of greater safety and of at least equivalent potency.

(c) *Criteria for qualification of the seed virus.* (1) Each seed virus used in vaccine manufacture shall be prepared from an acceptable strain in monkey kidney cell cultures, derived from animals which have met all of the requirements of § 630.12(a), and demonstrated to be free of extraneous microbial agents except for unavoidable bacteriophage.

(2) Seed virus used for the manufacture of oral poliovirus vaccine shall meet the requirements of §§ 630.13 and 630.16, including the intraspinal test for neurovirulence prescribed in § 630.16(b)(1). In addition, the neurovirulence of the first five consecutive monovalent virus pools prepared from the seed virus when tested by intraspinal inoculation in Macaca monkeys shall be no greater than that of the Reference Attenuated Poliovirus of the corresponding type available under § 630.14(b).

(3) A new seed virus may be used for production provided data are submitted in the form of a product license amendment that show the new seed virus and the first five consecutive monovalent virus pools prepared from it meet the safety requirements of §§ 630.13 and 630.16 and approval for the use of the seed virus is received in writing from the Director, Office of Biologics Research and Review.

(4) Seed virus in vaccine manufacture shall be prepared in a seed lot system from a master virus seed lot at a passage level consistent with § 630.13(a).

(5) The use of the seed virus may continue provided that the frequency of monovalent virus pools produced with it which fail to meet the criteria of neurovirulence for monkeys prescribed in § 630.16(b)(1)(ii) is not greater than predicted on the basis of comparison with the corresponding reference preparation. If the frequency of monovalent virus pools produced with the same seed virus which fail to meet the criteria of neurovirulence for monkeys prescribed in § 630.16(b)(1)(ii) is greater than the predicted 1 percent on the basis of the 99 percent fiduciary one-sided upper limit, that seed virus shall be disqualified for further use in vaccine production.

(6) Seed virus prepared and tested prior to [180 days after date of publication of revised rule] in accordance with the regulations applicable at that time may continue to be used for the manufacture of oral poliovirus vaccine without retesting to meet the revised specifications of this subsection. However, such seed virus shall be disqualified for vaccine use if it fails to meet the criteria of § 630.10(c)(5).

§ 630.11 Clinical trials to qualify for license.

To qualify for license, the antigenicity of the vaccine shall have been determined by clinical trials of adequate statistical design conducted in compliance with Part 56 of this chapter, unless exempted under § 56.104 or granted a waiver under § 56.105, and with Part 50 of this chapter. Such clinical trials shall be conducted with five lots of oral poliovirus vaccine that have been manufactured by the same methods. Type specific neutralizing antibody for each type of poliovirus in the vaccine shall be induced in 90 percent or more of susceptibles after a series of doses.

§ 630.12 Animal source and quarantine; personnel.

(a) *Monkeys*—(1) *Species permissible as source of kidney tissue.* Only Macaca monkeys, Cercopithecus monkeys, or other species found by the Director, Office of Biologics Research and Review, to be equally suitable, which meet the requirements of § 600.11(f) (2) and (8) of this chapter, shall be used as the source of kidney tissue for the manufacture of Poliovirus Vaccine Live Oral Trivalent.

(2) *Experimental and test monkeys.* Monkeys that have been used previously for experimental or test purposes shall not be used as a source of kidney tissue in the processing of vaccine.

(3) *Quarantine; additional requirements.* Excluding deaths from accidents or causes not due to infectious diseases, if the death rate of any group of monkeys being conditioned in

accordance with § 600.11(f)(2) of this chapter exceeds 5 percent per month, the remaining monkeys may be used for the manufacture of Poliovirus Vaccine Live Oral Trivalent only if all of the monkeys survive a new quarantine period.

(b) *Personnel.* All reasonably possible steps shall be taken to ensure that personnel involved in processing the vaccine are immune to all three types of poliovirus and do not excrete poliovirus.

§ 630.13 Manufacture of Poliovirus Vaccine Live Oral Trivalent.

(a) *Virus passages.* Virus in the final vaccine shall represent no more than five tissue culture passages from the original strain or no more than five passages from a virus clone derived from one of the first five passages.

(b) *Virus propagated in monkey kidney cell cultures*—(1) *Continuous cell lines.* When primary monkey kidney cell cultures are used in the manufacture of poliovirus vaccine, continuous cell lines shall not be introduced or propagated in vaccine manufacturing areas.

(2) *Identification of processed kidneys.* The kidneys from each monkey shall be processed separately. The resulting viral fluid shall be identified as a separate monovalent harvest and kept separately from other monovalent harvests until all samples for the tests prescribed in paragraph (b) (3) and (4) relating to that pair of kidneys have been withdrawn from the harvest.

(3) *Monkey kidney tissue production vessels prior to virus inoculation.* Prior to inoculation with the seed virus and at least 3 days after complete formation of the tissue sheet, the tissue culture growth in vessels derived from each pair of kidneys shall be examined microscopically for evidence of cell degeneration. If such evidence is observed, the tissue cultures from that pair of kidneys shall not be used for poliovirus vaccine manufacture. To test the tissue found free of cell degeneration for further evidence of freedom from demonstrable viable microbial agents, the fluid shall be removed from the cell cultures immediately prior to virus inoculation and tested in each of four culture systems:

(i) Macaca monkey kidney cells,

(ii) Cercopithecus monkey kidney cells,

(iii) Primary rabbit kidney cells, and

(iv) Human cells from one of the systems described in § 630.16(a)(6).

The fluid shall be tested in the following manner: Aliquots of fluid from each vessel shall be pooled and at least 10 milliliters of the pool inoculated into each system. The dilution of the pool with medium shall be no greater than 1:4 and the area of surface growth of cells shall be at least 3 square centimeters per milliliter of test inoculum. The cultures shall be observed for at least 14 days. At the end of the observation period, at least one subculture of fluid from the Cercopithecus monkey kidney cell cultures shall be made in the same tissue culture system and the subculture shall be observed for at least 14 days. If these tests indicate the presence in the monkey kidney tissue culture production vessels of any viable microbial agent, the viral harvest from these tissue cultures so implicated shall not be used for poliovirus vaccine manufacture.

(4) *Control vessels.* At least 25 percent of the cell suspension from each pair of kidneys shall be set aside and used to establish control cultures. The control cultures shall be examined microscopically for cell degeneration for an additional 14 days after the time of viral harvest. The culture fluids from such control cells shall be tested, both at the time of virus harvest and at the end of the additional observation period, by the method described for testing of fluids in paragraph (b)(3) of this section. In addition, the control cell sheet shall be examined for presence of hemadsorption viruses by the addition of guinea pig red blood cells.

(5) *Interpretation of test results.* At least 80 percent of the control vessels shall be free of cell degeneration at the end of the observation period to qualify the kidneys for poliovirus vaccine manufacture. If the test results of the control cells indicate the presence of any extraneous agent at the time of virus harvest, the virus harvest from that tissue culture preparation shall not be used for poliovirus vaccine manufacture. If any of the tests or observations described in paragraph (b) (3) or (4) of this section demonstrate the presence in the tissue culture preparation of any microbial agent known to be capable of producing human disease, the virus grown in each tissue culture preparation shall not be used for poliovirus vaccine manufacture.

(6) *Temperature of kidney tissue production vessels after virus inoculation.* After virus inoculation, production vessels shall be maintained at 33.0 to 35.0 °C during the course of virus propagation.

(7) *Kidney tissue virus harvests.* Virus shall be harvested not later than 72 hours after virus inoculation. Virus harvested from vessels containing the kidney tissue from one monkey may be tested separately, or samples of viral harvests from more than one pair of kidneys may be combined, identified, and tested as a monovalent virus pool. Each pool shall be mixed thoroughly and samples withdrawn for testing as prescribed in § 630.16(a). The samples shall be withdrawn immediately after harvesting and prior to further processing, except that samples of test materials frozen immediately after harvesting and maintained at −60 °C or below, may be tested upon thawing, provided no more than one freeze-thaw cycle is employed.

(8) *Filtration.* After harvesting and removal of samples for the safety tests prescribed in § 630.16(a), the pool shall be passed through sterile filters having a sufficiently small porosity to assure bacteriologically sterile filtrates.

§ 630.14 Reference virus preparations.

(a) *Titration test controls.* The following reference viruses may be obtained from the Office of Biologics Research and Review:

(1) Reference Poliovirus, Live, Attenuated, Type 1, as a control for correlation of virus titers in tissue cultures.

(2) Reference Poliovirus, Live, Attenuated, Type 2, as a control for correlation of virus titers in tissue cultures.

(3) Reference Poliovirus, Live, Attenuated, Type 3, as a control for correlation of virus titers in tissue cultures.

(4) Reference Poliovirus, Live, Attenuated, Trivalent, as a control for correlation of virus titers in tissue cultures.

(b) *Neurovirulence test controls.* Except as provided in paragraph (b)(2) of this section, the following reference virus shall be obtained from the Office of Biologics Research and Review:

(i) Reference Attenuated Poliovirus, Type 1, as a control for evaluation of monkey neurovirulence tests.

(ii) Reference Attenuated Poliovirus, Type 2, as a control for evaluation of monkey neurovirulence tests.

(iii) Reference Attenuated Poliovirus, Type 3, as a control for evaluation of monkey neurovirulence tests.

(2) Alternatively, WHO reference standards of the corresponding type, WHO/I, WHO/II, and WHO/III, may be used as controls for evaluation of monkey neurovirulence tests.

§ 630.15 Potency test.

(a) *Test for virus titer.* The concentration of living virus in each monovalent virus pool and in each trivalent vaccine, expressed as infectivity titer per milliliter for cell cultures, shall be determined using the Reference Poliovirus, Live, Attenuated of the same type as a control or using another reference preparation of the

same type that has been calibrated against the appropriate reference preparation listed in § 630.14(a). A titration of the monovalent virus pool or the trivalent vaccine shall not constitute a valid test unless the titration of the reference virus when tested in parallel is within ± 0.5 $\log_{10}$ of its established titer. The titration of the parallel reference is intended to validate the test system and shall not be used to adjust the titer of the pool or lot under test.

(b) *Dose.* The human dose of trivalent vaccines shall be constituted to have infectivity titers in the final container material of $10^{5.4}$ to $10^{6.4}$ for Type 1, $10^{4.5}$ to $10^{5.5}$ for Type 2, and $10^{5.2}$ to $10^{6.2}$ for Type 3, or the equivalent.

§ 630.16 Tests for Safety.

(a) *Tests prior to filtration.* Monovalent virus pools shall contain no demonstrable viable microbial agent, except for unavoidable bacteriophage and the intended attenuated live poliovirus. The vaccine shall be tested for the absence of other infectious agents, including polioviruses of other types or strains. Testing of each monovalent pool shall include the following procedures:

(1) *Inoculation of rabbits.* A minimum of 100 milliliters of each monovalent virus pool shall be tested by inoculation into at least 10 healthy rabbits, each weighing 1,500 to 2,500 grams. Each rabbit shall be injected with a total of 1.0 milliliter intradermally in multiple sites, and subcutaneously with 9.0 milliliters, of the monovalent virus pool and the animals observed for at least 3 weeks. Each rabbit that dies after the first 24 hours of the test, or is sacrificed because of illness, shall be necropsied and the brain and organs removed and examined. The monovalent virus pool may be used for poliovirus vaccine only if at least 80 percent of the rabbits remain healthy and survive the entire period and if all the rabbits used in the test fail to show lesions of any kind at the sites of inoculation and fail to show evidence of cercopithecid herpesvirus 1 or any other viral infection.

(2) *Inoculation of adult mice.* Each of at least 20 adult mice, each weighing 15 to 20 grams, shall be inoculated intraperitoneally with 0.5 milliliter and intracerebrally with 0.03 milliliter of each monovalent virus pool. The mice shall be observed for 21 days. Each mouse that dies after the first 24 hours of the test, or is sacrificed because of illness, shall be necropsied and examined for evidence of viral infection by direct observation and subinoculation of appropriate tissue into at least five additional mice which shall be observed for 21 days. The monovalent virus pool may be used for poliovirus vaccine only if at least 80 percent of the mice remain healthy and survive the entire period and if all the mice used in the test fail to show evidence of lymphocytic choriomeningitis virus or other viral infection.

