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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
(TWO BRIEFINGS)

WHEN: November 21 at 9:00 am and 1:30 pm

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

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Rules and Regulations

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

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AG25

Prevailing Rate Systems; Abolishment of Detroit Special Wage Schedules for Printing Positions

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing interim regulations to abolish the Federal Wage System special wage schedule for printing positions in the Detroit, Michigan, wage area. Printing and lithographic employees in Detroit will now be paid rates from the regular Detroit, Michigan, wage schedule.

DATES: This interim rule becomes effective on November 2, 1994. Comments must be received by December 2, 1994. Employees paid rates from the Detroit, Michigan, special wage schedule for printing positions will continue to be paid from that schedule until their conversion to the regular Detroit, Michigan, wage schedule effective on the first day of the first full pay period beginning on or after November 2, 1994.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Acting Assistant Director for Compensation Policy, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, Room 6H31, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Paul Shields, (202) 606–2848.

SUPPLEMENTARY INFORMATION: The Department of Defense recommended to the Office of Personnel Management that the Detroit, Michigan, Printing and Lithographic wage schedule be abolished and that the regular Detroit, Michigan, wage schedule apply to printing employees in Detroit. This recommendation was based on the fact that the Detroit special printing wage survey would produce special schedule rates lower than the regular schedule rates for the area. Because regulations provide that the special printing schedule rates may not be lower than the regular schedule rates for an area, special printing schedule rates for Detroit are currently based on the Detroit regular wage schedule rates.

In addition, the Detroit special printing wage survey has become impractical due to the declining number of printing and lithographic employees available to serve as data collectors in the Detroit wage area. There are only nine covered employees. No employee's wage rate will be reduced upon conversion to the regular schedule. The Federal Prevailing Rate Advisory Committee has reviewed this recommendation and by consensus has recommended approval.

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. Also, pursuant to section 553(d)(3) of title 5, United States Code, I find that good cause exists for making this rule effective in less than 30 days. The notice is being waived and the regulation is being made effective in less than 30 days because preparations for the January 1995 Detroit survey must begin immediately.

Regulatory Flexibility Act

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

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 532

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

Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; sec. 532.707 also issued under 5 U.S.C. 552.

§ 532.279 [Amended]

2. Section 532.279 is amended by removing paragraph (j)(10) and redesignating paragraph (j)(11) as (j)(10).

[FR Doc. 94–27103 Filed 11–1–94; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1902, 1941, 1942, 1943, 1944, and 1945

Handling of U.S. Treasury Checks and U.S. Savings Bonds

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations regarding the handling of U.S. Treasury Checks and U.S. Savings Bonds. This action is necessary to update information regarding the disposition of checks and savings bonds in various circumstances. The intended effect is to identify the proper procedures for handling U.S. Treasury Checks and U.S. Savings Bonds.

EFFECTIVE DATE: November 2, 1994.

FOR FURTHER INFORMATION CONTACT: James Webb, Accounting Policy and Procedures Branch, FmHA, Finance Office, 1520 Market Street, St. Louis, Missouri 63103, telephone 314–539–6026.

SUPPLEMENTARY INFORMATION: This action is not subject to the provisions of Executive Order 12866 since it only involves internal agency management. It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comments, not

withstanding the exemption in 5 U.S.C. 553 regarding such rules. This action is not published for proposed rulemaking because it involves only internal Agency management and publication for comment is unnecessary.

Discussion

The FmHA issues FmHA Instruction 2018–D, Policy and Procedure for Handling U.S. Treasury Checks and U.S. Savings Bonds, to replace FmHA Instruction 102.1, Handling of Loan Checks, Salary Checks, and U.S. Savings Bonds. The purpose of FmHA Instruction 2018–D is to identify the internal Agency procedures necessary for the proper handling of U.S. Treasury Checks and U.S. Savings Bonds. Published references to FmHA Instruction 102.1 contained in 7 CFR Parts 1902, 1941, 1942, 1943, 1944, and 1945 are being revised to reference FmHA Instruction 2018–D.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, and environmental impact statement is not required.

Programs Affected

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10.762 Solid Waste Management Grants
10.763 Emergency Community Water Assistance Grants
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10.433 Rural Housing Preservation Grants
10.434 Nonprofit National Corporations Loan and Grant Program
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Intergovernmental Consultation

For the reasons set forth in the final rule related to Notice 7 CFR Part 3015, Subpart V, (48 FR 29115, June 24, 1983), all the programs listed above are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

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7 CFR Part 1941

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7 CFR Part 1944

Administrative practice and procedure, Aged, Farm labor housing, Grant programs—Housing and community development, Handicapped, Home Improvement, Loan programs—Housing and Community development, Low and moderate income housing—Rental, Migrant labor, Mobile homes, Mortgages, Nonprofit organizations, Public housing, Rent subsidies, Rural housing, Subsidies.

7 CFR Part 1945

Agriculture, Disaster assistance, Intergovernmental relations, Livestock, Loan programs—Agriculture.

Accordingly, Chapter XVIII, Title 7, of the Code of Federal Regulations is amended as follows:

PARTS 1902, 1941, 1942, 1943, 1944, 1945—[AMENDED]

1. The authority citation for the following parts are revised to read as follows:

Part 1902—**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480; 7 CFR 2.23 and 2.70.

Part 1941—**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989; 7 CFR 2.23 and 2.70.

Part 1942—**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005; 7 CFR 2.23 and 2.70.

Part 1943—**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989; 7 CFR 2.23 and 2.70.

Part 1944—**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480; 7 CFR 2.23 and 2.70.

Part 1945—**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480; 7 CFR 2.23 and 2.70.

CHAPTER XVIII—[AMENDED]

2. 7 CFR, chapter XVIII is amended by changing the reference from "FmHA Instruction 102.1" to "FmHA Instruction 2018–D" in the following places:

(a) Part 1902, subpart A, § 1902.1 (c) and § 1902.2 (e).

(b) Part 1941, subpart A, § 1941.35 (b).

(c) Part 1942, subpart A, § 1942.7 (e) twice, and § 1942.12 (a).

(d) Part 1942, subpart C, § 1942.123 (j), twice.

(e) Part 1943, subpart A, § 1943.35 (b) (2) and (c) (1).

(f) Part 1943, subpart B, § 1943.85 (b) (2), (b) (3), and (c) (1).

(g) Part 1944, subpart A, § 1944.32 (b) (2) and (c).

(h) Part 1944, subpart D, § 1944.175 (e) (2).

(i) Part 1944, subpart E, § 1944.235 (f) (1).

(j) Part 1945, subpart C, § 1945.126 (b) (3).

(k) Part 1945, subpart D, § 1945.185 (a).

PART 1902—[AMENDED]

Subpart C—Selecting a Financial Institution for the Concentration Banking System (CBS)

§ 1902.104 [Amended]

3. and 4. Section 1902.104 (a) (2) introductory text is amended by changing the words "Cash Management Staff" and "Mail Code FC–32" to "Cash Management Branch" and "Mail Code FC–354", respectively.

5. Section 1902.104 (a) (3) is amended in the first and last sentence by changing the word "Staff" to "Branch".

PART 1943—[AMENDED]

Subpart A— Direct Farm Ownership Loan Policies, Procedures, and Authorizations

§ 1943.35 [Amended]

6. and 7. Section 1943.35(b)(3) is amended by changing the words "FmHA Instruction 102.1, a copy of which may be obtained as stated in paragraph (b)(2) of this section." to "FmHA Instruction 2018–D".

PART 1944—[AMENDED]

Subpart D—Farm Labor Housing Loan and Grant Policies, Procedures, and Authorizations

§ 1944.175 [Amended]

8. and 9. Section 1944.175(f) is amended by changing the words "paragraph IV of FmHA Instruction 102.1" to "FmHA Instruction 2018–D".

Subpart E—Rural Rental and Rural Cooperative Housing Loan Policies, Procedures, and Authorizations

§ 1944.235 [Amended]

10. Section 1944.235(g) is amended by changing the words "paragraph IV of FmHA Instruction 102.1" to "FmHA Instruction 2018–D".

PART 1945—[AMENDED]

Subpart C—Economic Emergency Loans

§ 1945.126 [Amended]

11. and 12. Section 1945.126(a) is amended by changing the words "FmHA Instruction 102.1, paragraph IV C" to "FmHA Instruction 2018–D".

Dated: October 3, 1994.

Bob J. Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc. 94–27093 Filed 11–1–94; 8:45 am]

BILLING CODE 3410–07–U

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7 CFR Part 1951

Servicing and Collections

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulation regarding processing payments under the Predetermined Amortization Schedule System (PASS). This action is taken to change the distribution of Form FmHA 1944–9A, Multiple Family Housing Statement of Payment Due. The intended effect is to only distribute the form to those borrowers that are delinquent and/or have late fees.

EFFECTIVE DATE: November 2, 1994.

FOR FURTHER INFORMATION CONTACT: Christine Mechtly, Staff Accountant, Quality Assurance Branch, FmHA, USDA, Finance Office, 1520 Market Street, St. Louis, Missouri 63103, Telephone 314–539–6203.

SUPPLEMENTARY INFORMATION: This final rule has been determined to be exempt from the requirements of Executive Order 12866 because it has no adverse impact on FmHA borrowers or other members of the public and it involves only internal Agency management. It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comments notwithstanding the exemption in 5 U.S.C. 533 with respect to such rules. This action, however, is not published for proposed rulemaking since it involves only internal Agency management and publication for comment is unnecessary.

Environmental Impact Statement

This document has been reviewed according to 7 CFR, Part 1940, Subpart G, "Environmental program." It is the determination of FmHA that the proposed action consisting only of accounting changes, does not constitute a major Federal Action significantly affecting the quality of the human environment and according to the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Intergovernmental Review

This program/activity is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

These changes affect the following FmHA program as listed in the Catalog of Federal Domestic Assistance under number:

10.415 Rural Rental Housing Loans

Discussion

Section 1951.506 is being amended to change the distribution of Form FmHA 1944–9A to only those borrowers who are delinquent and/or have late fees. This change in the distribution was requested by FmHA field office personnel in order to save FmHA money.

List of Subjects in 7 CFR Part 1951

Account servicing, Accounting, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing loans—Servicing, Mortgages.

Accordingly, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart K—Predetermined Amortization Schedule System (PASS) Account Servicing

2. Section 1951.506 is amended by revising paragraphs (a) (3) and (4) to read as follows:

§ 1951.506 Processing Payments

(a) * * *

(3) On or about the 11th day of each month, the Finance Office will generate and mail to each borrower that is delinquent and/or has late fees, Form FmHA 1944–9A, "Multiple Family Housing Statement of Payment Due," showing the current monthly payment due, unpaid late fees, and delinquent payments, if any, due on the first day of the following month. This payment statement will be determined from current Finance Office records but will not reflect overage or occupancy surcharge due from the borrower or rental assistance (RA) due the borrower.

(4) Each borrower will submit to the District Office Form FmHA 1944–29 with the required monthly payment indicated or adjusted as indicated in paragraph (a)(5) of this section regardless of whether or not Form FmHA 1944–9A is received.

* * * * *

Dated: October 3, 1994.

Bob J. Nash,

Under Secretary for Small Community and Rural Development.

[FR Doc. 94–27092 Filed 11–1–94; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 5 and 16

[Docket No. 94–17]

RIN 1557–AA65

Securities Offering Disclosure Rules

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

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is amending its regulations governing the disclosure requirements for offers and sales of national bank securities. This final rule replaces regulations detailing the contents of offering documents covering national bank securities and requires that offering documents conform to the information requirements set forth in the appropriate Securities and Exchange Commission (SEC) registration form. The final rule also cross-references certain provisions of the Securities Act of 1933 and SEC rules.

The purpose of the final rule is to reduce unnecessary regulatory burdens on national banks and enhance their ability to raise capital, while maintaining the quality of disclosures provided to investors. The final rule generally treats national bank securities comparably to those of other corporations and eliminates a duplicative and potentially confusing system of regulations and forms.

EFFECTIVE DATE: April 3, 1995.

FOR FURTHER INFORMATION CONTACT: Elizabeth Malone, Senior Attorney, Securities, Investments, and Fiduciary Practices Division, (202) 874–5210, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Background

The OCC's securities offering regulations protect the purchasers of national bank securities by ensuring that investors receive full disclosure of all material facts when purchasing such securities, and also protect the integrity of national bank capital. The OCC determined, however, that revisions to these regulations were needed to reduce unnecessary burdens that the requirements imposed on national banks.

The OCC published a notice of proposed rulemaking (proposal), on October 15, 1992, seeking public comment on proposed revisions to the OCC's regulations governing the offer and sale of national bank securities (57 FR 47,280). The proposal replaced the OCC's former regulations with a series of regulations based, to the extent appropriate for national banks, on the Securities Act of 1933 (Securities Act) (15 U.S.C. 77a through 77aa) and the SEC's rules (17 CFR part 230). The deadline for submitting comments on the proposal originally was December 14, 1992. The OCC extended that deadline to February 1, 1993 (58 FR 4600), after several potential commenters requested additional time to prepare and submit comments.

Overview of Final Rule

The OCC is issuing this final rule pursuant to 12 U.S.C. 1 *et seq* and 93a. The final rule generally requires national bank securities offering documents to conform to the form for registration that the bank would use if it had to register the securities under the Securities Act. Accordingly, the final rule cross-references a number of provisions of the Securities Act and a number of SEC rules. The OCC's former regulations generally required the disclosure of similar information but in a different format than used by the SEC. And, unlike the SEC, the OCC did not provide for incorporation by reference of filings made under the Securities Exchange Act of 1934 (Exchange Act) (15 U.S.C. 78a through 78jj).

By conforming its securities disclosure rules to those of the SEC, the OCC believes it can reduce significantly unnecessary regulatory burden. Banks, bank counsel, and investors are familiar with SEC disclosure requirements. In addition to being well-known in the marketplace, the interpretation of SEC disclosure requirements is well established and benefits from a significant body of precedent. Moreover, because the OCC rules will now actually reference the SEC rules, rather than parallel or copy them, the OCC rules will automatically remain current. Thus, the OCC's adoption of the SEC registration requirements, while reducing regulatory burden through the elimination of a duplicate (yet sometimes slightly dissimilar) set of disclosure rules, will maintain the quality of disclosure received by investors.

Similar to the OCC's former regulations, the final rule generally prohibits the offer or sale of bank-issued securities unless: (1) A registration statement for those securities has been filed with and declared effective by the OCC and the securities are sold through a prospectus that was filed as a part of that registration statement, or (2) the transaction is subject to an exemption. The final rule incorporates various SEC exemptions from registration requirements and adds an exemption for offers and sales of certain large denomination high-grade debt securities to accredited investors.

For example, the final rule incorporates through cross-reference the SEC's Regulation A (17 CFR 230.251 through 230.263), which sets forth the small issues exemption from registration requirements. Regulation A provides a simplified disclosure system for offerings of up to $5 million in any 12-month period. The OCC's former regulations included a similar exemption, but it was limited to offerings of up to $2 million in a 12-month period.

The final rule also includes an abbreviated registration system for offers and sales of large denominations of nonconvertible debt to accredited investors (defined in 17 CFR 230.501). This abbreviated registration system reduces unnecessary regulatory burden on offers and sales of such debt in situations where purchasers do not need the more extensive disclosures provided by the full part 16 registration process.

The OCC originally developed the abbreviated registration system through a series of interpretive and no-objection letters issued under the former part 16. While the SEC rules do not provide for this abbreviated approach, the OCC believes it is appropriate for several reasons. The market for such debt is well-developed and has not presented particular disclosure concerns. The requirements that the securities have a specified large denomination, be highly-rated, and that purchasers must meet the accredited investor criteria further ensure that the debt will only be offered and sold by a bank in situations when an abbreviated disclosure system is appropriate. Inclusion of this abbreviated approach in the final rule clarifies its criteria and provides better notice that such a system is available.

The final rule also cross-references the SEC's Rule 415 (17 CFR 230.415) on shelf registration. This enables banks to register securities for future sale and then to sell those securities when market conditions are favorable. Under the OCC's former regulations, shelf registration was not permitted. This imposed additional and unnecessary costs on national banks and put them at a disadvantage with respect to other issuers seeking to raise capital.

The final rule provides that nonpublic offerings of securities generally may be made in accordance with the SEC's Regulation D (17 CFR 230.501 through 230.508). The final rule permits sales to an unlimited number of investors who meet certain requirements (accredited investors), and up to 35 other sophisticated purchasers, or to any number of sophisticated purchasers subject to a limitation on the aggregate offering price.

Cross-reference of the SEC's Regulation D increases the number of allowable purchasers in a nonpublic offering. The former regulation allowed banks to make nonpublic offerings to only 15 sophisticated purchasers (and

an unlimited number of accredited investors) in a 12-month period, unless the bank received OCC permission to increase the number of purchasers.

The revised rule makes certain conforming changes to §§ 5.46 and 5.47 to enable banks to use the SEC's Rule 415 (17 CFR 230.415) on shelf registration. The final rule further provides that a bank need not obtain prior OCC approval for a cash sale of preferred stock or an issuance of subordinated debt unless the OCC has notified the bank that prior approval is necessary. The OCC's former regulations required prior OCC approval for all cash sales of preferred stock and issuances of subordinated debt.

The Interagency Statement on Retail Sales of Nondeposit Investment Products (February 15, 1994) applies to retail sales of nondeposit investment products including bank securities. Thus, if bank securities are sold to retail customers, banks must ensure that such customers are fully informed that the securities are not insured by the FDIC, are not deposits or other obligations of the bank and are not guaranteed by the bank, and are subject to investment risks including possible loss of the principal invested.

Section-By-Section Discussion

The OCC received 13 comments on the proposal. The commenters generally supported the OCC's plan to incorporate through cross-reference certain sections of the Securities Act and the SEC's rules thereunder, and to adopt the SEC's forms. The commenters focused on specific aspects of the revisions that they believed needed modification. The OCC has carefully considered each of the comment letters and has made a number of changes in response to them.

Definitions (Section 16.2)

The proposal cross-referenced a number of definitions in the Securities Act. One such definition was the Securities Act definition of "underwriter." The proposal's cross-reference to the "underwriter" definition brought sales of stock by control persons and affiliates within the coverage of part 16. The former version of part 16 had covered those sales as indirect sales by a bank. By adopting the Securities Act underwriter definition, the proposal clarified the coverage of part 16. The final rule adopts the cross-reference to the definition of "underwriter" as proposed.

The proposal also defined "security" to conform with the definition in the Securities Act. The proposed definition was more detailed than the definition in the former part 16, specifying that all bank debt, not just debt subordinated to the claims of general creditors was considered a security. The definition in the former part 16 was unclear as to what debt instruments were covered.

The OCC received six comments on this issue. One commenter favored specifically covering senior debt in the definition while five commenters were opposed. Several commenters also stated that the definition of "security" should exclude specific traditional bank products and deposits.

The final rule includes a cross-reference to the Securities Act definition of "security." That definition clearly includes senior debt. While a number of banks interpreted the definition of "security" in the former part 16 as excluding senior debt and opposed a change in the definition that they viewed as expanding the coverage of part 16, the OCC believes there is no reason to treat senior debt differently from subordinated debt for purposes of this definition. Purchasers of both types of debt should receive the information necessary to make informed investment decisions.

In fact, the passage of the depositor preference provisions of the Omnibus Reconciliation Act of 1993 (12 U.S.C. 1821(d)(11)) has strengthened the need for purchasers of senior debt to receive disclosure materials. The depositor preference provisions require the FDIC to pay the claims of uninsured depositors prior to paying the claims of any other general creditors of a bank. Senior debt, therefore, is not equivalent to uninsured deposits. Purchasers of senior debt now are less likely than they were prior to the passage of the Omnibus Reconciliation Act to receive full payment in the event of a bank's insolvency.

The definition of "security" in the final rule does not specifically exclude traditional bank products. Nevertheless, the OCC does not intend that the definition cover insured or uninsured deposits or other traditional bank products, including letters of credit, banker's acceptances, or repurchase agreements. Judicial precedents have generally found these instruments *not* to be securities. Providing an exhaustive list of exceptions in the definition of "security" would be unwieldy and detract from the benefits of cross-referencing the SEC definition.

Registration Statement and Prospectus Requirements (Section 16.3)

Section 16.3 of the proposal set forth the general prohibitions on offers and sales of bank securities. Under the proposal, no person could offer or sell bank securities unless a registration statement for the securities had been filed with and declared effective by the OCC and the offer or sale was accompanied or preceded by a prospectus filed as a part of that registration statement, or an exemption was available under part 16. The OCC would keep on file and make available for public inspection the information that was included in the registration statement but not included in the prospectus provided to shareholders.

The OCC's proposed requirements on the use of a preliminary prospectus and the delivery of a final prospectus differed from the comparable SEC requirements. The OCC proposal simply incorporated the former part 16 requirements. The proposal required prior OCC authorization to use a preliminary prospectus. The proposal also required that, except in a situation where the OCC has authorized the use of a preliminary prospectus, offers must be made through the use and delivery of a prospectus that has been declared effective by the OCC. Unlike the SEC rules, the proposal did not generally permit a bank to provide the final prospectus to purchasers with the confirmation.

Five commenters addressed the OCC's proposed requirements on the use of a preliminary prospectus and the delivery of a final prospectus. All five commenters agreed that the OCC should follow the Securities Act requirements and SEC rules. Upon further consideration, the OCC agrees and has revised § 16.3 of the final rule to more clearly follow the requirements in the Securities Act and the SEC rules. The final rule provides that a preliminary prospectus may be used if (1) a registration statement including the preliminary prospectus has been filed with the OCC; (2) the preliminary prospectus includes the information required in a final prospectus (except for omission of certain information dependent on the offering price); and (3) a copy of the final prospectus is furnished to each purchaser prior to or simultaneously with the sale of the security.

Communications Not Deemed an Offer (Section 16.4)

The proposal listed a number of communications that the OCC did not deem to be offers and which therefore did not violate the prohibitions on making offers in § 16.3. The list included communications that comply with SEC Rule 134 or 135 (17 CFR 230.134 or 230.135). SEC Rules 134 and 135 govern advertisements used prior and subsequent to the filing of a registration statement. The proposal also

provided that supplemental sales literature could be used after a registration statement has been declared effective if the sales literature was accompanied or preceded by a prospectus. In addition, the proposal provided that advertisements only had to be filed with the OCC upon the OCC's request.

The proposal also eliminated certain restrictions on advertisements that were in the former part 16. Former part 16 permitted the use of only extremely limited information in advertisements, such as the name of the bank and the amount of securities being offered, did not provide for the use of sales literature, and required all advertisements to be cleared by the OCC prior to use.

The OCC received no comments on this section of the proposal. However, the final rule adds to the list of permissible communications four types of communications that were not in the proposal, but which are permissible under SEC rules. Those communications include an oral offer of securities covered by a registration statement that has been filed with the OCC, a summary prospectus that satisfies the requirements of SEC Rule 431 (17 CFR 230.431), a notice of a proposed unregistered offering that satisfies the requirements of SEC Rule 135c (17 CFR 230.135c), and a communication that satisfies the requirements of SEC Rules 138 or 139 (17 CFR 230.138 or 230.139—Definition of "offer for sale" and "offer to sell" in sections 2(10) and 5(c) of the Securities Act in relation to certain publications).

Exemptions (Section 16.5)

Under the proposal, the registration and prospectus requirements did not apply to an offer or sale of securities exempt under certain sections of the Securities Act or the rules promulgated thereunder. The registration and prospectus requirements did not apply if the securities were exempt from registration under section 3 of the Securities Act (15 U.S.C. 77c) by reason of an exemption other than those contained in section 3(a)(2) (for securities issued by banks) or section 3(a)(11) (for intrastate offerings). The proposed registration and prospectus requirements also did not apply to transactions exempt from registration under section 4 of the Securities Act (15 U.S.C. 77d). Section 4 of the Securities Act exempts transactions by any person other than an issuer, underwriter or dealer, transactions by an issuer not involving a public offering, transactions involving offers or sales by an issuer solely to accredited investors, and other transactions that meet certain specified requirements.

The proposal generally exempted from the § 16.3 registration statement and prospectus requirements offers and sales of bank securities to sophisticated purchasers that satisfy the requirements of SEC Regulation D (17 CFR 230.501 through 230.508). SEC Regulation D sets forth rules governing the limited offer and sale of securities without registration under the Securities Act, providing a safe harbor for compliance with sections 3(b) and 4(2) of the Securities Act (15 U.S.C. 77c(b) and 77d(2)).

The proposal also exempted from the § 16.3 registration statement and prospectus requirements offers and sales of bank issued securities in transactions that satisfy the abbreviated disclosure requirements of certain SEC rules. Those rules require only limited disclosure to purchasers because of the particular circumstances of the types of transactions. The rules include Rules 144 (17 CFR 230.144—Persons deemed not to be engaged in a distribution and therefore not underwriters), 144A (17 CFR 230.144A—Private resales of securities to institutions), 236 (17 CFR 230.236—Exemption of shares offered in connection with certain transactions), and Regulation S (17 CFR 230.901 through 230.904—Rules governing offers and sales made outside the United States without registration under the Securities Act of 1933). In addition, the proposal exempted transactions that complied with the requirements of SEC Rules 701, 702T, and 703T (17 CFR 230.701, 230.702T, and 230.703T), which cover offers and sales of securities pursuant to certain compensatory benefit plans and contracts relating to compensation.

The commenters largely agreed with the OCC's approach. Two commenters recommended that the OCC also exempt transactions that comply with the SEC's Regulation A (17 CFR 230.251 through 230.263). Regulation A permits unregistered, public offerings of up to $5 million in securities under certain specified conditions.

The final rule adopts the exemptions from the registration and prospectus requirements included in the proposal, and also includes an exemption for transactions that comply with Regulation A. (This exemption is discussed further under "Small Issues (16.8)" of this preamble). This approach treats banks comparably to other corporations when issuing small quantities of securities.

Sales of Nonconvertible Debt (Section 16.6)

The proposal provided an optional abbreviated registration system for offers and sales of nonconvertible debt if those transactions met certain requirements. Offers and sales that met those requirements were deemed to be in compliance with the Registration statement and prospectus (16.3), Form and content (16.15), and Periodic and current reports (16.20) provisions of part 16.

In particular, the proposal specified that: (1) The bank issuing the nonconvertible debt must have securities registered under the Exchange Act or must be a subsidiary of a bank holding company that has securities registered under the Exchange Act; (2) The insured depository institution subsidiaries of the registered bank holding company must constitute at least 80% of the bank holding company's assets; (3) The debt must be offered and sold only to accredited investors (defined in 17 CFR 230.501(a)); (4) The debt must be offered and sold by a reputable and experienced underwriter, not affiliated with the bank; (5) The debt must be sold in minimum denominations of more than $100,000 and the notes cannot be exchanged for notes in smaller denominations; (6) The debt must be rated investment quality; (7) Each purchaser must receive an offering document describing the terms of the debt and incorporating the bank's latest Call Reports and the bank or holding company's Exchange Act filings; (8) The offering document and any amendments must be filed with the OCC within five days after first use; and (9) Any required filing fees must be submitted.

The OCC designed the requirements of the abbreviated registration system to ensure that potential purchasers of debt subject to the abbreviated registration system had access to necessary information on the issuing bank and commonly controlled depository institutions, as well as the appropriate knowledge and experience to evaluate that information.

The OCC requested comment on whether this abbreviated registration system was necessary or appropriate. The OCC received 11 comments on this issue. Although the commenters generally favored the abbreviated registration system, they expressed different perspectives about the specific requirements of the system. A number stated that the OCC should eliminate the requirement that nonconvertible debt be sold by an underwriter unaffiliated with the bank. Several commenters agreed

that the OCC needed to revise the abbreviated registration system to address the special circumstances of federal branches and agencies of foreign banks.

The OCC agrees with the commenters that the underwriter requirement is unnecessary. The underwriter requirement imposes additional costs on banks and limits their flexibility without necessarily improving the quality of the disclosure materials provided to investors. The final rule therefore does not require that the debt be offered and sold by an underwriter, not affiliated with the bank, as part of an underwritten offering.

In addition, the OCC has determined that it is unnecessary to require that the insured depository subsidiaries of a registered bank holding company constitute at least 80% of the bank holding company's assets. This asset-based requirement does not ensure that the holding company's Exchange Act filings would be more meaningful to investors than the filings would be without the requirement. Accordingly, it has been eliminated from the final rule.

Further, the final rule requires that the debt be sold in minimum denominations of $250,000, rather than more than $100,000, in order to provide additional protections to purchasers of debt. Requiring larger denomination notes, and preventing them from being broken into smaller denominations, helps ensure that the purchasers of the notes are sophisticated, high net worth individuals or entities, for whom abbreviated disclosure is appropriate.

The final rule also takes into account the special circumstances of federal branches of foreign banks. Because foreign banks and their holding companies generally are not reporting companies under the Exchange Act, federal branches and agencies often would be unable to comply fully with the requirements on Exchange Act filings in the abbreviated registration system. Federal branches and agencies usually do not have securities registered under the Exchange Act and are not subsidiaries of holding companies registered under the Exchange Act. Therefore, federal branches and agencies also cannot incorporate Exchange Act filings into offering documents.

Accordingly, the final rule provides that federal branches and agencies of foreign banks need not have securities registered under the Exchange Act or be subsidiaries of holding companies that have securities registered under the Exchange Act to take advantage of the abbreviated registration system. Instead, these entities may make information about themselves available to purchasers by filing with the OCC the information specified in SEC Rule 12g3–2(b) (17 CFR 240.12g3–2(b)) and providing purchasers with the information specified in SEC Rule 144A(d)(4)(i) (17 CFR 230.144A(d)(4)(i)). The OCC believes that this information is adequate for the sophisticated purchasers who are eligible investors under the abbreviated disclosure system. Such purchasers also are able to determine whether they have sufficient information to make informed investment decisions, and if they do not, can request additional information.

Nonpublic Offerings (Section 16.7)

The proposal permitted offers and sales without compliance with the registration statement and prospectus requirements of § 16.3 if the offers and sales were made in accordance with SEC Regulation D (17 CFR 230.501 through 230.508) and the purchasers were either accredited investors or "sophisticated" investors. SEC Regulation D sets forth rules governing the limited offer and sale of securities without registration under the Securities Act and provides a safe harbor for compliance with sections 3(b) and 4(2) of the Securities Act (15 U.S.C. 77c(b) and 77d(2)). SEC Regulation D does not require that in all circumstances purchasers be sophisticated.

The proposal's cross-reference of Regulation D increased the number of purchasers permitted in a nonpublic offering over the number allowed under the former part 16. Former part 16, as interpreted by the OCC, permitted sales to only 15 sophisticated purchasers (and an unlimited number of accredited investors), unless the seller received OCC permission to increase the number of purchasers. The proposal permitted sales to 35 sophisticated purchasers and an unlimited number of accredited investors, or to any number of sophisticated purchasers subject to a limitation on the aggregate offering price.

The proposal required the filing of a notice of sales no later than 15 days after the first sale of securities in accordance with SEC Rule 503 of Regulation D. Under the former part 16, nonpublic offering notices had to be filed 20 days prior to the time any security was offered or sold. This proposed change gave banks added flexibility in the timing of sales of securities.

Under the proposal, securities subject to the limitations on resale of Regulation D must be sold pursuant to SEC Rule 144 or 144A, another exemption from registration under the Securities Act, or in accordance with the part 16 registration and prospectus requirements. The former part 16 did not permit any securities sold in a nonpublic offering to be resold for two years. The proposed change in resale limitations would improve the marketability of bank securities.

The OCC received two comments on this section of the proposal. One commenter supported the cross-reference of Regulation D. The other commenter believed that by including the notice requirement in the nonpublic offering section, the OCC was making the filing of a notice a condition to the availability of the nonpublic offering exemption. The commenter stated that while the SEC does provide for the filing of a notice, it is not a condition of any of the exemptions in Regulation D.