(3) *Inoculation of suckling mice.* Each of at least 20 suckling mice less than 24 hours old shall be inoculated intracerebrally with 0.01 milliliter and intraperitoneally with 0.1 milliliter of the monovalent virus pool. The mice shall be observed daily for at least 14 days. Each mouse that dies after the first 24 hours of the test, or is sacrificed because of illness, shall be necropsied and examined for evidence of viral infection. Such examination shall include subinoculation of appropriate tissue suspensions into an additional group of at least five suckling mice by the intracerebral and intraperitoneal routes and observed daily for 14 days. In addition, a blind passage shall be made of a single pool of the emulsified tissue (minus skin and viscera) of all mice surviving the original 14-day test. The monovalent virus pool may be used for poliovirus vaccine only if at least 80 percent of the mice remain healthy and survive the entire period and if all the mice used in the test fail to show evidence of Coxsackie or other viral infection.

(4) *Inoculation of guinea pigs.* Each of at least five guinea pigs, each weighing 350 to 450 grams, shall be inoculated intracerebrally with 0.1 milliliter and intraperitoneally with 5.0 milliliters of the monovalent virus pool to be tested. The animals shall be observed for at least 42 days and rectal temperatures recorded daily for the last 3 weeks of the test. Each animal that dies after the first 24 hours of the test, or is sacrificed because of illness, shall be necropsied and its tissues shall be examined both microscopically and culturally for evidence of tubercle bacilli, and by passage of tissue suspensions into at least three other guinea pigs by the intracerebral and intraperitoneal routes of inoculation for evidence of viral infection. If clinical signs suggest infection with lymphocytic choriomeningitis virus, serological tests shall be performed on blood samples of the test guinea pigs to confirm the clinical observations. Animals that die or are sacrificed during the first 3 weeks after inoculation with the monovalent virus pool shall be examined for infection with lymphocytic choriomeningitis virus. Animals that die in the final 3 weeks shall be examined both microscopically and culturally for *Mycobacterium tuberculosis*. The monovalent virus pool may be used for poliovirus vaccine only if at least 80 percent of all animals remain healthy and survive the observation period and if all the animals used in the test fail to show evidence of infection with *Mycobacterium tuberculosis* or any viral infection.

(5) *Inoculation of monkey kidney tissue cultures.* At least 500 doses or 50 milliliters, whichever is a greater volume of virus, taken either from each undiluted monovalent virus pool or, in equal proportions from individual harvests or subpools, shall be tested for simian viruses in Macaca monkey kidney tissue cultures and, in the same volume, in Cercopithecus monkey kidney tissue cultures. A dilution of the virus pool in medium not to exceed 1:4 shall be used. The area of surface growth of the cells shall be at least 3 square centimeters per milliliter of test inoculum. The test poliovirus shall be neutralized by high-titer specific antiserum of nonprimate origin. The immunizing antigens used for the preparation of antisera shall be grown in a cell line other than the cell line used for testing the vaccine. The cultures shall be observed for at least 14 days. At the end of the observation period at least one subculture of fluid from the Cercopithecus kidney cell culture shall be made in the same tissue culture system and the subculture shall be observed for at least 14 days. The monovalent virus pool may be used for poliovirus vaccine only if all the tissue cultures fail to show evidence of the presence of simian viruses or any other viral infection.

(6) *Inoculation of human cell cultures.* At least 500 doses or 50 milliliters, whichever represents a greater volume of virus, taken from either a single monovalent pool or, in equal proportions from individual harvests or subpools, shall be tested for the presence of measles virus in either (i) primary human amnion cells, (ii) primary human kidney cells, or (iii) any other human or nonhuman cell system of comparable susceptibility to unmodified measles virus. The virus pool shall be diluted with medium not to exceed 1:4. The area of surface growth of cells shall be at least 3 square centimeters per milliliter of test inoculum. The test material shall be neutralized with poliovirus antiserum of other than primate origin if the tissue culture cell system used is susceptible to poliovirus. The immunizing antigens used for the preparation of antiserum shall be grown in a cell line other than the cell line used for testing the vaccine. The culture shall be observed for at least 14 days. The monovalent virus

pool may be used for poliovirus vaccine only if all tissue cultures fail to show evidence of the presence of measles virus or any other viral infection.

(7) *Inoculation of a rabbit kidney tissue culture.* At least 500 milliliters of virus pool taken from either a single monovalent pool or, in equal proportions from individual harvests or subpools, shall be tested in primary rabbit kidney tissue culture preparations for evidence of cercopithecid herpesvirus 1. The virus pool shall be diluted with medium not to exceed 1:4. The area of surface growth of cells shall be at least 3 square centimeters per milliliter of test inoculum. The culture shall be observed for at least 14 days. The monovalent virus pool may be used for poliovirus vaccine only if all tissue cultures fail to show evidence of the presence of herpesvirus.

(b) *Tests after filtration.* The following tests relating to safety shall be performed on each monovalent virus pool after the filtration process:

(1) *Neurovirulence in monkeys.* Each monovalent virus pool shall be tested concurrently, if possible, with the corresponding type Reference Attenuated Poliovirus for neurovirulence by the intraspinal route of injection in Macaca monkeys. Whenever possible the monkeys should be from the same quarantine group and distributed randomly between the two test groups. If the number of monkeys included in both groups precludes completion during a single workday, equal numbers of monkeys shall be inoculated with the monovalent virus pool and the reference preparation during each of the testing days. A preinjection serum sample obtained from each monkey shall be shown to contain no neutralizing antibody in a dilution of 1:4 when tested against no more than 1,000 $TCID_{50}$ of each of the three types of poliovirus. The neurovirulence test is not valid unless the inoculation sample contains $10^{6.5}$ to $10^{7.5}$ $TCID_{50}$ per milliliter when titrated in comparison with the Reference Poliovirus, Live, Attenuated of the appropriate type. All monkeys shall be observed for 17 to 21 days and any evidence of physical abnormalities indicative of poliomyelitis or other viral infections ahall be recorded.

(i) *Intraspinal inoculation.* For tests with Type 1 and Type 2 monovalent virus pools and the Reference Attenuated Poliovirus of the corresponding types, each of a group of at least 12 monkeys after being suitable anesthetized shall be injected intraspinally into the enlargement of the lumbar cord with 0.1 milliliter of the inoculation sample. For tests with Type 3 poliovirus materials groups of at least 20 monkeys shall be used after being suitably anesthetized. A test of a virus pool shall include at least one group of monkeys, and no more than three groups shall be inoculated. If on examination there is no evidence of correct inoculation, additional animals may be inoculated in order to restablish the minimum number of 11 positive monkeys for tests of Types 1 and 2 virus pools and the minimum number of 18 positive monkeys for tests of Type 3 virus pools. A positive monkey is an animal which either survives for 11 or more days or succumbs or is sacrificed due to a severe poliovirus infection at any time before the 11th day of the observation period and in which neural lesions specific for poliovirus are seen in the central nervous system. If at least 60 percent of the animals of a group survive 48 hours after inoculation, those animals that did not survive may be replaced by additional animals. If less than 60 percent of the animals in a group survive 48 hours after inoculation, the test shall be considered invalid and shall be repeated.

(ii) *Determination of neurovirulence.* At the conclusion of the observation period, a comparable evaluation shall be made of the evidence of neurovirulence of the monovalent virus pool under test and the Reference Attenuated Poliovirus of the corresponding type with respect to the histopathology of lesions caused by poliovirus, except that for animals dying or sacrificed when severely paralyzed or moribund during the test period, these examinations shall be made immediately after death. Histopathological examinations by a qualified pathologist shall be made of at least the lumbar and cervical enlargements, the medulla, the mescencephalon, the thalamus, and motor cortex of each monkey in the groups injected with the monovalent virus pool or with the reference under test. The magnitude of the neuropathology exhibited in the lumbar and cervical areas, the medulla, and mesencephalon of all positive monkeys inoculated with the monovalent virus pool shall be quantified and compared to the magnitude of the neuropathology exhibited in the same anatomical areas of monkeys in the current test and all previous tests of the Reference Attenuated Poliovirus of the corresponding type. If, in the current test, monkeys were not inoculated with the Reference Attenuated Poliovirus of the corresponding type because of a shortage of monkeys, the magnitude of the neuropatholgy of the monovalent virus pool shall be compared to the magnitude of the neuropathology exhibited in all previous tests of the corresponding Reference Attenuated Poliovirus. The monovalent virus pool may be used for poliovirus vaccine if a comparative analysis of the test results demonstrates that the numerical value assigned for neurovirulence of the monovalent virus pool is equal to or less than that of the Reference Attenuated Poliovirus of the corresponding type. If the numerical value assigned for neurovirulence of the monovalent virus pool is greater than that of the Reference Attenuated Poliovirus, the monovalent virus pool is acceptable if the difference is not greater than that calculated by a mathematical method that is expected to reject vaccines with neurovirulence identical to the reference at a frequency of not less than 1 in 100 when 1 group of monkeys is inoculated. If 2 groups are injected with the same monovalent virus pool under test, the frequency or rejection shall be not less than 5 in 100 and for 3 groups, not less than 10 in 100. If the difference in numerical values is greater than that calculated, irrespective of which reference preparation was used in the test, the monovalent virus pool shall be considered unacceptable and shall not be used for vaccine manufacture.

(iii) *Test with Reference Attenuated Poliovirus.* The Reference Attenuated Poliovirus of the appropriate type shall be tested as prescribed in paragraph (b)(1)(i) of this section concurrently with the monovalent virus pool, unless such testing is not possible because of insufficient numbers of monkeys. More than one monovalent virus pool of the same type may be tested with the same corresponding Reference Attenuated Poliovirus. A minimum of four tests by the testing laboratory of each Reference Attenuated Poliovirus is required to provide sufficient experience to define its performance and establish the variability of the assay. Each test of the Reference Attenuated Poliovirus shall be considered acceptable and added to the previous testing experience only if the magnitude of its poliovirus neuropathology is statistically compatible with the results of all previous tests with the same reference preparations of the same type performed by the test laboratory.

(2) *Tests for in vitro markers.* A test shall be performed on each monovalent virus pool using the rct/40 Marker or another marker method shown to be of value in identification of the attenuated strain. A second test shall be performed using the d Marker. The test results shall demonstrate that the monovalent virus pool under test and the seed virus have

substantially the same marker characteristics.

(i) *rct/40 Marker.* Attenuated strains which grow readily at 40 °C (±0.5 °C) are classified as rct/40 positive (+) in contrast to the rct/40 negative (−) strains, which show an increased growth of at least 100,000 fold at 36 °C over that obtained at 40 °C. Comparative determination shall be made in suitable culture vessels.

(ii) *d Marker.* Attenuated strains which grow readily at low concentrations of bicarbonate under agar are classified as d positive (+) in contrast to the d negative (−) strains, which exhibit delayed growth under the same conditions. The cultures shall be grown in a 36 °C incubator, in suitable culture vessels in an environment of 5 percent CO_2 in air.

(c) *Final container sterility test.* The final container sterility test need not be performed provided aseptic techniques are used in the filling process.

§ 630.17 General requirements.

(a) *Vaccine release.* No lot of trivalent vaccine shall be released unless each monovalent virus pool contained therein:

(1) Has been manufactured by the same procedures;

(2) Has met the criteria of neurovirulence for monkeys prescribed in § 630.16(b)(1);

(3) Has met the criteria of in vitro markers prescribed in § 630.16(b)(2); and

(4) Has been released for further manufacturing by the Director, Office of Biologics Research and Review.

However, monovalent virus pools manufactured and tested prior to [180 days after date of publication of revised rule] in accordance with regulations applicable at that time may continue to be used to produce trivalent vaccine without additional testing of the monovalent virus pools by the manufacturer. The protocols for all monovalent virus pools produced sequentially from the same seed shall be submitted to the Director, Office of Biologics Research and Review, whether or not release of the pool for futher manufacturing is requested.

(b) *Labeling.* In addition to the items required by other applicable labeling provisions of this chapter, the final container label shall bear a statement indicating that liquid vaccine may not be used for more than 7 days after opening the container. Labeling may include a statement indicating that, for frozen vaccine, a maximum of 10 freeze-thaw cycles is permissible provided the total cumulative duration of thaw does not exceed 24 hours, and provided the temperature does not exceed 8 °C during the periods of thaw.

(c) *Samples and protocols.* For each trivalent lot of vaccine and for each monovalent virus pool, the following materials shall be submitted in accordance with instructions received from the Director, Office of Biologics Research and Review, Center for Drugs and Biologics, 8800 Rockville Pike, Bethesda, MD 20892:

(1) A protocol that consists of a summary of the history of manufacture of each trivalent lot or monovalent virus pool, including any test results requested by the Director, Office of Biologics Research and Review.

(2) A 200-milliliter bulk sample of each final monovalent virus pool having a virus titer of no less than $10^{7.5}$ $TCID_{50}$ per milliliter; if the titer is greater, a correspondingly smaller volume may be submitted.

(3) A total of at least 200 doses or 6 final containers of the trivalent vaccine, whichever is the larger amount.

(4) When deemed appropriate, the Director, Office of Biologics Research and Review, may require submission of sample volumes other than those specified in paragraphs (c)(2) and (3) of this section.

Dated: April 26, 1986.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 86-9980 Filed 5-2-86; 8:45 am]

BILLING CODE 4160-01-M

federal register

Monday,
May 5, 1986

Part IV

Department of the Interior

Office of the Secretary

43 CFR Part 11

Natural Resource Damage Assessments; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 11

Natural Resource Damage Assessments

AGENCY: Office of the Secretary, Interior.

ACTION: Proposed rulemaking.

SUMMARY: The proposed rule establishes simplified procedures for assessing damages to natural resources from a discharge of oil or release of a hazardous substance and compensable under either the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601 *et seq.*, or under the Clean Water Act (CWA), 33 U.S.C. 1251 *et seq.* (also known as the Federal Water Pollution Control Act). Responsibility for preparation of this proposed rule was delegated by the President to the Department of the Interior in Executive Order 12316, August 14, 1981, 46 FR 42237. The proposed rule supplements the procedures for performing assessments published at 50 FR 52126 (December 20, 1985) referred to as the "type B" procedures. The proposed rule is applicable only to the assessment of damages in coastal and marine environments.

DATE: Comments should be submitted by June 19, 1986. Comments received on or before the above date will be considered in the decisionmaking process on the final rulemaking. The short comment period is required because of the court-ordered deadline that requires publication of the final rule by October 7, 1986.

ADDRESS: Comments should be sent to Keith Eastin, Deputy Under Secretary, CERCLA 301 Project Director, Room 4354, Department of the Interior, 1801 "C" St. NW, Washington, DC 20240. Comments will be available for review at the above address during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT:
Keith Eastin, (202) 343–5183
Alison Ling, (202) 343–1301

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Background

Section 301(c) of CERCLA requires the promulgation of rules for the assessment of damages for injury to, destruction of, or loss of natural resources resulting from a discharge of oil or a release of a hazardous substance for the purposes of CERCLA and of section 311(f) (4) and (5) of the CWA. Section 301(c) states:

(c)(1) The President, acting through Federal officials designated by the National Contingency Plan published under section 105 of this Act, shall study and, not later than two years after the enactment of this Act, shall promulgated regulations for the assessment of damages for injury to, destruction of, or loss of natural resources resulting from a release of oil or a hazardous substance for the purpose of this Act and section 311(f) (4) and (5) of the Federal Water Pollution Control Act.

(2) Such regulations shall specify: (A) Standard procedures for simplified assessments requiring minimal field observation, including establishing measures of damages based on units of discharge or release or units of affected area, and (B) alternative protocols for conducting assessments in individual cases to determine the type and extent of short- and long-term injury, destruction, or loss. Such regulations shall identify the best available procedures to determine such damages, including both direct and indirect injury, destruction, or loss and shall take into consideration factors, including, but not limited to, replacement value, use value, and ability of the ecosystem or resource to recover.

(3) Such regulations shall be reviewed and revised as appropriate every two years.

The proposed rule, when final, will be used by Federal and State authorized officials acting as trustees of natural resources to assess damages to natural resources for purposes of section 107(a) and 111 (a) and (d) of CERCLA and section 311(f) (4) and (5) of the CWA. The results of assessments performed by a Federal official according to these procedures shall be accorded the evidentiary status of a rebuttable presumption as provided in 111(h) of CERCLA.

Section 301(c) of CERCLA specifies two types of procedures to be developed. The type A procedures are to be standard procedures for simplified assessments requiring minimal field observation. The type B procedures are to include alternative methodologies for conducting assessments in individual cases.

B. Regulatory Background

On December 20, 1985, the Department of the Interior proposed the alternative methodologies for conducting assessments in individual cases, otherwise known as the "type B" procedures. The proposed rule was published at 50 FR 52126. The rationale set forth in that proposed rule and explained in the preamble is also applicable to this proposed rule, which is a more specific application of the concepts expressed in the type B proposal. This proposed rule comprises the "type A" procedures, or the standard procedures for simplified assessments requiring minimal field observation.

The December 20, 1985, proposed rulemaking explained that the type A amd type B proposed rules were being promulgated under court-imposed deadlines in a consent order entered in *State of New Jersey et al.* v. *Ruckelshaus et al.*, (now Thomas), Civ. No. 84–1668 (D.N.J.). On February 3, 1986, Judge Rodriguez entered an order modifying the previously established deadlines. The modified schedule is as follows:

1. The Secretary will promulgate and submit to the Federal Register the final type B regulations on or before June 23, 1986.

2. The Secretary will propose for public comment the type A regulations on or before May 5, 1986, and promulgate final type A regulations and submit them to the Federal Register for publication by October 7, 1986.

This change in deadlines resulted largely from numerous requests for extension of time to provide public comment on the type B proposed rule and was agreed to by the parties to the litigation. Because of the court mandated deadline, the comment period for this proposed rule is limited to 45 days.

C. Concepts Embodied in the Proposed Rule

1. The Model

The type A procedure described in this proposed rule uses a computer model to perform the numerous mathematical computations required for the simplified assessment of damages in coastal and marine environments. Accordingly, this assessment model is referred to as the Natural Resource Damage Assessment Model for Coastal and Marine Environments (NRDAM/CME). The model incorporates the concepts enunciated in the type B proposal. The computer program is designed so that it can be run on widely available microcomputers.

This proposed rule is the first type A procedure being developed by the Department of the Interior. At some future date this system may be expanded or new systems developed to cover other ecosystems, natural resources and different types of discharges or releases. Coastal and marine environments were chosen as the subject of the first type A procedure because much more extensive information was available on the fate and effects of discharges or releases of oil or hazardous substances in these

environments than for other ecosystems and natural resources.

The NRDAM/CME, which represents the state-of-the-art in computer modeling and techniques, was developed with contractor assistance provided by Economic Analysis, Inc., of Wakefield, Rhode Island, and Applied Science Associates, Inc., of Narragansett, Rhode Island. The contractor's work was reviewed by a number of experts in ocean and marine biology, computer modeling, natural resources economics, and toxicology. Prior to the drafting of this proposed rule, a draft of the contractor's technical report and the NRDAM/CME was circulated to the Department of the Interior bureaus and offices and to Federal agencies represented on the National Response Team for review and comment. The contractor's technical report is entitled: Measuring Damages to Coastal and Marine Natural Resources: Concepts and Data Relevant for CERCLA Type A Damage Assessments.

The report and the NRDAM/CME are available from the CERCLA 301 Project at the address listed at the beginning of this document. The report contains a detailed discussion of the model, its documentation, and its limitations.

2. Selecting Between a Type A or Type B Assessment

Whenever a discharge or release occurs in the coastal or marine environment a type A assessment should be performed unless the limtations of the model make it inappropriate to a given incident. The NRDAM/CME cannot be applied universally. It is applicable only to selected types of discharges or releases. Fundamentally, before the NRDAM/CME may be used, the discharge or release must occur in a coastal or marine envirnoment. Certain other conditions also apply. The substance discharged or released must be contained in the data base of the model. Special resources, as that term is defined in the type B proposed rule, are not addressed in the biological data base and therefore cannot be assessed using the NRDAM/CME. If estimates of the natural resources potentially injured would differ significantly from the averages listed within the NRDAM/CME for the area in which the discharge or release occurred, the model may not be appropriate for assessing damages. The discharge or release must be a relatively minor, single event of short duration occurring at the water surface or in the intertidal zone. The injury to biological resources must be primarly due to direct or indirect mortality, or damage must occur due to closure of a fishing area or closure of a bench. In addition, mortality to biological resources must be due primarly to the direct and indirect effects of the discharge or release rather than the effects of any chemical agents or other clean up activities.

Whether or not certain of these conditions exist will necessarily be a subjective decision in some incidents. It may be clear in the case of a barge spill or the rupture of a vessel hull by grounding that the incident is a "single event" which occurred over a "short duration of time." However, it is impossible to formulate a uniform definition of the term "relatively minor" that will be able to cover all types of discharges and releases. There is no clear definition in CERCLA concerning the threshold amount of a discharge or release or the perceived extent of natural resource damages that will separate a type A from a type B assessment. In fact, the consequences of seemingly similar incidents can vary greatly, depending upon such factors as the amount and characteristics of the discharge or release and the location and season of the events. For example, a release of a hazardous substance in a highly productive estuary will likely cause greater biological injuries and economic damages than an identical discharge in other less productive areas. Potential natural resources damages will depend upon the location and season of the incident as well as the quantity and toxicity of oil and hazardous substances discharged or released.

If the conditions under which the NRDAM/CME can be used do not exist, the authorized official performing the assessment should use a type B procedure. Future models or other procedures may be developed that will allow for type A assessments involving other ecosystems or other types of discharges or releases.

Use of the NRDAM/CME requires little or no field observation of the pathway of contamination or of the biological resources injured. The model and its supporting data bases are based upon averaged values and may not necessarily reflect the actual events of any specific incident. Accordingly, there may be times when the authorized official performing the assessment or the potentially responsible party may conclude that a type B assessment that examines actual occurrences would be a more accurate measure of damages. For this reason, the following discretion is allowed as to selection of assessment procedures.

If the authorized official determines that one of the conditions listed above is not satisfied, the authorized official may make a determination that the NRDAM/CME is not applicable to the discharge or release, and that a type B assessment will be performed. Conversely, it may be the potentially responsible party that prefers that a type B assessment be performed for a particular incident. The proposed rule allows the potentially responsible party to request that a type B assessment be conducted even if the NRDAM/CME is applicable to the discharge or release, on the condition that the potentially responsible party agrees to advance and ultimately bear responsibility for all reasonable costs of the assessment regardless of the outcome. In this case, the authorized official performing the assessment must then perform a type B. As stated in § 11.32(d) of the type B proposed rule, the authorized official may allow the potentially responsible party to perform all or any part of the Assessment Plan under the direction and guidance of the authorized official.

The potentially responsible party will be offered the opportunity to exercise the option to request that a type B assessment be performed even if the NRDAM/CME is applicable to the discharge or release after: (1) The preassessment screen has been completed, including the identification of resources potentially at risk; and (2) the authorized official has determined that a type A assessment will be performed. The Assessment Plan will include documentation setting forth the fact that such an opportunity was offered to the potentially responsible party, and that party's decision as to whether (1) the type B assessment will be performed upon its advancement of costs, or (2) type A procedures will be used. Should the potentially responsible party select type B procedures, the Assessment Plan will be completed on that basis and all requirements for a type B assessment must be fulfilled, including confirmation of exposure and determination of injury.

I. Overview of the Proposed Rule

A. The type A assessment

1. Preassessment Screen

A type A assessment includes the same preliminary steps as the type B assessment. The authorized official must perform a preassessment screen to determine that a CERCLA or CWA covered incident has occurred and that resources for which a Federal or State agency may act as trustee have been affected. Multiple trusteeship issues will require resolution in accordance with

the provisions proposed in the type B procedures.