The final rule adopts this section as proposed with certain clarifying changes. The final rule indicates more clearly that although the filing of a notice is required, failure to file a notice does not result in the loss of the nonpublic offering exemption. Thus, the notice is not a condition of any of the exemptions in Regulation D. The final rule also clarifies that offers and sales made in reliance on Regulation D must only be made to sophisticated purchasers.

Small Issues (Section 16.8)

The proposal did not cross-reference the SEC's Regulation A (17 CFR 230.251 through 230.264), which permits the unregistered, public offering of securities under specified conditions. The OCC requested comment as to whether it should cross-reference Regulation A and received two comments in response. Both commenters believed that the OCC should cross-reference Regulation A.

In light of these comments, the OCC has decided to cross-reference Regulation A in the final rule. Given the criteria for use of the rule, the OCC does not believe its use reduces purchaser safeguards. Moreover, the OCC believes that the Regulation A small issues exemption from registration should be available to banks, as it is to other issuers, to prevent imposing unnecessary burdens on banks in connection with small securities issuances.

In order to use the Regulation A exemption, an issuer's offering documents must be filed with and reviewed by the OCC. The final rule states that filers should consult the SEC's Securities Act Industry Guide 3—Statistical Disclosure by Bank Holding Companies (17 CFR 229.801(c) and 231)

for guidance on the appropriate disclosures to be included in the offering document. The Guide 3 disclosures consist of information that potential purchasers of bank securities need in order to evaluate their investments

Form and Content (Section 16.15)

The proposal required all registration statements filed with the OCC to be on the form for registration that the bank would use were it required to register the securities under the Securities Act. Which form a bank uses depends, among other things, on whether the bank is subject to the registration and reporting requirements of section 12 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78*l* and 78o(d)) and on the amount of the offering.

Several commenters suggested that the OCC clarify whether a national bank may use the SEC's Form S–3 (Form for registration under the Securities Act of securities of certain issuers offered pursuant to certain types of transactions) in connection with the offer and sale of its securities if its parent company meets the requirements set forth in Instruction I.C. to Form S–3 and the other requirements set forth in Instruction I.C. are met.

The final rule permits national banks to use Form S–3 in such situations. Pursuant to Instruction I.C. to the SEC's Form S–3, if the parent of a registrant meets the registration requirements for the use of Form S–3, the registrant may use Form S–3 for offers and sales of nonconvertible debt or nonconvertible preferred stock provided the registrant is a wholly-owned subsidiary of the parent and the securities being issued by the registrant are investment grade securities (or are fully guaranteed by the qualifying parent as to principal and interest).

A national bank may establish an Exchange Act disclosure base for the Form S–3 by registering its common stock on Form 10 (General form for registration of securities pursuant to section 12(b) or 12(g) of the Exchange Act) prior to the effectiveness of its offering document and incorporating by reference the form pursuant to Item 12(a)(1) of Form S–3 in lieu of a Form 10–K (General form of annual report).

The proposal also required that the registration statement must meet the requirements of the SEC regulations referred to in the registration form. Those regulations include Regulation S–X (17 CFR part 210), which applies to financial statements, and Regulation S–K (17 CFR part 229), which applies to the nonfinancial statement portion of the registration statement. The OCC expects that, consistent with SEC requirements and practice, filers will prepare registration statements for bank securities in accordance with Securities Act Industry Guide 3—Statistical Disclosure by Bank Holding Companies (17 CFR 229.801(c) and 231).

Because the proposal required registration statements to satisfy the requirements of the SEC regulations referred to in the applicable registration form, the financial statements in the registration statements must be audited. The OCC sought comment on whether it should limit the requirement for audited financial statements to banks of a certain size and whether that size should be the cut-off for the requirement for annual independent audits that was established pursuant to section 112 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) (12 U.S.C. 1831m). Several commenters stated that the OCC should limit the audited financial statements requirement to banks of a certain size, although they disagreed as to what that size should be.

After considering the comments, the OCC has decided not to limit the audited financial statements requirement to banks of a certain size. The final rule requires audited financial statements from national banks to the same extent that the SEC requires audited financial statements of other corporations. Requiring banks to provide audited financial statements in their registration statements helps ensure that purchasers of bank stock receive the same quality of disclosure and the same protections as do purchasers of stock of other types of issuers.

Because the proposal required registration statements to comply with the SEC regulations referenced in the applicable registration form, banks that were subsidiaries of holding companies had to include audited bank financial statements, rather than bank holding company statements, in their registration statements. However, a number of commenters felt that banks that are subsidiaries of holding companies that have securities registered under the Exchange Act should not have to include audited bank financial statements in their registration statements. The commenters stated that these banks should instead be allowed to include in their registration statements the audited financial statements contained in the holding companies' Exchange Act filings and the banks' Call Reports.

The OCC disagrees, and the final rule requires banks that are subsidiaries of holding companies to include audited bank financial statements in registration statements for bank securities. The OCC believes that purchasers of bank securities that are not subject to any sophistication requirements should be provided with bank, not merely holding company, financial statements. Those purchasers need bank level financial statements in order to make informed investment decisions about bank securities.

The proposal cross-referenced the requirements of Rule 400 and Articles 1–3 of the SEC's general rules on registration in SEC Regulation C (17 CFR 230.400 through 230.439). Regulation C includes the SEC rule on shelf registration in Rule 415 (17 CFR 230.415—Delayed or continuous offering and sale of securities). Shelf registration enables banks to register securities that are to be sold in the future and then to sell those securities when the market conditions are most favorable. Regulation C also includes SEC Rule 430A (17 CFR 230.430A—Prospectus in a registration statement at the time of effectiveness). Rule 430A allows an issuer to file a prospectus that omits certain information dependent on the offering price. The former part 16 did not contain any provisions comparable to Rule 415 or Rule 430A, so price and other information had to be set at the time an offering document was filed.

The final rule, like the proposal, cross-references the requirements of Rule 400 and Articles 1–3 of the SEC's general rules on registration in SEC Regulation C (17 CFR 230.400 through 230.439). However, the final rule also cross-references the other articles of Regulation C (17 CFR 230.445 through 230.497). The OCC is cross-referencing the remaining articles of Regulation C in order to adopt the SEC's rules and procedures governing when registration statements and amendments become effective. (For a discussion of this matter *see* "Effectiveness (§ 16.16)" in this preamble). These remaining articles include rules on delaying amendments and acceleration of the effective date that are integral to the procedures under which registration statements and amendments become effective.

Effectiveness (Section 16.16)

The proposal did not provide for the adoption of the Securities Act provisions or the SEC's rules pertaining to when registration statements become effective. The proposal retained the requirement in former part 16 that no registration statement, prospectus, or amendment was effective until declared effective by the OCC.

Only one commenter discussed this issue. That commenter urged that the OCC follow the SEC's procedures in this area. The OCC agrees and the final rule adopts the Securities Act provisions and the SEC's rules on effectiveness. (*See* discussion under "Form and Content (§ 16.15)" in this preamble.)

Under the cross-referenced provisions of the Securities Act, registration statements automatically become effective 20 days after they are filed unless a delaying amendment is filed with the OCC. However, consistent with SEC practice, the OCC expects all filers to file delaying amendments with their registration statements to prevent the registration statements from becoming automatically effective. The delaying amendments will ensure that the OCC has adequate time to review and comment upon filings.

Filing Requirements and Inspection of Documents (Section 16.17)

This section of the proposal specified that issuers must file four copies of all documents with the OCC and required the OCC to make those documents available for public inspection. The former part 16 required issuers to submit six copies of most documents. The proposal also specified that all notices or other documents required to be filed by any section of the Securities Act, the Exchange Act, or a rule of the SEC cross-referenced in part 16, be filed with the OCC. The final rule adopts this section generally as proposed, with a few technical clarifying changes.

Use of Prospectus (Section 16.18)

Under the proposal, a prospectus or amendment declared effective by the OCC may not be used more than nine months after its effective date unless the information contained therein is as of a date not more than 16 months prior to the date of use. This section of the proposal was based on the requirement in section 10(a)(3) of the Securities Act (15 U.S.C. 77j(a)(3)) pertaining to the age of information in a prospectus. The proposal provided more time for an offering to be completed than did former part 16. Former part 16 allowed an offering circular to be effective for a period of only six months, although the OCC could extend the six month period for two consecutive 90 day periods upon request. In the event there was a material change after a prospectus has been declared effective, the proposal prohibited use of the prospectus until an amendment reflecting the change had been filed with and declared effective by the OCC.

The final rule adopts this section generally as proposed, with minor clarifying changes.

Withdrawal or Abandonment (Section 16.19)

The proposed rule allowed filers to withdraw a registration statement and amendments prior to the effective date. It also stated that the OCC could determine that a registration statement and amendments had been abandoned if they had been on file for nine months and not become effective. Documents withdrawn or declared abandoned would be so marked but would remain in the OCC files. The final rule adopts this section as proposed, with minor clarifying changes.

Current and Periodic Reports (Section 16.20)

The proposal required banks that had filed registration statements declared effective pursuant to part 16 to file with the OCC periodic and current reports until the banks were eligible to suspend the filing of those reports. This requirement was based on that imposed by section 15(d) of the Exchange Act (15 U.S.C. 78o(d)) on corporations filing Securities Act registration statements with the SEC. The filing of periodic and current reports ensures that current information about an issuer is available for a period after an offering of securities is made. The periodic and current reporting requirements cease the year after the registration statement becomes effective, if the issuer is not otherwise required to register its securities under the Exchange Act.

The proposal further provided that a bank need not comply with the periodic and current reports requirements if the bank was a subsidiary of a one-bank holding company and the bank's parent bank holding company filed current and periodic reports pursuant to section 13 of the Exchange Act.

Five commenters stated that all banks that are subsidiaries of holding companies that have securities registered under the Exchange Act should be able to rely on holding company Exchange Act filings and bank Call Reports to fulfill the current and periodic report requirements.

The final rule permits banks that are subsidiaries of holding companies that have securities registered under the Exchange Act to rely on holding company Exchange Act filings and bank Call Reports to fulfill the current and periodic reports requirements in specified circumstances. A bank need not file current and periodic reports if the bank is a subsidiary of a one-bank holding company, the financial statements of the bank and the parent bank holding company are substantially the same, and the bank's parent bank holding company files periodic and current reports pursuant to section 13 of the Exchange Act.

The OCC believes that when these conditions are met, the holding company's current and periodic reports will provide the marketplace with information equivalent to what would be provided if the holding company's subsidiary bank made separate reports. The OCC concluded that any broader exception would not be appropriate because the information provided is used in markets including both sophisticated and unsophisticated investors. In the case of the latter, they may not have sufficient financial expertise to evaluate information that differs substantially from the type and scope of disclosure that would have been contained in current and periodic reports filed by the bank itself.

Request for Interpretive Advice or No Objection Letter (Section 16.30)

The proposal set forth the requirements that a person must meet to obtain interpretive advice or a no-objection letter under part 16. Although these requirements are not detailed in former part 16, the OCC based them on Banking Circular 205, OCC Staff No-Objection Positions, which has been in effect since July 26, 1985. The final rule adopts this section as proposed, with minor clarifying changes.

Escrow Requirement (Section 16.31)

The proposal required the use of an independent escrow account if the funds received in an offering were to be certified as capital or if there was a minimum amount to be sold in an offering. One commenter opposed this requirement.

The final rule modifies the escrow requirements. Section 16.31 of the final rule allows the OCC to require any funds received through an offer or sale of securities to be held in an independent escrow account at an unrelated insured depository institution when the OCC determines it is in the best interest of the shareholders. A bank does not have to use an independent escrow account unless the OCC has notified the bank that an escrow account is necessary. However, the OCC generally expects banks to use independent escrow accounts.

Fraudulent Transactions and Unsafe and Unsound Practices (Section 16.32)

The proposal prohibited untrue statements of material fact, omissions of material fact, and acts or practices that

operate as a fraud in the offer or sale of a bank security. The language in this section of the proposal was substantially similar to the language in section 17(a) of the Securities Act (15 U.S.C. 77q). The section 17(a) prohibitions apply to offers and sales of bank securities regardless of whether the prohibitions are restated in part 16. The OCC believed that restating the prohibitions in part 16 furnished warning that the prohibitions apply. The proposal further provided that violations of the fraudulent transactions section also constitute unsafe or unsound practices under 12 U.S.C. 1818. This section of the final rule is adopted as proposed.

Conforming Amendments to Part 5

Merger, Consolidation, Purchase and Assumption (Section 5.33(b)(6))

The proposal included a conforming amendment to 12 CFR 5.33(b)(6)(ii) which requires that all shareholders in a merger or consolidation transaction be adequately informed of all aspects of the transaction. The proposal amended § 5.33(b)(6)(ii) to add that a bank required to file a registration statement with the OCC may use that registration statement to comply with the proxy statement requirements set forth in § 5.33(b)(6)(ii). In addition, a bank subsidiary of a holding company required to file a registration statement with the SEC may use that registration statement to comply with OCC proxy statement requirements. The final rule adopts the conforming amendment to § 5.33(b)(6)(ii) as proposed, with minor technical clarifying changes.

Changes in Equity Capital (Section 5.46) and Subordinated Debt as Capital (Section 5.47)

The proposal did not include any changes to 12 CFR 5.46 and 5.47. Former § 5.46 required OCC preliminary approval for a change in capital due to a sale of preferred stock. Former § 5.46 further specified that changes in equity capital must occur within 12 months of seeking preliminary approval. Former § 5.47 required OCC approval for subordinated debt that is to be considered part of a bank's capital structure; a bank must receive preliminary approval prior to the issuance of subordinated debt and the subordinated debt must be issued within 12 months of the preliminary approval.

The OCC requested comment on whether §§ 5.46 and 5.47 needed to be modified in order to enable banks to use the SEC rule on shelf registration in Rule 415 (17 CFR 230.415—Delayed or continuous offering and sale of securities). Shelf registration permits banks to register securities that are to be sold in the future and then to sell those securities when the market conditions are most favorable.

The OCC received four comments on this issue. All of the commenters stated that because of the delays caused by the preliminary approval requirements in §§ 5.46 and 5.47, the OCC needed to amend those requirements in order for banks to take advantage of SEC Rule 415. The OCC agrees and has adopted a final rule that includes changes to §§ 5.46 and 5.47. The changes will enable most banks to use the SEC's rule on shelf registration and thereby reduce unnecessary regulatory burden.

As adopted in the final rule, § 5.46 no longer requires a bank to obtain preliminary approval of cash sales of preferred stock unless the OCC has notified the bank that preliminary approval is necessary. After selling preferred stock, a bank still must obtain final approval and certification.

The final rule also changes the approval procedures in § 5.47 for the issuance of subordinated debt. Under the new procedures, a bank need not obtain prior approval to issue subordinated debt unless the OCC has notified the bank that prior approval is necessary. A bank that has not been notified that it must obtain prior approval to issue subordinated debt must notify the OCC after issuing debt that is to be counted as tier 2 capital. Subordinated debt will qualify as tier 2 capital if it meets the requirements set forth in 12 CFR part 3, Appendix A section 2(b)(4) and complies with the OCC Guidelines for Subordinated Debt Instruments in the Comptroller's Manual for Corporate Activities.

The OCC may solicit comments on § 5.46 and § 5.47 in connection with its proposed comprehensive revisions to Part 5 of the OCC's regulations.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Comptroller of the Currency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12866

The OCC has determined that this document is not a significant regulatory action as defined in Executive Order 12866.

Paperwork Reduction Act

The collections of information contained in this final regulation have been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1557–0120. The estimated annual burden per respondent varies from two to 100 hours, depending on individual circumstances, with an estimated average of 19 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of the Comptroller of the Currency, Legislative, Regulatory, and International Activities Division, 250 E Street, SW, Washington, DC 20219 and to the Office of Management and Budget, Paperwork Reduction Project (1557–0120), Washington, DC 20503.

List of Subjects

12 CFR Part 5

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

12 CFR Part 16

National banks, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons set out in the preamble, chapter I of title 12 of the Code of Federal Regulations, part 5 is amended and part 16 is revised to read as follows:

PART 5—RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES

1. The authority citation for part 5 continues to read as follows:

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

2. In § 5.33, paragraph (b)(6)(ii) is amended by adding a new sentence at the end of the paragraph:

§ 5.33 Merger, consolidation, purchase and assumption.

* * * * *

(b) * * *

(6) * * *

(ii) * * * In any transaction where securities are required to be registered with the Office under part 16 of this chapter or with the Securities and Exchange Commission under the Securities Act of 1933, a depository institution may file the registration statement with the Office to meet the requirements of this paragraph;

* * * * *

3. In § 5.46, paragraphs (f)(4) and (g)(1) are revised to read as follows:

§ 5.46 Changes in equity capital.

* * * * *

(f) * * *

(4) *Preferred stock.* A bank need not submit a letter of intent and obtain preliminary approval prior to selling preferred stock for cash unless the Office has notified the bank that preliminary approval is necessary. Any bank selling preferred stock must submit a letter of notification pursuant to paragraph (g)(2) of this section to obtain final approval and certification. The Office must review and may approve provisions in articles of association concerning preferred stock dividends, voting and conversion rights, retirement, and rights to exercise control over management. A bank may submit those provisions for review and approval with the letter of notification.

* * * * *

(g) *Procedures.* (1) A bank must submit to the appropriate District office by hand or by mail, return receipt requested, a letter of intent to change capital. The bank must receive preliminary approval for any change in capital except for a stock dividend, a cash sale of common stock, a cash sale of preferred stock where the bank has not been notified by the Office that preliminary approval is required, or a reduction in par value of common stock that does not change the sum of capital and capital surplus. Stock dividends, cash sales of common stock, cash sales of preferred stock where the bank has not been notified by the Office that preliminary approval is required, or reductions in par value of common stock that do not change the sum of capital and capital surplus are subject only to the notification process described in paragraphs (g)(2) and (g)(3) of this section. For other changes in equity capital, the bank must submit a letter of intent describing the type and amount of the proposed change, and state if the bank is subject to a capital plan with the Office. If the bank is subject to a capital plan or if a capital plan is required in connection with the proposed change in equity capital, the bank must state how the proposed change conforms to the plan. The bank may consider its proposed change preliminarily approved 30 days after the day on which the Office receives the letter of intent, unless the bank is notified that preliminary approval is delayed, conditioned, or denied. The bank should submit the letter of intent and receive preliminary approval prior to seeking shareholder approval. The bank may proceed with an increase in capital after preliminary approval is received; however, it may not reduce its capital or make a distribution until it has received final Office approval as specified in paragraphs (g)(2) and (g)(3) of this section.

* * * * *

4. Section 5.47 is revised to read as follows:

§ 5.47 Subordinated debt as capital.

(a) *Authority.* 12 U.S.C. 93a.

(b) *Licensing requirements.* Unless the OCC has previously notified a national bank that prior approval is required, or unless prior approval is required by law, a national bank does not need prior OCC approval to issue or prepay subordinated debt, regardless of whether the bank intends to count the debt as Tier 2 capital. A national bank that is not required to obtain prior approval must notify the OCC after issuing subordinated debt that is to be counted as Tier 2 capital.

(c) *Scope.* This section sets forth the procedures for OCC review and approval of applications to issue or prepay subordinated debt.

(d) *Definitions.* (1) *Capital plan* means a plan describing the means and schedule by which a national bank will attain specified capital levels or ratios, including a plan to achieve minimum capital ratios filed with the appropriate district office under § 3.7 of this chapter and a capital restoration plan filed with the OCC under 12 U.S.C. 1831o and § 6.5 of this chapter.

(2) *Tier 2 capital* has the same meaning as set forth in § 3.2(d) of this chapter.

(e) *Qualification as regulatory capital.* (1) A national bank's subordinated debt qualifies as Tier 2 capital if the subordinated debt meets the requirements in part 3 of this chapter, appendix A to part 3, section 2(b)(4), and complies with the "OCC Guidelines for Subordinated Debt Instruments" in the Comptroller's Manual for Corporate Activities (Manual).

(2) If the OCC notifies a national bank that it must obtain OCC approval before issuing subordinated debt, the subordinated debt will not qualify as Tier 2 capital until the bank obtains OCC approval for its inclusion in capital.

(f) *Prior approval procedure.* (1) *Application.* A national bank required to obtain OCC approval before issuing or prepaying subordinated debt must submit an application to the appropriate district office. The application must include:

(i) A description of the terms and amount of the proposed issuance or prepayment;

(ii) A statement of whether the bank is subject to a capital plan or required to file a capital plan with the OCC and, if so, how the proposed change conforms to the capital plan;

(iii) A copy of the proposed subordinated note format and note agreement; and

(iv) A statement of whether the debt issue complies with all laws, regulations, and the "OCC Guidelines for Subordinated Debt Instruments" in the Manual.

(2) *Approval.* (i) *General.* The OCC approves, conditionally approves, or denies an application to issue or prepay subordinated debt on or before the 30th day after the complete application is received by the OCC. The application is deemed approved by the OCC as of the 30th day after the filing is received by the OCC unless the OCC notifies the bank prior to that date that the filing presents significant supervisory or compliance concerns, or raises significant legal or policy issues.

(ii) *Notification.* When the OCC notifies the bank that the OCC approves the bank's application to issue or prepay the subordinated debt, it also notifies the bank whether the debt qualifies as Tier 2 capital.

(iii) *Expiration of approval.* Approval expires if a national bank does not complete the sale of the subordinated debt within one year of approval.

(g) *Notice procedure.* If a national bank is not required to obtain approval before issuing subordinated debt, the bank must notify the appropriate district office in writing within ten days after issuing subordinated debt that is to be counted as Tier 2 capital. The notice must include:

(1) The terms of the issuance;

(2) The amount and date of receipt of funds;

(3) A copy of the final subordinated note format and note agreement; and

(4) A statement that the issue complies with all laws, regulations, and the "OCC Guidelines for Subordinated Debt Instruments" in the Manual.

(h) *Exceptions to rules of general applicability.* Sections 5.8, 5.10 and 5.11 do not apply to the issuance of subordinated debt.

(i) *Issuance of subordinated debt.* A national bank must comply with the Securities Offering Disclosure Rules in part 16 of this chapter when issuing subordinated debt even if the bank is not required to obtain prior approval to issue subordinated debt.

PART 16—SECURITIES OFFERING DISCLOSURE RULES

5. Part 16 is revised to read as follows:

PART 16—SECURITIES OFFERING DISCLOSURE RULES

Sec.
16.1 Authority, purpose, and scope.
16.2 Definitions.
16.3 Registration statement and prospectus requirements.
16.4 Communications not deemed an offer.
16.5 Exemptions.
16.6 Sales of nonconvertible debt.
16.7 Nonpublic offerings.
16.8 Small issues.
16.15 Form and content.
16.16 Effectiveness.
16.17 Filing requirements and inspection of documents.
16.18 Use of prospectus.
16.19 Withdrawal or abandonment.
16.20 Current and periodic reports.
16.30 Request for interpretive advice or no-objection letter.
16.31 Escrow requirement.
16.32 Fraudulent transactions and unsafe and unsound practices.
16.33 Filing fees.

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

§ 16.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued under the general authority of the national banking laws, 12 U.S.C. 1 *et seq.*, and the OCC's general rulemaking authority in 12 U.S.C. 93a.

(b) *Purpose.* This part sets forth rules governing the offer and sale of securities issued by a bank.

(c) *Scope.* This part applies to offers and sales of bank securities by issuers, underwriters, and dealers.

§ 16.2 Definitions.

For purposes of this part, the following definitions apply:

(a) *Accredited investor* means the same as in Commission Rule 501(a) (17 CFR 230.501(a)).

(b) *Bank* means an existing national bank, a national bank in organization, a bank operating under the Code of Law of the District of Columbia, or a federal branch or agency of a foreign bank.

(c) *Commission* means the Securities and Exchange Commission. When used in the rules, regulations, or forms of the Commission referred to in this part, the term "Commission" shall be deemed to refer to the OCC.

(d) *Dealer* means the same as in section 2(12) of the Securities Act (15 U.S.C. 77b(12)).

(e) *Exchange Act* means the Securities Exchange Act of 1934 (15 U.S.C. 78a through 78jj).

(f) *Insured depository institution* means the same as in section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)(2)).

(g) *Investment grade* means that a security is rated investment grade (i.e., in one of the top four rating categories) by each nationally recognized statistical rating organization that has rated the security.

(h) *Issuer* means a bank that issues or proposes to issue any security.

(i) *Nonconvertible debt* means a general obligation of the bank, whether senior or subordinated, that is not convertible into any class of common or preferred stock or any derivative thereof.

(j) *OCC* means the Office of the Comptroller of the Currency.

(k) *Person* means the same as in section 2(2) of the Securities Act (15 U.S.C. 77b(2)) and includes a bank.

(l) *Prospectus* means an offering document that includes the information required by section 10(a) of the Securities Act (15 U.S.C. 77j(a)).

(m) *Registration statement* means a filing that includes the prospectus and other information required by section 7 of the Securities Act (15 U.S.C. 77g).

(n) *Sale, sell, offer to sell, offer for sale,* and *offer* mean the same as in section 2(3) of the Securities Act (15 U.S.C. 77b(3)).

(o) *Securities Act* means the Securities Act of 1933 (15 U.S.C. 77a through 77aa).

(p) *Security* means the same as in section 2(1) of the Securities Act (15 U.S.C. 77b(1)).

(q) *Underwriter* means the same as in section 2(11) of the Securities Act (15 U.S.C. 77b(11)). Commission Rules 137, 140, 141, 142, and 144 (17 CFR 230.137, 230.140, 230.141, 230.142, and 230.144) (which apply to section 2(11) of the Securities Act) apply to this part.

§ 16.3 Registration statement and prospectus requirements.

(a) No person shall offer or sell, directly or indirectly, any bank issued security unless:

(1) A registration statement for the security meeting the requirements of § 16.15 of this part has been filed with and declared effective by the OCC pursuant to this part, and the offer or sale is accompanied or preceded by a prospectus that has been filed with and declared effective by the OCC as a part of that registration statement; or

(2) An exemption is available under § 16.5 of this part.

(b) Notwithstanding paragraph (a) of this section, securities of a bank may be offered through the use of a preliminary prospectus before a registration statement and prospectus for the securities have been declared effective by the OCC if:

(1) A registration statement including the preliminary prospectus has been filed with the OCC;

(2) The preliminary prospectus contains the information required by § 16.15 of this part except for the omission of information with respect to the offering price, underwriting discounts or commissions, discounts or commissions to dealers, amount of proceeds, conversion rates, call prices, or other matters dependent upon the offering price; and

(3) A copy of the prospectus as declared effective containing the information specified in paragraph (b)(2) of this section is furnished to each purchaser prior to or simultaneously with the sale of the security.

(c) Commission Rule 174 (17 CFR 230.174—Delivery of prospectus by dealers; Exemptions under section 4(3) of the Act) applies to transactions by dealers in bank issued securities.

§ 16.4 Communications not deemed an offer.

(a) The OCC will not deem the following communications to be an offer under § 16.3 of this part:

(1) Prior to the filing of a registration statement, any notice of a proposed offering that satisfies the requirements of Commission Rule 135 (17 CFR 230.135);

(2) Subsequent to the filing of a registration statement, any notice, circular, advertisement, letter, or other communication published or transmitted to any person that satisfies the requirements of Commission Rule 134 (17 CFR 230.134);

(3) Subsequent to the filing of a registration statement, any oral offer of securities covered by that registration statement;

(4) Subsequent to the filing of a registration statement, any summary prospectus that is filed as a part of that registration statement and satisfies the requirements of Commission Rule 431 (17 CFR 230.431);

(5) Subsequent to the effective date of a registration statement, any written communication if it is proved that each recipient of the communication simultaneously or previously received a written prospectus meeting the requirements of section 10(a) of the Securities Act (15 U.S.C. 77j(a)) and § 16.15 of this part that was filed with and declared effective by the OCC;

(6) A notice of a proposed unregistered offering that satisfies the requirements of Commission Rule 135c (17 CFR 230.135c); and

(7) A communication that satisfies the requirements of Commission Rule 138 or 139 (17 CFR 230.138 or 230.139).

(b) The OCC may request that communications not deemed an offer under paragraph (a) of this section be submitted to the OCC.

(c) The OCC may prohibit the publication or distribution of any

communication not deemed an offer under paragraph (a) of this section if necessary to protect the investing public.

§ 16.5 Exemptions.

The registration statement and prospectus requirements of § 16.3 of this part do not apply to an offer or sale of bank securities:

(a) If the securities are exempt from registration under section 3 of the Securities Act (15 U.S.C. 77c), but only by reason of an exemption other than section 3(a)(2) (exemption for bank securities) and section 3(a)(11) (exemption for intrastate offerings) of the Securities Act. Commission Rules 149 and 150 (17 CFR 230.149 and 230.150) (which apply to section 3(a)(9) of the Securities Act) apply to this part;

(b) In a transaction exempt from registration under section 4 of the Securities Act (15 U.S.C. 77d). Commission Rules 152 and 152a (17 CFR 230.152 and 230.152a) (which apply to sections 4(2) and 4(1) of the Securities Act) apply to this part;

(c) In a transaction that satisfies the requirements of § 16.7 of this part;

(d) In a transaction that satisfies the requirements of § 16.8 of this part;

(e) In a transaction that satisfies the requirements of Commission Rule 144, 144A, 145, or 236 (17 CFR 230.144, 230.144A, 230.145, or 230.236);

(f) In a transaction that satisfies the requirements of Commission Rules 701, 702T, and 703T (17 CFR 230.701, 230.702T, and 230.703T); or

(g) In a transaction that is an offer or sale occurring outside the United States under Commission Regulation S (17 CFR part 230, Regulation S—Rules Governing Offers and Sales Made Outside the United States Without Registration Under the Securities Act of 1933).

§ 16.6 Sales of nonconvertible debt.

(a) The OCC will deem offers or sales of bank issued nonconvertible debt to be in compliance with §§ 16.3, 16.15 (a) and (b), and 16.20 of this part if all of the following requirements are met:

(1) The bank issuing the debt has securities registered under the Exchange Act or is a subsidiary of a bank holding company that has securities registered under the Exchange Act;

(2) The debt is offered and sold only to accredited investors;

(3) The debt is sold in minimum denominations of $250,000 and each note or debenture is legended to provide that it cannot be exchanged for notes or debentures of the bank in smaller denominations;

(4) The debt is rated investment grade;

(5) Prior to or simultaneously with the sale of the debt, each purchaser receives an offering document that contains a description of the terms of the debt, the use of proceeds, and method of distribution, and incorporates the bank's latest Consolidated Reports of Condition and Income (Call Report) and the bank's or its bank holding company's Forms 10–K, 10–Q (or 10–KSB, 10–QSB), and 8–K (17 CFR part 249) filed under the Exchange Act; and

(6) The offering document and any amendments are filed with the OCC no later than the fifth business day after they are first used.

(b) Offers or sales of nonconvertible debt issued by a federal branch or agency of a foreign bank need not need comply with the requirements of paragraph (a)(1) of this section, if the federal branch or agency provides the OCC the information specified in Commission Rule 12g3–2(b) (17 CFR 240.12g3–2(b)) and provides purchasers the information specified in Commission Rule 144A(d)(4)(i) (17 CFR 230.144A(d)(4)(i)). A federal branch or agency that provides the OCC the information specified in Commission Rule 12g3–2(b) need not incorporate that information by reference into the offering document provided to purchasers pursuant to paragraph (a)(5) of this section. However, the federal branch or agency must make that information available to the potential purchasers upon request. The OCC will make the information available for public inspection.

§ 16.7 Nonpublic offerings.

(a) The OCC will deem offers and sales of bank issued securities that meet all of the following requirements to be exempt from the registration and prospectus requirements of § 16.3 pursuant to § 16.5(c) of this part:

(1) All the securities are offered and sold in a transaction that satisfies the requirements of Commission Regulation D (17 CFR part 230, Regulation D—Rules Governing the Limited Offer and Sale of Securities Without Registration Under the Securities Act of 1933);

(2) Each purchaser who is not an accredited investor either alone or with its purchaser representative(s) has the knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of the prospective investment, or the issuer reasonably believes immediately prior to making any sale that the purchaser comes within this description; and

(3) A notice that meets the requirements of Commission Rule 503 (17 CFR 230.503) is filed with the OCC.