2. Assessment Plan

An Assessment Plan as described in § 11.30 through §11.33 of the type B proposed rule is required before a type A assessment may be performed. Specifically, the authorized official must comply with the development requirements of § 11.32 including coordination with co-trustees, identification and involvement of the potentially responsible party, and public involvement in the Assessment Plan. Unlike the plan for a type B assessment, the type A Assessment Plan need not contain a plan for field testing and sampling, nor is a confirmation of exposure required. An Economic Methodology Determination is also unnecessary since the NRDAM/CME incorporates the use value methodology. What is required for the type A Assessment Plan is a list of the specific data inputs described in § 11.41(c) of this Part that will be used to apply the NRDAM/CME. The Assessment Plan shall document how the specific data inputs were derived or obtained.

Some of these data inputs are required for each incident that is assessed. For other data inputs the model will supply default values if estimates of site-specific information are not available. The default values pertain to environmental characteristics of the site such as the air temperature, surface currents and water depth. Site-specific information or estimates of this information should be used whenever it is reasonably available.

Basic information such as the type, amount, location, and date for each discharge or release should be available from the On-Scene Coordinator (OSC), normally the U.S. Coast Guard in coastal and marine areas. The OSC may often have available pertinent supplemental information, such as the mean ocean surface current and the mean wind speed and direction at the approximate time of the discharge or release.

Additional information on data input parameters that were not specifically measured at the time of the discharge or release is available from a number of sources. Surface currents can be obtained from the *Surface Currents* atlas series published by the Department of Navy, Naval Oceanographic Office, Bay St. Louis, NSTL Station, MS 39522, and available from the National Technical Information Service, 5285 Port Royal Rd., Springfield, VA 22161. Tidal velocities can be obtained or calculated from data values available in the *Tide Tables* or *Tidal Current Tables* published annually by the National Oceanographic and Atmospheric Administration (NOAA) National Ocean Service. More detailed information on tides for some locations can be found in *Tidal Current Charts* or *Tidal Current Diagrams*, also published by NOAA. Information on distance to land boundaries and bottom types can be found in *Standard Nautical Charts*. All of these NOAA documents are published by geographic regions and may be ordered from: U.S. Department of Commerce, Distribution Branch, NCG 22, Riverdale, MD 20737–1199; (301) 436–8194. Another source of information on bottom types or sediment characteristics is the National Geophysical Data Center, which has data files that can be searched by location. The address is: National Geophysical Data Center, NOAA/NESDIS, Mail Code E/GC, 325 Broadway, Boulder, CO 80303; (303) 497–6487.

The National Oceanographic Data Center collects historical survey data for a large number of variables, including suface current, upper and lower water column depth and density, water temperature, suspended sediment concentration, and wind speed and direction, though not all information may be available for a specific location or time period. They can be contacted for an inventory of the data available for a particular location at: National Oceanographic Data Center, NOAA/NESID, NODE/OC21, Page Bldg. 1, Rm. 406, 2001 Wisconsin Ave., NW, Washington, DC 20235; (202) 634–7500. A User's Guide to their data files can also be obtained at that address.

Similar information on weather related parameters at the approximate time of the discharge or release, including air temperature, wind speed, and wind direction is available from the National Climatic Data Center. Their address is: National Climatic Data Center, NOAA/NESDIS, Federal Building, Asheville, NC 28801; (704) 259–0682.

B. Overview of the NRDAM/CME

The NRDAM/CME contains all of the chemical, biological, and economic data required to determine injury, quantify that injury, and determine damages for natural resources in the coastal and marine environments of the United States, and its territories and possessions. The NRDAM/CME is comprised of physical fates, biological effects, and economic damages submodels.

The model defines injury as a result of the discharge or release, as: (1) direct mortality to adult and larval fish, shellfish, waterfowl, shorebirds, fur seals, and lower trophic organisms due to toxic concentrations of the spilled substance, and (2) indirect mortality to fish and shellfish due to a loss of foodstuff from the food chain. The model also calculates damages due to the closure of a fishing area, or the closure of a public beach. The model does not consider possible injuries to air resources or species using the air resources that could occur due to the evaporation or volatization of the spilled substance, as there is a lack of reliable data on these effects.

The areal extent of a fishing area subject to closure is a data input made by the user based upon the authorized official's determination of the actual area closed, not a fact developed from the NRDAM/CME. The length of beach closed, if any, is also an input made by the user. Data on the length of beach closed is required rather than the area closed. This is because most of the State-supplied visitation data was in the form of trips made to, and footage of, public beaches. Use of this data allowed calculation of trips made per foot of public beach. In addition, total visits forgone and the value of each visit are adjusted (without further user input) for the time of year that the closure of the beach took place.

The physical fates submodel determines the transport of the substance in the water pathway. The user supplies information on the type of substance spilled, weather conditions, the physical conditions of the coastal or marine environment in which the discharge or release occurred, and whether the discharge or release occurred in the intertidal or subtidal area. With this information the submodel calculates the expected concentration, transport, and dispersion of the substance over time.

The quantification of the loss to biological resources injured by the substance is determined by the interaction of the physical fates and biological effects submodels. The user supplies information on ecosystem province type, predominant bottom type, whether the spill occurred in the marine or estuarine environment, and the extent of beach or fishing area that was closed. With this information the model calculates the loss of biomass due to direct and indirect mortality. In the case of fishing closures, the model also determines the lost catch attributable to the closure. The biological data base for this submodel contains information on the average density of biomass for over 150 commercially and recreationally important species, grouped by species category and by season and location;

primary and secondary productivity estimates for the phytoplankton, zooplankton, and benthic populations of food chains in each of the ecosystem province types; and selected population parameter measures, such as growth rates, mortality rates, and fishing mortality rates for each ecosystem province type.

The NRDAM/CME incorporates the use value methodology of § 11.83 of the type B procedures instead of balancing restoration costs against lost use values. Restoration costs were not used because the number of circumstances addressed by the physical fates and biological effects submodels made calculation of average restoration costs technically infeasible. The economic data base contains province specific ex-vessel prices for the value of commercially harvested fish and all shellfish not caught due to the discharge or release. These prices are three year averages for 1982–84. The data base also contains information on visitor days and length of stays for National Seashores and other public beaches. Beach days lost are valued using average non-market prices obtained from existing studies of recreational beach use. The data base contains non-market marginal prices for the value of waterfowl, recreational fishing, and shorebirds. All non-market prices come from a review of the economic literature in their respective areas.

To apply the model, the authorized official need only supply the necessary site-specific data. Little or no actual field observation is necessary if the chemical and quantity discharged or released are known. The NRDAM/CME data bases contain the information required to determine injury, specify the pathway through which injury occurred, quantify the effects of injury, and determine damages, based on the scientific knowledge and the concepts developed in the type B proposed rule. This level of detail allows the NRDAM/CME to be presumptive.

C. Post-Assessment Phase

The proposed rule for type B assessments requires that the responsible party establish a fund when the damage award is made. Restoration actions are to be planned, and the fund is to pay for actions taken pursuant to the Restoration Plan. For type A assessments it may not always be feasible to prepare a separate full scale Restoration Plan for each award, since amounts recovered may be less than amounts recovered as a result of a type B assessment. These smaller recoveries will result since the type A assessments are generally designed for relatively smaller and simpler incidents than type B assessments.

Accordingly, the proposed rule now provides that when recoveries occur from type A assessments the agency acting as trustee may apply several type A recoveries to one Restoration Plan. One or more type A recoveries can be added to any existing restoration effort if a plan has been developed that incorporates similar requirements to those in § 11.82. The requirements of § 11.82 are that the plan incorporate: (1) cost-effectiveness; (2) public participation; (3) a no-action alternative; (4) the use of interdisciplinary techniques; and (5) a thorough examination of alternatives, as appropriate to the amount of the monies available and the extent of the existing restoration effort. The Restoration Plan must describe how sums from more than one recovery will be used for restoration, replacement, or acquisition of equivalent resources.

For example, discharges or releases may occur in the X Bay. State Y could develop a Restoration Plan for X Bay. Whenever a type A incident occurred in X Bay, damages for that particular incident would be used to fund actions under the X Bay Restoration Plan. Alternatively, if a "Restoration Plan" which is similar to that required in § 11.82 is in effect for X Bay, monies recovered from a type A assessment may be included in that Restoration Plan.

III. Summary and Analysis of Major Issues Included in the Comments Received from the Advance Notices of Proposed Rulemaking

A. Introduction

Three Advance Notices of Proposed Rulemaking (ANPRM's) were issued by the Department during the course of the development of the rules required under § 301(c) of CERCLA. These ANPRM's were issued on January 10, 1983, August 1, 1983, and January 11, 1985. Most of the comments received in response to the three Notices were either on the overall principles that should govern the development of both type A and type B assessments, or on type B assessments in particular. All of these comments were addressed at length in the preamble to the proposed rule for type B assessments. Since the type A assessments are based on the underlying concepts in the type B proposed rule, these basic issues are not discussed again here.

Comments specifically directed toward type A assessments fell into two general categories. The first centers on the appropriate criteria for selecting between a type A or type B assessment. The second includes suggestions and recommendations on the format and design of the type A assessments.

B. Comments on the Selection of a Type A or Type B Assessment Procedure

Comments on deciding between an A and a B assessment covered both the issue of how the decision should be made and of who should make the decision.

Some comments assumed that an A or a B assessment would be selected on the basis of the size of a discharge or release. Others suggested taking into consideration such factors as the duration of the discharge or release, the units or degree of resources damaged, the kinds of ecosystems affected, or the amount of remedial action required. Some recommended statistical analyses of these factors or others to reveal patterns of characteristics indicative of major and minor events. One comment said that most hazardous substance releases should require a type B assessment, another said that a type B should be mandated when endangered or threatened species were involved, and another stated that a type A should only be used for brief, discrete spills to surface waterways. Some comments recommended an economic criteria, such as allowing a type B only when the parties involved refused to accept type A damage results, or requiring a type A if the cost of doing a type B would be equal to or exceed the amount of damage determined by a type B assessment. One comment suggested that a type B only be done in special cases, and that the cost of type B assessments be split between the discharger and the trustee as an incentive to reach agreement based on a type A assessment. Many comments requested flexibility in the decision of whether to do a type A or a type B rather than the imposition of a hard and fast rule.

A few comments expressed the opinion that a "de minimus" level for spill amounts should be set, and that discharges or releases under this amount should be automatically excluded from either a type A or a type B assessment. About half of the comments on the type A's maintained that the official authorized to act as trustee should be the one to decide between a type A or a type B assessment. An equal number of comments held that the decision should either have input from the responsible party, be left entirely up to the responsible party, or be made by the responsible party and the On-Scene

Coordinator. One comment suggested that the decision be made entirely by the On-Scene Coordinator and the Regional Response Team.

The criteria set forth in the proposed rule for selecting between a type A or a type B assessment incorporate many of the ideas expressed in the comments. These criteria are discussed in detail in part (I)(c)(2) of this preamble. The information necessary for the decision includes the type, size, impact, duration and location of the discharge or release, and whether special resources or significantly above-average amounts of natural resources are affected. Both the authorized official and the responsible party are given some discretion in the choice of assessment type. Allowing flexibility in the decision to select an A or a B assessment, providing some incentive to use the less elaborate A assessment when appropriate, and limiting type A's to certain situations, should act to ensure that all assessments performed exhibit both reasonable cost and an appropriate assessment of damage.

No de minimus levels prohibiting assessments for discharges or releases below a certain amount have been set in the proposed rule. Since the degree of injury potentially caused by a discharge or release varies according to many factors in addition to the amount spilled, including aquatic toxicity, solubility, and geography, it would be unrealistic to attempt to set any one level or even several levels as a cut-off point for an assessment. Type A assessments using the NRDAM/CME yield a damage amount that is functionally related to the injury to natural resources from any particular discharge or release. The fact that many relatively small spills result in insignificant damage amounts guards against the performance of unnecessary assessments. In these cases the costs of pursuing an assessment would not be reasonable in comparison with any possible awards.

C. Comments on the Format and Design of Type A Assessments

Almost all comments received opposed the use of simple tables or charts of organism prices for type A assessments. A number of comments insisted that injury always be directly linked with a discharge or release. Some comments suggested that "formula-type" procedures using statistical analyses of existing data along with the best current technology and techniques would be appropriate.

The Department investigated statistical procedures to correlate existing information on actual injuries, damages, or restoration costs to amounts discharged or released. There were three major problems that made this type of analysis unproductive. First, most previously reported damage amounts are the result of negotiated settlements. This means the damage award may have little, if any, relationship to the injury to natural resources. Because of this it is difficult, if not impossible, to determine the value of the injured resource or even a "correct" restoration cost in most cases.

Second, only a few actual damage assessments or restorations have been performed under CERCLA or the CWA, giving an insufficient number of data points necessary for a high degree of statistical confidence. Moreover, these assessments have been done, quite logically, mainly for relatively large discharges or releases. An extensive literature search did not reveal any damage assessments done under CERCLA or the CWA in coastal or marine environments for the more common relatively small discharge or release. For example, according to the preliminary 1983 figures published by the U.S. Coast Guard ("Pollution Incidents In and Around U.S. Waters," COMDTINST, M16450.2F) the average discharge of oil per incident in marine and estuarine areas in the Pacific and Atlantic Oceans and the Gulf of Mexico was about 12 barrels. The Department is not aware of any damage assessments performed for discharges this small in coastal or marine environments. Casual empiricism suggests, and is borne out by the results of the NRDAM/CME, that the relationship between "large" and "small" discharges or releases is not necessarily linear. Therefore, even if there were sufficient information on large discharges or releases, we would not expect to be able to extrapolate this information for application to relatively small discharges or releases.

Third, while some information is available for large discharges of oil, CERCLA is too new to have generated many natural resource damage assessments even for large releases of hazardous substances. Therefore, even less information exists for natural resource damages associated with releases of hazardous substances than those associated with discharges of oil. These problems prompted the Department to investigate other ways to estimate injury and damages in a simplified manner. This investigation led to the development of the NRDAM/CME.

The computer model described in this proposed rule uses statistical averages to estimate injuries caused by specific oils or hazardous substances under specific ecological, environmental, and physical conditions. This method allows a more technically accurate and realistic assessment of damages than those obtainable from any kind of simplistic table or chart. At the same time, the model retains the advantage of a simplified procedure by not requiring the extensive field testing necessary to establish a causal connection between injury and a discharge or release.

General comments on the content of type A procedures included a variety of suggestions. It was recommended that the assessments should: recognize fate and effect differences; incorporate information on toxicity, persistence, amount spilled, area affected, natural resources, ecosystems, and habitats; require minimum field observation; be concerned with effects on marinas and beaches; or concentrate on areas and resources where spills have occurred in the past and might be expected in the future. A number of comments maintained that separate procedures be established for oil and hazardous substances.

The decision by the Department to develop a coastal and marine model as the initial type A procedure reflects an awareness of the magnitude of previous discharges and releases in these environments. The model incorporates detailed information on oil and hazardous substances and resources as suggested by the comments, but requires minimum field observation. Since the model takes into account differences in fate, effect, toxicity, etc., between oils and hazardous substances, it is able to handle both without the need for separate sets of procedures.

A number of comments addressed the economic methodology to be used for determining damage amounts in type A assessments. Many maintained that the law indicated compensation for injuries rather than the imposition of penalties. Comments variously suggested that damages be limited to economically measurable amounts as measured using sound economic evaluation techniques, that only consumptive losses be included unless data is available on non-consumptive losses, or that damages include all lost use values and thus be a disincentive to possible polluters. Most comments expressed a concern about restoration, and many recommended that restoration costs, taking into account the ability of the resource to recover naturally, be used as the basis for determining damage. An additional concern was that parties causing the discharge or release not be charged with damages caused by negligent response activities performed by other parties.

The NRDAM/CME calculates damages based on the reduction in consumptive and non-consumptive value of the in situ use of the affected resource during the period of natural recovery. The model uses an ecological food chain approach for assessing value to lower trophic organisms and bases damage to fisheries and beaches on regional market prices, recreational values, and lost days of use due to closure. Amounts of oil or hazardous substances removed during response actions can be accounted for by the model, but additional injury caused by cleanup activities are not.

Due to a lack of available data, it was not possible to design an economically sound model using restoration costs as the basis for damage calculation. Two points should be emphasized in this regard. First, as is discussed in section (I)(C)(2) of this preamble, the potentially responsible party has the option to have a type B assessment performed, upon that party's agreement to advance and bear responsibility for its costs. The determination of damages in a type B assessment will always include an evaluation of restoration costs as compared with diminution of use values. Second, the use of all awards resulting from type A assessments must be used for restoration purposes as mandated in §§ 11.92 and 11.93 of the type B proposed rule. This is in keeping with the overall mandate of CERCLA that natural resource damages be used to benefit the resource that was injured, lost, or destroyed.

Authorship

The primary authors of this proposed rulemaking are Keith Eastin, Deputy Under Secretary, Alison Ling, Office of the Solicitor, David Rosenberger, U.S. Fish and Wildlife Service, and Willie Taylor, Office of Policy Analysis, all with the Department of the Interior, Sheryl Katz, formerly with the Office of the Solicitor, and Richard Aiken, formerly with the Bureau of Land Management, Department of the Interior.

National Environmental Policy Act, Executive Order 12291, Regulatory Flexibility Act, and Paperwork Reduction Act

The Department of the Interior has determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, no further analysis pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 [43 U.S.C. 4332(2)(C)] has been prepared.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and certifies that this document will not have significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The proposed rule provides technical procedural guidance for the assessment of damages to natural resources. It does not directly impose any additional cost. In addition, estimates of the potential economic effects of this proposed rule are well below $100 million annually. As the proposed rule applies to Federal and State agencies acting as trustees for natural resources, it is not expected to have an effect on a substantial number of small entities. It has been determined that these amendments to 43 CFR Part 11 do not contain any information collection requirements which require approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 43 CFR Part 11

Coastal zone, Continental shelf, Environmental protection, Fish, Hazardous substances, Marine resources, National parks, Natural resources, Oil pollution, Public lands, Recreation areas, Sea shores, Wildlife, Wildlife refuges.

For the reasons set out in the preamble, and under the authority of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 it is proposed to amend proposed 43 CFR Part 11 (50 FR 52126) as set forth below.

Dated: April 29, 1986.

Joseph J. Martyak,

Deputy Under Secretary.

PART 11—NATURAL RESOURCE DAMAGE ASSESSMENTS

1. The authority citation for 43 CFR Part 11 continues to read as follows:

Authority: 42 U.S.C. 9651(c).

Subpart A—Introduction

2. It is proposed to amend § 11.15 by adding paragraph (a)(1)(iii), by revising paragraph (b) to read as follows:

§ 11.15 Actions against the responsible party for damages.

(a) * * *

(1) * * *

(iii) The determination of the damage amount under this Part shall be based entirely on either a type A or type B assessment and may not constitute any combination thereof.

* * * * *

(b)(1) In a claim filed pursuant to section 311(f) (4) and (5) of the CWA, a Federal or State agency acting as trustee may only claim damages for restoration or replacement.

(2) The measure of damages as determined in accordance with the requirements and guidance of § 11.40 shall be considered damages for restoration or replacement in an action against a responsible party under section 311(f)(4) and (5) of the CWA, except where § 11.33(a)(2)(i) or (ii) applies.

* * * * *

Subpart B—Preassessment Phase

3. It is proposed to amend § 11.24 by adding paragraph (c) to read as follows:

§ 11.24 Preassessment screen—information on the site.

* * * * *

(c) *Damages excluded from liability under the CWA.* (1) The authorized official shall determine whether the discharge meets one or more of the exclusions provided in sections 311(a)(2) or (b)(3) of the CWA.

(2) An assessment under this Part shall not be continued for potential injuries from discharges meeting one or more of the CWA exclusions described in paragraph (c)(1) of this section.

Subpart C—Assessment Plan Phase

4. It is proposed to amend § 11.31 by adding paragraph (d) to read as follows:

§ 11.31 Assessment Plan—content.

* * * * *

(d) *Specific requirements for type A assessments.* When a type A natural resource damage assessment is performed, the assessment shall contain the information specified in § 11.40 of this Part.

5. It is proposed to add § 11.33 to read as follows:

§ 11.33 Assessment Plan—deciding between a type A or type B assessment.

(a) *Coastal and marine environments.* (1) When a discharge or release occurs in a coastal or marine environment, the authorized official shall determine whether the following conditions apply to the discharge or release:

(i) The substance discharged or released is included within the list provided in Appendix C of U.S. Department of the Interior, "Measuring Damages to Coastal and Marine Natural Resources: Concepts and Data Relevant

to CERCLA Type A Damage Assessments," Economics Analysis, Inc., Wakefield, RI, and Applied Sciences Associates, Narragansett, RI, DOI 14-01-0001-85-C-20, April 1986, available from CERCLA 301 Project, Room 4354, Department of the Interior, 1801 "C" St., NW, Washington, DC 20240;

(ii) Special resources are not included in the assessment;

(iii) The estimated quantity and type of resources potentially injured are not expected to differ significantly from the average biomass listed in Appendix B of U.S. Department of the Interior, "Measuring Damages to Coastal and Marine Natural Resources: Concepts and Data Relevant to CERCLA Type A Damage Assessments," Economics Analysis, Inc., Wakefield, RI, and Applied Sciences Associates, Narragansett, RI, DOI 14-01-0001-85-C-20, April 1986, available from CERCLA 301 Project, Room 4354, Department of the Interior, 1801 "C" St., NW, Washington, DC 20240, for the province and bottom type in which the discharge or release occurred;

(iv) The discharge or release was of a short duration;

(v) The discharge or release was relatively minor;

(vi) The discharge or release was a single event;

(vii) The estimated injury to biological resources is expected to be primarily due to mortality or to closure of a fishing area;

(viii) The use of chemical dispersants or other agents used in a cleanup, if one takes place, are not estimated to have caused significant injury to natural resources; and

(ix) The discharge or release occurred at the water surface or in the intertidal zone.

(2) The authorized official must select the NRDAM/CME procedure if the discharge or release occurred in a coastal or marine environment unless:

(i) The potentially responsible party requests that a type B assessment be performed and agrees to advance and bear responsibility for all reasonable assessment costs; or

(ii) The authorized official makes a determination that one or more of the conditions listed in (a)(1) are not satisfied. This determination shall be included in the Assessment Plan. If the authorized official cannot confirm exposure when using the type B procedures, he may not then re-select the type A procedure.

(b)-(e) [Reserved]

6. it is proposed to add Subpart D consisting of §§ 11.40 and 11.41 to read as follows:

Subpart D—Type A Assessments.

11.40 Type A assessments—general.
11.41 Coastal and marine environments.

§ 11.40 Type A assessments—general.

(a) The procedures in § 11.41 of this subpart may be used to assess damages in coastal and marine environments. The procedures require the use of a model referred to as the Natural Resource Damage Assessment Model for Coastal and Marine Environments (NRDAM/CME). The NRDAM/CME and the procedures in § 11.41 provide a simplified assessment process involving minimal field observation to determine injury, quantify that injury, and determine damages in coastal and marine environments resulting from a discharge or release.

(b)-(e) [Reserved]

§ 11.41 Coastal and marine environments.

(a) *NRDAM/CME—general.* (1) *Purpose.* The purpose of the NRDAM/CME is to provide a standard assessment methodology for conducting simplified natural resource damage assessments when a discharge or release occurs in a coastal or marine environment.

(2) *Availability.* Requests for a copy of the NRDAM/CME should be sent to: CERCLA 301 Project, Room 4354, Department of the Interior, 1801 "C" St., NW, Washington, DC 20240.

(3) *Steps in the NRDAM/CME.* The NRDAM/CME assessment methodology consists of four phases: § 11.41(c) Coastal and marine environments—Assessment Plan; § 11.41(d) Coastal and marine environments—injury determination; § 11.41(e) Coastal and marine environments—qualification; § 11.41(f) Coastal and marine environments—damage determination.