(b) All subsequent sales of bank issued securities subject to the limitations on resale of Commission Regulation D (17 CFR part 230, Regulation D—Rules Governing the Limited Offer and Sale of Securities Without Registration Under the Securities Act of 1933) must be made pursuant to Commission Rule 144 (17 CFR 230.144), Commission Rule 144A (17 CFR 230.144A), another exemption from registration under the Securities Act referenced in § 16.5 of this part, or in accordance with the registration and prospectus requirements of § 16.3 of this part.

(c) No offer or sale of bank issued securities shall be made in reliance on Commission Regulation D (17 CFR part 230, Regulation D—Rules Governing the Limited Offer and Sale of Securities Without Registration Under the Securities Act of 1933) without compliance with paragraphs (a)(1) and (a)(2) of this section.

§ 16.8 Small Issues.

(a) The OCC will deem offers and sales of bank issued securities that satisfy the requirements of Commission Regulation A (17 CFR part 230, Regulation A—Conditional Small Issues Exemption) to be exempt from the registration and prospectus requirements of § 16.3 pursuant to § 16.5(d) of this part.

(b) A filer should consult the Commission's Securities Act Industry Guide 3—Statistical Disclosure by Bank Holding Companies (17 CFR 229.801(c) and 231) and requirement 7 (Loans) of Rule 9–03 of Commission Regulation S–X (17 CFR 230.9–03) for guidance on appropriate disclosures when preparing offering documents to be filed with the OCC pursuant to Regulation A.

§ 16.15 Form and content.

(a) Any registration statement filed pursuant to this part must be on the form for registration (17 CFR part 239) that the bank would be eligible to use were it required to register the securities under the Securities Act and must meet the requirements of the Commission regulations referred to in the applicable form for registration. A filer should consult the Commission's Securities Act Industry Guide 3—Statistical Disclosure by Bank Holding Companies (17 CFR 229.801(c) and 231) for guidance on appropriate disclosures when preparing registration statements.

(b) Any registration statement or amendment filed pursuant to this part must comply with the requirements of Commission Regulation C (17 CFR part 230, Regulation C—Registration), except

to the extent those requirements conflict with specific requirements of this part.

(c) In addition to the information expressly required to be included in the registration statement by paragraphs (a) and (b) of this section, the registration statement must include any additional material information that is necessary to make the required statements, in light of the circumstances under which they are made, not misleading.

(d) Notwithstanding paragraph (a) of this section, the registration statement for securities issued by a bank that is not in compliance with the regulatory capital requirements set forth in part 3 of this chapter must be on the Form S–1 (17 CFR part 239) registration statement under the Securities Act.

§ 16.16 Effectiveness.

(a) Registration statements and amendments filed with the OCC pursuant to this part will become effective in accordance with sections 8(a) and (c) of the Securities Act (15 U.S.C. 77h(a) and (c)) and Commission Regulation C (17 CFR part 230, Regulation C—Registration).

(b) The OCC will deem registration statements and amendments that become effective pursuant to paragraph (a) of this section to be declared effective. If the OCC deems a registration statement to be declared effective, the OCC will also deem the prospectus that was filed as a part of that registration statement to be declared effective.

§ 16.17 Filing requirements and inspection of documents.

(a) Except as provided in paragraph (b) of this section, all registration statements, offering documents, amendments, notices, or other documents must be filed with the Securities, Investments, and Fiduciary Practices Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

(b) All registration statements, offering documents, amendments, notices, or other documents relating to a bank in organization must be filed with the appropriate District office of the OCC.

(c) Where this part refers to a section of the Securities Act or the Exchange Act or a Commission rule that requires the filing of a notice or other document with the Commission, that notice or other document must be filed with the OCC.

(d) Unless otherwise requested by the OCC, any filing under this part must include four copies of any document filed. Material may be filed by delivery to the OCC through use of the mails or otherwise. The date on which documents are actually received by the OCC will be the date of filing of those documents, if the person filing the documents has complied with all requirements regarding the filing, including the submission of any fee required under § 16.33 of this part.

(e) Any filing of amendments or revisions must include at least four copies, two of which are marked to indicate clearly and precisely, by underlining or in some other appropriate manner, the changes made.

(f) The OCC will make available for public inspection copies of the registration statements, offering documents, amendments, exhibits, notices or reports filed pursuant to this part at the address identified in § 4.17(b) of this chapter.

§ 16.18 Use of prospectus.

(a) No person shall use a prospectus or amendment declared effective by the OCC more than nine months after the effective date unless the information contained in the prospectus or amendment is as of a date not more than 16 months prior to the date of use.

(b) If any event arises, or change in fact occurs, after the effective date and that event or change in fact, individually or in the aggregate, results in the prospectus containing any untrue statement of material fact, or omitting to state a material fact necessary in order to make statements made in the prospectus not misleading under the circumstances, then no person shall use the prospectus that has been declared effective under this part until an amendment reflecting the event or change has been filed with and declared effective by the OCC.

§ 16.19 Withdrawal or abandonment.

(a) Any registration statement, amendment, or exhibit may be withdrawn prior to the effective date. A withdrawal must be signed and state the grounds upon which it is made. The OCC will not remove any withdrawn document from its files, but will mark the document *Withdrawn upon the request of the registrant on (date).*

(b) When a registration statement or amendment has been on file with the OCC for a period of nine months and has not become effective, the OCC may, in its discretion, determine whether the filing has been abandoned. Before determining that a filing has been abandoned, the OCC will notify the filer that the filing is out of date and must either be amended to comply with the applicable requirements of this part or be withdrawn within 30 days after the date of notice. When a filing is abandoned, the OCC will not remove the filing from its files but will mark the filing *Declared abandoned by the OCC on (date).*

§ 16.20 Current and periodic reports.

(a) Each bank that files a registration statement that has been declared effective pursuant to this part must file with the OCC, after the effective date, the periodic and current reports required by section 13 of the Exchange Act (15 U.S.C. 78m), as if the securities covered by the registration statement were securities registered pursuant to section 12 of the Exchange Act (15 U.S.C. 78l). Banks must file periodic and current reports in accordance with Commission Regulation 15D (17 CFR 240.15d–1 up to but not including 240.15Aa–1).

(b) Suspension of the duty to file periodic and current reports under this section will be in accordance with section 15(d) of the Exchange Act (15 U.S.C. 78o(d)), Commission Regulation 15D (17 CFR 240.15d–1 up to but not including 240.15Aa–1), and Commission Rule 12h–3 (17 CFR 240.12h–3).

(c) Paragraph (a) of this section does not apply if the bank is a subsidiary of a one-bank holding company, the financial statements of the bank and the parent bank holding company are substantially the same, and the bank's parent bank holding company files current and periodic reports pursuant to section 13 of the Exchange Act (15 U.S.C. 78m).

(d) Paragraph (a) of this section does not apply if the bank files the registration statement in connection with a merger, consolidation, or acquisition of assets subject to § 5.33(b)(6)(ii) of this chapter.

§ 16.30 Request for interpretive advice or no-objection letter.

Any person requesting interpretive advice or a no-objection letter from the OCC with respect to any provision of this part shall:

(a) File a copy of the request, including any supporting attachments with the Securities, Investments, and Fiduciary Practices Division at the address listed in § 16.17;

(b) Identify or describe the provisions of this part to which the request relates, the participants in the proposed transaction, and the reasons for the request; and

(c) Include with the request a legal opinion as to each legal issue raised and an accounting opinion as to each accounting issue raised.

§ 16.31 Escrow requirement.

The OCC may require that any funds received in connection with an offer or sale of securities be held in an independent escrow account at an unrelated insured depository institution when the use of an escrow account is in the best interests of shareholders.

§ 16.32 Fraudulent transactions and unsafe and unsound practices.

(a) No person in the offer or sale of bank securities shall directly or indirectly:

(1) Employ any device, scheme or artifice to defraud;

(2) Make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(3) Engage in any act, practice, or course of business which operates as a fraud or deceit upon any person, in connection with the purchase or sale of any security of a bank.

(b) Nothing in this section limits the applicability of section 17 of the Securities Act (15 U.S.C. 77q) or section 10(b) of the Exchange Act (15 U.S.C. 78j) or Rule 10b–5 promulgated thereunder (17 CFR 240.10b–5).

(c) Any violation of this section also constitutes an unsafe or unsound practice under 12 U.S.C. 1818.

(d) Commission Rule 175 (17 CFR 230.175—Liability for certain statements by issuers) applies to this part.

§ 16.33 Filing fees.

(a) Filing fees must accompany certain filings made under the provisions of this part before the OCC will accept those filings. The applicable fee schedule is provided in the Notice of Comptroller of the Currency Fees published pursuant to § 8.8 of this chapter.

(b) Filing fees must be paid by check payable to the Comptroller of the Currency.

Dated: October 27, 1994.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 94–27082 Filed 11–1–94; 8:45 am]

BILLING CODE 4810–33–P

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R–0852]

Applications Under Regulation Y

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim rule with request for comments.

SUMMARY: These rules are intended to implement the simplified notice procedures recently established under section 346 of the Riegle Community Development and Regulatory Improvement Act of 1994 for bank holding companies proposing to engage *de novo* or through an acquisition in nonbanking activities. Because Section 346 implements this procedure immediately, the Board has proposed the following as an interim rule that will take effect immediately and will apply to all notices filed subsequent to enactment of Section 346. The Board also is seeking comments on the interim rule, and will amend the rule as needed to address the comments received. The Board is currently developing additional initiatives to reduce the regulatory burden associated with its application and notice procedures, and the Board invites comment on any suggestions in furtherance of these initiatives.

DATES: Interim rule effective on November 2, 1994, comments must be received by December 5, 1994.

ADDRESSES: Comments should refer to Docket No. R–0852 and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551. Comments also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the Board's Security Control Room inside the Eccles Building courtyard on 20th Street (between Constitution Avenue and C Street, NW) anytime. Comments may be inspected in room MP–500 of the Martin Building between 9 a.m. and 5 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding availability of information.

FOR FURTHER INFORMATION CONTACT: Scott G. Alvarez, Associate General Counsel (202/452–3583), or Terence F. Browne, Senior Attorney (202/452–3707), Legal Division; or Don E. Kline, Associate Director (202/452–3421), Nicholas A. Kalambokidis, Supervisory Financial Analyst (202/452–3830), or Larry R. Cunningham, Senior Financial Analyst (202/452–2701), Division of Banking Supervision and Regulation of the Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION: Section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843) (BHC Act) prohibits bank holding companies from acquiring or retaining shares of any company that is not a bank or engaging in any activity other than managing and controlling banks, except under certain circumstances. The primary exception permits bank holding companies to conduct activities and acquire companies engaged solely in activities the Board has determined to be closely related to banking and a proper incident thereto. See 12 U.S.C. 1843(c)(8).

Section 346 of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. No. 103–325, section 346, 108 Stat. 2160, 2239 (1994)("Section 346")) amends section 4 of the BHC Act to establish a new notice procedure for obtaining Board approval under sections 4(a)(2) and 4(c)(8) of the BHC Act.[1] Under Section 346, a proposal requiring Board approval under section 4(a)(2) or 4(c)(8) may be consummated 60 days after providing the Board with a complete written notice of the proposal, unless the notice period is extended as provided in the statute. Section 346 also permits proposals to be consummated at anytime during this notice period if approved by the Board during this period.

The proposed interim rule would replace the current application procedure of section 4(c)(8) of the BHC Act with the new notice procedure.[2] The rule would streamline the current procedure for obtaining Board approval for nonbanking proposals in several respects. In particular, the proposed revisions would:

- Establish a simplified notice procedure for action on proposals to engage *de novo* or through an acquisition in a listed activity (i.e., an activity on the Regulation Y list of permissible nonbanking activities [3]) within 30 days of receipt of the notice by the Reserve Bank;
- Establish a notice procedure for action on proposals to engage *de novo* or through an acquisition in an un-listed activity or a new activity within 60 days of filing of a complete notice;
- Eliminate the current 28 day pre-acceptance period for notices involving nonbanking proposals;
- Reduce from 30 days to 15 days the public comment period for proposals involving listed activities; and

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[1] Section 346 establishes a notice procedure for situations in which prior Board approval is required under section 4(c)(8) or 4(a)(2) of the BHC Act, and was not intended to impose any new approval requirements on transactions that may otherwise be consummated under section 4 of the BHC Act without Board approval.

[2] All applications and notices to engage in nonbanking activities that were filed with a Reserve Bank prior to September 23, 1994 will continue to be processed under the existing rules.

[3] 12 CFR 225.25.

• Specify in the regulation the core information that bank holding companies must provide for a nonbanking proposal.

These revisions to the current application procedures should result in an overall reduction in the total period of time involved in reviewing nonbanking proposals, and in a reduction in the paperwork burden associated with proposals to engage in nonbanking activities. Comment is invited on all aspects of this proposal.

Notice Procedure Under Interim Rule

To implement these statutory changes, the Board proposes to amend Regulation Y to replace the application procedures for obtaining approval to engage in nonbanking activities with a notice procedure. The interim rule contemplates action by the Reserve Bank on nonbanking proposals involving listed activities within 30 days after a notice containing all of the information required in the rule has been received by the Reserve Bank, in cases that qualify for Reserve Bank action, and within 60 days of that date in cases involving any previously approved activity that are subject to Board action. While the rule also indicates that the Board will seek to act on notices involving new activities within 60 days of receipt of the notice by the Reserve Bank, proposals that involve activities that have not been previously approved by the Board often require substantial information and may continue to require a greater processing period.

The interim rule specifies the different types of information required for proposals to engage *de novo* in listed activities, proposals to acquire a company engaged in listed activities, and proposals to engage in activities not previously approved by regulation ("unlisted activities").

Listed Activities

The proposed rule contemplates that proposals to engage *de novo* or to acquire a company engaged in a listed activity will be approved within 30 days of the original date of filing of the notice, even if additional information is subsequently requested by the Reserve Bank or the Board. Upon receipt of a notice to engage in or to acquire a company engaged in a listed activity (or an activity previously approved by order), the Reserve Bank shall immediately notify the Board, and the Board will publish notice of the proposal in the **Federal Register** inviting public comment for a period of 15 days. Within 30 calendar days after receipt by the Reserve Bank of a notice filed under the interim rule, the Reserve Bank must approve the notice, extend the notice period for 15 calendar days, or refer the notice to the Board for decision because a substantive comment on the proposal has been received or action on the notice by the Reserve Bank is not appropriate. The Reserve Bank also may, within 15 calendar days of receipt of the notice, return the notice if it is informationally incomplete. Under the interim rule, the return of a notice by a Reserve Bank under such circumstances is deemed action on the notice.

Unlisted Activities

As is the practice under the current rules, proposals to engage in activities not previously approved by the Board by regulation or order will be published by the Board in the **Federal Register** within 10 business days of acceptance by the Reserve Bank, unless the Board determines to extend this 10-day period for an additional 30 days. Public notice of proposals to engage in such new activities shall invite comment for a period of generally 30 days, or if the Board determines that the notificant has not adequately demonstrated that the proposed activity is so closely related to banking as to be a proper incident thereto, the Board may return the notice and explain the reasons for its determination.

The interim rule provides that the Board will attempt to act on all cases referred for Board action within 60 days of the date the notice is received by the Reserve Bank. As noted above, proposals that involve new activities that have not been previously approved by the Board are likely to require a greater processing period. In the event the Board does not act on the notice within 60 days of receipt by the Reserve Bank, the Board will notify the bank holding company, and explain the reasons for needing additional time as well as provide an anticipated date by which the Board expects to act on the notice.

Elimination of Pre-Acceptance Review Period

As noted above, the interim rule eliminates the pre-acceptance review procedure currently contained in Regulation Y for proposals to engage in nonbanking activities. This procedure established a defined period of up to 28 days during which an applicant and the Reserve Bank could identify and address significant issues prior to the filing of a final application. This procedure has been particularly beneficial to the processing of complex proposals and applications to engage in activities not previously approved by the Board by regulation or order, where information requests often must be tailored to the specific proposal.

While the elimination of pre-acceptance procedures should shorten the review process, the Board recognizes the utility of a pre-acceptance procedure and anticipates that there will be certain proposals that could benefit from some form of pre-acceptance review. The Board invites comments as to whether some form of pre-notice review procedure should be reinstated in the final regulations.

Public Notice

Regulation Y currently provides that (with the exception of proposals processed under the abbreviated procedure for small acquisitions) all proposals to engage in previously approved nonbanking activities must be published in the **Federal Register** and provide for a public comment period of not more than 30 days. Under the interim rule, the public comment period has been shortened from 30 days to 15 days for proposals to engage in activities previously approved by the Board by regulation or order. The interim rule also provides that the Reserve Bank may not act on a notice before the fifth business day following the close of the public comment period unless an emergency exists requiring expedited or immediate action.

Section 346 authorizes the Board to prescribe shorter notice periods by regulation for particular activities or transactions. The Board invites comment on whether further shortening of the comment period is appropriate, particularly for notices to engage in activities previously approved by the Board. In particular, the Board requests comment on a proposal to reduce the public comment period to 5 calendar days for proposals that involve listed activities and/or activities that have been previously approved by Board order. This would enable the Reserve Banks to act on proposals that raise no substantive issues well within the 30-day target.

Statutory Period

The interim rule incorporates the provisions of Section 346 that establish the permissible length of the notice period. Under the interim rule, a notice is deemed approved by operation of law 60 days after receipt of a complete notice, unless extended as provided in Section 346. As provided in the statute, the interim rule provides that a notice is deemed complete when it contains all information required in the interim rule and all other information requested by the Board or the Reserve Bank in

connection with the notice. The Board may extend the notice period for an additional 30 days upon notice to the bank holding company. If the proposal involves an unlisted activity, the Board may extend the notice period for a 90-day period in addition to the 30-day extension, provided the Board notifies the bank holding company and explains the reasons for this additional extension. Further extensions are only permissible in the event the Board determines to conduct a hearing on the proposal, or the notificant has consented to an extension or tolling of the notice period.

The interim rule adopts the provision in Section 346 that permits the Board to request additional information about a proposal at any time during the notice period. The rule also includes the provision of Section 346 that provides that the Board may deny any notice if the notificant neglects, fails, or refuses to furnish the Board all the information required by the Board.

Abbreviated Notice Procedure for Small Acquisitions

The interim rule retains the current abbreviated notice procedure contained in Regulation Y for small acquisitions of assets or shares of companies engaged in activities previously approved by the Board by regulation.[4] Currently, this abbreviated notice procedure may be used for acquisitions where neither the book value of the assets to be acquired nor the gross consideration to be paid for the securities or assets exceeds the greater of (i) $15 million or (ii) 5 percent of the consolidated assets of the acquiring company up to a maximum of $100 million. The interim rule retains this abbreviated notice procedure for small acquisitions of companies engaged in laundry list activities, and increases the size limitation for acquisitions that qualify for this procedure from a maximum of $100 million to a maximum of $300 million.

The primary benefit of the abbreviated notice procedure for small acquisitions is the shortened approval process realized by opting to publish public notice of the proposal in local newspapers in the communities affected by the proposal. Since this provision of Regulation Y was adopted, notificants have increasingly opted to publish notice of the proposed acquisition in the **Federal Register** in order to conduct the nonbanking activity nationwide or throughout a geographic area so large that public notice of the proposal by means of local newspaper publication is unduly expensive or impracticable. Moreover, the streamlined notice procedure established by the interim rule would effectively shorten the notice period for all acquisitions involving listed activities.

In light of this, the Board invites comment as to whether the abbreviated notice procedure for small acquisitions should be retained, eliminated, or amended.

Simplified Notice Procedures

The Board believes that these proposals will substantially reduce the burden associated with the approval requirement under section 4 of the BHC Act without resulting in unsafe and unsound banking practices. Because the provisions of Section 346 are implemented immediately, the Board is proposing to adopt the following regulation as an interim rule in connection with nonbanking activities conducted pursuant to section 4 of the BHC Act. The Board invites comments on all aspects of this interim rule, and will amend this rule as needed to reflect the comments received. The Board also invites suggestions on other means of reducing the regulatory burden associated with the System's application and notices procedures.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Board does not believe that these changes will have a significant adverse economic impact on a substantial number of small entities. This interim rule will reduce the regulatory burden on bank holding companies imposed by the Board's procedures, and the Board is inviting public comment on additional ways to reduce regulatory burden.

Paperwork Reduction Act Analysis

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are contained in these changes, and comment is invited on a proposal that would reduce the current information collection requirements imposed in connection with certain applications.

List of Subjects in 12 CFR Part 225

Administrative practice and procedure, Banks, Banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, the Board amends 12 CFR part 225 as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3907, 3909, 3310, and 3331–3351.

2. Sections 225.23 and 225.24 are revised to read as follows:

§ 225.23 Procedures for notices to engage in nonbanking activities.

(a) *Notice required for nonbanking activities.* A notice for the Board's prior approval under § 225.21(a) to engage in or acquire a company engaged in a nonbanking activity shall be filed by a bank holding company (including a company seeking to become a bank holding company) with the appropriate Reserve Bank in accordance with this section and the Board's Rules of Procedure (12 CFR 262.3).

(1) *Engaging de novo in listed activities.* A bank holding company seeking to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity listed in § 225.25 shall file a notice containing the following:

(i) A description of the activities to be conducted;

(ii) The identity of the company that will conduct the activity; and

(iii) If the notificant proposes to conduct the activity through an existing subsidiary, a description of the existing activities of the subsidiary.

(2) *Acquiring company engaged in listed activities.* A bank holding company seeking to acquire or control voting securities or assets of a company engaged in a nonbanking activity listed in § 225.25 shall file a notice containing the following:

(i) A description of the proposal, including a description of each proposed activity, and the effect of the proposal on competition among entities engaging in each proposed activity;

(ii) The identity of any entity involved in the proposal, and if the notificant proposes to conduct the activity through an existing subsidiary, a description of the existing activities of the subsidiary;

(iii) A statement of the public benefits that can reasonably be expected to result from the proposal; and

(iv) A description of the terms and sources of funds for the transaction; a copy of any pertinent purchase agreement(s); balance sheet and income

[4] This procedure is only available to bank holding companies that meet the Board's Capital Adequacy Guidelines and are proposing to acquire a company engaged in activities for which the bank holding company has previously received System approval.

statements for the most recent fiscal quarter and year-end for any company to be acquired; parent company only and consolidated *pro forma* balance sheets for the notificant as of the most recent fiscal quarter; and calculations of *pro forma* consolidated risk-based capital ratios and leverage ratio for the notificant as of the most recent fiscal quarter.

(3) *Engaging in or acquiring company to engage in unlisted activities.* A bank holding company seeking to commence or to engage *de novo*, or to acquire or control voting securities or assets of a company engaged in, any activity not listed in § 225.25 shall file a notice containing the following:

(i) Evidence that the proposed activity is so closely related to banking or managing or controlling banks as to be a proper incident thereto;

(ii) A commitment to comply with all conditions and limitations that have been established by the Board governing the proposed activity; and

(iii) The information required in paragraph (a)(2) of this section, as appropriate.

(b) *Notice provided to Board.* The Reserve Bank shall immediately send to the Board a copy of any notice received under paragraphs (a)(2) or (a)(3) of this section.

(c) *Notice to public*—(1) *Listed activities and activities approved by order.* A Reserve Bank that receives a notice involving an activity listed in § 225.25 or previously approved by the Board by order shall immediately send notice of receipt of the proposal to the Board for publication in the **Federal Register**. The **Federal Register** notice shall invite public comment on the proposal for a period of 15 days.

(2) *New activities*—(i) *In general.* In the case of a notice under this section involving an activity that is not listed in § 225.25 and that has not been previously approved by the Board by order, the Board shall send notice of the proposal to the **Federal Register** for publication, unless the Board determines that the notificant has not demonstrated that the activity is so closely related to banking or to managing or controlling banks as to be a proper incident thereto. The **Federal Register** notice shall invite public comment on the proposal for a reasonable period of time, generally for 30 days.

(ii) *Time for publication.* The Board shall send the notice required under this paragraph to the **Federal Register** within 10 business days of acceptance by the Reserve Bank. The Board may extend the 10-day period for an additional 30 calendar days upon notice to the notificant. In the event notice of a proposal is not published for comment, the Board shall inform the notificant of the reasons for the decision.

(d) *Action on notices*—(1) *Reserve Bank action.*—(i) *In general.* Within 30 calendar days after receipt by the Reserve Bank of a notice filed pursuant to paragraphs (a)(1) or (a)(2) of this section, the Reserve Bank shall:

(A) Approve the notice; or

(B) Refer the notice to the Board for decision because substantive adverse comment has been received or because action under delegated authority is not appropriate.

(ii) *Return of incomplete notice.* Within 15 calendar days of receipt, the Reserve Bank may return any notice as informationally incomplete that does not contain all of the information required by this subpart. The return of such a notice shall be deemed action on the notice.

(iii) *Extension of period for action.* The Reserve Bank may, within the 30-day period provided in this paragraph for action on a notice, extend such 30-day period for an additional 15 calendar days.

(iv) *Notice of action.* The Reserve Bank shall promptly notify the bank holding company of any action, referral or extension under this paragraph.

(v) *Close of public comment period:* The Reserve Bank shall not approve any notice under this paragraph prior to the fifth business day after the close of the public comment period, unless an emergency exists that requires expedited or immediate action.

(2) *Board action*—(i) *Internal schedule.* The Board seeks to act on every notice referred to it for decision within 60 days of the date that the notice is filed with the Reserve Bank. If the Board is unable to act within this period, the Board will notify the notificant and explain the reasons and the date by which the Board expects to act.

(ii) *Required time limit for Board action.* The Board shall act on any notice under this section that is referred to it for decision within 60 calendar days after the submission of a complete notice.

(iii) *Extension of required period for action*—(A) *In general.* The Board may extend the 60-day period required for Board action under paragraph (d)(2)(ii) of this section for an additional 30 days upon notice to the notificant.

(B) *Unlisted activities.* If a notice involves a proposal to engage in an activity that is not listed in § 225.25, the Board may extend the period required for Board action under paragraph (d)(2)(ii) of this section for an additional 90 days. This 90-day extension is in addition to the 30-day extension period provided in paragraph (d)(2)(iii)(A) of this section. The Board shall notify the notificant that the notice period has been extended and explain the reasons for the extension.

(3) *Requests for additional information.* The Board or the Reserve Bank may at any time request any additional information that either believes is needed for a decision on any notice under this subpart.

(4) *Tolling of period.* The Board or the Reserve Bank, as the case may be, may at any time extend or toll the time period for action on a notice for any period with the consent of the notificant.

(5) *Approval through failure to act.* A notice under this subpart shall be deemed to be approved at the conclusion of the period that begins on the date the complete notice is received by the Reserve Bank or the Board and that ends 60 calendar days plus any applicable extension and tolling period thereafter.

(6) *Complete notice.* A notice shall be deemed to be complete for purposes of this subpart at such time as it contains all information required by this subpart and all other information requested by the Board or the Reserve Bank in connection with the particular notice.

(e) *Expedited procedure for small acquisitions*—(1) *Filing notice.* As an alternative to the notice procedure of paragraph (a)(2) of this section, a bank holding company may satisfy the notice requirement of this section in connection with the acquisition of voting securities or assets of a company engaged in an activity listed in § 225.25 by:

(i) Providing the appropriate Reserve Bank with a description of the transaction; and either

(ii) Submitting a copy of a newspaper notice in the form prescribed by the Board; or

(iii) Requesting the Board to publish notice of the proposal in the **Federal Register** as provided in paragraph (c)(1) of this section.

(2) *Contents of publication.* A newspaper notice under this subsection shall be published in a newspaper of general circulation in the areas to be served as a result of the acquisition and shall provide an opportunity for interested persons to comment on the notice for a period of at least 10 calendar days.

(3) *Criteria for use of expedited procedure.* The procedure in this paragraph is available only if:

(i) Neither the book value of the assets to be acquired nor the gross consideration to be paid for the securities or assets exceeds the greater of:

(A) $15 million; or

(B) Five percent of the consolidated assets of the acquiring company up to a maximum of $300 million;

(ii) The bank holding company has previously received Board approval to engage in the activity involved in the acquisition; and

(iii) The bank holding company meets the Board's Capital Adequacy Guidelines (Appendix A of subparts A through E of this part).

(4) *Action on notice.* Within 5 business days after the close of the comment period specified in the **Federal Register** notice or within 15 calendar days after receipt by the Reserve Bank of the newspaper notice, the Reserve Bank shall either approve the proposal or refer it to the Board for decision if action under delegated authority is not appropriate. The Board shall act in accordance with paragraph (d)(2) of this section on a notice under this paragraph that is referred to it for decision. The Reserve Bank, upon written notice to the notificant, may extend the time period for approval under this paragraph for a reasonable period of time not to exceed 30 days.

(f) *Hearings*—(1) *Procedure to request hearing.* Any request for a hearing on a notice under this section shall comply with the provisions of 12 CFR 262.3(e).

(2) *Determination to hold hearing.* The Board may order a formal or informal hearing or other proceeding on a notice as provided in 12 CFR 262.3(i)(2). The Board shall order a hearing only if there are disputed issues of material fact that cannot be resolved in some other manner.

(3) *Extension of period for hearing.* The Board may extend the time for action on any notice for such time as is reasonably necessary to conduct a hearing and evaluate the hearing record. Such extension shall not exceed 91 calendar days after the date of submission to the Board of the complete record on the notice. The procedures for computation of the 91-day rule as set forth in § 225.14(g) apply to notices under this subpart that involve hearings.

(g) *Notice to expand or alter nonbanking activities*—(1) *De novo expansion.* A notice under paragraph (a)(1) of this section is required to open a new office or to form a subsidiary to engage in, or to relocate an existing office engaged in, a nonbanking activity that the Board has previously approved for the bank holding company under this regulation, only if:

(i) The Board's prior approval was limited geographically;

(ii) The activity is to be conducted in a country outside of the United States and the bank holding company has not previously received prior Board approval under this regulation to engage in the activity in that country; or

(iii) The Board or appropriate Reserve Bank has notified the company that a notice under paragraph (a)(1) of this section is required.

(2) *Activities outside United States.* With respect to activities to be engaged in outside the United States that require approval under this subpart, the procedures of this section apply only to activities to be engaged in directly by a bank holding company that is not a qualifying foreign banking organization or by a nonbank subsidiary of a bank holding company approved under this subpart. Regulation K (12 CFR part 211) governs other international operations of bank holding companies.

(3) *Alteration of nonbanking activity.* A notice under paragraph (a)(1) of this section is required to alter a nonbanking activity in any material respect from that considered by the Board in acting on the application or notice to engage in the activity.

(h) *Emergency thrift institution acquisitions.* In the case of a notice to acquire a thrift institution, the Board may modify or dispense with the public notice and hearing requirements of this section if the Board finds that an emergency exists that requires the Board to act immediately and the primary Federal regulator of the institution concurs.

§ 225.24 Factors considered in acting on nonbanking proposals.

(a) *In general.* In evaluating a notice under § 225.23, the Board shall consider whether the performance by the notificant of the activities can reasonably be expected to produce benefits to the public (such as greater convenience, increased competition, and gains in efficiency) that outweigh possible adverse effects (such as undue concentration of resources, decreased or unfair competition, conflicts of interest, and unsound banking practices).

(b) *Financial and managerial resources.* Consideration of the factors in paragraph (a) of this section includes an evaluation of the financial and managerial resources of the notificant, including its subsidiaries, and any company to be acquired, and the effect of the proposed transaction on those resources.

(c) *Competitive effect of de novo proposals.* Unless the record demonstrates otherwise, the commencement or expansion of a nonbanking activity *de novo* is presumed to result in benefits to the public through increased competition.

(d) *Denial for lack of information.* The Board may deny any notice submitted under this subpart if the notificant neglects, fails, or refuses to furnish all information required by the Board.

By order of the Board of Governors of the Federal Reserve System, effective October 26, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94-27057 Filed 11-1-94; 8:45 am]

BILLING CODE 6210-01-P

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12 CFR Parts 225 and 262

[Regulation Y; Docket No. R-0853]

Applications Under Regulation Y

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim rule with request for comments.

SUMMARY: These rules implement the streamlined notice procedure recently enacted in Section 319 of the Riegle Community Development and Regulatory Improvement Act of 1994 ("Riegle Act") for the formation of a new bank holding company that results from a corporate reorganization of a bank by the current shareholders of the bank. These rules also implement section 321 of the Riegle Act, which amends the Bank Holding Company Act and the Bank Merger Act to authorize the Board to shorten the post-approval waiting period for bank acquisitions and mergers (during which time the United States Attorney General may review the competitive effects of a proposal approved by the Board) from 30 to 15 days with the consent of the United States Attorney General. Because the procedures prescribed by section 319 and section 321 are effective immediately, the Board has proposed the following as an interim rule that will take effect immediately. The Board is seeking comments on this interim rule, and will amend the rule as needed to address the comments received. The Board also is currently developing additional initiatives to reduce the regulatory burden associated with its application and notice procedures, and invites comment on any suggestions in furtherance of these initiatives.

DATES: Interim Rule effective on November 2, 1994; comments must be received by December 5, 1994.

ADDRESSES: Comments should refer to Docket No. R-0853 and may be mailed

to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551. Comments also may be delivered to Room B-2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the Board's Security Control Room inside the Eccles Building courtyard on 20th Street (between Constitution Avenue and C Street, NW) anytime. Comments may be inspected in room MP-500 of the Martin Building between 9 a.m. and 5 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding availability of information.

FOR FURTHER INFORMATION CONTACT: Scott G. Alvarez, Associate General Counsel (202/452-3583), or Terence F. Browne, Senior Attorney (202/452-3707), Legal Division; or Don E. Kline, Associate Director (202/452-3421), Nicholas A. Kalambokidis, Supervisory Financial Analyst (202/452-3830), or Larry R. Cunningham, Senior Financial Analyst (202/452-2701), Division of Banking Supervision and Regulation of the Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION: Section 3(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)) ("BHC Act") requires Federal Reserve Board approval prior to consummating certain transactions resulting in the formation of a bank holding company, or in the acquisition by a bank holding company of shares or control of a bank, subject to certain exceptions. Section 319 of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. No. 103-325, section 319, 108 Stat. 2160, 2224 (1994)("Section 319")) amends section 3 of the BHC Act to establish a notice procedure for the formation of a new bank holding company resulting from a corporate reorganization that involves substantially the same shareholders.[1] In connection with section 319, section 320 of the Riegle Act provides an exemption from the registration requirements of the Securities Act of 1933 for securities issued by a bank holding company pursuant to such a reorganization.

In addition, section 321 of the Riegle Act (Pub. L. No. 103-325, section 321, 108 Stat. 2160, 2226 (1994)("Section 321") permits the Board, with the consent of the U.S. Attorney General, to shorten the post-approval waiting period for bank acquisitions and mergers from 30 days to 15 days. The interim rule implement the provisions enacted in sections 319 and 321 of the Riegle Act. Comment is invited on all aspects of these proposals.

Formation of a New Bank Holding Company Under Section 319

By its terms, the notice procedure added by section 319[2] applies only if certain conditions are met. Specifically, the formation of a new bank holding company may be consummated 30 days after providing written notice to the appropriate Federal Reserve Bank if: (1) The shareholders of the bank will acquire, as a result of the reorganization, the shares of the newly formed bank holding company in substantially the same proportional interest as they held in the bank; (2) the bank holding company would meet, and its resulting subsidiary bank would meet, certain financial and capital standards; (3) the bank holding company would not, as a result of the reorganization, acquire other banking or nonbanking interests; and (4) during the 30-day notice period, the Reserve Bank or the Board does not object to the proposal.

Substantially the Same Shareholders

Under the interim rule, the requirement that shareholders of the bank acquire "substantially the same share interest" in the newly formed bank holding company would be met by proposals in which the shareholder or shareholders who lawfully control at least 80 percent of the shares of the bank at the time the notice is filed would acquire, immediately after the reorganization, at least 80 percent of the shares of the holding company in substantially the same proportion.

By the terms of Section 319, allowance is made for changes in shareholders' interests resulting from the exercise of dissenting shareholders' rights under State or Federal law. Accordingly, under the interim rule, a shareholder of the bank will be considered to have substantially the same proportional interest in the holding company (notwithstanding a change in the percentage of shares controlled by the shareholder) if the shareholder interest increases, on a *pro rata* basis, as a result of either the redemption by the bank or bank holding company of shares from dissenting shareholders, or as a result of the acquisition of shares of dissenting shareholders by the remaining shareholders.

However, this notice procedure would not be available in cases in which any shareholder or group of shareholders acting in concert would, following the reorganization, own or control 10 percent or more of any class of voting shares of the bank holding company unless that shareholder or group of shareholders was authorized, after review under the Change in Bank Control Act of 1978 (12 U.S.C. 1817(j)) by the appropriate Federal banking agency for the bank, to own or control 10 percent or more of any class of voting shares of the bank. Similarly, this procedure is not available in cases in which the exercise of dissenting shareholders' rights would cause a company that is not a bank holding company (other than the company in formation) to be required to register as a bank holding company. This procedure also is not available for the formation of a bank holding company organized in mutual form.

The Board seeks comment on other alternative formulations consistent with the statutory mandate that the reorganization involve substantially the same shareholders.

Financial Standards

Section 319 also establishes certain financial thresholds that must be satisfied to qualify for the abbreviated notice procedure. In particular, the bank to be reorganized must, at the time the notice is filed, be "adequately capitalized," as this term is defined in section 38 of the Federal Deposit Insurance Act. See 12 U.S.C. 1831o. In addition, Section 319 requires that the bank holding company resulting from the reorganization meet any "capital and other financial standards" established by the Board.

In the interim rule, the Board has established three requirements designed to identify reorganization proposals that do not raise financial or supervisory concerns that would benefit from review and explanation through an application process rather than an abbreviated notice procedure. Under the interim rule, a proposal to form a new one-bank holding company would qualify for the abbreviated notice procedures established in Section 319 if: (1) The

[1] Section 319 also amends section 5(d)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1815(d)(3))—commonly referred to as the "Oakar Amendment"—to eliminate the requirement for prior Board approval of transactions by banks owned by holding companies to merge with thrift institutions. Under the Riegle Act, Oakar transactions continue to require the prior approval of the appropriate Federal banking agency for the acquiring institution, and all Oakar transactions must comply with section 3(d) of the BHC Act, the "Douglas Amendment." No amendments to the Board's regulations are needed to implement these amendments to section 5(d)(3).

[2] Any application to organize a bank holding company that was filed with a Reserve Bank prior to September 23, 1994 will continue to be processed under the existing rules.

bank has received at least a composite "satisfactory" rating at its most recent examination, in the event that the bank has been subject to examination; (2) the amount of debt that the bank holding company would assume at the time of the reorganization, and the proposed means of retiring this debt, would not place undue burden on the holding company or its subsidiary on a *pro forma* basis;[3] and (3) at the time of the reorganization, neither the bank nor any of its officers, directors or shareholders is involved in any unresolved supervisory or enforcement matters with any appropriate Federal banking agency.

Section 319 provides that this abbreviated notice procedure is only available to a bank holding company that would not acquire any additional banks or any nonbanking interests as part of the reorganization.

Contents of Notice

To begin the notice period under the interim rule, the notificant organization must submit to the appropriate Reserve Bank a written notice that includes: (1) Certification that the requirements of Section 319 and the Board's implementing rule are met by the proposal; (2) a list of the shareholders of the bank prior to the reorganization and of the holding company following the reorganization, identifying the percentage of shares held by each shareholder in the bank and proposed to be held in the new holding company; (3) a description of the resulting management of the proposed bank holding company and its subsidiary bank, including (i) biographical information regarding any officers, directors or shareholders of the resulting bank holding company who were *not* senior officers or directors of the bank prior to the reorganization, and (ii) a detailed history of the involvement of any officer, director or shareholder of the resulting bank holding company in any administrative or criminal proceeding; (4) *pro forma* financial statements for the bank holding company, and a description of the amount, source and terms of debt, if any, that the bank holding company proposes to incur, and information regarding the sources and timing for debt service and retirement; and (5) verification that notice of the proposal has been published in a newspaper of general circulation in the community in which the bank is located that provides an opportunity for interested persons to comment on the notice for a period of at least 15 calendar days.

As indicated above, the interim rule requires that the applicant publish notice of the proposed reorganization and invite public comment for a period of at least 15 days. This request for public comment is consistent with the Board's practice of publishing notice of all bank holding company formations and bank expansion proposals so that the public may comment in particular on the bank's record of serving the convenience and needs of the community under the Community Reinvestment Act.

Objections to Notices

Within 7 calendar days of receipt of a notice containing all the information required under this interim regulation, the appropriate Reserve Bank will provide a written acknowledgement of receipt of the notice indicating that the transaction may be consummated following the 30th calendar day after the date the notice was received by the Reserve Bank unless the Reserve Bank or the Board objects to the proposal during that time. The Reserve Bank may provide written notice of approval of the reorganization at an earlier time during the notice period.

If during the notice period the Board or the Reserve Bank objects to the proposal, the bank holding company must file an application under section 3 of the BHC Act.[4] In this case, the notificant will immediately be notified of the reason for the objection, and of any additional information that may be needed to complete an application.

Shortening of Post-Approval Waiting Period Under Section 321

Currently, section 11(b)(1) of the BHC Act (12 U.S.C. 1849(b)(1)) prohibits a bank holding company that has received approval for a transaction under section 3 of the BHC Act (other than transactions involving a probable bank failure or an emergency) from consummating the transaction prior to the thirtieth day following Board approval of the proposal in order to provide the United States Attorney General time to review the transaction for any adverse effects on competition in banking or the concentration of banking resources. The Bank Merger Act contains a similar provision applying post-approval waiting period to bank merger proposals. See 12 U.S.C. 1828(c)(6).

Because Section 319 creates an exception from the application and approval process established by section 3 of the BHC Act, a notificant who has met the criteria of Section 319 and the interim rule does not appear to be subject to the post-approval waiting period established under section 11 of the BHC Act.

With regard to other acquisitions under section 3 of the BHC Act or under the Bank Merger Act, section 321 of the Riegle Act ("Section 321") authorizes the Board to shorten the post-approval waiting period in any case to a period of not less than 15 days, provided the Board has received no adverse comment from the Attorney General relating to competitive factors and the Attorney General concurs with the Board's decision to shorten the waiting period. Section 321 does not affect processing of applications involving probable bank failures or emergencies. The interim rule incorporates these revisions to the Board's Regulation Y. The Board is currently discussing with the U.S. Department of Justice the types of cases that may qualify for this shortened post-approval waiting period, and invites public comment on the types of cases where this would be appropriate.

As described above, the Board has adopted the following interim rule which shall be effective immediately, and invites public comment on all aspects of this interim rule. The Board also invites suggestions on other means of reducing the regulatory burden associated with its application and notices procedures.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Board does not believe that these changes will have a significant adverse economic impact on a substantial number of small entities. This interim rule will reduce the regulatory burden imposed by the Board's procedures on small bank holding companies in formation, and the Board is inviting public comment on additional ways to reduce regulatory burden.

Paperwork Reduction Act Analysis

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are contained in these changes, and comment is invited on a proposal that would reduce the current information collection requirements

[3] For a banking organization with consolidated assets, on a *pro forma* basis, of less than $150 million (other than a banking organization that would control a *de novo* bank), this requirement would be satisfied if the proposal would comply with the Board's policy statement on small one-bank holding company formations (12 CFR part 225, appendix C).

[4] *See* 12 CFR 225.14. If the Reserve Bank or Board believes that issues might readily be resolved within the notice period without having to issue a formal objection, the Reserve Bank or Board may request additional information during the notice period to supplement the notice.

imposed in connection with certain applications.

List of Subjects

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 262

Administrative practice and procedure, Banks, banking, Federal Reserve System.

For the reasons set forth in the preamble, the Board amends 12 CFR parts 225 and 262 as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3907, 3909, 3310, and 3331–3351.

2. In § 225.11, the introductory text is revised to read as follows:

§ 225.11 Transactions requiring Board approval.

The following transactions require an application for the Board's prior approval under section 3 of the Bank Holding Company Act except as exempted under § 225.12 or as otherwise covered by § 225.15 of this part:

* * * * *

3. In § 225.14, paragraph (i) is revised to read as follows:

§ 225.14 Procedures for applications, notices, and hearings.

* * * * *

(i) *Waiting period.* A transaction approved under this subpart, other than a transaction approved under § 225.15, shall not be consummated until 30 days after the date of approval of the application, except that a transaction may be consummated:

(1) Immediately upon approval, in the event that the Board has determined under paragraph (h) of this section that the application involves a probable bank failure;

(2) On or after the fifth calendar day following the date of approval, in the event that the Board has determined under paragraph (h) of this section that an emergency exists requiring expeditious action; or,

(3) On or after the fifteenth calendar day following the date of approval, in the event that the Board has not received any adverse comments from the United States Attorney General relating to the competitive factors and the Attorney General has consented to such shorter waiting period.

4. A new § 225.15 is added under Subpart B to read as follows:

§ 225.15 Notice Procedure for One-Bank Holding Company Formations.

(a) *Transactions which qualify under this section.* An acquisition by a company of control of a bank may be consummated 30 days after providing notice to the appropriate Reserve Bank in accordance with paragraph (b) of this section, provided that all of the following conditions are met:

(1) The shareholder or shareholders who control at least 80 percent of the shares of the bank would control, immediately after the reorganization, at least 80 percent of the shares of the holding company in substantially the same proportion, except for changes in shareholders' interests resulting from the exercise of dissenting shareholders' rights under State or Federal law;[5]

(2) No shareholder or group of shareholders acting in concert would, following the reorganization, own or control 10 percent or more of any class of voting shares of the bank holding company unless that shareholder or group of shareholders was authorized, after review under the Change in Bank Control Act of 1978 (12 U.S.C. 1817(j)) by the appropriate Federal banking agency for the bank, to own or control 10 percent or more of any class of voting shares of the bank;[6]

(3) The bank is adequately capitalized (as defined in section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o));

(4) The bank has received at least a composite "satisfactory" rating at its most recent examination, in the event that the bank has been subject to an examination;

(5) At the time of the reorganization, neither the bank nor any of its officers, directors or shareholders is involved in any unresolved supervisory or enforcement matters with any appropriate Federal banking agency;

(6) The company demonstrates that any debt that it would incur at the time of the reorganization, and the proposed means of retiring this debt, would not place undue burden on the holding company or its subsidiary on a *pro forma* basis;[7]

(7) The holding company would not, as a result of the reorganization, acquire control of any additional bank or engage in any activities other than those of managing and controlling banks; and

(8) During this period, neither the appropriate Reserve Bank nor the Board has objected to the proposal or required the filing of an application under § 225.14 of this subpart.

(b) *Contents of notice.* A notice filed under this subsection must include:

(1) Certification by the notificant's board of directors that the requirements of 12 U.S.C. 1842(a)(C) and this section are met by the proposal;

(2) A list identifying the shareholders of the bank prior to the reorganization and of the holding company following the reorganization, and specifying the percentage of shares held by each shareholder in the bank and proposed to be held in the new holding company;

(3) A description of the resulting management of the proposed bank holding company and its subsidiary bank, including:

(i) Biographical information regarding any senior officers and directors of the resulting bank holding company who were *not* senior officers or directors of the bank prior to the reorganization; and,

(ii) A detailed history of the involvement of any officer, director or shareholder of the resulting bank holding company in any administrative or criminal proceeding;

(4) *Pro forma* financial statements for the holding company, and a description of the amount, source and terms of debt, if any, that the bank holding company proposes to incur, and information regarding the sources and timing for debt service and retirement; and,

(5) Verification that notice of the proposal has been published in a newspaper of general circulation in the community in which the bank is located that provides an opportunity for interested persons to comment on the notice for a period of at least 15 calendar days.

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[5] A shareholder of a bank in reorganization will be considered to have the same proportional interest in the holding company if the shareholder interest increases, on a *pro rata* basis, as a result of either the redemption of shares from dissenting shareholders by the bank or bank holding company or the acquisition of shares of dissenting shareholders by the remaining shareholders.

[6] This procedure is not available in cases in which the exercise of dissenting shareholders' rights would cause a company that is not a bank holding company (other than the company in formation) to be required to register as a bank holding company. This procedure also is not available for the formation of a bank holding company organized in mutual form.

[7] For a banking organization with consolidated assets, on a *pro forma* basis, of less than $150 million (other than a banking organization that would control a *de novo* bank), this requirement would be satisfied if the proposal would comply with the Board's policy statement on small one-bank holding company formations (12 CFR Part 225, Appendix C).

(c) *Acknowledgement of notice.* Within 7 calendar days following receipt of a notice under this section, the Reserve Bank shall provide the notificant with a written acknowledgement of receipt of the notice. This written acknowledgment shall indicate that the transaction described in the notice may be consummated on the 30th calendar day after the date of receipt of the notice if the Reserve Bank or the Board has not objected to the proposal during that time.

(d) *Application required upon objection.* The Reserve Bank or the Board may object to a proposal during the notice period by providing the bank holding company with a written explanation of the reasons for the objection. In such case, the bank holding company may file an application for prior approval of the proposal pursuant to section 225.14 of this subpart.

PART 262—RULES OF PROCEDURE

1. The authority citation for part 262 continues to read as follows:

Authority: 5 U.S.C. 552, 12 U.S.C. 321, 1828(c), and 1842.

2. In § 262.3, paragraph (b)(1)(i)(D) is revised to read as follows:

§ 262.3 Applications.

* * * * *

(b) * * *

(1)(i) * * *

(D) To become a bank holding company (except as provided in 12 CFR 225.15), and

* * * * *

By order of the Board of Governors of the Federal Reserve System, effective October 26, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–27058 Filed 11–01–94; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

16 CFR Part 410

Deceptive Advertising as to Sizes of Viewable Pictures Shown by Television Receiving Sets

AGENCY: Federal Trade Commission.

ACTION: Notice of final, non-substantive amendments.

SUMMARY: The Federal Trade Commission ("Commission") is issuing final, non-substantive amendments to its Rule on Deceptive Advertising as to Sizes of Viewable Pictures Shown by Television Receiving Sets, known as the Picture Tube Rule. The Commission solicited comments on the Rule as part of the agency's periodic review of rules and guides. Having considered all of the issues raised during the comment period, the Commission is amending the Rule. These amendments add the metric equivalents for measurements stated in inches in the examples used in the Rule, and clarify some of the illustrations.

EFFECTIVE DATE: The effective date of these non-substantive amendments will be December 2, 1994.

ADDRESSES: Requests for copies of the regulations and the notice of final, non-substantive amendments should be sent to Public Reference Branch, room 130, Federal Trade Commission, 6th & Pennsylvania Ave. NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Phillip Priesman, Attorney, Division of Advertising Practices, Federal Trade Commission, 6th & Pennsylvania Ave. NW., Washington, DC 20580, (202) 326–2484.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission has determined, as part of its oversight responsibilities, to review rules and guides periodically. These reviews seek information about the costs and benefits of the Commission's rules and guides and their regulatory and economic impact. The information obtained assists the Commission in identifying rules and guides that warrant modification or recision. On April 19, 1993, the Commission published in the **Federal Register** a request for public comments on its Trade Regulation Rule on Deceptive Advertising as to Sizes of Viewable Pictures Shown by Television Receiving Sets, 16 CFR part 410 ("The Picture Tube Rule" or "The Rule").

This Rule, like the other trade regulation rules issued by the Commission, "define[s] with specificity acts or practices which are unfair or deceptive acts or practices in or affecting commerce. Such rules may include requirements prescribed for the purpose of preventing such acts or practices. A violation of a rule shall constitute an unfair or deceptive act or practice in violation of section 5(a)(1) of (the Federal Trade Commission Act), unless the Commission otherwise expressly provides in its rule." 16 CFR 1.8. The Commission may initiate a trade regulation rule proceeding "upon its own initiative or pursuant to written petition filed with the Secretary by any interested person stating reasonable grounds therefor," 16 CFR 1.9.

II. The Regulation

The Picture Tube Rule sets forth the appropriate means for disclosing the method by which the dimensions of television screens are measured, when the measurement is included in any advertisement or promotional material for the television set. Under the Rule, the method used to measure the size of a television screen must be clearly and conspicuously disclosed in close proximity to the size designation. However, the Rule provides a safe harbor for measurements based on the horizontal dimensions, which may be given without disclosing that the dimensions were measured horizontally. The Rule notes that the measurement must not take into account any curvature of the tube. Further, disclosing the method of measurement in a footnote rather than in the body of the ad does not constitute a disclosure in close proximity to the size designation.

The Rule includes examples of both proper and improper representations of size descriptions. Previously, these examples were expressed in terms of inches. Under Executive Order 12770 of July 25, 1991 (56 FR 35801), and the Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act, (15 U.S.C. 205) all federal agencies are required to use the SI metric system of measurement in all procurements, grants and other business-related activities (which include rulemakings), except to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of markets to United States firms. To comply with these provisions, the examples in the Rule have been altered to include the metric equivalent in parentheses beside the English measurements. Thus, the measurements in the examples have been revised to read: 15 inches (38.10 cm); 19 inches (48.26 cm); 20 inches (50.80 cm); 21 inches (53.34 cm); and 262 square inches (1,690.32 sq. cm). This is a technical amendment to an illustrative example in the Rule rather than a substantive amendment to the Rule. It is not intended to create any new requirement under the Rule to use metric measurements or to use them in any particular fashion (for example, in hundredths of centimeters). A new note has been added to the Rule providing that the metric measurements are included for information purposes only, and are not required to be included in any of the disclosures.

The Commission received five comments, four of which supported retaining the Rule in its current form or

with minor modifications, and one which supported repeal of the Rule. Most of the comments indicated that the Rule continues to provide a benefit to the industry and consumers, while imposing no significant costs on the industry members.[1] The one comment opposing the regulation maintained that it imposed an unreasonable burden on the Federal Trade Commission in administering and enforcing the regulation.[2] In the **Federal Register** notice, the Commission requested public comments on the following questions:

(1) Has this trade regulation rule had a significant impact (cost or benefit) on entities subject to its requirements?

(2) Is there a continuing need for this rule?

(3) What burdens does adherence with this rule place on entities subject to its requirements?

(4) What changes should be made to this rule to minimize the economic effect on such entities?

(5) Does this rule overlap or conflict with other federal, state, or local government laws or regulations?

(6) Have technology or economic conditions changed since this rule was issued, and, if so, what effect do these changes have on the rule?

The public comments on these six issues are discussed below.

1. Has This Trade Regulation Rule Had A Significant Impact (Cost or Benefit) on Entities Subject to Its Requirements?

The majority of the comments indicated that the Picture Tube Rule has provided significant benefits to the public and the consumer electronics industry, and imposed very little costs on entities subject to the Rule's requirements. One comment noted that the Rule did impose economic costs on television manufacturers in 1966 when the Rule was first promulgated.[3] At that time, manufacturers had to prepare and produce new advertising and promotional materials to comply with the Rule. Further, the United States was, and is to this day, the only country that requires screen measurements to be limited to the viewable picture area.[4] After the initial modifications, however, the Rule does not appear to have imposed any further burdens on the industry. One manufacturer noted that the Rule has had "virtually no cost impact" on the company.[5]

It appears that the Rule has also provided significant benefits. The comments indicated that by establishing a uniform system of measurement, the Rule enabled consumers to compare various products from different manufacturers.[6] One comment concluded, "the rule and industry standard have virtually eliminated the possibility of consumer deception regarding television screen size."[7] The Rule's uniform system of measurement has also served the consumer electronics industry. A television manufacturer indicated that the rule has provided a significant benefit to the company and the industry, and created "a legal framework in which a standard industry practice of planar, diagonal-dimension measurement of the viewable screen area has emerged."[8] After reviewing these comments, the Commission believes the Rule has provided a clear public benefit, as well as a service to the industry, while imposing minimal costs on the industry.

2. Is There A Continuing Need for This Rule?

Just as the comments generally maintain that the Rule has provided significant benefits, most of the comments also support retaining the Rule. A trade association maintained that the Rule is still needed to ensure the consistency in screen measurements that is relied upon by both consumers and industry members.[9] One manufacturer expressed concern that if the Federal Trade Commission repealed the Rule, then other manufacturers would return to using deceptive measurements in their advertisements.[10] Based upon these comments, the Commission finds that there is a continuing need for the Picture Tube Rule.

3. What Burdens Does Adherence With This Rule Place on Entities Subject to Its Requirements?

As noted above, while the Picture Tube may have imposed a burden on advertisers and manufacturers when it was first promulgated, it appears that the Rule does not impose any current significant burden on any entities subject to the Rule. A trade association noted that the industry has incorporated the regulation's requirements into common business practice, and thus, the Rule is no longer a burden on industry members.[11] A manufacturer also indicated that the Rule "places virtually no burden whatsoever on entities subject to it."[12] One comment, however, suggested that the Rule did impose a burden on the Federal Trade Commission through administration and enforcement of the Rule.[13] The Commission has found that enforcing the Rule has entailed relatively little administrative burden on the agency, given the industry's general compliance with the Rule. Further, in seeking public comment, the Commission was soliciting information concerning the burden on other entities rather than the agency itself.

4. What Changes Should Be Made to This Rule to Minimize the Economic Effect on Such Entities?

Although most of the comments supported preserving the Picture Tube Rule, a few comments from industry members suggested changes to the Rule. The Electronic Industries Association urged the Commission to eliminate the horizontal dimension as the default measurement.[14] Currently, the advertised dimensions must reflect the horizontal measurement unless the alternative method of measurement is clearly and conspicuously disclosed in close proximity to the size designation. According to the Association, however, the prevailing practice within the industry is to use the diagonal plane to measure the screen, and this is the measurement that is most familiar to consumers. Thus, the comment urges the Commission to amend the Rule to reflect current industry practice. A manufacturer, however, recommended that the Commission retain the existing provision concerning the disclosure of the method of measurement, suggesting that methods of measuring picture tubes are still not likely to be instinctively understood by consumers.[15]

When the Commission initially promulgated the Picture Tube Rule in 1966, most television manufacturers measured the dimensions of their sets diagonally, just as they do today. Thus, the horizontal dimension was not chosen to be the default setting based on

[1] Comments of the Consumer Electronics Group of the Electronic Industries Association (Electronic Industries Association) at 2–3; Zenith Electronics Corporation (Zenith) at 1–2; Chuck Cooper at 1.

[2] Comment of the American Association of Advertising Agencies, Inc. (AAAA) at 1.

[3] Comment of Electronic Industries Association at 2.

[4] The Commission is aware of an effort by the Canadian government to adopt similar provisions concerning televisions advertised for sale in Canada. Further, the Canadian television industry is considering adopting a voluntary standard that would provide for measurement of only the viewable area.

[5] Comment of Zenith at 1.

[6] Comments of Chuck Cooper at 1; Electronic Industries Association at 2; Zenith at 1.

[7] Comment of Zenith at 1.

[8] Comment of Zenith at 1.

[9] Comment of Electronic Industries Association at 3.

[10] Comment of Zenith at 1.

[11] Comment of Electronic Industries Association at 3.

[12] Comment of Zenith at 2.

[13] Comment of AAAA at 1.

[14] Comment of the Electronic Industries Association at 3.

[15] Comment of Zenith at 1–2.

a belief that it was the industry norm. Rather, the Commission found that almost all rectangular objects, such as blankets and rugs, were measured horizontally and vertically. Television screens were the only rectangular-shaped commodities that were measured diagonally. Thus, the Commission reasoned, if a rectangular screen was measured in the usual manner for similarly-shaped objects, then no disclosure of the method of measurement was necessary.[16] Moreover, the television industry has adopted the Rule's disclosure requirements as part of its routine business practice. Reversing the provision, to require a disclosure when a measurement other than the diagonal dimension is used, will provide no tangible benefit, and may cause confusion in the industry and among consumers. Finally, as one television manufacturer noted in its comment, identifying the method of measurement is useful to consumers because many would not instinctively understand the diagonal measurement.[17] Thus, the Commission sees no reason to revise the Rule's disclosure requirements at this time.

Another comment suggested amending Note 2 of the Rule to provide that a disclosure in a footnote or asterisk would constitute a disclosure in "close connection and conjunction" to the measurement, as required by the Rule.[18] However, footnotes or other fine-print disclosures separated from the body of an advertisement may not be adequate to qualify statements in the text.[19] Thus, the Commission has declined to amend the Rule to allow the disclosure of the method of measurement in a footnote or asterisk.

One comment urged the Commission to add an additional Note to the text of the Rule providing that advertisers need not identify the method of measurement every time an advertisement indicates a television's dimensions, as long as the method is disclosed in close connection to the most prominent indication of screen size in the given advertisement.[20] The Commission does not believe there is a sufficient basis to justify this amendment. Many advertisements for televisions promote multiple television sets of different sizes, and a single disclosure of the method of measurement may not be noticed by consumers. The commenter provided no evidence that multiple disclosures were burdensome. Under the Rule, advertisers can comply simply by stating "X inches" for picture tubes measured horizontally, or "X inches diagonal" for diagonal measurements. Further, almost all of the comments the Commission received indicated that the current provisions of the Picture Tube Rule are not a burden to manufacturers or advertisers. Thus, the Commission has decided not to adopt the proposed Note, or otherwise provide exceptions to the requirement that the method of measurement accompany each measurement other than a horizontal description.

In 1972, the staff of the Federal Trade Commission issued an opinion letter to the Consumer Electronics Group of the Electronic Industries Association concerning various methods of disclosing the method of measurement used for television screens.[21] In the letter, staff approved a number of proposed disclosures, including "20 inch diagonal." One comment maintained that the staff opinion letter approving the use "20 inch diagonal" is inconsistent with the Rule listing the disclosure "21 inch diagonal set" as inappropriate.[22] The examples in the Rule apply to a television screen measuring 19 inches horizontally, 15 inches vertically, and 20 inches diagonally. Thus, the example states that the disclosure "21 inch diagonal set" is inappropriate not because of the description of the method of measurement, but because the 21 inch measurement is not accurate for the set used in the example. The disclosure approved in the opinion letter used the correct 20 inch measurement. While the current Rule would permit "20 inch diagonal," that phrase is not included in the list of permitted disclosures. While this list is intended to be illustrative rather than exhaustive, the Commission has decided to include this disclosure in the examples provided to remove any uncertainly that may exist.

One comment suggested adding language to the text of the Rule that introduces the examples of improper disclosures to provide that these examples are only improper absent disclosures elsewhere in the advertisement that clearly indicate the method of measurement utilized to obtain the given dimensions.[23] The Commission would be concerned that combining improper and proper disclosures in the same advertisement could engender consumer confusion or deception. Thus, the Commission has determined not to amend the Rule as suggested by this comment.

One of the examples identified in the Rule as being unacceptable is "21 inch over-all diagonal—262 square inch picture." One comment suggested deleting the second half of the example that refers to square inch measurements, so as to permit such measurements for wide-screen televisions.[24] While the Commission has no information on the likelihood of manufacturers of wide-screen televisions using square inch dimensions rather than the more traditional forms of measurement, the Rule does not prohibit measurements based on square inches. Rather, the example cited above is intended only to convey that the term, "overall" is inappropriate, regardless of whether it is accompanied by the square inch dimensions of the viewable picture screen. To avoid confusion and to emphasize the phrase that causes concern, the Commission has determined to modify the example "21 inch over-all diagonal—262 square inch picture" in the list of unacceptable disclosures to read "21 inch over-all diagonal."

5. Does This Rule Overlap or Conflict With Other Federal, State, or Local Government Laws or Regulations?

None of the commenters were aware of any law or regulation that conflicted or overlapped with the Picture Tube Rule.

6. Have Technology or Economic Conditions Changed Since This Rule Was Issued, and, If So, What Effect Do These Changes Have on the Rule?