(4) *Completion of type A assessment.* After completion of the type A assessment, a Report of Assessment as described in § 11.90 of this Part shall be prepared. The Report of Assessment shall include the determinations made in each phase. The determinations shall consist of the printed output from the model runs, the determinations made in Subpart B of this Part, and the determinations of site-specific data inputs required in paragraph (c) of this section.

(b) *Definitions.* As used in this Subpart the phrase:

"Area affected" means the number of square meters of an intertidal area affected by a release of a hazardous substance where a minimum of 90 percent mortality of individuals of at least 90 percent of the resident species is observed using standard and widely accepted methods for estimating populations.

"Biomass" means the weight of living organisms per unit of prescribed area or volume.

"Bottom type" means one of the sediment types used by the NRDAM/CME.[1] These bottom types are: rock, rocky shore, cobble, cobbled beach, sand, sand beach, mud, mud flat, saltmarsh, seagrass, macroalgal bed (kelp), mangrove swamp, coral reef, mollusk reef, and worm reef.

"CAS number" means the Chemical Abstract Service Registry Number assigned to a hazardous substance by the American Chemical Society, Chemical Abstract Service, or the number assigned to oils by the NRDAM/CME.

"Closure of a beach" means the prohibition of recreational or other uses in a specified length of a beach by an appropriate Federal or State agency, due to a discharge or release in a coastal or marine environment.

"Closure of a fishing area" means the prohibition of commercial and recreational fishing in a specified area by an appropriate Federal or State health agency, due to a discharge or release in a coastal or marine environment.

"Coastal environment" means the area incorporating: (1) The splash zone, which lies above the extreme high water level of spring tide; (2) the upper shore, which lies between the average high tide level and the extreme high water level of spring tides; (3) the midshore, which lies between the average low tide level and the average high tide level; (4) the lower shore, which lies between the extreme low water level of spring tides to the average spring tide level; and (5) the sublittoral fringe, which lies below the extreme low water level of spring tides.

"Default parameter(s)" means the value assigned by the NRDAM/CME to any parameter listed in § 11.41(c)(3) of this Part for which the authorized official does not have an estimate of a site-specific value.

"Estuarine environment" means deepwater tidal habitats that are usually semi-enclosed by land but have an open, partially obstructed, or sporadic access to the open ocean and in which ocean water is at least occasionally diluted by

[1] These sediment types are derived from the descriptions in "Classification of Wetlands and Deepwater Habitats of the United States," Cowardin, Carter, Golet, and LaRoe, Department of the Interior/Fish and Wildlife Service, FWS/OBS-79/31, 1979; available from the National Technical Information Service; 5285 Port Royal Road; Springfield, VA 22161; PB 80-168784/LP.

freshwater runoff from the land. The estuarine environment extends upstream and landward to where ocean-driven salts measure less than 0.5 parts per thousand during the period of average annual low flow; and (1) seaward to an imaginary straight line closing the mouth of a river, bay, or sound; or (2) to the seaward limit of wetland emergents, shrubs, or trees where not included in number (1) of this definition. The estuarine environment also includes offshore areas of continuous upwellings of freshwater containing typical estuarine plants and animals.

"Intertidal" means a coastal or marine environment in which the substrate is exposed and flooded by tides, including the associated splash zone.

"Marine environment" means the open ocean extending landward from the seaward limit of the fishery conservation zone established by the Magnuson Fishery Conservation and Management Act of 1976, to one of the following: (1) The seaward limit of the coastal environment; or (2) the seaward limit of the estuarine environment. The marine environment does not include offshore areas of continuous upwellings of freshwater containing typical estuarine plants and animals.

"NRDAM/CME" means the Natural Resource Damage Assessment Model for Coastal and Marine Environments, which is an integrated physical fates, biological effects, and economic damages model.

"Predominant bottom type" means the prevailing bottom type in the area of the discharge or release.

"Province" means one of the ten geographical areas used by the NRDAM/CME.[2] These provinces and their respective boundaries are:

(1) Arcadian (Northeast: Canadian border to Cape Cod, MA);

(2) Virginian (Mid-Atlantic: Cape Cod, MA, to Cape Hatteras, NC);

(3) Carolinian (South-Atlantic: Cape Hatteras, NC, to Cape Canaveral, FL);

(4) Louisianian (Gulf Coast: Cedar Key, FL, to Aransas, TX);

(5) West Indian (South Florida: Cape Canaveral, FL, to Cedar Key, FL; all Caribbean Islands; and Aransas, TX, to the Mexican border);

(6) Californian (California: Mexican border to Cape Mendocino, CA);

(7) Columbian (Pacific Northwest: Cape Mendocino, CA, to Canadian border);

(8) Fjord (Gulf of Alaska: Canadian border to Aleutian chain);

(9) Arctic (Alaska: Alaska north of the Aleutian chain); and

(10) Pacific Insular (Hawaii and other Pacific islands).

"Pycnocline" means a region in the ocean or in an estuary where a marked change in the density of the water column occurs. The change in density acts as a partial barrier between the upper and lower water columns.

"Species category" means one of the twelve groupings of biological resources used by the NRDAM/CME to aggregate the biomass of similar species in coastal and marine environments.

"Study area" means the geographical area included in the boundaries required to run the NRDAM/CME. Boundaries are established based on the direction of the mean ocean surface current, called the +X direction; 180 degrees from the direction of the mean ocean surface current, called the −X direction; 90 degrees counterclockwise from the direction of the mean ocean surface current, called the +Y direction; and 270 degrees counterclockwise from the direction of the mean ocean surface current, called the −Y direction.

"Subtidal" means a coastal or marine environment in which the substrate is continuously submerged.

(c) *Coastal and marine environments—Assessment Plan.* (1) *Required information.* When the NRDAM/CME is used, the Assessment Plan shall incorporate:

(i) The chemical CAS number of the substance discharged or released, derived from the NRDAM/CME;

(ii) The estimated total mass discharged or released stated in metric tons;

(iii) The date and the year of the discharge or release;

(iv) The province in which the discharge or release occurred;

(v) Whether the discharge or release occurred in the marine or estuarine environment;

(vi) Whether the discharge or release occurred in a subtidal or intertidal area; and

(vii) The predominant bottom type.

(2) *Supplemental information.* The following information on the discharge or release shall be incorporated into the Assessment Plan and used as a data input for the NRDAM/CME:

(i) Whether a cleanup activity has been conducted and the approximate amount of material removed, stated in metric tons;

(ii) The distance, in kilometers, to the study area boundaries including, as appropriate, the presence of a land boundary;

(iii) Whether a fishing area was closed and, if so, the area closed expressed in square meters, and the number of days or fractions of days of closure; and

(iv) Whether a recreational beach was closed and, if so, the length closed expressed in meters, and the number of days or fractions of days of closure.

(3) *Environmental parameters.* The following information on the characteristics of the environment at the approximate time and site of the discharge or release shall be incorporated into the Assessment Plan and used as a data input for the NRDAM/CME if site-specific information is available. Efforts expended in the collection data should be consistent with the reasonable cost of performing the assessment. If no site-specific information is supplied the NRDAM/CME will automatically provide default parameters:

(i) The mean ocean surface current and the direction of mean flow expressed in meters per second;

(ii) The tidal velocities expressed both in the direction of, and perpendicular to, the mean ocean current expressed in meters per second;

(iii) The wind speed expressed in meters per second;

(iv) The wind direction expressed in degrees measured counterclockwise to the mean ocean current;

(v) The upper water depth expressed in meters;

(vi) The lower water depth expressed in meters;

(vii) The air temperature expressed in degrees Celsius;

(viii) The surface water temperature expressed in degrees Celsius;

(ix) The presence or absence of a pycnocline;

(x) The density of the upper and lower water columns expressed in kilograms per liter;

(xi) The total suspended sediment concentration expressed in milligrams per liter; and

(xii) The mean settling velocity of suspended solids expressed in meters per day.

(4) *Discharges or releases of multiple substances and mixtures.* (i) The NRDAM/CME may be used only in accordance with the requirements of this paragraph in assessing incidents involving the simultaneous discharge or release of two or more oils or hazardous substances, or when a mixture of one or more oils or hazardous substances has

[2] These geographical areas are derived from the descriptions in "Classification of Wetlands and Deepwater Habitats of the United States," Cowardin, Carter, Golet, and LaRoe, Department of the Interior/Fish and Wildlife Service, FEW/OBS—79/31, 1979; available from the National Technical Information Service; 5285 Port Royal Road; Springfield, VA 22161; PB 80-168784/LP.

been discharged or released in a single incident.

(ii) The authorized official shall select one of the oils or hazardous substances present in the simultaneous discharge or release, or in the mixture. The selected substance shall be identified in the Assessment Plan, and the NRDAM/CME shall be applied only to the quantity of that substance selected that was discharged or released.

(d) *Coastal and marine environments—injury determination.* (1) *General.* Unless otherwise provided for in this Subpart, all injury determinations for coastal and marine environments shall be established through the use of the physical fates and biological effects submodels of the NRDAM/CME.

(2) *Pathway of contamination.* (i) The methodology for determining the pathway of contamination is the physical fates submodel.

(ii) The chemical parameter values of the oil or hazardous substance discharged or released are provided in the chemical data base contained within the NRDAM/CME.

(iii) The environmental parameters are listed in paragraph (c)(3) of this section and shall be provided by either the authorized official or by the default parameters contained in the NRDAM/CME.

(3) *Confirmation of exposure.* When the NRDAM/CME is used no sampling is required to confirm exposure, as described in § 11.34 of this Part. The interaction and results of the physical fates and biological effects submodels establish a presumption of exposure.

(4) *Determination of injury.* The methodology for determining that injury has occured to natural resources is provided by the biological effects submodel. The biological parameter values of acute toxicity of the oil or hazardous substances discharged or released are provided in the data base contained within the NRDAM/CME.

(5) *Time and location.* The time and location of the discharge or release shall be established consistent with 40 CFR 300.63 of the NCP for the discovery and notification of a discharge or release.

(6) *Discharged or released substance.* Discharges of oil shall be identified consistent with 40 CFR 110. Released hazardous substances shall be identified consistent with 40 CFR Part 302.

(7) *Results of cleanup actions.* (i) The results of cleanup actions that have been performed as part of response actions authorized in 40 CFR Part 300 shall be included within the NRDAM/CME procedures.

(ii) Cleanup actions include such actions as the physical removal of the oil or hazardous substance from the coastal or marine environment and the application of chemical agents, dispersants, surface collecting agents, burning agents, or other such agents authorized in 40 CFR Part 300 Subpart H for use on oil discharges. The use of chemical agents, burning agents, or other such agents shall not be considered a discharge or release for the purposes of this Subpart.

(iii) The authorized official shall determine the quantity of oil or hazardous substance cleaned up by the response action based on information or data obtained from the OSC.

(e) *Coastal and marine environments—quantification.* (1) *General.* Unless otherwise provided for in this Subpart, all quantification of injury for coastal and marine environments shall be established through the use of the biological effects submodel of the NRDAM/CME.

(i) The NRDAM/CME includes a biological data base for each province and bottom type. The results of the injury determination are quantified by the biological effects submodel of the NRDAM/CME to provide an estimate of biomass killed.

(ii) Based upon the results of the physical fates submodel and biological effects portion of the injury determination the authorized official shall make the determinations required in paragraphs (A) and (B) of this section.

(A) The authorized official shall determine whether any intertidal areas are affected. If any intertidal areas are determined to be affected, the authorized official shall follow the procedures provided in paragraph (e)(3) of this section.

(B) The authorized official shall determine whether any toxic threshold concentrations that migrated across the province boundary are to be included in the assessment. If any inter-provincial migration is to be included, the authorized official shall follow the procedures provided in paragraph (e)(4) of this section.

(C) The authorized official shall determine whether any toxic threshold concentrations that migrated across the boundary of an estuarine/marine area are to be included in the assessment. If estuarine/marine migration is to be included, the authorized official shall follow the procedures provided in paragraph (e)(5) of this section.

(2) *Study area boundaries.* (i) When the discharge or release migrates outside of the original study area, the user may redefine the study area boundaries, and reapply the NRDAM/CME. The boundaries of the new study area should be redefined such that, to the extent practicable, the new boundaries encompass all the area in which the toxic threshold concentrations have been exceeded in the upper or lower water columns or in which the discharge or release exists as a surface slick, except as specified in paragraphs (e) (3), (4), or (5) of this section.