The Picture Tube Rule was first promulgated in 1966. Since then, both technology and economic conditions have changed significantly. A much greater percentage of households owns one or more televisions. Television sets have become more complex and offer an array of features. The television industry itself has expanded considerably, with the advent of cable and satellite television, and the introduction of interactive television combined with personal computers and telecommunications. However, none of these changes require any modification of the Picture Tube Rule.

[16] 31 FR 3342 (March 3, 1966).

[17] Comment of Zenith at 1–2.

[18] Comment of Zenith at 3.

[19] See FTC's Deception Statement, 103 F.T.C. 110, 180 (1983). See also *Thompson Medical Co.*, 104 F.T.C. 648, 797–98 (1984), *aff'd*, 791 F.2d 189 (D.C. Cir. 1986), *cert. denied*, 488 U.S. 955 (1988); *Standard Oil Co. of California*, 84 F.T.C. 1401, 1471 (1974), *aff'd as modified*, 577 F.2d 653 (9th Cir. 1978).

[20] Comment of Zenith at 3.

[21] Letter from Carthon A. Aldhizer, Attorney, Division of Rules and Guides, Federal Trade Commission, to Mr. Jack Wyman, Staff Vice President, Consumer Electronics Group of the Electronic Industries Association (Feb. 2, 1972).

[22] Comment of Zenith at 3.

[23] Comment of Zenith at 3–4.

[24] Comment of Zenith at 4.

The technological change with the closest nexus to the Picture Tube Rule is the introduction of high definition television (HDTV), and the new, wider screens used to display these enhanced digital pictures. Most television screens today have horizontal/vertical dimensions in a 5:3 proportion, or aspect ratio, but the screens for the HDTV have a 16:9 aspect ratio.[25] The new ratio, however, does not necessitate any changes to the Rule, because the existing provisions can easily be applied to the new screens. HDTVs may be advertised as "46 inch diagonal" sets. Most consumers are familiar with this type of measurement for televisions, and will be able to use this measurement to compare different brands of HDTVs, as well as between high definition and more traditional screens. *TV Digest*, a trade industry publication, has suggested adding a "W" (for wide-screen) to the diagonal measure of the new 16:9 television screens.[26] Nothing in the existing Rule would prohibit this designation. However, the Commission does not believe the designation is necessary to avoid consumer deception or confusion because the "46 inch diagonal" or any other measurement allowed under the Rule should provide consumers with adequate information as to the size of the HDTV. Consequently, no additional designation such as "W" is required under the Rule for wide-screen televisions.

One commenter suggested that the Picture Tube Rule be expanded to encompass video display terminals for computer monitors. He indicated that he had purchased a monitor advertised as measuring 14 inches, but discovered that the actual dimensions of the viewable area were 13 inches.[27] Currently, the Rule is limited to "television receiving sets" and does not encompass computer monitors. The Commission is considering measurement problems with regard to computer monitors, but has determined not to initiate a rulemaking proceeding to amend the Picture Tube Rule at this time. Rather, the Commission is reviewing the extent of problems in this area, and is exploring other possible options for addressing such problems.

III. Effective Date

These non-substantive amendments to the Rule will become effective thirty days after publication in the **Federal Register**.

[25] Comments of Electronic Industries Association at 2–3; Zenith at 4–5.

[26] Comment of Zenith at 5.

[27] Comment of Chuck Cooper at 1.

List of Subjects in 16 CFR Part 410

Advertising, Picture tubes, Television sets, Trade practices.

Accordingly, part 410 of 16 CFR is amended as follows:

PART 410—DECEPTIVE ADVERTISING AS TO SIZES OF VIEWABLE PICTURES SHOWN BY TELEVISION RECEIVING SETS

1. The authority citation for part 410 continues to read as follows:

Authority: 38 Stat. 717 as amended, 15 U.S.C. 41–58.

2. Section 410.1 is amended by revising the examples for Note 2, and by adding Note 3 to read as follows:

§ 410.1 The rule.

* * * * *

Note 2: * * *

Examples of proper size descriptions when a television receiving set shows a 20-inch picture measured diagonally, a 19-inch picture measured horizontally, a 15-inch picture measured vertically, and a picture area of 262 square inches include:

"20 inch (50.80 cm) picture measured diagonally" or
"20 inch (50.80 cm) diagonal"
"19 inch × 15 inch (48.26 cm × 38.10 cm) picture" or
"19 inch (48.26 cm) picture" or
"19 inch (48.26 cm)" or
"262 square inch (1,690.32 cm. sq.) picture."

Examples of improper size descriptions of a television set showing a picture of the size described above include:

"21 inch (53.34 cm) set" or
"21 inch (53.34 cm) diagonal set" or
"21 inch (53.34 cm) over-all diagonal" or
"Brand Name 21."

Note 3: The numbers in parentheses reflect the metric equivalent of the English measurements. They are provided for information purposes only, and are not required to be included in the disclosures.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 94–27012 Filed 11–1–94; 8:45 am]

BILLING CODE 6750–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–34908, International Series Release No. 736, File No. S7–18–93]

RIN 3235–AF88

Exemption of the Securities of the Kingdom of Spain Under the Securities Exchange Act of 1934 for Purposes of Trading Futures Contracts on Those Securities

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission adopts an amendment to Rule 3a12–8 [17 CFR 240.3a12–8] under the Securities Exchange Act of 1934 that would designate debt obligations issued by the Kingdom of Spain as "exempted securities." The purpose of this amendment is to permit the marketing and trading of futures contracts on those securities in the United States or to U.S. persons. This change is not intended to have any substantive effect on the operation of the Rule.

EFFECTIVE DATE: November 2, 1994.

FOR FURTHER INFORMATION CONTACT: Francois-Ihor Mazur, Attorney, Office of Market Supervision, Division of Market Regulation, Securities and Exchange Commission (Mail Stop 5–1), 450 Fifth Street, N.W., Washington, D.C. 20549, at 202/942–0184.

SUPPLEMENTARY INFORMATION:

I. Introduction

Under the Commodity Exchange Act ("CEA"), it is unlawful to trade a futures contract on any individual security, unless the security in question is an exempted security (other than a municipal security) for the purposes of the Securities Act of 1933 ("Securities Act") or the Securities Exchange Act of 1934 ("Exchange Act").[1] Debt obligations of foreign governments are not exempted securities under either of these statutes. The Securities and Exchange Commission ("Commission" or "SEC"), however, has the authority to designate securities as exempted securities for purposes of the Exchange Act.

In order to facilitate the trading of futures contracts on debt securities of certain foreign governments by U.S. persons, the Commission has adopted

[1] The term "exempted security" is defined in Section 3 of the Securities Act, 15 U.S.C. 77c, and Section 3(a)(12) of the Exchange Act, 15 U.S.C. 78c(a)(12).

Rule 3a12–8 under the Exchange Act ("Rule")[2] to designate debt obligations issued by certain foreign governments as exempted securities under the Exchange Act solely for the purpose of marketing and trading futures contracts on those securities in the United States or to U.S. persons.[3] Currently, the foreign governments listed in the Rule are Great Britain, Canada, Japan, Australia, France, New Zealand, Austria, Denmark, Finland, the Netherlands, Switzerland, Germany, Ireland, and Italy (the "fourteen designated countries"). As a result, futures contracts on the debt obligations of these countries may be sold to U.S. persons, so long as the other terms of the Rule are satisfied.[4]

On May 5, 1993, the Commission issued a release proposing to amend Rule 3a12–8 to designate the debt obligations of the Kingdom of Spain ("Spain") as exempt securities, solely for the purpose of futures trading.[5] The Commission received two comment letters concerning the proposal from the same commenter.[6]

The Commission is adopting this amendment to the Rule, adding Spain to the list of countries whose debt obligations are exempted by Rule 3a12–8. In order to qualify for the exemption, futures contracts on debt obligations of Spain would have to meet all the other existing requirements of the Rule.

II. Background

Section 2(a)(1)(B)(v) of the CEA,[7] which was adopted as part of the Futures Trading Act of 1982,[8] provides that it is unlawful to trade a futures contract on an individual security unless that security is an exempted security under Section 3 of the Securities Act or Section 3(a)(12) of the Exchange Act.[9] These sections of the Securities Act and the Exchange Act explicitly designate certain securities, including government securities and municipal securities, as exempted securities. Securities issued by foreign governments, however, are not "government securities" within the meaning of the federal securities laws.[10] Therefore, securities issued by foreign governments are not deemed to be exempted securities under the statutory language.

Section 3(a)(12) of the Exchange Act, however, provides the Commission with the authority to designate other securities as exempted securities, either unconditionally or for specified purposes.[11] Rule 3a12–8 was adopted in 1984[12] pursuant to this exemptive authority in order to facilitate the trading of futures contracts on securities of foreign governments by U.S. persons.[13] As originally adopted, the Rule provided that debt obligations of Canada and the United Kingdom would be deemed to be exempted securities, solely for the purpose of permitting the offer, sale, and confirmation of "qualifying foreign futures contracts" on such securities, so long as the securities in question were neither registered under the Securities Act nor the subject of any American Depositary Receipt so registered. A futures contract on such a debt obligation is deemed under the Rule to be a "qualifying foreign futures contract" if delivery under the contract is settled outside the United States and is traded on a board of trade.[14]

The conditions imposed by the Rule were intended to facilitate the trading of futures contracts on foreign government securities without sacrificing the longstanding policy under the federal securities laws of requiring foreign government securities to comply with the basic requirements of the federal securities laws in order to be marketed and traded in the United States. Accordingly, the conditions set forth in the Rule were designed to ensure that, absent registration, a domestic market in unregistered foreign government securities would not develop, and that markets for futures on these instruments would not be used to avoid the registration requirements and other provisions of the federal securities laws.

When the Commission originally proposed Rule 3a12–8, it recognized that the Rule might require amendment in the future to extend its provisions to debt obligations of other foreign governments.[15] Subsequently, the Commission amended the Rule to include within its coverage debt obligations issued by Japan, Australia, France, New Zealand, Austria, Denmark, Finland, the Netherlands, Switzerland, Germany, Ireland, and Italy.[16]

Rule 3a12–8 has not been amended since 1992. Futures overlying Spanish

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[2] 17 CFR 240.3a12–8 (1992).

[3] Under the Rule, the trading of futures on foreign government securities exempted by the Rule is permitted only on or through a board of trade. 17 CFR 240.3a12–8(a)(2) (1992).

[4] *See infra* note 14 and accompanying text for a discussion of the other terms of the Rule that must be satisfied in order for these contracts to be marketed or traded in the United States.

[5] Securities Exchange Act Release No. 32265 (May 5, 1993), 58 FR 27684 (May 11, 1993).

[6] Letter from Antonio Garcia Rebollar, Deputy Director, Ministerio de Economia y Hacienda, Direccion General del Tesoro y Politica Financiera to Jonathan G. Katz, Secretary, Commission, dated May 31, 1993; and letter from Antonio Garcia Rebollar to Howard Kramer, Associate Director, Division of Market Regulation, Commission, dated November 24, 1993, described *infra* notes 19–22 and accompanying text.

[7] 7 U.S.C. 2(1)(B)(v) (1991).

[8] Pub. L. No. 97–444, 96 Stat. 2294, 7 U.S.C. 1 *et seq.* [codified at 7 U.S.C. 2(a)].

[9] Section 2(a)(1)(B)(v) of the CEA, 7 U.S.C. 2(1)(B)(v) (1991), provides that "[n]o person shall offer to enter into, enter into, or confirm the execution of any contract of sale (or option on such contract) for future delivery of any security, or interest therein or based on the value thereof, except an exempted security under Section 3 of the Securities Act * * * or Section 3(a)(12) of the [Exchange Act] * * *."

[10] *See* Exchange Act Section 3(a)(42), 15 U.S.C. 78c(a)(42) (defining the term "government security" for purposes of the Exchange Act).

[11] 15 U.S.C. 78c(a)(12).

[12] Securities Exchange Act Release Nos. 20708 ("Adopting Release") (March 2, 1984), 49 FR 8595 (March 8, 1984) and 19811 ("Proposing Release") (May 25, 1983), 48 FR 24725 (June 2, 1983).

[13] The marketing and trading of foreign futures contracts to U.S. persons is subject to regulation by the Commodity Futures Trading Commission ("CFTC"). In particular, Section 4b of the CEA, 7 U.S.C. 6b, authorizes the CFTC to regulate the offer and sale of foreign futures contracts to U.S. persons, and Rule 9, 17 CFR 30.9, promulgated under Section 2(a)(1)(A) of the CEA, 7 U.S.C. 2(1)(A), is intended to prohibit fraud in connection with the offer and sale to U.S. persons of futures contracts executed on foreign exchanges. Additional rules promulgated under Section 2(a)(1)(A) of the CEA, 7 U.S.C. 2(1)(A), govern the domestic offer and sale of futures and options contracts traded on foreign boards of trade. These rules require, among other things, that the domestic offer and sale of foreign futures be effected through CFTC registrants or through entities subject to a foreign regulatory framework comparable to that governing domestic futures trading. *See* 17 CFR 30.3, 30.4, and 30.5 (1991). In enacting the Futures Trading Act of 1982, Congress expressed its understanding that neither the SEC nor the CFTC had intended to bar the sale of futures contracts on debt obligations of the United Kingdom of Great Britain and Northern Ireland ("United Kingdom") to U.S. persons, and its expectation that administrative action would be taken to allow the sale of such futures contracts in the United States. *See* Proposing Release, supra note 12, 48 FR at 24725 [citing 128 Cong. Rec. H7492 (daily ed. September 23, 1982) (statements of Representatives Daschle and Wirth)].

[14] As originally adopted, the Rule required that the board of trade be located in the country that issued the underlying securities. This requirement was eliminated in 1987. *See* Securities Exchange Act Release No. 24209 (March 12, 1987), 52 FR 8875 (March 20, 1987).

[15] *See* Proposing Release, *supra* note 12, 48 FR at 24726–27.

[16] As noted above, the Rule as originally adopted applied only to debt obligations of Canada and the United Kingdom. Adopting Release, *supra* note 12. In 1986, the rule was amended to include debt obligations of Japan. Securities Exchange Act Release No. 23423 (July 11, 1986), 51 FR 25996 (July 18, 1986). In 1987, the Rule was amended to include debt obligations of Australia, France, and New Zealand. Securities Exchange Act Release No. 25072 (October 29, 1987), 52 FR 42277 (November 4, 1987). In 1988, the Rule was amended to include debt obligations of Austria, Denmark, Finland, the Netherlands, Switzerland, and West Germany. Securities Exchange Act Release No. 26217 (October 26, 1988), 53 FR 43860 (October 31, 1988). In 1992, the Rule was again amended to (1) include debt obligations of the Republics of Ireland and Italy, (2) change the country designation of "West Germany" to the "Federal Republic of Germany," and (3) replace all references to the informal names of the countries listed in the Rule with references to their official names. Securities Exchange Act Release No. 30166 (January 6, 1992), 57 FR 1375.

government bonds originally were, and currently are, only traded on the Mercado de Futuros Financieros ("Meff"), a Spanish financial futures exchange located in Barcelona, Spain. For several months in 1993, the London International Financial Futures and Options Exchange ("LIFFE") traded a futures contract based on Spanish government bonds denominated in Pesetas.[17] The Commission has been informed that U.S. citizens may be interested in derivative products based on securities issued by foreign governments, including Spain, and has received a request that Rule 3a12–8 be amended to facilitate such trading.[18]

The Commission is amending Rule 3a12–8 to add Spain to the list of countries whose debt obligations are deemed to be "exempted securities" under the terms of the Rule. Under this amendment, the existing conditions set forth in the Rule (*i.e.*, that the underlying securities not be registered in the United States, that the futures contracts require delivery outside the United States, and that the contracts be traded on a board of trade) would continue to apply. This should ensure that a domestic market in the unregistered foreign sovereign debt of Spain does not develop. Therefore, the amendment should pose no risk for investors in the U.S. securities market.

III. Discussion

The Commission received two comment letters from the Finance Ministry of Spain in response to the proposal.[19] The first letter objected to the rating of Aa2 by Moody's Investors Service ("Moody's") and AA by Standard and Poor's ("S&P"), stating that such debt obligations should receive the same rating as two public Spanish companies: Red Nacional de Ferrocarriles Espanoles ("RENFE") and Instituto Nacional de Industria ("INI").[20] The letter also voiced concerns about the possible effects the rule proposal might have on Spain's debt management and policies, and requested further time to study such effects.[21]

The second comment letter stated that further study indicated that designating Spain's debt obligations as "exempted securities" would be positive for Spain's debt management and policies. However, the letter reasserted the first concern relating to the assigned rating for Spain's debt obligations.[22]

For the reasons discussed below, and in light of the comment letters received, the Commission has determined that Rule 3a12–8 should be amended to include the debt obligations of Spain. The Commission believes that the debt obligations of Spain should be subject to the same regulatory treatment under the Rule as those of the fourteen designated countries for purposes of trading futures contracts on such debt obligations by U.S. persons. Like the debt obligations of the fourteen designated countries,[23] the long-term debt obligations of Spain are rated in one of the two highest rating categories by at least two nationally recognized statistical rating organizations.[24] For purposes of the Rule, the Commission is aware of no material differences between the debt obligations of Spain and those of the fourteen designated countries. Although the commenter believed the assigned rating for Spain's debt obligations should be in the highest rating category, that issue is not relevant to the Commission's determination to amend the Rule.

Additionally, the Commission believes that there are no valid legal or policy reasons for denying U.S. investors the ability to trade futures on debt obligations of Spain. Moreover, the availability to U.S. investors of these hedging vehicles will allow such investors to take advantage of the growing globalization of the securities markets.

IV. Regulatory Flexibility Act Consideration

Former Chairman Breeden certified in connection with the Release proposing the amendment to the Rule[25] that this amendment, if adopted, would not have a significant economic impact on a substantial number of small entities. The Commission received no comments on this certification.

V. Effects on Competition and Other Findings

Section 23(a)(2) of the Exchange Act[26] requires the Commission, in adopting rules under the Exchange Act, to consider the competitive effects of such rules, if any, and to balance any impact with the regulatory benefits gained in terms of furthering the purposes of the Exchange Act. The Commission has considered the amendments to the Rule in light of the standards cited in Section 23(a)(2) and believes that adoption of the amendments will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. As stated above, the amendment is designed to assure the lawful availability in this country of Spanish government bond futures that otherwise would not be permitted to be marketed under the terms of the CEA. The amendment thus serves to expand the range of financial products available in the United States and enhances competition in financial markets. Insofar as the Rule contains limitations, they are designed to promote the purposes of the Exchange Act by ensuring that futures trading on Spanish government securities is consistent with the goals and purposes of the federal securities laws by minimizing the impact of the Rule on securities trading and distribution in the United States.

The Commission finds, in accordance with the Administrative Procedure Act,[27] that the amendments to the rule are exemptive in nature. Accordingly, the Commission has determined to make the foregoing action effective immediately upon publication in the **Federal Register**.

VI. Statutory Basis

The amendments to Rule 3a12–8 are being adopted pursuant to 15 U.S.C. 78a *et seq.*, particularly Sections 3(a)(12) and 23(a), 15 U.S.C. 78c(a)(12) and 78w(a).

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

For the reasons set forth above, the Commission is amending Part 240 of Chapter II, Title 17 of the *Code of Federal Regulations* as follows:

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[17] *See LIFFE Prepares Spanish 10–Year Bond Contract*, FINANCIAL TIMES, February 3, 1993; *LIFFE Suspends Spanish Bond Contract Delivery*, REUTERS, August 4, 1993.

[18] Letter from Wesley G. Nissen, Katten Muchin & Zavis, to William H. Heyman, Director, Division of Market Regulation, Commission, dated January 14, 1993. Subsequent to the LIFFE request, the Commission published a proposal to amend Rule 3a12–8 to include Spanish sovereign debt. Shortly thereafter, LIFFE ceased to trade futures on Spanish debt. Recently, the Commission has been apprised of continuing interest by market participants in the proposed amendment to Rule 3a12–8 because of the trading on the MEFF of futures on Spanish government debt.

[19] *See supra* note 6.

[20] Letter from Antonio Garcia Rebollar, dated May 31, 1993, *supra* note 6. According to the commenter, RENFE and INI both received AAA ratings from Moody's and S&P. *Id.*

[21] *Id.*

[22] Letter from Antonio Garcia Rebollar, dated November 24, 1993, *supra* note 6.

[23] In amending the Rule to exempt the debt securities of other countries, the Commission has noted that the long-term sovereign debt of such countries was rated in one of the two highest rating categories by at least two nationally recognized statistical rating organizations. *See, e.g.*, Securities Exchange Act Release No. 30166 (January 6, 1992), 57 FR 1375 (amending the Rule to exempt the debt securities of the Republics of Ireland and Italy).

[24] Spain's long-term sovereign debt is rated Aa2 by Moody's and AA by S&P.

[25] *See supra* note 5.

[26] 15 U.S.C. 78w(a)(2) (1988).

[27] 15 U.S.C. 553(d) (1988).

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. Section 240.3a12–8 is amended by removing the word "or" at the end of paragraph (a)(1)(xiii), removing the "period" at the end of paragraph (a)(1)(xiv) and adding "; or" in its place, and adding paragraph (a)(1)(xv) to read as follows:

§ 240.3a12–8 Exemption for designated foreign government securities for purposes of futures trading.

(a) * * *

(1) * * *

(xv) the Kingdom of Spain.

* * * * *

By the Commission.

Dated: October 27, 1994.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–27161 Filed 11–1–94; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 11

[Docket No. RM86–2–000]

Update of the Federal Energy Regulatory Commission's Fees Schedule for Annual Charges for the Use of Government Lands

October 28, 1994.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; update of Federal land use fees.

SUMMARY: On May 8, 1987, the Commission issued its final rule amending Part 11 of its regulations (Order No. 469, 52 FR 18201, May 14, 1987). The final rule revised the billing procedures for annual charges for administering Part I of the Federal Power Act, the billing procedures for charges for Federal dam and land use, and the methodology for assessing Federal land use charges.

In accordance with the Commission's regulations, the Commission by its designee, the Executive Director, is updating its schedule of fees for the use of government lands. The yearly update is determined by adapting the most recent schedule of fees for the use of linear rights-of-way prepared by the United States Forest Service. Since the next fiscal year will cover the period from October 1, 1994, through September 30, 1995, the fees in this notice will become effective October 1, 1994. The fees will apply to fiscal year 1995 annual charges for the use of government lands.

EFFECTIVE DATE: October 1, 1994.

FOR FURTHER INFORMATION CONTACT: Diane E. Bernier, Financial Services Division, Office of the Executive Director and Chief Financial Officer, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, (202) 219–2886.

SUPPLEMENTARY INFORMATION: In accordance with Section 11.2, 18 CFR, the land values included in this document will be published in the **Federal Register**. In addition, the Commission provides all interested persons an opportunity to inspect or copy contents of this document during normal business hours in Room 3104 at the Commission's Headquarters, 941 North Capitol Street NE., Washington, D.C. 20426.

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

List of Subjects in 18 CFR Part 11

Electric power, Reporting and recordkeeping requirements.

Christie McGue,

Executive Director and Chief Financial Officer.

Accordingly, the Commission, effective October 1, 1994, amends Part 11 of Chapter I, Title 18 of the Code of Federal Regulations, as set forth below.

PART 11—[AMENDED]

1. The authority citation for Part 11 continues to read as follows:

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

2. In Part 11, Appendix A is revised to read as follows:

APPENDIX A TO PART 11

[Fee Schedule for FY 1995]

STATE AND COUNTY	RATE PER ACRE
ALABAMA: ALL COUNTIES	$22.97
ARKANSAS: ALL COUNTIES	17.23
ARIZONA:	
APACHE, COCHISE, GILA, GRAHAM, LA PAZ, MOHAVE, NAVAJO, PIMA, YAVAPAI, YUMA, COCONINO NORTH OF COLORADO RIVER	5.74
COCONINO SOUTH OF COLORADO RIVER, GREENLEE, MARICOPA, PINAL, SANTA CRUZ	22.97
CALIFORNIA:	
IMPERIAL, INYO, LASSEN, MODOC, RIVERSIDE, SAN BERNARDINO	11.48
SISKIYOU	17.23

APPENDIX A TO PART 11—Continued

[Fee Schedule for FY 1995]

STATE AND COUNTY	RATE PER ACRE
AMEDA, ALPINE, AMADOR, BUTTE, CALAVERAS, COLUSA, CONTRA COSTA, DEL NORTE, EL DORADO, FRESNO, GLENN, HUMBOLDT, KERN, KINGS, LAKE, MADERA, MARIPOSA, MENDOCINO, MERCED, MONO, NAPA, NEVADA, PLACER, PLUMAS, SACRAMENTO, SAN BENITO, SAN JOAQUIN, SANTA CLARA, SHASTA, SIERRA, SOLANO, SONOMA, STANISLAUS, SUTTER, TEHAMA, TRINITY, TULARE, TUOLUMNE, YOLO, YUBA	28.70
LOS ANGELES, MARIN, MONTEREY, ORANGE, SAN DIEGO, SAN FRANCISCO, SAN LUIS OBISPO, SAN MATEO, SANTA BARBARA, SANTA CRUZ, VENTURA	34.46
COLORADO:	
ADAMS, ARAPAHOE, BENT, CHEYENNE, CROWLEY, ELBERT, EL PASO, HUERFANO, KIOWA, KIT CARSON, LINCOLN, LOGAN, MOFFAT, MONTEZUMA, MORGAN, PUEBLO, SEDGWICK, WASHINGTON, WELD, YUMA	5.74
BACA, DOLORES, GARFIELD, LAS ANIMAS, MESA, MONTROSE, OTERO, PROWERS, RIO BLANCO, ROUTT, SAN MIGUEL	11.48
ALAMOSA, ARCHULETA, BOULDER, CHAFFEE, CLEAR CREEK, CONEJOS, COSTILLA, CUSTER, DENVER, DELTA, DOUGLAS, EAGLE, FREMONT, GILPIN, GRAND, GUNNISON, HINSDALE, JACKSON, JEFFERSON, LAKE, LA PLATA, LARIMER, MINERAL, OURAY, PARK, PITKIN, RIO GRANDE, SAGUACHE, SAN JUAN, SUMMIT, TELLER	22.97
CONNECTICUT: ALL COUNTIES	5.74
FLORIDA:	
BAKER, BAY, BRADFORD, CALHOUN, CLAY, COLUMBIA, DIXIE, DUVAL, ESCAMBIA, FRANKLIN, GADSDEN, GILCHRIST, GULF, HAMILTON, HOLMES, JACKSON, JEFFERSON, LAFAYETTE, LEON, LIBERTY, MADISON, NASSAU, OKALOOSSA, SANTA ROSA, SUWANNEE, TAYLOR, UNION, WAKULLA, WALTON, WASHINGTON	34.46
ALL OTHER COUNTIES	57.43
GEORGIA: ALL COUNTIES	34.46
IDAHO:	
CASSIA, GOODING, JEROME, LINCOLN, MINIDOKA, ONEIDA, OWYHEE, POWER, TWIN FALLS	5.74
ADA, ADAMS, BANNOCK, BEAR LAKE, BENEWAH, BINGHAM, BLAINE, BOISE, BONNER, BONNEVILLE, BOUNDARY, BUTTE, CAMAS, CANYON, CARIBOU, CLARK, CLEARWATER, CUSTER, ELMORE, FRANKLIN, FREMONT, GEM, IDAHO, JEFFERSON, KOOTENAI, LATAH, LEMHI, LEWIS, MADISON, NEZ PERCE, PAYETTE, SHOSHONE, TETON, VALLEY, WASHINGTON	17.23
KANSAS:	
ALL OTHER COUNTIES	5.74
MORTON	11.48
ILLINOIS: ALL COUNTIES	17.23
INDIANA: ALL COUNTIES	28.70
KENTUCKY: ALL COUNTIES	17.23
LOUISIANA: ALL COUNTIES	34.46
MAINE: ALL COUNTIES	17.23
MICHIGAN:	
ALGER, BARAGA, CHIPPEWA, DICKINSON, DELTA, GOGEBIC, HOUGHTON, IRON, KEWEENAW, LUCE, MACKINAC, MARQUETTE, MENOMINEE, ONTONAGON, SCHOOLCRAFT	17.23
ALL OTHER COUNTIES	22.97
MINNESOTA: ALL COUNTIES	17.23
MISSISSIPPI: ALL COUNTIES	22.97
MISSOURI: ALL COUNTIES	17.23
MONTANA:	
BIG HORN, BLAINE, CARTER, CASCADE, CHOUTEAU, CUSTER, DANIELS, McCONE, MEAGHER, DAWSON, FALLON, FERGUS, GARFIELD, GLACIER, GOLDEN VALLEY, HILL, JUDITH BASIN, LIBERTY, MUSSELSHELL, PETROLEUM, PHILLIPS, PONDERA, POWDER RIVER, PRAIRIE, RICHLAND, ROOSEVELT, ROSEBUD, SHERIDAN, TETON, TOOLE, TREASURE, VALLEY, WHEATLAND, WIBAUX, YELLOWSTONE	5.74
BEAVERHEAD, BROADWATER, CARBON, DEER LODGE, FLATHEAD, GALLATIN, GRANITE, JEFFERSON, LAKE, LEWIS & CLARK, LINCOLN, MADISON, MINERAL, MISSOULA, PARK, POWELL, RAVALLI, SANDERS, SILVER BOW, STILLWATER, SWEET GRASS	17.23
NEBRASKA: ALL COUNTIES	5.74
NEVADA:	
CHURCHILL, CLARK, ELKO, ESMERALDA, EUREKA, HUMBOLDT, LANDER, LINCOLN, LYON, MINERAL, NYE, PERSHING, WASHOE, WHITE PINE	2.87
CARSON CITY, DOUGLAS, STOREY	28.70
NEW HAMPSHIRE: ALL COUNTIES	17.23
NEW MEXICO:	
CHAVES, CURRY, DE BACA, DONA ANA, EDDY, GRANT, GUADELUPE, HARDING, HIDALGO, LEA, LUNA, MCKINLEY, OTERO, QUAY, ROOSEVELT, SAN JUAN, SOCORRO, TORRANCE	5.74
RIO ARRIBA, SANDOUAL, UNION	11.48
BERNALILLO, CATRON, CIBOLA, COLFAX, LINCOLN, LOS ALAMOS, MORA, SAN MIGUEL, SANTA FE, SIERRA, TAOS, VALENCIA	22.97
NEW YORK: ALL COUNTIES	22.97
NORTH CAROLINA: ALL COUNTIES	34.46
NORTH DAKOTA: ALL COUNTIES	5.74
OHIO: ALL COUNTIES	22.97
OKLAHOMA:	
ALL OTHER COUNTIES	5.74
BEAVER, CIMARRON, ROGER MILLS, TEXAS	11.48
LE FLORE, MC CURTAIN	17.23

APPENDIX A TO PART 11—Continued

[Fee Schedule for FY 1995]

STATE AND COUNTY	RATE PER ACRE
OREGON:	
HARNEY, LAKE, MALHEUR	5.74
BAKER, CROOK, DESCHUTES, GILLIAM, GRANT, JEFFERSON, KLAMATH, MORROW, SHERMAN, UMATILLA, UNION, WALLOWA, WASCO, WHEELER	11.48
COOS, CURRY, DOUGLAS, JACKSON, JOSEPHINE	17.23
BENTON, CLACKAMAS, CLATSOP, COLUMBIA, HOOD RIVER, LANE, LINCOLN, LINN, MARION, MULTNOMAH, POLK, TILLAMOCK, WASHINGTON, YAMHILL	22.97
PENNSYLVANIA: ALL COUNTIES	22.97
PUERTO RICO: ALL	34.46
SOUTH DAKOTA:	
BUTTE, CUSTER, FALL RIVER, LAWRENCE, MEAD, PENNINGTON	17.23
ALL OTHER COUNTIES	5.74
SOUTH CAROLINA: ALL COUNTIES	34.46
TENNESSEE: ALL COUNTIES	22.97
TEXAS:	
CULBERSON, EL PASO, HUDSPETH	5.74
ALL OTHER COUNTIES	34.46
UTAH:	
BEAVER, BOX ELDER, CARBON, DUCHESNE, EMERY, GARFIELD, GRAND, IRON, JAUB, KANE, MILLARD, SAN JUAN, TOOELE, UINTAH, WAYNE	5.74
WASHINGTON	11.48
CACHE, DAGGETT, DAVIS, MORGAN, PIUTE, RICH, SALT LAKE, SANPETE, SEVIER, SUMMIT, UTAH, WASATCH, WEBER	17.23
VERMONT: ALL COUNTIES	22.97
VIRGINIA: ALL COUNTIES	22.97
WASHINGTON:	
ADAMS, ASOTIN, BENTON, CHELAN, COLUMBIA, DOUGLAS, FRANKLIN, GARFIELD, GRANT, KITTITAS, KLICKITAT, LINCOLN, OKANAGAN, SPOKANE, WALLA WALLA, WHITMAN, YAKIMA	11.48
FERRY, PEND OREILLE, STEVENS	17.23
CALLAM, CLARK, COWLITZ, GRAY HARBOR, ISLAND, JEFFERSON, KING, KITSAP, LEWIS, MASON, PACIFIC, PIERCE, SAN JUAN, SKAGIT, SKAMANIA, SNOHOMISH, THURSTON, WAHKIAKUM, WHATCOM	22.97
WEST VIRGINIA: ALL COUNTIES	22.97
WISCONSIN: ALL COUNTIES	17.23
WYOMING:	
ALBANY, CAMPBELL, CARGON, CONVERSE, GOSHEN, HOT SPRINGS, JOHNSON, LARAMIE, LINCOLN, NATRONA, NIOBRARA, PLATTE, SHERIDAN, SWEETWATER, FREMONT, SUBLETTE, UINTA, WASHAKIE	5.74
BIG HORN, CROOK, PARK, TETON, WESTON	17.23
ALL OTHER ZONES:	5.41

[FR Doc. 94–27140 Filed 11–1–94; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 12

[T.D. 94–84]

RIN 1515–AB63

Extension of Import Restrictions on Maya Artifacts From the Peten Region, Guatemala

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to reflect the extension of the import restrictions on Maya artifacts from the Peten Region, Guatemala which were imposed by T.D. 91–34. The Deputy Director of the United States Information Agency has determined that the emergency conditions which originally warranted the imposition of import restrictions still exist. Accordingly, the restrictions will continue to be in effect for an additional three years, and the Customs Regulations are being amended to indicate this extension.

EFFECTIVE DATE: November 2, 1994.

FOR FURTHER INFORMATION CONTACT: *Legal Aspects:* Donnette Rimmer, Intellectual Property Rights Branch, (202) 482–6960.

Operational Aspects: Leo Wells, Office of Trade Operations (202) 927–0300.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to the provisions of the Convention on Cultural Property Implementation Act, the Deputy Director of the United States Information Agency (USIA), after consultation with the Secretaries of State and Treasury, determined that Maya artifacts from the Peten Region, Guatemala were in danger of pillage and looting, and that an emergency condition existed which warranted the imposition of a prohibition on the importation of such articles into the United States. In T.D. 91–34, the Customs Service announced the imposition of import restrictions and identified the types of articles covered by the restrictions.

The Deputy Director of the USIA has considered the recommendations of the Cultural Property Advisory Committee and determined that the emergency conditions which warranted imposition of the initial restrictions still exist and has decided to extend the import restrictions for another three years. (See 59 FR 50038, September 30, 1994.)

Accordingly, Customs is amending § 12.104g (19 CFR 12.104g) to reflect the extension of the import restriction.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Order 12866

This amendment does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Inapplicability of Notice and Delayed Effective Date

Because this amendment reflects the extension of emergency import restrictions on cultural property which is currently subject to pillage and looting, pursuant to § 553(b)(B) of the Administrative Procedure Act, no notice of proposed rulemaking or public procedure is necessary. For the same reason, a delayed effective date is both impracticable and contrary to the public interest.

Drafting Information

The principal author of this amendment was Peter T. Lynch, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 12

Customs duties and inspections, Imports, Cultural Property

Amendment to the Regulations

Accordingly, Part 12 of the Customs Regulations (19 CFR Part 12) is amended as set forth below:

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The general and specific authority citation for Part 12 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 17, Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

* * * * *

Sections 12.104–12.104i also issued under 19 U.S.C. 2612.

* * * * *

§ 12.104 [Amended]

2. Section 12.104g(b) is amended by adding, to the table, "extended by 94–84" immediately after the entry "91–34" in the column headed "T.D. No." adjacent to the entry for Guatemala.

Dated: October 21, 1994.

George J. Weise,

Commissioner of Customs.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 94–27148 Filed 11–1–94; 8:45 am]

BILLING CODE 4820–02–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1601

706 Agencies; Arlington County (VA) Human Rights Commission

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission amends its regulations designating certain State and local fair employment practices agencies as certified designated agencies. The designation permits the Commission to accept the findings and resolutions of State and local fair employment practices agencies in regard to most cases processed under contract without individual, case-by-case substantial weight reviews by the Commission. Publication of this amendment effectuates the designation of the Arlington County (VA) Human Rights Commission as a certified designated FEP agency.

EFFECTIVE DATE: November 2, 1994.

FOR FURTHER INFORMATION CONTACT: Boyce Nolan, Equal Employment Opportunity Commission, Office of Program Operations, Charge Resolution Review Program, 1801 L Street, N.W., Washington, DC. 10507, Telephone (202) 663–4856.

SUPPLEMENTARY INFORMATION:

List of Subjects in 29 CFR Part 1601

Administrative practice and procedure, Equal employment opportunity, Intergovernmental relations.

PART 1601—PROCEDURAL REGULATIONS

1. The authority citation for part 1601 continues to read as follows:

Authority: 42 U.S.C. 2000e to 2000e–17; 42 U.S.C. 12111 to 12117.

2. Title 29, Chapter XIV of the Code of Federal Regulations, 29 CFR 1601.80 is amended by adding in alphabetical order the following agency:

§ 1601.80 Certified designated FEP agencies.

* * * * *

Arlington County (VA) Human Rights Commission.

* * * * *

Signed at Washington, DC, this 28th day of October, 1994.

For the Commission.

James H. Troy,

Director, Office of Program Operations.

[FR Doc. 94–27137 Filed 11–1–94; 8:45 am]

BILLING CODE 6750–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 0F3893/R2084; FRL–4917–4]

RIN 2070–AB78

Pesticide Tolerance for Metalaxyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for combined residues of the fungicide metalaxyl [*N*-(2,6-dimethylphenyl)-*N*-(methoxyacetyl) alanine methyl ester] and its metabolites containing the 2,6-dimethylaniline moiety, and *N*-(2-hydroxymethyl-6-methyl)-*N*-(methoxyacetyl)-alanine methylester, each expressed as metalaxyl, in or on the raw agricultural commodity leafy vegetables (except Brassica) group (except spinach). Ciba-Geigy Corp. petitioned for this regulation to establish the maximum permissible levels for residues of the fungicide.

EFFECTIVE DATE: October 19, 1994.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 0F3893/R2084], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA

Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Leonard S. Cole, Jr., Acting Product Manager (PM) 21, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202; (703)-305-6900.

SUPPLEMENTARY INFORMATION: EPA issued a notice of filing, published in the **Federal Register** of December 13, 1991 (56 FR 29767), which announced that Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419, had submitted pesticide petition PP 0F3893 to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), establish a tolerance for combined residues of the fungicide metalaxyl [*N*-(2,6-dimethylphenyl)-*N*-(methoxyacetyl) alanine methyl ester] and its metabolites containing the 2,6-dimethylaniline moiety, and *N*-(2-hydroxymethyl-6-methyl)-*N*-(methoxyacetyl)-alanine methylester, each expressed as metalaxyl, in or on the raw agricultural commodity leafy vegetables (except Brassica) group (except spinach) at 5.0 ppm.

There were no comments or requests for referral to an advisory committee received in response to the notice of filing. By way of public reminder, this notice also reiterates the registrant's responsibility under section 6 (a)(2) of FIFRA to submit additional factual information regarding adverse effects on the environment and to human health by the pesticide. The scientific data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the tolerance include:

1. A 3-month dietary study in rats with a no-observed-effect level (NOEL) at 17.5 milligrams per kilogram (mg/kg) body weight (bwt)/day (250 parts per million (ppm)).

2. A developmental toxicity study in rats with a NOEL of 50 mg/kg bwt for developmental toxicity and maternal toxicity.

3. A developmental toxicity study in rabbits with a NOEL of 300 mg/kg bwt, the highest dose tested (HDT). Metalaxyl did not cause developmental toxicity, even in the presence of maternal toxicity.

4. Metalaxyl was negative in bacterial and mammalian gene mutation. The fungicide also did not increase the frequency of reverse mutations in yeast. Metalaxyl was negative in an *in vivo* cytogenetics assay (hamsters) and a dominant-lethal assay (mice). Metalaxyl did not increase unscheduled DNA synthesis in rat primary hepatocytes or in human fibroblasts. These results suggest that metalaxyl is not genotoxic.

5. A three-generation rat reproduction study with a NOEL of 63 mg/kg bwt/day (1,250 ppm).

6. A 6-month dog feeding study with a NOEL of 6.3 mg/kg bwt/day (250 ppm). Effects found at 25 mg/kg were increased serum alkaline phosphatase activity and increased liver weight and liver-to-brain weight ratios without histological changes.

7. A 2-year rat chronic feeding/carcinogenicity study with no compound-related carcinogenic effects under the conditions of the study at dietary levels up to 1,250 ppm. The NOEL is 13 mg/kg bwt/day (250 ppm). The lowest-observed-effect level (LOEL) is 63 mg/kg/day based upon slight increases in liver weight to body weight ratios and periacinar vacuolation of hepatocytes.

8. A 2-year mouse oncogenic study with no compound-related carcinogenic effects under the conditions of the study at dietary levels up to 190 mg/kg/day.

Because of concerns raised over some equivocal increases in tumor incidences in the male mouse liver and the male rat adrenal medulla, and the female rat thyroid, the two chronic feeding studies were submitted to the Environmental Pathology Laboratories (EPL) for an independent reading of the microscopic slides. The new pathological evaluation by EPL and the original reports of the rat and mouse oncogenicity studies were then both submitted for review to EPA's Carcinogen Assessment Group (CAG). A final review of the carcinogenicity studies and related material was performed by the Peer Review Committee of the Toxicology Branch (TB) of the Office of Pesticide Programs (OPP).

The four major issues evaluated by CAG and the peer review group included: (1) Perifollicular cell adenomas in the thyroid of female rats; (2) adrenal medullary tumors (pheochromocytomas) in male rats; (3) liver tumors in male mice; and (4) whether the HDT (1,250 ppm) in the rat and mouse oncogenicity studies represented a maximum-tolerated dose (MTD).

Regarding the thyroid tumors in female rats, the peer review group concluded that the increased incidences of thyroid tumors in females of treated groups were not compound related. This conclusion was based on the following: (1) There was no progression of benign tumors (adenomas) to malignancy (carcinomas); (2) there was no increase in hyperplastic changes; (3) there was no dose-response relationship; and (4) the two reevaluations of the microscopic slides by the pathologists at EPL and TB in OPP further did not confirm any apparent effects observed in the original report.

The issue of a possible treatment-related increase of adrenal medullary gland tumors, namely, pheochromocytomas, in the male rat was also reassessed by both CAG and the Peer Review Committee. Both concluded that the data, especially in view of the reevaluation of the microscopic slides performed by EPL, did not support a compound-related increase of adrenal medullary tumors; the incidence of pheochromocytomas more accurately represented spontaneous variations of a commonly occurring tumor in the aged rat.

The analysis of the significance of the equivocal increase in the incidence of liver tumors in male mice was very similar to that performed for the rat thyroid and adrenal gland tumors. The original pathological reading of the tissue slides reported an elevated increase of tumors in some treatment groups; however, these increases were not evident after a reevaluation of the microscopic slides was performed by an independent pathologist at EPL and by the reading of a CAG pathologist. The Peer Review Committee concurred that the reevaluation of the slides is reliable and does not show any compound-related increase in the incidence of liver tumors in the mouse.

The Agency believes that the data from the rat and mouse long-term studies are sufficient to support the conclusion that metalaxyl does not show a carcinogenic potential in laboratory animals. This conclusion is supported by the following: (1) The doses tested in both the rat and mouse long-term studies approached an MTD based upon compound-related changes in liver weight and/or liver histology; (2) extensive available mutagenic evidence indicates no potential genotoxic activity which correlates with the negative carcinogenic potential demonstrated in long-term testing; (3) metalaxyl is not structurally related to known carcinogens; and (4) under the conditions of the rat and mouse tests, no indication of compound-related carcinogenic effects was noted at any of the treatment doses, sexes, or species.

The chronic dietary exposure analysis used a reference dose (RfD) of 0.08 mg/kg bwt/day, based on a NOEL of 7.8 mg/kg bwt/day and an uncertainty factor of 100. The NOEL is taken from a 6-month

dog feeding study which demonstrated increased alkaline phosphatase activity and an increase in relative liver weights at 30.63 mg/kg bwt/day. The RfD was taken from actual dose values and has thus changed from 0.06 mg/kg bwt/day to the 0.08 used in the analysis.

Food uses evaluated in the residue analysis were the published uses of metalaxyl listed in 40 CFR 180.408 and 185.4000 and the proposed use on leafy vegetables (except Brassica) group (except spinach). In a memo of June 21, 1991, Chemistry Branch Tolerance Support recommended for a tolerance reassessment for metalaxyl on leafy vegetables (except Brassica) group (except spinach). In 40 CFR 180.408 tolerances exist for metalaxyl on leafy vegetables (0.1 ppm), spinach (10 ppm), and head lettuce (5 ppm). Data submitted lead to the proposed new tolerance of 5 ppm for the crop group leafy vegetables (except Brassica) group (except spinach) for metalaxyl.

The nature of the residue is adequately understood, and adequate analytical methods (GLC and AFID) are available for enforcement purposes in the Pesticide Analytical Manual, Vol. II.

A chronic exposure analysis was performed using tolerance level residues and 100-percent-crop-treated information to estimate the Theoretical Maximum Residue Contribution (TMRC) for the general population and 22 subgroups. Percent-crop-treated data were used to calculate the Anticipated Residue Contribution (ARC) for the Dietary Risk Evaluation System (DRES) population subgroups for certain commodities.

The anticipated residue contribution (ARC) for the overall U. S. population from published uses is 6.5×10^{-3} mg/kg bwt/day, which represents 8% of the RfD. The proposed use on leafy vegetables (except Brassica) group (except spinach) contributes an exposure of 4.7×10^{-4} mg/kg bwt/day, representing less than 1% of the RfD. When the proposed exposure is added to the public exposure for metalaxyl the ARC is 6.9×10^{-3} mg/kg bwt/day, or 9% of the RfD.

The subgroup most highly exposed, children (1 to 6 years old), has an ARC from existing uses of 1.2×10^{-2} mg/kg bwt/day, representing 16% of the RfD. The proposed use contributes an additional 6.1×10^{-4} mg/kg bwt/day and raises the overall ARC 1.3×10^{-2} mg/kg bwt/day, still representing 16% of the RfD.

Based on the exposure and risk estimates arrived at through this analysis, the Agency believes that the proposed use for metalaxyl does not pose a chronic dietary risk that is of concern.

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

Based on the information and data considered, the Agency has determined that the tolerance established by amending 40 CFR part 180 will protect the public health. Therefore, the tolerance is established as set forth below.

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

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

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

List of Subjects in 40 CFR Part 180

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

Dated: October 19, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.408 is amended in paragraph (a) in the table therein by revising the entry for leafy vegetables (except brassica) group, to read as follows:

§ 180.408 Metalaxyl; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Leafy vegetables (except Brassica) group (except spinach)	5.0
* * * * *	

* * * * *

[FR Doc. 94–26799 Filed 11–1–94; 8:45 am]

BILLING CODE 8560–50–F

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40 CFR Part 180

[PP 9F3811/R2082; FRL–4916–9]

RIN 2070–AB78

Pesticide Tolerances for Myclobutanil

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document extends the time-limited tolerances for residues of the fungicide myclobutanil and certain of its metabolites in or on the raw agricultural commodities cherries (sweet and sour), nectarines, and peaches until April 1, 1995. This extension will allow EPA adequate time to evaluate studies conducted by Rohm & Haas Co. required to support permanent tolerances for this chemical in or on these commodities.

EFFECTIVE DATE: October 14, 1994.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 9F3811/R2082], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of the objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Leonard S. Cole, Jr., Acting Product Manager (PM) 21, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6900.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of January 9, 1990 (55 FR 779), which announced that the Rohm & Haas Co. of Independence Mall West, Philadelphia, PA 19105, had submitted pesticide petition (PP) 9F3811 to EPA proposing to establish tolerances under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) for the fungicide myclobutanil (*alpha*-butyl-*alpha*-(3-hydroxybutyl)-1*H*-1,2,4-triazole-1-propanenitrile) and both the free and bound forms of its metabolite *alpha*-(3-hydroxybutyl)-*alpha*-(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile in or on stone fruits group (except cherry) at 2.0 parts per million (ppm) and cherry at 5.0 ppm.

Subsequently, Rohm & Haas amended the petition by deleting the request for the stone fruit group and requesting tolerances for peaches and nectarines at 2.0 ppm and cherries (sweet and sour) at 5.0 ppm.

Additionally, the Agency requested that Rohm & Haas amend the petition by proposing a tolerance of 4.0 ppm in/on cherries. The petition was amended by requesting that the tolerance for cherries be reduced to 4.0 ppm.

In the **Federal Register** of February 5, 1992 (57 FR 4368), EPA established tolerances, on an interim basis, in 40 CFR 180.443 for residues of this chemical in or on the raw agricultural commodities cherries (sweet and sour), nectarines, and peaches. An expiration date of October 1, 1994, was imposed for the tolerances. The interim tolerances were established based upon the condition that data be submitted to the Agency to fully support permanent tolerances for these commodities.

The conditions imposed by the establishment of the interim tolerances were that the chronic/oncogenicity feeding studies in the mouse and the rat be repeated. Both studies need to be repeated because a maximum-tolerated dose (MTD) had not been achieved. However, no preneoplastic lesions were observed in either study to suggest possible carcinogenic activity, and myclobutanil did not induce either genotoxic effects or chromosomal aberrations in a series of mutagenicity tests. In addition, no strong structural activity correlation to other carcinogens has been found. Under these circumstances, EPA concluded that no significant carcinogenic risk was posed by these tolerances for the timeframe involved in receiving and reviewing the repeated studies.

The Agency evaluated dietary exposure to the fungicide residues for the commodities which have established permanent or interim tolerances. The acceptable daily intake (ADI) based on the 2-year rat chronic feeding study (NOEL of 2.49 mg/kg body weight/ day), using a hundredfold uncertainty factor, was calculated to be 0.025 mg/kg bwt/day. The theoretical maximum residue contribution (TMRC) from previously established tolerances and interim tolerances is 0.002217 mg/kg bwt/day and utilizes 8.865 percent of the ADI.

The data submitted in support of the tolerances and other relevant material have been reviewed. The toxicological data considered in support of these tolerances are discussed in detail in the document establishing the interim tolerances which was published in the **Federal Register** of February 5, 1992 (57 FR 4369).

Based upon the above dietary risk estimate, the Agency believes that an extension of the interim tolerances would not pose a significant public health risk for the period of time indicated and would allow the Agency sufficient time to review the final reports on all the required data. EPA does not expect that the required data will significantly change the above risk estimate.

On the basis of the available studies on myclobutanil, the Agency has concluded that the human risk posed by the use of myclobutanil on cherries, nectarines, and peaches does not raise significant concerns. The Agency has determined that extending the tolerances will protect the human health. Therefore, as set forth below, the tolerances are extended to April 1, 1995. Based upon the reviews of the rat and mouse oncogenicity studies, the Agency will determine whether establishing permanent tolerances is appropriate.

Residues remaining in or on the above raw agricultural commodities after expiration of these tolerances will not be considered actionable if the pesticide is legally applied during the term, and in accordance with, provisions of the conditional registrations.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is

requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

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

List of Subjects in 40 CFR Part 180

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

Dated: October 14, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, chapter I of the title 40 of the Code of Federal Regulations is amended in part 180 as follows:

PART 180—[AMENDED]

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

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

2. In § 180.443, by amending paragraph (a) by revising the table therein, to read as follows:

§ 180.443 Myclobutanil; tolerances for residues.

(a) * * *

Commodity	Parts per million	Expiration date
Apples	0.5	None
Cherries (sweet and sour)	4.0	April 1, 1995
Grapes	1.0	None
Nectarines	2.0	April 1, 1995
Peaches	2.0	April 1, 1995

* * * * *

[FR Doc. 94–26796 Filed 11–1–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 180

[PP 1F3993/R2083; FRL–4917–3]

RIN 2070–AB78

Pesticide Tolerances for Metalaxyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for combined residues of the fungicide metalaxyl [*N*-(2,6-dimethylphenyl)-*N*-(methoxyacetyl) alanine methyl ester] and its metabolites containing the 2,6-dimethylaniline moiety and *N*-(2-hydroxymethyl-6-methyl)-*N*-(methoxyacetyl)-alanine methylester, each expressed as metalaxyl, in or on the raw agricultural commodities cereal grains (except wheat, barley, and oats) [replacing grain crops] and forage, fodder, and straw of the cereal grains group (except wheat, barley, and oats). Ciba-Geigy Corp. petitioned to establish the maximum permissible levels for residues of the fungicide.

EFFECTIVE DATE: October 19, 1994.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 1F3993/R2083], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Leonard S. Cole, Jr., Acting Product Manager (PM) 21, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202; (703)-305-6900.

SUPPLEMENTARY INFORMATION: EPA issued a notice of filing, published in the **Federal Register** of December 13, 1991 (56 FR 29767), which announced that Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419, had submitted pesticide petition PP 1F3993 to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), establish tolerances for combined residues of the fungicide metalaxyl [*N*-(2,6-dimethylphenyl)-*N*-(methoxyacetyl) alanine methyl ester] and its metabolites containing the 2,6-dimethylaniline moiety, and *N*-(2-hydroxymethyl-6-methyl)-*N*-(methoxyacetyl)-alanine methylester, each expressed as metalaxyl, in or on the raw agricultural commodities cereal grains (except wheat, barley, and oats) at 0.1 part per million (ppm) (replacing grain crops at 0.1 ppm) and forage, fodder, and straw of cereal grains group (except wheat, barley, and oats) at 1.0 ppm.

There were no comments or requests for referral to an advisory committee received in response to the notice of filing. By way of public reminder, this

notice also reiterates the registrant's responsibility under section 6 (a)(2) of FIFRA to submit additional factual information regarding adverse effects on the environment and to human health by the pesticide. The scientific data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the tolerances include:

1. A 3-month dietary study in rats with a no-observed-effect level (NOEL) at 17.5 milligrams per kilogram (mg/kg) body weight (bwt)/day (250 parts per million (ppm)).

2. A developmental toxicity study in rats with a NOEL of 50 mg/kg bwt for developmental toxicity and maternal toxicity.

3. A developmental toxicity study in rabbits with a NOEL of 300 mg/kg bwt, the highest dose tested (HDT). Metalaxyl did not cause developmental toxicity, even in the presence of maternal toxicity.

4. Metalaxyl was negative in bacterial and mammalian gene mutation. The fungicide also did not increase the frequency of reverse mutations in yeast. Metalaxyl was negative in an in vivo cytogenetics assay (hamsters) and a dominant-lethal assay (mice). Metalaxyl did not increase unscheduled DNA synthesis in rat primary hepatocytes or in human fibroblasts. These results suggest that metalaxyl is not genotoxic.

5. A three-generation rat reproduction study with a NOEL of 63 mg/kg bwt/day (1,250 ppm).

6. A 6-month dog feeding study with a NOEL of 6.3 mg/kg bwt/day (250 ppm). Effects found at 25 mg/kg were increased serum alkaline phosphatase activity and increased liver weight and liver-to-brain weight ratios without histological changes.

7. A 2-year rat chronic feeding/carcinogenicity study with no compound-related carcinogenic effects under the conditions of the study at dietary levels up to 1,250 ppm. The NOEL is 13 mg/kg bwt/day (250 ppm). The lowest-observed-effect level (LOEL) is 63 mg/kg/day based upon slight increases in liver weight to body weight ratios and periacinar vacuolation of hepatocytes.

8. A 2-year mouse oncogenic study with no compound-related carcinogenic effects under the conditions of the study at dietary levels up to 190 mg/kg/day.

Because of concerns raised over some equivocal increases in tumor incidences in the male mouse liver and the male rat adrenal medulla, and the female rat thyroid, the two chronic feeding studies were submitted to the Environmental Pathology Laboratories (EPL) for an independent reading of the microscopic slides. The new pathological evaluation by EPL and the original reports of the rat and mouse oncogenicity studies were then both submitted for review to EPA's Carcinogen Assessment Group (CAG). A final review of the carcinogenicity studies and related material was performed by the Peer Review Committee of the Toxicology Branch (TB) of the Office of Pesticide Programs (OPP).

The four major issues evaluated by CAG and the peer review group included: (1) Perifollicular cell adenomas in the thyroid of female rats; (2) adrenal medullary tumors (pheochromocytomas) in male rats; (3) liver tumors in male mice; and (4) whether the HDT (1,250 ppm) in the rat and mouse oncogenicity studies represented a maximum-tolerated dose (MTD).

Regarding the thyroid tumors in female rats, the peer review group concluded that the increased incidences of thyroid tumors in females of treated groups were not compound related. This conclusion was based on the following: (1) There was no progression of benign tumors (adenomas) to malignancy (carcinomas); (2) there was no increase in hyperplastic changes; (3) there was no dose-response relationship; and (4) the two reevaluations of the microscopic slides by the pathologists at EPL and TB in OPP further did not confirm any apparent effects observed in the original report.

The issue of a possible treatment-related increase of adrenal medullary gland tumors, namely, pheochromocytomas, in the male rat was also reassessed by both CAG and the Peer Review Committee. Both concluded that the data, especially in view of the reevaluation of the microscopic slides performed by EPL, did not support a compound-related increase of adrenal medullary tumors; the incidence of pheochromocytomas more accurately represented spontaneous variations of a commonly occurring tumor in the aged rat.

The analysis of the significance of the equivocal increase in the incidence of liver tumors in male mice was very similar to that performed for the rat thyroid and adrenal gland tumors. The original pathological reading of the tissue slides reported an elevated increase of tumors in some treatment groups; however, these increases were not evident after a reevaluation of the microscopic slides was performed by an independent pathologist at EPL and by the reading of a CAG pathologist. The Peer Review Committee concurred that the reevaluation of the slides is reliable and does not show any compound-related increase in the incidence of liver tumors in the mouse.

The Agency believes that the data from the rat and mouse long-term studies are sufficient to support the conclusion that metalaxyl does not show a carcinogenic potential in laboratory animals. This conclusion is supported by the following: (1) The doses tested in both the rat and mouse long-term studies approached an MTD based upon compound-related changes in liver weight and/or liver histology; (2) extensive available mutagenic evidence indicates no potential genotoxic activity which correlates with the negative carcinogenic potential demonstrated in long-term testing; (3) metalaxyl is not structurally related to known carcinogens; and (4) under the conditions of the rat and mouse tests, no indication of compound-related carcinogenic effects was noted at any of the treatment doses, sexes, or species.

The reference dose (RfD) based on the 6-month dog feeding study (NOEL 7.8 mg/kg bwt/day), and using a hundredfold safety factor, is calculated to be 0.08 mg/kg bwt/day. The anticipated residue contribution from previously established tolerances and food additive regulations and the tolerances and food additive regulations established here are 0.006465 mg/kg bwt/day and utilize 8% of the RfD.

The anticipated residue contribution from previously established tolerances and food additive regulations and the tolerances and food additive regulations established here for the subgroup most highly exposed, children (1 to 6 years old), have an anticipated residue contribution (ARC) from existing uses of 1.2×10^{-2} mg/kg bwt/day, representing 16% of the RfD.

The nature of the residue is adequately understood, and adequate analytical methods (N/P GLC) are available for enforcement purposes in the Pesticide Analytical Manual, Vol. II.

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

Based on the information and data considered, the Agency has determined that the tolerances established by amending 40 CFR part 180 will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A

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

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

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

List of Subjects in 40 CFR Part 180

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

Dated: October 19, 1994.

Steven L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.408 is amended in paragraph (a) in the table therein by adding and alphabetically inserting a new entry for cereal grains (except wheat, barley, and oats) and in paragraph (b) in the table therein by adding and alphabetically inserting new entries for forage, fodder, and straw of cereal grains group (except wheat, barley, and oats) to read as follows:

§ 180.408 Metalaxyl; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * *	*
Cereal grains (except wheat, barley, and oats)	0.1
* * * *	*

(b) * * *

Commodity	Parts per million
* * * *	*
Cereal grains group (except wheat, barley, and oats), fodder	1.0
Cereal grains group (except wheat, barley, and oats), forage	1.0
Cereal grains group (except wheat, barley, and oats), straw	1.0
* * * *	*

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[FR Doc. 94-26798 Filed 11-1-94; 8:45 am]

BILLING CODE 6560-50-F

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40 CFR Part 180

[PP 4E4310/R2078; FRL-4908-1]

RIN 2070-AB78

Watermelon Mosaic Virus-2 Coat Protein, Zucchini Yellow Mosaic Virus Coat Protein, and the Genetic Material Necessary for Production of These Proteins in Transgenic Squash Plants; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance under the Federal Food, Drug, and Cosmetic Act for residues of the plant pesticides watermelon mosaic virus-2 (WMV2) coat protein and zucchini yellow mosaic virus (ZYMV) coat protein, as expressed in Asgrow line ZW20 of *Cucurbita pepo* L. and the genetic material necessary for the production of these proteins. Asgrow Seed Co. petitioned EPA for the exemption.

EFFECTIVE DATE: This regulation becomes effective November 2, 1994.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 4E4310/R2078], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Leonard S. Cole, Acting Product Manager (PM) 21, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, 1921 Jefferson Davis

Hwy., Arlington, VA 22202, (703)-305-6900.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 27, 1994 (59 FR 38149), EPA issued a proposed rule that gave notice that the Asgrow Seed Co., Kalamazoo, MI 49004, had submitted pesticide petition (PP) 4E4310 to EPA under section 408 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a, to exempt from the requirement of a tolerance the residues of the plant-pesticides watermelon mosaic virus-2 coat protein and zucchini yellow mosaic virus coat protein as expressed in Asgrow line ZW20 of *Cucurbita pepo* L., and subsequent generations obtained through normal sexual reproduction. An amendment to this petition was received on April 4, 1994, which changed the proposed exemption by including the genetic material necessary for the production of these proteins.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule. By way of public reminder, this notice also reiterates the registrant's responsibility, under section 6 (a)(2) of FIFRA, to submit additional factual information regarding adverse effects on the environment and to human health by the pesticide.

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

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

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

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

List of Subjects in 40 CFR Part 180

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

Dated: October 17, 1994.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. In subpart D, by adding new § 180.1132, to read as follows:

§ 180.1132 Watermelon mosaic virus-2 coat protein, zucchini yellow mosaic virus coat protein, and the genetic material necessary for the production of these proteins; exemption from the requirement of a tolerance.

The plant pesticides watermelon mosaic virus-2 coat protein and zucchini yellow mosaic virus coat protein as expressed in Asgrow line ZW20 of *Cucurbita pepo* L. and the genetic material (nucleic acids) necessary for the production of these proteins are exempted from the requirement of a tolerance in this transgenic plant and in subsequent generations of Asgrow line ZW20 of *cucurbita pepo* L. obtained through normal sexual reproduction.