(ii) The damages determined through multiple applications of the NRDAM/CME to adjust study boundaries or any other parameter values, specified in paragraph (e)(2) of this section, are not additive, except as described in paragraphs (e) (3), (4), or (5) of this section.

(3) *Estimating the intertidal area affected.* (i) When the release of a hazardous substance occurs in an intertidal area, the authorized official shall estimate the area affected, as that phrase is used in this Subpart, and the number of days the area remains affected.

(ii) When the discharge of oil occurs in an intertidal area, no further information is required to apply the NRDAM/CME.

(iii) When the NRDAM/CME indicates that a subtidal discharge or release migrates onshore, the NRDAM/CME should be applied a second time to the intertidal area affected. The mass of substance that is specified by the NRDAM/CME to have come ashore is the quantity discharged or released in an intertidal area for the second application.

(4) *Inter-province effects.* (i) As appropriate, the boundary of a province shall be included as one or more of the boundaries of the study area.

(ii) When the NRDAM/CME indicates that the oil or hazardous substance has migrated from one province into another province, the NRDAM/CME may be also applied in that second province, provided that when inter-provincial migration occurred, the oil or hazardous substance exceeded toxic threshold concentrations in either the upper or lower water columns or existed as a surface slick.

(iii) The quantity of the substance to be used in the second application of the NRDAM/CME shall be calculated as the sum of the percentages of the mass in the surface, upper water column, and lower water column at the time the substance migrated outside the study area multiplied by the mass of the original discharge or release.

(5) *Estuarine/marine.* (i) As appropriate, a boundary between the estuarine and marine environments shall be included as one, or more, of the boundaries of the study area.

(ii) When the NRDAM/CME indicates that the oil or hazardous substance has migrated across a boundary between estuarine and marine environments, the NRDAM/CME may be applied in the second environment, provided that the oil or hazardous substance exceeded toxic threshold concentrations in either the upper or lower water column at the boundary or existed as a surface slick at the boundary. The mass discharged or released for the second application shall be calculated in accordance with paragraph (e)(4)(iii) of this section.

(f) *Coastal and marine environments—damage determination.* (1) *General.* Unless otherwise provided for in this Subpart, all damage determinations for coastal and marine environments shall be established through the use of the economic damages submodel of the NRDAM/CME.

(i) Damages, as determined by the NRDAM/CME, are the average diminution in in situ use values due to the discharge of oil or release of a hazardous substance.

(ii) Damages are calculated for direct, short-term lethal effects on lower trophic biota, fur seals, ducks, geese and shorebirds; direct and indirect lethal effects on fish and shellfish, the reduction in catch from the closure of a fishing area; and the direct loss of use of a public beach due to closure.

(2) *Estimating damages for fishery closures.* To determine damages for the closure of a fishing area the authorized official shall specify, as a data input for the NRDAM/CME, the amount of area closed to fishing and the length of time the area is closed to fishing due solely to the discharge or release.

(3) *Estimating damages for beach closure.* To determine damages for loss of beach use the authorized official shall estimate the length of the area closed and the amount of time this area is closed due solely to the discharge or release.

(4) *Estimating other damages.* Only those damages determined by the NRDAM/CME may be claimed as damages in a type A damage assessment for coastal and marine environments.

(g) *Coastal and marine environments—NRDAM/CME availability, security, and verification.* (1) *General.* (i) The NRDAM/CME that may be used for assessment of damages to coastal and marine environments is that which is published or made available concurrent with this rulemaking, or which is published or made available as a result of modification in accordance with § 11.12 of this Part.

(ii) No alterations, substitutions, additions, or deletions may be made to the logic structure, to any of the mathematical equations, including their numerical coefficients and rate functions, or to any other program element of the NRDAM/CME.

(iii) No alterations, substitutions, additions, or deletions may be made to any of the data bases that accompany and are interactive with the NRDAM/CME unless such alterations, substitutions, additions, or deletions have been specifically authorized and allowed for elsewhere in this Subpart.

(2) *Official Reference Documentation.* (i) The Department of the Interior shall maintain and hold secure the Official Reference Documentation of the NRDAM/CME. The Official Reference Documentation shall include a printed copy of the NRDAM/CME computer program, written documentation of the NRDAM/CME, printed copies of the data bases, and the three computer disks, which shall be referenced as:

(A) Disk #1 (FATES) and contains the physical/biological model system files;

(B) Disk #2 (PHYSCHEM) and contains the chemicals and chemical parameters for the model; and

(C) Disk #3 (ECON) and contains the economic model and data files for the model.

(ii) The Department of the Interior shall make available upon request copies of such information as may be contained in the Official Reference Documentation.

(3) *Model verification.* (i) In such instances as may arise where verification of the NRDAM/CME is needed, the responsible party or the authorized official may obtain such information as may be needed from the Official Reference Documentation.

(ii) Verification may be accomplished by one of the following:

(A) Comparison of any given application of the model output from the copy of the NRDAM/CME and model output from the verified copy, when the same data input parameters are used. The outputs must be identical.

(B) Comparison of the computer program and data base files on the verified disks and the disks used, using a file comparison program. All program and data base input files must be identical.

(iii) The Department of the Interior may charge an appropriate fee for providing such verification, as provided for in 31 U.S.C. 9701.

Subpart F—Post-Assessment Phase

7. It is proposed to amend § 11.91 by revising paragraph (a) to read as follows:

§ 11.91 Post-assessment phase—demand.

(a) *Requirement and content.* At the conclusion of the assessment the authorized official shall present to the responsible party a demand in writing for a sum certain, representing the damages determined in accordance with the requirements and guidance of § 11.40 or § 11.80 and including the reasonable cost of the assessment, delivered in such a manner as will establish the date of receipt. The demand shall adequately identify the Federal or State agency asserting the claim, the general location and description of the injured resource, identification of the type of discharge or release determined to have resulted in the injuries, and the damages sought from that party.

* * * * *

8. It is proposed to amend § 11.93 by adding paragraph (c) to read as follows:

§ 11.93 Post-assessment phase—Restoration Plan.

* * * * *

(c) If the measure of damages was determined in accordance with Subpart D, the Restoration Plan may describe actions to be taken that are to be financed from more than one trust fund established pursuant to § 11.92(a) of this Part.

[FR Doc. 86-9945 Filed 5-2-86; 8:45 am]
BILLING CODE 4310-10-M

federal register

Monday
May 5, 1986

Part V

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 884

Obstetrical-Gynecological Devices; Effective Date of Requirement for Premarket Approval; Contraceptive Intrauterine Device (IUD) and Introducer; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 884

[Docket No. 84N-0375]

Obstetrical-Gynecological Devices; Effective Date of Requirement for Premarket Approval; Contraceptive Intrauterine Device (IUD) and Introducer

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule to require the filing of a premarket approval application or a notice of completion of a product development protocol for the contraceptive intrauterine device (IUD) and introducer, a medical device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: August 4, 1986.

FOR FURTHER INFORMATION CONTACT: Raju G. Kammula, Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 26, 1980 (45 FR 12711), FDA published a final rule (21 CFR 884.5360) classifying into class III (premarket approval) the IUD and introducer, a medical device. Section 884.5360 of FDA's regulations setting forth the classification of obstetrical and gynecological devices intended for medical use applies to (1) any IUD and introducer that was in commercial distribution before May 28, 1976, and (2) any device that FDA has found to be substantially equivalent to an IUD and introducer described in (1) and that has been marketed on or after May 28, 1976.

In the **Federal Register** of August 19, 1985 (50 FR 33500), FDA published a proposed rule to require the filing under section 515(b) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(b)) of a premarket approval application (PMA) or a notice of completion of a product development protocol (PDP) for the IUD and introducer. In accordance with section 515(b)(2)(A) of the act, FDA included in the preamble to the proposal the agency's proposed findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to meet the premarket approval requirements of the act, and on the benefits to the public from use of the device (50 FR 33501). The preamble to the proposal also provided an opportunity for interested persons to submit comments on the proposed rule and the agency's proposed findings, and, under section 515(b)(2)(B) of the act, provided an opportunity for interested persons to request a change in the classification of the device based on new information relevant to its classification. Any petition requesting a change in the classification of the IUD and introducer was required to be submitted by September 3, 1985. The comment period closed on October 18, 1985.

Although FDA did not receive any petitions requesting a change in the classification of the IUD and introducer, the agency received one comment in response to the August 19, 1985, proposal. The comment, from a former manufacturer of the device, disagreed with the factual basis for "many" of FDA's "asserted risks of the device," and alleged that FDA's decision to initiate a proceeding to require premarket approval for the IUD and introducer is "not justified by sound scientific principles." The comment did not provide any rationale for its objections or any data to support the objections.

FDA has reexamined its proposed findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring the IUD and introducer to meet the statute's approval requirements. The agency concludes that its proposed findings and its conclusions discussed in the preamble to the proposed rule are appropriate. Accordingly, FDA is promulgating a final rule requiring premarket approval for the IUD and introducer under section 515(b)(3) of the act and is summarizing its findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring the IUD and introducer to have an approved PMA or declared completed PDP, and the benefits to the public from the use of the device.

Findings With Respect to Risks and Benefits

Degree of Risk

1. *Pelvic inflammatory disease (PID).* The incidence of infection of the internal female reproductive organs, commonly described by the term "pelvic inflammatory diseases" (PID), is higher for IUD users than for nonusers. Among the sequelae of PID are loss of reproductive functions, increased incidence of ectopic pregnancy, and even death.

2. *Tubal infertility.* Use of an IUD increases the risk of acute PID leading to tubal infertility.

3. *Perforation.* Uterine perforation is the most serious complication associated with IUD insertion. Most instances of complete uterine perforation are believed to occur at the time of insertion. Partial perforation, which may also occur at the time of insertion, can allow the IUD to pass completely outside the confines of the uterus causing foreign body reactions, peritonitis, adhesions, and intestinal obstructions. A number of factors are related to the causation and frequency of perforation. Primary among these is the skill of the individual performing the insertion.

4. *Pregnancy.* Pregnancy may occur either after an unnoticed expulsion of an IUD or with the device still in place. New data suggest that the use of an IUD is associated with an increased incidence of ectopic pregnancy. Data also demonstrate that the risk of midtrimester fetal loss increases tenfold when the pregnancy occurs with an IUD in situ. Also, pregnancy with an IUD in situ increases the risk of septic midtrimester abortion endangering the life of the user.

5. *Bleeding and pain.* The bleeding associated with the IUD may be intermenstrual but more often occurs as an increase in menstrual flow. Bleeding and pain are believed to be due to direct erosion into the endometrium by the device or to a generalized increase in vascularity of the entire endometrium which leads to localized hemorrhage. Indeed, bleeding and pain associated with the IUD may be due to both conditions.

6. *Expulsion.* Explusion of an IUD can be complete or partial. If complete expulsion of the IUD goes unnoticed, it places the woman at risk of pregnancy. Partial displacement or expulsion of the device into the lower uterine segment also presents the risk of pregnancy. Partial displacement may also result in an increased risk of ascending uterine infection from the vagina.

FDA concludes that these risks could be eliminated or reduced by requiring the IUD and introducer to undergo premarket approval.

Benefits of the Device

The most recent study of contraceptive effectiveness of the IUD showed an IUD failure rate of 4.2 per 100 married women aged 15 to 44 (50 FR 33503). The failure rate was much lower among women who were in their 30's and who were careful in checking for expulsion. The primary advantage of

IUD's is that the effectiveness of the device does not entirely depend upon specific actions of the user such as taking an oral contraceptive every morning or using a barrier method of contraception at each act of intercourse.

In terms of mortality, IUD's are about twice as safe as oral contraceptives used by young women without conditions predisposing them to circulatory disease and three to five times safer than oral contraceptives used by older women (50 FR 33503).

Final Rule

Under section 515(b)(3) of the act, FDA is adopting the proposed findings as published in the preamble to the proposed rule and is issuing a final rule to require premarket approval of the generic type of device, the IUD and introducer.

Under the final rule, a PMA or a notice of completion of a PDP is required to be filed on or before August 4, 1986, for any IUD and introducer that was in commercial distribution before May 28, 1976, or that has been found by FDA to be substantially equivalent to such a device on or before August 4, 1986. An approved PMA or a declared completed PDP is required to be in effect for any such device on or before January 30, 1987. (If FDA finds that continued availability of an IUD and introducer for which a PMA has been timely filed is necessary for the public health, FDA may, under section 515(d)(1)(B)(i) of the act, extend the 180-day period for taking action on the PMA.) Any IUD and introducer that was not in commercial distribution before May 28, 1976 or that has not on or before August 4, 1986, been found by FDA to be substantially equivalent to an IUD and introducer that was in commercial distribution before May 28, 1976, is required to have an approved PMA or a declared completed PDP in effect before it may be marketed.

If a PMA or a notice of completion of a PDP for an IUD and introducer is not filed on or before August 4, 1986, that device will be deemed adulterated under section 501(f)(1)(A) of the act (21 U.S.C. 351(f)(1)(A)), and commercial distribution of the device will be required to cease. The device may, however, be distributed for investigational use, if the requirements of the investigational device exemption (IDE) regulations (21 CFR Part 812) are met.

Under § 812.2(d) of the IDE regulations, FDA hereby stipulates that the exemptions from the IDE requirements in § 812.2(c)(1) and (2) will no longer apply to clinical investigations of the IUD and introducer. Further, FDA concludes that investigational IUD's and introducers are significant risk devices as defined in § 812.3(m), and advises that as of the effective date of § 884.5360(d) the requirements of the IDE regulations regarding significant risk devices will apply to any clinical investigation of an IUD and introducer. For any such device, therefore, an IDE submitted to FDA, under § 812.20, is required to be in effect under § 812.30 before an investigation is initiated or continued on or after August 4, 1986. FDA advises all persons who intend to sponsor any clinical investigation involving the IUD and introducer to submit an IDE application to FDA no later than July 7, 1986, to avoid the interruption of ongoing investigations.

Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Economic Impact

FDA has examined the economic consequences of this final rule in accordance with the criteria in section 1(b) of Executive Order 12291 and found that the rule will not be a major rule as specified in the Order. The agency believes that only one or two firms will be affected by this rule. Therefore, the agency certifies under the Regulatory Flexibility Act (Pub. L. 96–354) that the rule will not have a significant economic impact on a substantial number of small entities. An assessment of the economic impact of this final rule has been placed on file in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 884

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 884 is amended as follows:

PART 884—OBSTETRICAL AND GYNECOLOGICAL DEVICES

1. The authority citation for 21 CFR Part 884 is revised to read as follows:

Authority: Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)); 21 CFR 5.10; § 884.5360(d) also is issued under secs. 501, 515, and 520(g), 52 Stat. 1049–1050 as amended, 90 Stat. 552–559, 569–571 (21 U.S.C. 351, 360e, 360j(g)).

2. In § 884.5360 by adding new paragraph (d), to read as follows:

§ 884.5360 Contraceptive intrauterine device (IUD) and introducer.

* * * * *

(d) *Date premarket approval application (PMA) or notice of completion of a product development protocol (PDP) is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before August 4, 1986, for any IUD and introducer that was in commercial distribution before May 28, 1976, or that has on or before August 4, 1986, been found to be substantially equivalent to an IUD and introducer that was in commercial distribution before May 28, 1976. Any other IUD and introducer shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

Dated: April 3, 1986.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 86–9982 Filed 5–2–86; 8:45 am]

BILLING CODE 4160–01–M

federal register

Monday
May 5, 1986

Part VI

Department of Justice

Bureau of Justice Assistance

State Reimbursement Program for Incarcerated Mariel-Cubans; Notice

DEPARTMENT OF JUSTICE

Bureau of Justice Assistance

State Reimbursement Program for Incarcerated Mariel-Cubans

AGENCY: Bureau of Justice Assistance, Justice.

ACTION: Notice of issuance of solicitation for applications to reimburse states for the expenses incurred by the incarceration of Mariel-Cubans.

SUMMARY: The Bureau of Justice Assistance (BJA) is administering a program to reimburse states for expenses incurred by the incarceration of certain Mariel-Cubans in state facilities.

ADDRESS: Henry T. Tubbs, Bureau of Justice Assistance, 633 Indiana Avenue NW., Washington, D.C. 20531.

FOR FURTHER INFORMATION CONTACT: Kim C. Rendelson, (202) 272–4605. (This is not a toll free number).

SUPPLEMENTARY INFORMATION: The Bureau of Justice Assistance (BJA) is publishing a notice of issuance of solicitation to implement a State Reimbursement Program for Incarcerated Mariel-Cubans. The Department of Justice Appropriation Act for 1986 (Pub. L. 99–180) allocates up to $5 million (reduced by Gramm-Rudman-Hollings sequester to $4,785,000) for the purpose of making grants to states for their expenses for the incarceration of Mariel-Cubans in state facilities.

I. General Provisions

Statutory authority: The statutory authority is the Department of Justice Appropriation Act for 1986 (Pub. L. 99–180).

Submission date: The submission date for state applications is no later than 30 days after publication of the Program Guidelines in the **Federal Register.**

Eligible applicants: All states are eligible to apply for and receive grants. *States,* means any state of the United States and includes the District of Columbia and the Commonwealth of Puerto Rico.

Participating states: It is expected that the sixteen states that participated last year will participate again this year, specifically, Alaska, California, Florida, Georgia, Illinois, Michigan, Minnesota, Nevada, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Texas, Washington, and Wisconsin. There may be the possibility of a few additional states participating also.

II. Allocations and Uses of Funds

Fund availability: The Act provides a total of $5 million (reduced by Gramm-Rudman-Hollings sequester to $4,785,000) for the purpose of making grants to states. The total amount of funds awarded will be on the basis that the certified number of incarcerated persons in a state bears to the total certified number of such incarcerated persons. The amount of reimbursement per prisoner per annum will not exceed $12,000.

Fund use: The intent of the public law is to reimburse the States for their expenses by reason of Mariel-Cubans having to be incarcerated in state facilities. A budget or expenditure plan is not required as the award will be solely for reimbursement. No match funds are required.

III. Application Content

(a) All state applicants must submit Standard Form 424, (Application for Federal Assistance), and a *certified listing* of incarcerated Mariel-Cuban prisoners. This listing will include the following information in the suggested sequence:

(1) Name (last name first),
(2) AKA (also known as),
(3) Alien Identification Number (e.g., A24456789),
(4) Date of birth,
(5) Last known address,
(6) Conviction date,
(7) Conviction offense,
(8) Probable earliest release date,
(9) State facility housing the prisoner,
(10) State facility address,
(11) Dates of incarceration of the prisoner,
(12) I–247 Form-Immigration Detainer Notice (If INS has filed a Detainer on this prisoner, submit a copy)
(13) Fingerprint card.

(b) The certified listing must be signed by the Governor or his authorized representatives.

(c) The period of incarceration for reimbursement purposes is October 1, 1985 to September 30, 1986. The computation of funds will be based on an aggregate total of certified prisoners incarcerated for a twelve month period (e.g., if two prisoners are incarcerated for six months during the period the state will be reimbursed the full amount for one year).

(d) The Act is specific in that the prisoner must have been paroled into the United States by the Attorney General during the 1980 influx of Mariel-Cubans. This means those Cubans who *Entered Without Inspection* (EWI), earlier arrivals (pre-boatlift), and/or later arrivals (post-boatlift) cannot be included and, thus, no expense will be reimbursed.

(e) State law will prevail when a determination is required as to what constitutes a state facility and/or a state prisoner.

IV. Review of State Applications

State applications must be submitted in the form and at the time prescribed.

(a) The application and certified listing will be reviewed by BJA and a cross-check verification of prisoners will be made by the Immigration and Naturalization Service of the U.S. Department of Justice. This review will be accomplished not later than 90 days after publication of program guidelines in the **Federal Register** and grants will be immediately made to States.

(b) Compliance with Executive Order 12372, "Intergovernmental Review of Federal Programs." This program is covered by Executive Order 12372 and Department of Justice implementing regulations 28 CFR Part 30. States must submit grant applications to the State's *Single Point of Contact,* if there is a *Single Point of Contact,* and if this program has been selected for coverage by the State process, at the same time applications are submitted to the Federal agency. State processes have 60 days starting from the application deadline to comment on applications. Applicants should contact their state "Single Point of Contact" as soon as possible to alert them of the prospective applications and receive instructions regarding the process.

(c) The BJA will notify the applicant in writing of the specific reasons for the disapproval of the application or amendment, in whole or in part.

V. Civil Rights Assurances

The applicant State must specifically assure that it will comply, and that subgrantees and contractors will comply, with all applicable Federal non-discrimination laws and regulations, including the following:

(a) Title VI of the Civil Rights Act of 1964,
(b) Section 809(C) of Justice Assistance Act of 1984,
(c) Section 504 of the Rehabilitation Act of 1973, as amended,
(d) Title IX of the Education Amendments of 1972,
(e) The Age Discrimination Act of 1975, and,
(f) The Department of Justice Non-Discrimination Regulations, 28 CFR Part 42, Subparts, C, D, E, and G.

Any application for $500,000 or more shall be accompanied by a copy of the current Equal Employment Opportunity Program of the corrections department in accordance with the provisions of 28 CFR 42.301 *et seq.* State applicants that previously applied for and received

funding under this initiative and had an Office of Justice Programs' approval of their Equal Employment Opportunity Program need only submit a statistical update of the previously approved program.

VI. Non-Discrimination

The state assures that it will comply, and that subgrantees and contractors will comply, with all applicable Federal non-discrimination requirements, including:

(a) Title VI of the Civil Rights Act of 1964,

(b) Section 504 of the Rehabilitation Act of 1973, as amended;

(c) Title IX of the Education Amendments of 1972,

(d) The Age Discrimination Act of 1975; and,

(e) The Department of Justice Non-Discrimination Regulations, 28 CFR Part 42, Subparts, C, D, E, and G.

Mack M. Vines,

Director, Bureau of Justice Assistance.

[FR Doc. 86–10024 Filed 5–2–86; 8:45 am]

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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3 (1985 Compilation and Parts 100 and 101)	14.00	[6] Jan. 1, 1986
4	11.00	Jan. 1, 1986
5 Parts:		
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600-799	6.50	Apr. 1, 1985
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1300-End	5.50	Apr. 1, 1985
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[3] No amendments to this volume were promulgated during the period July 1, 1984 to June 30, 1985. The CFR volume issued as of July 1, 1984, should be retained.

[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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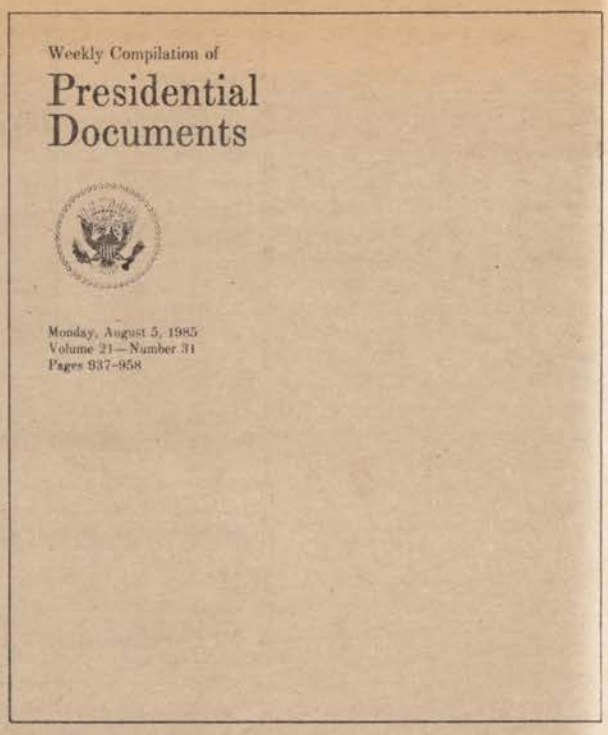

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