[FR Doc. 94–26804 Filed 11–1–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 180

[OPP–300356A; FRL–4914–1]

RIN 2070–AB78

Poly(vinylpyrrolidone); Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance for residues of poly(vinylpyrrolidone) (CAS Reg. No. 9003-39-8) when used as an inert ingredient (surfactant, related adjuvants of surfactant) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest. International Specialty Products requested this regulation.

EFFECTIVE DATE: This regulation becomes effective November 2, 1994.

ADDRESSES: Written objections, identified by the document control number, [OPP-300356A], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC

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

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

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 31, 1994 (59 FR 44956), EPA issued a proposed rule that gave notice that International Specialty Products, 1361 Alps Rd., Wayne, NJ 07470, had submitted pesticide petition (PP) 4E4308 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), propose to amend 40 CFR 180.1001(c) by revising the currently listed exemption from the requirement of a tolerance for residues of poly(vinylpyrrolidone) (CAS Reg. No. 9003-39-8) when used as an inert ingredient (surfactant, related adjuvants of surfactant) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest to include poly(vinylpyrrolidone) polymers of molecular weights greater than 4,000. The current molecular weight limit is 40,000 or over.

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

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

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

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

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

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

List of Subjects in 40 CFR Part 180

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

Dated: October 14, 1994.

Daniel M. Barolo,
Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.1001(c) is amended in the table therein by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
* * *	* * *	* * *
Poly(vinylpyrrolidone) (CAS Reg. No. 9003-39-8), minimum number-average molecular weight 4,000.		Surfactant, related adjuvants of surfactant.
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[FR Doc. 94-26808 Filed 11-1-94; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[PP 4F4361/R2086; FRL-4918-1]

RIN 2070-AB78

Pesticide Tolerances for Aluminum Tris(O-Ethylphosphonate)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes increased tolerances for residues of the fungicide fosetyl-Al, aluminum tris(*O*-ethylphosphonate), in or on strawberries at 75 parts per million (ppm), brassica (cole) leafy vegetables group at 60 ppm, and leafy vegetables (except brassica vegetables) group at 100 ppm. This regulation to increase the maximum permissible levels of residues of the fungicide in or on these commodities was requested in a petition submitted by Rhone-Poulenc Ag Co.

EFFECTIVE DATE: This regulation becomes effective November 2, 1994.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 4F4361/R2086], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing request filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington DC 20460. In person, bring copy of objections and hearing request to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Product Manager (PM) 22, Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 229, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5540.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of August 24, 1994 (59 FR 43579), which announced that Rhone-Poulenc Ag Co., P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709, had submitted a pesticide tolerance petition (PP 4F4361) to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), establish increased tolerances for the fungicide fosetyl-Al, aluminum tris(*O*-ethylphosphonate) in or on strawberries from 20 ppm to 75 ppm, brassica (cole) leafy vegetables group from 55 ppm to 60 ppm, and leafy vegetables (except brassica vegetables) group from 80 ppm to 100 ppm. There were no comments or requests for referral to an advisory committee received in response to the notice of filing.

The data submitted in the petitions and all other relevant material have been evaluated. The toxicology data considered in support of the tolerances include:

1. A rat acute oral study with an LD_{50} of 5.4 grams (g)/kilogram (kg).

2. A mouse acute oral study with an LD_{50} of 3.5 gm/kg.

3. A 90-day rat feeding study with a no-observed-effect level (NOEL) of 5,000 ppm (250 milligrams (mg)/kg/day).

4. A 90-day dog feeding study with a NOEL of 10,000 ppm (250 mg/kg/day).

5. A 21-day rabbit dermal study with a NOEL of 1.5 g/kg/day [the highest dose tested (HDT)].

6. A carcinogenicity study in mice with no carcinogenic effects observed at any dose level under the conditions of the study (the HDT was 2,857/4,286 mg/kg body weight (bwt)/day).

7. A rat chronic feeding/carcinogenicity study with a NOEL of 2,000 ppm (100 mg/kg bwt/day) for systemic effects (carcinogenic effects observed are discussed below).

8. A 2-year dog feeding study with a NOEL of 10,000 ppm (250 mg/kg bwt/day) and a lowest effect level (LEL) of 20,000 ppm (500 mg/kg bwt/day) based on a slight degenerative effect on the testes.

9. A reproduction study in rats with a NOEL of 300 mg/kg bwt/day for systemic toxicity and an LEL of 600 mg/kg bwt/day based on effects on animal weights in some groups and urinary tract changes in some groups. No reproductive effect was seen.

10. Teratology studies in rabbits and rats with teratogenic NOELs of 500 mg/kg/day and 1,000 mg/kg/day, respectively.

11. Ames mutagenicity assays, E. coli phage induction tests, micronucleus tests in mice, DNA repair tests using *E. coli*, and *Saccharomyces cervisiae* yeast assay that were negative.

As stated in a notice, published in the **Federal Register** of November 2, 1983 (48 FR 50532), carcinogenic effects were noted in the rat chronic feeding/carcinogenicity study. In this study, Charles River CD rats were dosed with aluminum tris (*O*-ethylphosphonate) at levels of 0, 2,000, 8,000, and 40,000/30,000 ppm (0, 100, 400, and 2,000/1,500 mg/kg bwt/day). The 40,000-ppm dose was reduced to 30,000 ppm after 2 weeks following observations of staining of the abdominal fur and red coloration of the urine at 40,000 ppm (2,000 mg/kg bwt/day).

The highest dose level of the chemical tested in the male Charles River CD-1 rats (2,000/1,500 mg/kg bwt/day) in this study appears to approximate a maximum tolerated dose (MTD) based on the finding of urinary bladder hyperplasia at this dose. Similarly, an MTD level appeared to be satisfied in the female Charles River CD-1 rats at the high-dose level of 2,000 mg/kg bwt/day, during the first 2 weeks of the carcinogenicity/chronic feeding study, before the dose level was reduced to 1,500 mg/kg bwt/day.

The study demonstrated a significantly elevated incidence of urinary bladder tumors (adenomas and carcinomas combined) at the highest dose level tested (2,000/1,500 mg/kg) in male Charles River CD-1 rats. The tumors were mainly seen in surviving males at the time of terminal sacrifice.

The original pathological diagnosis of these tumors was independently confirmed by another consulting pathologist, who also reported an elevated incidence of urinary bladder hyperplasia in high-dose male rats. No increase in the incidence of urinary bladder tumors was observed in female rats.

In 1986, the Health Effects Division Peer Review Committee for Carcinogenicity of the Office of Pesticide Programs concluded that the available data provided limited evidence of the carcinogenicity of fosetyl-Al in male rats and classified the pesticide as a Category C carcinogen (possible human carcinogen with limited evidence of carcinogenicity in animals) in accordance with proposed Agency guidelines, published in the **Federal Register** of November 23, 1984 (49 FR 46294). The Health Effects Division Peer Review Committee for Carcinogenicity determined that a quantitative risk assessment was not appropriate for the following reasons:

1. The carcinogenic response observed with this chemical was confined solely to the high-dose males at one site (urinary bladder) in rats.
2. The tumor response was primarily due to an increase in benign tumors.
3. The tumors were seen only in surviving animals at the time of terminal sacrifice.
4. The carcinogenic effects were observed only at unusually high doses which exceed the commonly used limit dose of 1,000 mg/kg/day recommended as an upper-limiting dose for bioassays.
5. The chemical was not carcinogenic when administered in the diet to Charles River CD-1 mice at dose levels ranging from 2,500 to 30,000 ppm (357 to 4,286 mg/kg bwt/day).
6. Fosetyl-Al was not mutagenic in eight well conducted genotoxic assays.

In 1993, the Health Effects Division Peer Review Committee (PRC) for Carcinogenicity revisited the carcinogenicity classification of fosetyl-Al because of a recent 90-day feeding study of fosetyl-Al in rats which showed a strong association between the presence of uroliths in the urinary bladder and the incidence of urinary bladder tumors in treated rats. The PRC concluded that fosetyl-Al is not amenable to classification using the current Agency cancer guidelines. Based on a mechanistic evaluation of the only tumors seen, those that occurred at exceptionally high doses (2,000/1,500 mg/kg) in the bladder of male rats, it appears that humans are not likely to be exposed to doses of fosetyl-Al that produce the urinary tract toxicity that precedes and seems to lead to the tumor response in rats. In particular, anticipated human dietary and occupational exposures to fosetyl-Al are far below the NOEL in rats for the apparent urinary tract tumor precursors (stone formation and attendant epithelial irritation). These effects are produced in rats at extremely high doses, under conditions not anticipated to occur outside of the experimental laboratory. The PRC concludes that pesticidal use of fosetyl-Al is unlikely to pose a carcinogenic hazard to humans. Therefore, the standard risk assessment approach of using the Reference Dose (RfD) based on systemic toxicity was applied to fosetyl-Al.

Using a 100-fold safety factor and the NOEL of 250 mg/kg bwt/day determined by the most sensitive species from the 2-year dog-feeding study, the RfD is 3.0 mg/kg bwt/day. The theoretical maximum residue contribution (TMRC) from the established and proposed tolerances is 0.053921 mg/kg bwt/day and utilizes 1.8 percent of the RfD for the overall U. S. population. For exposure of the most highly exposed subgroup in the population, Non-Hispanic Others, the TMRC is 0.081236 mg/kg bwt/day and utilizes 2.7 percent of the RfD. Previous tolerances have been established for fosetyl-Al, aluminum tris(O-ethylphosphonate), in asparagus, avocadoes, brassica vegetable crop group, caneberries, citrus, cucurbit vegetables group, dried hops, dry bulb onions, fresh ginseng root, leafy vegetables crop group, pineapples, pineapple forage and fodder, and strawberries.

The metabolism of aluminum tris(*O*-ethylphosphonate) in plants is adequately understood. No animal feed items are associated with this petition; therefore, there is no reasonable expectation of secondary residues occurring in milk, eggs, and meat of livestock or poultry. There are no processed commodities derived from the RACs, strawberries, brassica vegetable group, and leafy vegetable group; consequently, no corresponding food or feed additive regulations are required.

An adequate analytical method, gas-liquid chromatography, is available for enforcement purposes. Because of the long lead time from establishing these tolerances to publication of the enforcement methodology in the Pesticide Analytical Manual, Vol. II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Response Program Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5805.

The pesticide is considered useful for the purposes for which the tolerances are sought. Based on the information and data considered, the Agency concludes that the establishment of the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

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

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides

and pests, Recording and recordkeeping requirements.

Dated: October 21, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. In § 180.415, by amending paragraph (a) in the table therein by revising the entries for brassica (cole) leafy vegetables group, leafy vegetables (except brassica vegetables) group, and strawberries, to read as follows:

§ 180.415 Aluminum tris(O-ethylphosphonate); tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Brassica (cole) leafy vegetables group	60
* * * * *	
Leafy vegetables (except brassica vegetables) group	100
* * * * *	
Strawberries	75
* * * * *	

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[FR Doc. 94–27176 Filed 11–1–94; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 186

[OPP–300199B/FRL–4910–5]

RIN 2070–AB78

Captan; Order Denying Objection to Revocation of Feed Additive Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Order denying objection to revocation.

SUMMARY: This Order, pursuant to section 409(f) of the Federal Food, Drug, and Cosmetic Act (FFDCA) and in accordance with the regulations in 40 CFR part 178, announces that EPA is denying an objection to a final rule issued August 4, 1993, that revoked the feed additive regulation in 40 CFR 186.500 for residues of the pesticide captan in or on detreated captan-treated corn seed.

DATES: This denial of the objection is effective January 31, 1995. For purposes of judicial review, the entry of this Order shall be at 1 p.m. eastern time on November 16, 1994.

FOR FURTHER INFORMATION CONTACT: By mail: Patricia C. Critchlow, Emergency Response and Minor Use Section (7505W), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703-308-7066).

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 4, 1993 (58 FR 41430), EPA revoked the feed additive regulation (40 CFR 186.500) for residues of the fungicide captan in or on corn seed at 100 parts per million (ppm). This regulation addressed corn seed that originally was treated with captan as a seed protectant and was later "detreated" by washing or roasting so that the seed could be used as an animal feed. The basis for the revocation was the absence of residue data to support the regulation and the lack of adequate control procedures to ensure seed was detreated properly. On August 27, 1993, Ken Hunt of Ken's Roasting Service filed objections to that revocation. This Order denies those objections.

Background

In March 1986, as part of an overall review of captan, EPA determined that the record contained "no acceptable residue data to support the roasting detreatment method at any dosage or period of storage." (Guidance for the Reregistration of Pesticide Products Containing Captan (March 1986).) The Residue Chemistry Chapter of the Registration Standard (August 1985) concluded that there were insufficient data for residues of captan on corn seed that had been treated at the maximum label rate and then detreated. The only available data were on residue reduction from washing of treated corn seed. The then- existing tolerance was exceeded in several samples, the treatments were not conducted at the maximum label rate, and crucial details of many of the experiments were missing. The validity of the data could not be determined, and the data covered only a washing process. Data were requested on the residues of concern on seed both before and after detreating. The detreatment methods of interest to the registrant(s), such as roasting, were to be tested. This information was essential to establish a proper tolerance and to evaluate the dietary risk from detreated corn.

EPA announced it would revoke the food additive regulation for detreated corn seed unless within 1 year the following data and information were submitted:

1. Data on the residues of concern in or on corn seed treated with captan at the maximum allowable rate and detreated by an acceptable process. Data were required on residues of concern both before and after detreatment. Moreover, EPA made clear that different methods of detreating would only be permitted under the regulation if data were presented depicting residues resulting from each method. EPA required that the data must depict the influence of varying parameters of the detreating process, such as rate of seed treatment, volume of water required, temperature employed, etc. Finally, EPA explained that these data would be used to establish the acceptable conditions for detreating by each method.

2. An acceptable method for informing corn seed treaters and corn seed distributors of acceptable methods for detreating captan-treated corn seed must be proposed.

3. An acceptable handling procedure for captan-treated seed corn (to be detreated) to assure that there are no other pesticides on the seed must be proposed.

Because no data or information were submitted over the next 3 years, on August 30, 1989 (54 FR 35897), EPA proposed to revoke the food additive regulation on the grounds that there were insufficient data to support it. EPA received several comments opposing the revocation, but none of the commenters submitted the data requested. EPA was not convinced by any of the comments that the data were not necessary and, therefore, on August 4, 1993, it issued a final rule revoking the tolerance.

On August 27, 1993, Ken Hunt of Ken's Roasting Service, Arcadia, Nebraska, filed objections to the revocation. Mr. Hunt supplemented his objections on September 7, 1993. Mr. Hunt's primary objection is that detreatment of captan-treated seed by roasting is safer than simply disposing of the seed. As support for this contention, Mr. Hunt claims that his experience in feeding to his livestock seed that he has detreated has caused no harm to the livestock or to his family, which has consumed meat from that livestock. Mr. Hunt also notes that tolerances for captan on various other crops, such as grapes, are as high as 50 parts per million (ppm). Mr. Hunt submitted analytic sampling results

from his detreated corn which show that the tested corn contained low levels of captan (2 ppm or less). Mr. Hunt claims that he avoids detreating seeds that contain pesticide residues other than captan by having his trucker check the labels on all seed that is picked up for detreatment. Finally, Mr. Hunt asks if EPA would allow him to continue his operation for a few more years because of the sizable investment he has put into it.

For the reasons below, EPA must deny Mr. Hunt's objections. Magnitude of residue data, such as were requested here, are critical data in establishing or supporting tolerances and food additive regulations for pesticide residues. As EPA's Pesticide Assessment Guidelines explain, "[r]esidue chemistry data on processed food/feed are used by the Agency to estimate the exposure of the general population to pesticide residues in foods (including animal commodities) and for setting and enforcing food additive tolerances for pesticide residues in or on processed food/feed under provisions of Section 409 of the Federal Food, Drug, and Cosmetic Act." (Pesticide Assessment Guidelines, Subdivision O, Addendum 4, p. 2 [MIS #PB88-117270, EPA 540/09-88-004 (Nov. 1987)].)

Without magnitude-of-residue data, EPA cannot make accurate exposure estimates and hence risk estimates also will be inaccurate. The anecdotal information supplied by Mr. Hunt cannot substitute for safety evaluations made on the basis of valid scientific data. Additionally, magnitude-of-residue data allow EPA to establish enforcement levels in tolerances and food additive regulations that are representative of the residue levels that will be found under proper pesticide use patterns. If tolerances and food additive regulations are set at levels exceeding what could be expected from normal usage, then pesticide users might be encouraged to apply pesticides without strict regard to label requirements or not to follow proper detreatment procedures. If tolerances and food additive regulations are set too low, then otherwise safe food may be seized by the Food and Drug Administration or Department of Agriculture.

It is true that several foods have captan tolerances at levels exceeding the levels Mr. Hunt has reported in his detreated corn, but those tolerances are supported by residue data and the safety of those tolerances has been evaluated based on those data, consumption pattern data, and information on exposure from other uses of captan. If residue data had been submitted for detreated corn, a similar analysis could have been performed for the food additive regulation at issue.

The sampling results submitted by Mr. Hunt are no substitute for the magnitude-of-residue data requested. They represent a single detreatment method under unspecified conditions. Several summary analysis reports are given, indicating residues on detreated corn ranging from less than 0.01 ppm to 2.6 ppm. The analytical methods are not specified, and no method validation data were included. Moreover, no data were provided on the same corn prior to detreatment. The data are of the type that a business might use to monitor quality control in its process, but the data are totally inadequate for fulfilling residue chemistry data requirements. Mr. Hunt appears to follow a careful procedure for not detreating seed containing other than captan residues, but this alone is not grounds for maintaining the food additive regulation. Finally, EPA recognizes that Mr. Hunt may have a sizable investment in his operation, but tolerances and food additive regulations are rules of national application, and Mr. Hunt's investment cannot justify maintaining the legality of these pesticide residues nationwide.

Accordingly, the objections are denied. This Order is issued under FFDCA section 409(f) and is subject to judicial review as provided in FFDCA section 409(g).

Dated: September 26, 1994.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 94-26805 Filed 11-1-94; 8:45 am]

BILLING CODE 6560-50-F

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40 CFR Part 300

[FRL-5100-2]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of Deletion of the Ringwood Mines/Landfill Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region II announces the deletion of the Ringwood Mines/Landfill site (Site) from the National Priorities List (NPL). The NPL constitutes appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. EPA and the State of New Jersey have determined that no further action is appropriate under CERCLA.

EFFECTIVE DATE: November 2, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Lance R. Richman, P.G., Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, Rm. 13100, New York, New York 10278, (212) 264-6695.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: Ringwood Mines/Landfill Site, Ringwood Borough, New Jersey.

A Notice of Intent to Delete for this Site was published in the **Federal Register**, on December 8, 1993 (58 FR 64539). The closing date for comments on the Notice of Intent to Delete was January 7, 1993. EPA has received no comments. Therefore there is no responsiveness summary.

The EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substances Superfund Response Trust Fund (Fund). Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the site warrant such action. Deletion of a site from the NPL does not effect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: October 19, 1994.

William J. Muszynski,

Deputy Regional Administrator, USEPA Region II.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9601-9657; 33 U.S.C. 1321(c)(2); (E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

2. Table 1 of appendix B to part 300 is amended by removing the Site "Ringwood Mines Landfill, Ringwood Borough, New Jersey".

[FR Doc. 94–27169 Filed 11–1–94; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 97

[DA 94–1158]

Revised Procedures for Filing an Amateur Service License Application

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Order amends the amateur service rules to provide an electronic filing capability to the volunteer-examiner coordinators (VECs), to clarify that amateur station and operator licensees are authorized as soon as the license data is entered into the Commission's licensee data base, and to reflect other non-substantive procedural changes. This action is necessary because recent modernization of the Commission's data processing capabilities makes it possible to greatly reduce the time it takes for us to grant licenses in the amateur service, and all of the VECs have notified us that they want to begin electronic filing of license application data as soon as possible. The intended effect of this action is to allow successful license examinees to operate their amateur stations as soon as possible. The text of the final rules is at the end of this document.

EFFECTIVE DATE: December 20, 1994.

FOR FURTHER INFORMATION CONTACT: William T. Cross, Special Services Division, Private Radio Bureau, Federal Communications Commission, Washington, DC. 20554; or telephone (202) 632–4964.

SUPPLEMENTARY INFORMATION:

1. This is a summary of the Order adopted October 17, 1994, and released October 24, 1994. The complete text of this Order, including the rule amendments, may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

2. Accepting from the VECs electronically filed data from applications for new and upgraded amateur operator licenses, will eliminate the time and effort required for the VECs to send, and for the Commission to receive, application documents by mail. As part of their routine operations, the VECs enter the data from the application documents they receive into an electronic form that can be sent at high speed over telephone lines to our license processing facility. This data can be used as received so that our license processors could discontinue manually reentering the data into the processing system. We have been making arrangements with the VECs to enable them to use electronic filing procedures similar to those that have been implemented for certain private land mobile radio services. The FCC Form 610 has been revised to accommodate electronic filing. VECs may also continue to send by mail to our license processing facility the application documents.

3. The decision to grant a license occurs when our license processing facility enters the data into the amateur service licensee data base. Currently, however, the new licensee must delay beginning operation until a license document can be printed, mailed, and delivered. This procedure can result in several weeks delay during which the licensee cannot operate an amateur station. Fortunately, information technology is making our amateur service licensee data base more widely available, thus diminishing the need for an amateur operator to hold a license document before exercising the privileges authorized by the grant of the license. We are amending the rules, therefore, to authorize operation on the basis of the licensee data appearing in the amateur service licensee data base.

4. Beginning in 1995, our new system also will give us the capability to make a timely mailing to a licensee's address of record a renewal short form, filled in and ready for signature. We are amending the rules to allow this form to be used. Because we cannot be certain of delivery of the form to every licensee in every instance, however, we will also continue to allow the Form 610 to be used for renewing licenses.

5. We are also combining into § 97.509 all of the administering volunteers examiner (VE) requirements that are presently stated in four separate rule sections, and adding new § 97.511, *Examinee conduct*, to emphasize that an examinee must comply with the instructions given by the administering VEs. Further, we are amending § 97.9 to treat Technician Plus as a license class.

6. We certify that the Regulatory Flexibility Act of 1980 does not apply to the amended rules because there will not be any significant economic impact on a substantial number of small business entities, as defined by section 601(3) of the Regulatory Flexibility Act. The amateur service may not be used to transmit communications for compensation, for the pecuniary benefit of the station control operator or the station control operator's employer, or for communications, on a regular basis, which could reasonably be furnished through other radio services. *See* 47 CFR 97.113.

7. The Secretary shall send a copy of this *Order*, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 605(b) of the Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612 (1981).

8. The Commission ordered that effective December 20, 1994, part 97 of the Commission's rules, 47 CFR part 97, IS AMENDED as set forth below.

List of Subjects in 47 CFR Part 97

Radio, Reporting and recordkeeping requirements, Volunteers.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

Part 97 of chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 97—AMATEUR RADIO SERVICE

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

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

2. Section 97.5 is revised to read as follows:

§ 97.5 Station license required.

(a) The person having physical control of the station apparatus must have been granted a station license of the type listed in paragraph (b) of this section, or hold an unexpired document of the type listed in paragraph (c) of this section, before the station may transmit on any amateur service frequency from any place that is:

(1) Within 50 km of the Earth's surface and at a place where the amateur service is regulated by the FCC;

(2) Within 50 km of the Earth's surface and aboard any vessel or craft that is documented or registered in the United States; or

(3) More than 50 km above the Earth's surface aboard any craft that is documented or registered in the United States.

(b) The types of station licenses are:

(1) An operator/primary station license. One, but only one, operator/primary station license is granted to each person who is qualified to be an amateur operator. The primary station license is granted together with the amateur operator license. Except for a representative of a foreign government, any person who qualifies by examination is eligible to apply for an operator/primary station license. The operator/primary station license document is printed on FCC Form 660.

(2) A club station license. A club station license is granted only to the person who is the license trustee designated by an officer of the club. The trustee must be a person who has been granted an Amateur Extra, Advanced, General, Technician Plus, or Technician operator license. The club must be composed of at least two persons and must have a name, a document of organization, management, and a primary purpose devoted to amateur service activities consistent with this Part. The club station license document is printed on FCC Form 660.

(3) A military recreation station license. A military recreation station license is granted only to the person who is the license custodian designated by the official in charge of the United States military recreational premises where the station is situated. The person must not be a representative of a foreign government. The person need not have been granted an amateur operator license. The military recreation station license document is printed on FCC Form 660.

(4) A RACES station license. A RACES station license is granted only to the person who is the license custodian designated by the official responsible for the governmental agency served by that civil defense organization. The custodian must be the civil defense official responsible for coordination of all civil defense activities in the area concerned. The custodian must not be a representative of a foreign government. The custodian need not have been granted an amateur operator license. The RACES station license document is printed on FCC Form 660.

(c) The types of documents are:

(1) A *reciprocal permit for alien amateur licensee* (FCC Form 610–AL) issued to the person by the FCC.

(2) An amateur service license issued to the person by the Government of Canada. The person must be a Canadian citizen.

(d) A person who has been granted a station license of the type listed in paragraph (b) of this section, or who holds an unexpired document of the type listed in paragraph (c) of this section, is authorized to use in accordance with the FCC Rules all transmitting apparatus under the physical control of the station licensee at points where the amateur service is regulated by the FCC.

3. Section 97.7 is revised to read as follows:

§ 97.7 Control operator required.

When transmitting, each amateur station must have a control operator. The control operator must be a person who has been granted an amateur operator/primary station license, or who holds an unexpired document of the following types:

(a) A *reciprocal permit for alien amateur licensee* (FCC Form 610–AL) issued to the person by the FCC, or

(b) An amateur service license issued to the person by the Government of Canada. The person must be a Canadian citizen.

4. Section 97.9 is revised to read as follows:

§ 97.9 Operator license.

(a) The classes of amateur operator licenses are: Novice, Technician, Technician Plus (until such licenses expire, a Technician Class license granted before February 14, 1991, is considered a Technician Plus Class license), General, Advanced, and Amateur Extra. A person who has been granted an operator license is authorized to be the control operator of an amateur station with the privileges of the operator class specified on the license.

(b) A person who has been granted an operator license of Novice, Technician, Technician Plus, General, or Advanced class and who has properly submitted to the administering VEs an application document, FCC Form 610, for an operator license of a higher class, and who holds a CSCE indicating that the person has completed the necessary examinations within the previous 365 days, is authorized to exercise the rights and privileges of the higher operator class until final disposition of the application or until 365 days following the passing of the examination, whichever comes first.

5. Section 97.17 is revised to read as follows:

§ 97.17 Application for new license or reciprocal permit for alien amateur licensee.

(a) Any qualified person is eligible to apply for an amateur service license.

(b) Each application for a new amateur service license must be made on the proper document:

(1) FCC Form 610 for a new operator/primary station license;

(2) FCC Form 610–A for a *reciprocal permit for alien amateur licensee;* and

(3) FCC Form 610–B for a new amateur service club or military recreation station license.

(c) Each application for a new operator/primary station license must be submitted to the VEs administering the qualifying examination.

(d) Any eligible person may apply for a *reciprocal permit for alien amateur licensee.* The application document, FCC Form 610–A, must be submitted to the FCC, 1270 Fairfield Road, Gettysburg, PA 17325–7245.

(1) The person must be a citizen of a country with which the United States has arrangements to grant reciprocal operating permits to visiting alien amateur operators is eligible to apply for a *reciprocal permit for alien amateur licensee.*

(2) The person must be a citizen of the same country that issued the amateur service license.

(3) No person who is a citizen of the United States, regardless of any other citizenship also held, is eligible for a *reciprocal permit for alien amateur licensee.*

(4) No person who has been granted an amateur operator license is eligible for a *reciprocal permit for alien amateur licensee.*

(e) No person shall obtain or attempt to obtain, or assist another person to obtain or attempt to obtain, an amateur service license or *reciprocal permit for alien amateur licensee* by fraudulent means.

(f) One unique call sign will be shown on the license of each new primary station. The call sign will be selected by the sequential call sign system.

(g) No new license for a club, military recreation, or RACES station will be granted.

§ 97.19 [Removed and reserved]

6. Section 97.19 is removed and reserved.

7. Section 97.21 is revised to read as follows:

§ 97.21 Application for a modified or renewed license.

(a) A person who has been granted an amateur station license that has not expired:

(1) Must apply for a modification of the license as necessary to show the correct mailing address, licensee name, club name, license trustee name, or license custodian name. The application document must be submitted to: FCC, 1270 Fairfield Road, Gettysburg, PA 17325–7245. For an operator/primary station license, the application must be made on FCC Form 610. For a club,

military recreation, or RACES station license, the application must be made on FCC Form 610–B.

(2) May apply for a modification of the license to show a higher operator class. The application must be made on FCC Form 610 and must be submitted to the VEs administering the qualifying examination.

(3) May apply for renewal of the license for another term. (The FCC may mail to the licensee an FCC Form 610–R that may be used for this purpose.) The application may be made on the FCC Form 610–R if it is received from the FCC. If the Form 610–R is not received from the FCC at least 30 days before the expiration of the license, for an operator/primary station license, the application may be made on FCC Form 610. For a club, military recreation, or RACES station license, the application may be made on FCC Form 610–B. The application must be submitted no more than 90 days before its expiration to: FCC, 1270 Fairfield Road, Gettysburg, PA 17325–7245. When the application for renewal of the license has been received by the FCC at 1270 Fairfield Road, Gettysburg, PA 17325–7245 prior to the license expiration date, the license operating authority is continued until the final disposition of the application.

(4) May apply for a modification of the license to show a different call sign selected by the sequential call sign system. The application document must be submitted to: FCC, 1270 Fairfield Road, Gettysburg, PA 17325–7245. The application must be made on FCC Form 610. This modification is not available to club, military recreation, or RACES stations.

(b) A person who had been granted an amateur station license, but the license has expired, may apply for renewal of the license for another term during a 2 year filing grace period. The application document must be received by the FCC at 1270 Fairfield Road, Gettysburg, PA 17325–7245 prior to the end of the grace period. For an operator/primary station license, the application must be made on FCC Form 610. For a club, military recreation, or RACES station license, the application must be made on FCC Form 610–B. Unless and until the license is renewed, no privileges in this part are conferred.

(c) Each application for a modified or renewed amateur service license must be accompanied by a photocopy (or the original) of the license document unless an application for renewal using FCC Form 610–R is being made, or unless the original document has been lost, mutilated or destroyed.

(d) Unless the holder of a station license requests a change in call sign, the same call sign will be assigned to the station upon renewal or modification of a station license.

(e) A reciprocal permit for alien amateur licensee cannot be renewed. A new reciprocal permit for alien amateur licensee may be issued upon proper application.

8. Section 97.23 is revised to read as follows:

§ 97.23 Mailing address.

(a) Each application for a license and each application for a *reciprocal permit for alien amateur licensee* must show a mailing address in an area where the amateur service is regulated by the FCC and where the licensee or permittee can receive mail delivery by the United States Postal Service. Each application for a *reciprocal permit for alien amateur licensee* must also show the permittee's mailing address in the country of citizenship.

(b) When there is a change in the mailing address for a person who has been granted an amateur operator/primary station license, the person must file a timely application for a modification of the license. Revocation of the station license or suspension of the operator license may result when correspondence from the FCC is returned as undeliverable because the person failed to provide the correct mailing address.

(c) When a person who has been granted a *reciprocal permit for alien amateur licensee* changes the mailing address where he or she can receive mail delivery by the United States Postal Service, the person must file an application for a new permit. Cancellation of the *reciprocal permit for alien amateur licensee* may result when correspondence from the FCC is returned as undeliverable because the permittee failed to provide the correct mailing address.

9. Section 97.25 is revised to read as follows:

§ 97.25 License term.

(a) An amateur service license is normally granted for a 10-year term.

(b) A *reciprocal permit for alien amateur licensee* is normally granted for a 1-year term.

10. Section 97.27 is revised to read as follows:

§ 97.27 FCC modification of station license.

(a) The FCC may modify a station license, either for a limited time or for the duration of the term thereof, if it determines:

(1) That such action will promote the public interest, convenience, and necessity; or

(2) That such action will promote fuller compliance with the provisions of the Communications Act of 1934, as amended, or of any treaty ratified by the United States.

(b) When the FCC makes such a determination, it will issue an order of modification. The order will not become final until the licensee is notified in writing of the proposed action and the grounds and reasons therefor. The licensee will be given reasonable opportunity of no less than 30 days to protest the modification; except that, where safety of life or property is involved, a shorter period of notice may be provided. Any protest by a licensee of an FCC order of modification will be handled in accordance with the provisions of 47 U.S.C. 316.

11. Section 97.29 is added to read as follows:

§ 97.29 Replacement license document.

Each person who has been granted an amateur station license or *reciprocal permit for alien amateur licensee* whose original license document or permit document is lost, mutilated or destroyed must request a replacement. The request must be made to: FCC, 1270 Fairfield Road, Gettysburg, PA 17325–7245. A statement of how the document was lost, mutilated, or destroyed must be attached to the request. A replacement document must bear the same expiration date as the document that it replaces.

12. In § 97.301, introductory text of paragraphs (a) through (f) are revised to read as follows:

§ 97.301 Authorized frequency bands.

* * * * *

(a) For a station having a control operator who has been granted an operator license of Technician, Technician Plus, General, Advanced, or Amateur Extra Class:

* * * * *

(b) For a station having a control operator who has been granted an operator license of Amateur Extra Class:

* * * * *

(c) For a station having a control operator who has been granted an operator license of Advanced Class:

* * * * *

(d) For a station having a control operator who has been granted an operator license of General Class;

* * * * *

(e) For a station having a control operator who has been granted an

operator license of Novice or Technician Plus Class:

* * * * *

(f) For a station having a control operator who has been granted an operator license of Novice Class:

* * * * *

13. Section 97.501 is amended by revising the introductory text, paragraphs (d) and (e), and by adding new paragraph (f) to read as follows:

§ 97.501 Qualifying for an amateur operator license.

Each applicant for the grant of a new amateur operator license or for the grant of a modified license to show a higher operator class, must pass or otherwise receive credit for the examination elements specified for the class of operator license sought:

* * * * *

(d) Technician Plus Class operator: Elements 1(A) or 1(B) or 1(C), 2, and 3(A).

(e) Technician Class operator: Elements 2 and 3(A).

(f) Novice Class operator: Elements 1(A) or 1(B) or 1(C), and 2.

14. Section 97.505 is revised to read as follows:

§ 97.505 Element credit.

(a) The administering VEs must give credit as specified below to an examinee holding any of the following documents:

(1) An unexpired (or expired but within the grace period for renewal) FCC-granted Advanced Class operator license document: Elements 1(B), 2, 3(A), 3(B), and 4(A).

(2) An unexpired (or expired but within the grace period for renewal) FCC-granted General Class operator license document: Elements 1(b), 2, 3(A), and 3(B).

(3) An unexpired (or expired but within the grace period for renewal) FCC-granted Technician Plus Class operator (including a Technician Class operator license granted before February 14, 1991) license document: Elements 1(A), 2, and 3(A).

(4) An unexpired (or expired but within the grace period for renewal) FCC-granted Technician Class operator license document: Elements 2 and 3(A).

(5) An unexpired (or expired but within the grace period for renewal) FCC-granted Novice Class operator license document: Elements 1(A) and 2.

(6) A CSCE: Each element the CSCE indicates the examinee passed within the previous 365 days.

(7) An unexpired (or expired for less than 5 years) FCC-issued commercial radiotelegraph operator license document or permit: Element 1(C).

(8) An expired or unexpired FCC-issued Technician Class operator license document granted before March 21, 1987: Element 3(B).

(9) An expired or unexpired FCC-issued Technician Class license document granted before February 14, 1991: Element 1(A).

(10) An unexpired (or expired but within the grace period for renewal), FCC-granted Novice, Technician Plus (including a Technician Class operator license granted before February 14, 1991), General, or Advanced Class operator license document, and an FCC Form 610 containing:

(i) A physician's certification stating that because the person is an individual with a severe handicap, the duration of which will extend for more than 365 days beyond the date of the certification, the person is unable to pass a 13 or 20 words per minute telegraphy examination; and

(ii) A release signed by the person permitting the disclosure to the FCC of medical information pertaining to the person's handicap: Element 1(C).

(b) No examination credit, except as herein provided, shall be allowed on the basis of holding or having held any other license grant or document.

15. Section 97.507 is amended by revising introductory text of paragraph (a) and paragraph (a)(3) to read as follows:

§ 97.507 Preparing an examination.

(a) Each telegraphy message and each written question set administered to an examinee must be prepared by a VE who has been granted an Amateur Extra Class operator license. A telegraphy message or written question set, however, may also be prepared for the following elements by a VE who has been granted an FCC operator license of the class indicated:

* * * * *

(3) Element 2: Advanced, General, Technician, or Technician Plus Class operator.

* * * * *

16. Section 97.509 is revised to read as follows:

§ 97.509 Administering VE requirements.

(a) Each examination for an amateur operator license must be administered by 3 administering VEs at an examination session coordinated by a VEC. Before the session, the administering VEs must make a public announcement stating the location and time of the session. The number of examinees at the session may be limited.

(b) Each administering VE must:

(1) Be accredited by the coordinating VEC;

(2) Be at least 18 years of age;

(3) Be a person who has been granted an FCC amateur operator license document of the class specified below:

(i) Amateur Extra, Advanced, or General Class in order to administer a Novice, Technician, or Technician Plus Class operator license examination;

(ii) Amateur Extra Class in order to administer a General, Advanced, or Amateur Extra Class operator license examination.

(4) Not be a person whose grant of an amateur station license or amateur operator license has ever been revoked or suspended.

(5) Not own a significant interest in, or be an employee of, any company or other entity that is engaged in the manufacture or distribution of equipment used in connection with amateur station transmissions, or in the preparation or distribution of any publication used in preparation for obtaining amateur operator licenses. (An employee who does not normally communicate with that part of an entity engaged in the manufacture or distribution of such equipment, or in the preparation or distribution of any publication used in preparation for obtaining amateur operator licenses, may be an administering VE.)

(c) Each administering VE must be present and observing the examinee throughout the entire examination. The administering VEs are responsible for the proper conduct and necessary supervision of each examination. The administering VEs must immediately terminate the examination upon failure of the examinee to comply with their instructions.

(d) No VE may administer an examination to his or her spouse, children, grandchildren, stepchildren, parents, grandparents, stepparents, brothers, sisters, stepbrothers, stepsisters, aunts, uncles, nieces, nephews, and in-laws.

(e) No VE may administer or certify any examination by fraudulent means or for monetary or other consideration including reimbursement in any amount in excess of that permitted. Violation of this provision may result in the revocation of the grant of the VE's amateur station license and the suspension of the grant of the VE's amateur operator license.

(f) No examination that has been compromised shall be administered to any examinee. Neither the same telegraphy message nor the same question set may be re-administered to the same examinee.

(g) Passing a telegraphy receiving examination is adequate proof of an examinee's ability to both send and receive telegraphy. The administering VEs, however, may also include a sending segment in a telegraphy examination.

(h) Upon completion of each examination element, the administering VEs must immediately grade the examinee's answers. The administering VEs are responsible for determining the correctness of the examinee's answers.

(i) When the examinee is credited for all examination elements required for the operator license sought, the administering VEs must certify on the examinee's application document that the applicant is qualified for the license.

(j) When the examinee does not score a passing grade on an examination element, the administering VEs must return the application document to the examinee and inform the examinee of the grade.

(k) The administering VEs must accommodate an examinee whose physical disabilities require a special examination procedure. The administering VEs may require a physician's certification indicating the nature of the disability before determining which, if any, special procedures must be used.

(l) The administering VEs must issue a CSCE to an examinee who scores a passsing grade on an examination element.

(m) Within 10 days of the administration of a successful examination for an amateur operator license, the administering VEs must submit the application document to the coordinating VEC.

17. Section 97.511 is revised to read as follows:

§ 97.511 Examinee conduct.

Each examinee must comply with the instructions given by the administering VEs.

§ 97.515 [Removed and reserved]

18. Section 97.515 is removed and reserved.

§ 97.517 [Removed and reserved]

19. Section 97.517 is removed and reserved.

20. Section 97.519 is amended by revising paragraph (b) and adding a new paragraph (d) to read as follows:

§ 97.519 Coordinating examination sessions.

* * * * *

(b) At the completion of each examination session, the coordinating VEC must collect the FCC Forms 610 documents and test results from the administering VEs. Within 10 days of collecting the FCC Forms 610 documents, the coordinating VEC must screen and, for qualified examinees, forward electronically or on diskette the data contained on the FCC Forms 610 documents, or forward the FCC Form 610 documents, to: FCC, 1270 Fairfield Road, Gettysburg, PA 17325–7245. When the data is forwarded electronically, the coordinating VEC must retain the FCC Forms 610 documents for at least fifteen months and make them available to the FCC upon request.

* * * * *

(d) The FCC may:

(1) Administer any examination element itself;

(2) Readminister any examination element previously administered by VEs, either itself or under the supervision of a VEC or VEs designated by the FCC; or

(3) Cancel the operator/primary station license of any licensee who fails to appear for readministration of an examination when directed by the FCC, or who does not successfully complete any required element that is readministered. In an instancce of such cancellation, the person will be granted an operator/primary station license consistent with completed examination elements that have not been invalidated by not appearing for, or by failing, the examination upon readministration.

[FR Doc. 94–27139 Filed 11–1–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 93–15; Notice 2]

RIN 2127–AE38

Federal Motor Vehicle Safety Standards Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This notice amends Federal Motor Vehicle Safety Standard No. 108 to specify that plastic materials used in reflex reflectors show not more than 7 percent haze after a 3-year outdoor exposure test, a level at which haze becomes discernable to the naked eye. This amendment will not change the stringency of the standard as it has been applied, but it will increase its objectivity. NHTSA has not adopted its proposal that cumulative haze not exceed 7 percent when a plastic lens is placed in front of a reflex reflector. Instead, the same haze criterion is applied to the reflex reflector and outer lens material. This approach will limit cumulative haze to about the same level without the need to retest current materials.

DATES: The amendment is effective November 1, 1995.

FOR FURTHER INFORMATION CONTACT: Patrick Boyd, Office of Rulemaking (202–366–6346).

SUPPLEMENTARY INFORMATION: Sierra Products of Livermore, California ("Sierra") filed a "Petition to Amend FMVSS 108 Updating Weather & Heat Testing of Vehicle Lights & Reflectors." In granting the petition, NHTSA considered that three principal issues and several lesser issues merited public consideration and comment. An appropriate notice of proposed rulemaking (NPRM) was published on March 9, 1993, and an opportunity afforded for comment (58 FR 13042). Its primary subject concerned the permissibility of a minimum amount of haze. NHTSA noted that if any of the other issues merited the initiation of rulemaking, a supplemental notice of proposed rulemaking would follow.

Comments on the NPRM were received from Trucklite, Truck Safety Equipment Institute (TSEI), American Automobile Manufacturers Association (AAMA), 3M, Chrysler Corporation, Ford Motor Company, General Motors Corporation (GM), Japan Auto Parts Industries Association (JAPIA), Peterson Manufacturing, Thomas Loughran, and General Electric Plastics (GEP).

1. Haze Limit for Reflex Reflectors

The principal issue of the NPRM concerned the permissible amount of haze after outdoor exposure testing of reflex reflectors. S5.1.2 of Standard No. 108 establishes requirements for plastic materials used for optical parts such as lenses and reflectors. One of the requirements (subsection (c)) is that plastic materials used for reflex reflectors shall meet the appearance requirements of paragraph 4.2.2 of SAE Recommended Practice J576c, May 1970, after the 3-year exposure test specified in the Recommended Practice. Paragraph 4.2.2 states in pertinent part that "The exposed samples, when compared with the unexposed control samples, shall not show * * * haze * * *." Whether a sample shows haze has traditionally been determined by whether haze is visible to the naked eye.

However, all plastics will develop an amount of haze during the weathering test that may not be visible to the naked eye, but which is measurable by instrumentation.

General Electric, the manufacturer of "Lexan," a polycarbonate plastic resin used in reflex reflectors, has stated that its polycarbonate plastic will not pass the weathering test for reflector material unless the reflex reflector manufacturer coats the finished product with an optical coating approved by GE. In its latest revision of J576, SAE has replaced the visual inspection criterion for haze with a 7-percent haze limit for measurement with a hazometer. The committee recommending the change considered the new procedure equivalent to the previous practice but more objective. Properly coated polycarbonates develop about 6 percent haze, and acrylics develop about 3 percent haze in exposure tests conducted in Florida. Such products are certified under the present test and will remain in compliance. NHTSA notes that 7 percent haze is not difficult to discern visually.

Neither Standard No. 108 nor SAE J576c "requires" coating, although that process may, in fact, be the most practicable way to meet the requirements of both. The present requirement may imply the absence of haze after weathering, but an absolute requirement of zero haze is neither practicable nor appropriate. Industry studies used by the SAE Lighting Committee have demonstrated that degradation of reflex reflector performance can be limited to less than 17 percent by preventing haze in excess of 7 percent, but that degradation increases rapidly with further haze to a loss of over 80 percent of initial performance at 21 percent haze. To control reflex reflector degradation and to make the haze test more objective, the SAE amended its Recommended Practice to establish a maximum allowable limit of 7 percent haze for plastics used for reflex reflectors.

The proposal was opposed by AAMA, Ford, Chrysler, GM, and JAPIA. AAMA (supported in these views by Ford, Chrysler, GM,,and GEP) believes that the rulemaking is premature for two reasons. The first is that "the agency has not identified any safety problem arising from inadequacies" in the existing requirement. The second is that "there is no currently available information [to motor vehicle manufacturers] that relates haze test data for plastic materials currently used to the performance of reflex reflectors." It recommended that the agency withdraw its NPRM and issue an ANPRM on the subject. The comments of JAPIA were similar in that it requested an effective date for the final rule 5 years after its issuance to review its appropriateness.

NHTSA disagrees that the rulemaking is premature. The purpose of the rulemaking is to ensure that an existing requirement will more closely conform to that portion of the statutory definition of a Federal motor vehicle safety standard that it "provides objective criteria." (15 U.S.C. 1391(2)). The "inadequacy", to use AAMA's term, of the existing requirement is that it is subjective. As for the second argument, the SAE considered industry data on reflector performance with various haze filters fitted in front of a reflex reflector to quantify performance loss with increased haze, and it reported a subjective demonstration test also using haze filters (haze filters were used in the experiments rather than reflectors in various weathered states because reflector facets prevent the use of a hazeometer to measure the degree of haze). NHTSA believes that the needs for safety are met by the current requirement that plastic materials used in optical parts such as lenses meet the weathering test. Absent any treatment of the raw materials that affects its ability to meet J576 (see discussion below), optical parts fashioned from complying plastic materials ought to have the same haze resistance.

AAMA also commented that the proposal would increase the stringency of haze requirements: "[w]hereas the current Standard calls for no visually-perceptible *change* in haze resulting from outdoor exposure, the proposed revision would set a limit on the *total* haze of the exposed sample. Even unexposed samples exhibit some measurable haze that would be additive to any incremental haze produced by the three year outdoor exposure test." AAMA is not aware of any body of test data demonstrating whether plastic materials used in current reflex reflectors are capable of meeting a post-exposure limit of 7 percent.

The present requirement contained in 4.2.2 of SAE J576c states that "the exposed samples, when compared with the unexposed control samples, shall not show surface deterioration, crazing, haze, dimensional changes, color bleeding, delamination, or loss of surface luster." The determination of surface deterioration, dimensional changes, and color bleeding require comparison with control samples. But the SAE bases its interpretation of the haze requirement on the premise that low levels of haze are invisible to the naked eye, and it is certainly inappropriate for the samples to have visible haze before exposure. Therefore, the haze test is actually absolute; the only criterion is whether the exposed sample has visible haze. The "comparison" of visible haze to invisible haze is nothing more than a determination of the visible haze. Implicit in the visual test requirement is a mutually exclusive concept of haze—it is either visible or it is not visible. The concept of relative haze has little meaning unless the instrumentation of the proposed method of measurement is used.

NHTSA presumes that the certification of present materials is based on test data in the possession of material manufacturers. It is likely that haze measurements as well as visual inspection have been performed on current materials following exposure to weathering, but visual inspections alone should be sufficient. It is not difficult to detect 7 percent haze visually and samples already found to endure weathering without the development of visually perceptible haze are unlikely to have developed more than 7 percent haze.

The proposal was supported by Trucklite, TSEI, and Peterson. They pointed out that the SAE Lighting Committee haze task force unanimously recommended the 7 percent haze limit in part because it did not affect the use of plastic resins currently employed for reflex reflectors.

On balance, the agency has concluded that there is no demonstrable reason not to adopt the 7 percent haze limitation for plastic materials used for reflex reflectors.

The second part of the NPRM concerned a proposed cumulative haze limit of 7 percent when a plastic reflex reflector is installed behind a plastic outer lens and not exposed directly to sunlight. This was based upon draft SAE language and was opposed by the commenters. Subsequent to the NPRM the SAE modified its draft so that a cumulative haze limit was an optional part of its specification. NHTSA has decided not to impose a cumulative haze limit of 7 percent, but simply to adopt the same criterion (7 percent haze limit with direct exposure). Thus, S5.1.2(c) as amended by this notice will apply the limit and other criteria to "plastic materials used for reflex reflectors and for lenses used in front of reflex reflectors."

A comment from GE indicated that while uncoated "Lexan" would develop in excess of 30 percent haze in a Florida exposure test, the addition of a glass covering lens would limit haze to 4 to 6 percent. GE also offered data to show that plastic covering lenses provided

similar benefits. In view of the vast reduction in ultraviolet exposure of inner reflectors afforded by glass or plastic outer lenses, the agency concluded that acrylic and coated polycarbonate materials, which experience less than 7 percent haze under direct exposure, would experience negligible haze when protected by an outer lens. Therefore, it is not necessary to consider cumulative haze when material suitable for direct exposure is used with a covering lens, also suitable for direct exposure.

NHTSA's decision not to adopt the cumulative haze provision should allay industry concerns regarding the lack of test data to continue recertifying existing designs using covered reflex reflectors, but it may have the effect of necessitating an optical coating on any polycarbonate reflex reflectors which previously relied on an outer lens to prevent the formation of visible haze.

The SAE haze task force had also considered applying the 7 percent haze limit to plastic headlamp lenses as well as reflex reflectors, but it decided that more work was required to define the safety needs of headlamps. The revision of SAE J576 left the headlamp lens requirement unchanged from previous versions. It states that "plastic material used for forward road illumination devices, excluding cornering lamps, shall show no deterioration." It is not clear whether that specification is meant to be more restrictive than the 7 percent haze limit for reflectors, but it has the same effect in practice as the visual inspection requirement had for reflex reflectors.

NHTSA notes that in Standard No. 108, plastic lenses of replaceable bulb headlamps are subject to an abrasion resistance test, and that most, if not all, lenses must be given an abrasion resistant coating to meet it. It has been the agency's assumption that the hard coating would also protect headlamps lenses against excessive haze. Standard No. 108 does not require the abrasion test for plastic sealed beam headlamps, but NHTSA believes that it is industry practice to coat plastic sealed beam lamps. To pursue the subject of haze limitations for headlamp lens material, NHTSA requested that commenters address five specific issues. Ford was the sole commenter on the first four issues. These issues and Ford's comments follow:

(1) Whether there are any replaceable bulb headlamps with plastic lenses that do not use a hard coating to achieve abrasion resistance.

Ford's headlamps of this type all employ a hard coating.

(2) Whether all abrasion resistant coatings also prevent the formation of more than 7 percent haze on samples of plastics used in headlamp lenses which are subjected to the 3-year test.

In Ford's experience, coatings prevent formation of haze that exceeds 7 percent.

(3) Whether there are any sealed beam headlamps with plastic lenses that do not use a hard coating for either haze or abrasion resistance.

Ford used headlamps of this type in two model lines for one model year each a decade and a half ago. The lamps used an acrylic coating to prevent yellowing of the polycarbonate lens.

(4) Whether the adoption of a 7 percent haze limit for plastic headlamp lenses would create a burden on industry, and if so, the nature and severity of the burden.

Ford does not believe that it would create a burden "except possibly for some initial additional testing."

(5) Whether the industry favors harmonization of Standard No. 108 with SAE J576 for haze resistance of plastic headlamp lens materials.

Ford and another commenter, Truck-Lite, supported application of Standard No. 108 to materials for plastic headlamp lenses, albeit with the more recent versions of SAE J576, those of 1986 and 1991.

It appears that the abrasion resistance requirements for replaceable bulb headlamps and the industry practice of hard coating sealed beams already act to prevent haze on plastic headlamp lenses that exceed 7 percent. NHTSA remains interested in any SAE attempts to establish an appropriate haze criterion for headlamp lenses, but it appears that there is no safety need for rulemaking at present.

2. Thermal Degradation of Acrylic Reflex Reflectors

Sierra also claimed that current weathering tests do not address the loss of reflector performance for causes other than haze. It criticized the agency for deleting the lens warpage test in 1973 which regulated distortion from heat. Before then, Standard No. 108 incorporated the heat test of SAE Standard J575d which consisted of operating a lamp for one hour in a chamber heated to 120 degrees F. The lamp would reach a temperature higher than that from the heat of the filament. At the conclusion of the test, no warpage could result that would "affect the proper functioning of the device." Since the requirement was ambiguous, NHTSA eliminated it. However, in light of Sierra's complaint, NHTSA has reviewed the matter. When the heat test was deleted, the principal concern of the test seemed to be gross distortions of through-optic lenses. It appears that the heat damage to a lens with an integral reflex reflector was not considered.

There are limited data indicating that acrylic reflex reflectors may suffer from heat degradation. The General Electric Company (GE) has reported (NHTSA Docket No. 108–PRM–000015–01) a weathering test in Florida in which amber and yellow acrylic reflex reflectors decreased in specific intensity by 18 to 32 percent after an exposure of one year, regardless of the angle of exposure. GE attributed the decrease in photometric performance to minute distortions of the reflex lens (which the industry calls "creep") which occurred when the plastics were exposed to direct sunlight (temperatures of 150 to 160 degrees F).

In view of this test, NHTSA sought comments on the potential problem of heat degradation of acrylic plastic reflex reflectors. NHTSA requested commenters to address the following:

(1) Whether the commenter has test or other data relating to the performance of acrylic reflectors after exposure to heat.

(2) The threshold temperatures for creep and stress relaxation for acrylic plastics used for lamp lenses.

(3) Whether creep will stabilize or continue indefinitely.

(4) The maximum temperature acrylic lenses may endure without experiencing visible deformation.

(5) The length of exposure required for stability at slightly over the threshold temperature and at the maximum temperature stated in response to (4).

(6) The maximum loss of photometric performance to be expected if the creep and stress relaxation eventually stabilize.

(7) The maximum operating temperature of multiple function rear lamps on passenger cars, trucks, and trailers under realistic extreme conditions.

(8) Whether integral reflex reflectors would degrade under the conditions stated in response to (7).

(9) The test procedures that would be effective and practicable for testing reflectors and lamps with integral reflectors for the purpose of detecting which devices would degrade significantly in service.

Comments were received from TSEI, Peterson, 3M, Ford, and Trucklite. They reported that acrylic devices are designed to operate up to about 170 degrees F and that stress relaxation begins at about 180 degrees. A heat test of plastic samples at 175 degrees F is

incorporated by reference in Standard No. 108. The amount of distortion experienced at temperatures between 180 and 200 degrees F depends on the residual stress at the particular location, and the speed at which it stabilizes depends on the temperature. Unlike haze, creep is not indefinitely progressive; stabilization occurs in a matter of hours at elevated temperature.

All lamp manufacturers reported using a heat warpage test of some sort, even though no longer required by Standard No. 108. Some test more stringently than SAE J575d. Some commenters reported using photometric testing after a heat warpage test while others used a visual examination (the method set forth in SAE J575d). Peterson reported that acrylic lenses with reflectors subjected to SAE J575d show less than 5 percent losses in photometric brightness.

The agency eliminated the warpage test because it did not deem it required for safety. The degradation of acrylic reflectors alleged by Sierra would not be detected under SAE J575d which specifies a visual inspection.

Creep would affect a reflex reflector in a way fundamentally different from haze. Haze reduces the brightness of the reflector at all light entrance angles. Creep may cause the reflex reflector to lose brightness at some angles while gaining brightness at other angles. It appears unlikely that the loss of brightness reported by General Electric was the result of creep. GE did not test the acrylic reflectors thoroughly enough to make well founded conclusions about their performance.

In sum, there is no evidence that reflex reflectors degrade before other visible damage occurs.

3. Dye Loss of Acrylic Reflectors and Lenses

Sierra claimed that the weathering test of Standard No. 108 is inadequate because complying red and amber acrylic lenses lose their color in use. NHTSA responded that the breakdown of the dye may not be a property of the plastic but of the dye itself. Dyes with higher temperature tolerance are frequently used in polycarbonate products because they may be designed for higher temperature applications than acrylic products, but there is no property of acrylic plastic which contributes to fading. NHTSA understands, however, that the SAE adopted the three-year test when plastic began to replace glass because of some concern that plastic would not be as fade resistant as glass.

NHTSA requested that commenters provide information on the following:

(1) Whether the commenter has test or other data relating to fading or loss of dye color in acrylic or polycarbonate lenses through exposure to heat or weathering.

(2) Whether any data exist indicating that acrylic or polycarbonate lenses fade or do not fade under realistic operating conditions.

(3) The conditions under which fading could be expected.

(4) Whether there is any reason to believe that acrylic lenses are more subject to this type of degradation than polycarbonate lenses.

(5) Whether the commenter has observed faded lenses in service and, if so, what views the commenter has about the cause of the fading.

(6) Whether the three-year test of SAE J576, conducted in Florida and Arizona, is sufficient to identify plastic materials prone to fade in color.

(7) The kind of test procedure that would be effective and practicable for testing lenses or plastic materials used in lenses to detect any propensity to fade significantly in service.

Comments were received from TSEI, Peterson, 3M, Ford, Trucklite, and Thomas Loughran. The commenters believe that the three year weathering test of SAE J576 is adequate to identify plastic materials that are prone to fading. Acrylic materials do not appear to have a greater tendency to fade than polycarbonate materials. Peterson has observed that dyes used in acrylic material darken slightly as a result of sustained exposure to sunlight. TSEI reported that the only faded lenses in service which have been observed by its membership have been identified as made of noncomplying materials. Mr Loughran suggested that faded lenses result from the practice of blending virgin and reground material with additional dye at the time of molding.

Ford suggested that a modified xenon accelerated weathering test would be effective for testing colored plastic materials for their propensity to fade in service. This test would be configured to correlate with the three year weathering test. The object of accelerated testing with xenon lamps would be increased productivity rather than increased accuracy of detection.

The comments were unanimous in supporting the existing rule as an effective and sufficient test for dye loss of lamp and reflector materials. However, it appears from Mr. Loughran's comment that the uncontrolled use of reground material and added dye can create noncomplying plastic material to a greater degree than the lamp industry recognizes. NHTSA believes that the fading problem observed by the petitioner is the likely result of lamp manufacturing practices brought to its attention by Mr. Loughran. Accordingly, there appears to be no reason to change the present weathering test.

With respect to Mr. Loughran's comments, NHTSA takes this opportunity to present its views on the obligations of a manufacturer of reflex reflectors. The haze requirement is imposed by S5.1.2 upon "plastic materials used in optical parts". SAE Standard J594f "Reflex Reflectors" January 1977 as incorporated into Standard No. 108 at 3.2 references the plastic material test of SAE J576. This imposes an obligation upon the manufacturer of a reflex reflector to use plastic materials meeting J576. Thus, the manufacturer has an obligation to ensure that its acts do nothing to negate the conformance of the raw material with the tests of J576 when it is fashioned into reflectors.

A weathering test performed by NHTSA and comments to the docket suggest that lamp manufacturers need to take care that their coating practices actually meet the specifications used by plastic manufacturers to certify material properties. NHTSA's test included coated and uncoated "Lexan" samples exposed in Florida and Arizona. The uncoated samples failed the test visually as well as by the development of more than 7 percent haze before the end of the first year at both exposure sites. At the end of the second year, the coated Arizona sample had developed slightly less than 7 percent haze, but haze was plainly visible. The coated Florida sample had failed in both respects with 10.5 percent haze after a two-year exposure. Its uncoated mate had developed 10.3 percent haze in one year. At the end of the third year, the large haze reductions of the coated specimens, seen after one- and two-years exposure, had disappeared. Both Arizona specimens had slightly less than 20 percent haze and both Florida specimens had slightly more than 30 percent haze. The 24-month results were available at the time of the NPRM and were placed in the docket.

TSEI and Peterson commented on the 24-month test results, and Thomas Loughran's comment is relevant to cases of premature degradation. TSEI and Peterson consider the failure of coated sample to be an anomaly, uncharacteristic of the performance of all other coated polycarbonates in their experience. In their view, the failure is due to a faulty coating. Peterson suggested that either the coating thickness or the curing process was not performed in accordance with the

plastic manufacturer's specifications. The rapid surface degradation of both coated samples occurring in the period between 24 and 36 months exposure and the apparent flaking of the coating of the Arizona 18-month specimen support Peterson's opinion of faulty coating.

Mr. Loughran was concerned that coated polycarbonates may not meet the 7 percent haze limit either as samples or as finished products. He cited knowledge of Arizona exposure tests in which coated polycarbonate reflectors suffered 60 percent to 70 percent losses in reflective performance, and he suggested testing of finished products as well as material.

Mr. Loughran's experience appears to be at odds with the confidence of TSEI, Peterson, Trucklite, and the SAE haze task force that coated polycarbonate plastic will haze less than 7 percent in a 3-year exposure test. However, it is likely that departures from virgin material and poor coating practices can combine to cause inferior performance in products nominally made from certified materials.

These data suggest the beneficent effect of coating on polycarbonate plastic will not be sufficiently durable to meet the performance certified after the material unless the material manufacturer's recommendations are followed rigorously. While the presence of some coating material does not guarantee compliance, the absence of coating seems to ensure that plastics such as polycarbonates will quickly fail the haze test. Use of coatings with a tint element visible under an ultraviolet inspection light affords a simple, practicable way for regulatory bodies such as NHTSA to discern whether relevant plastic materials have been coated. The 3-year test period appears to be unnecessarily long in those instances where test failures occur long in advance, such as samples that manifest haze at the end of an exposure of only a year's duration. Failure to tint, and premature hazing afforded a basis upon which NHTSA can determine noncompliance without having to complete pro forma the 3-year test period and unnecessarily delay the remedy of a noncompliant product.

4. Miscellaneous Issues

3M suggested that a test measuring reflective brightness before and after exposure of retroreflective devices be established as an alternative to haze testing so that sheeting material devices could qualify as reflex reflectors. No specific test procedures or criteria were included in the comment. Because this issue is beyond the scope of the present rulemaking, it could not be not considered in formulating the final rule.

Rulemaking Analyses

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking action has not been considered under E.O. 12866. NHTSA has considered the impacts of this rulemaking action and has determined that it is not significant under Department of Transportation regulatory policies and procedures. The stringency of the haze requirement would not be changed. Further, manufacturers of plastic materials are currently measuring the haze of weathered samples by ASTM D 1003, which will govern the certification to the 7 percent haze limit. In addition, according to the agency's observation that haze not detectable by the human eye is also less than 7 percent, conformance of a reflector with the haze requirement could still be judged with the naked eye. Impacts of the final rule are, therefore, be so minimal as not to warrant preparation of a full regulatory evaluation.

Regulatory Flexibility Act

The agency has also considered the effects of this rulemaking action in relation to the Regulatory Flexibility Act. I certify that this rulemaking action would not have a significant economic effect upon a substantial number of small entities. Manufacturers of plastic materials are generally not small businesses within the meaning of the Regulatory Flexibility Act. Further, small organizations and governmental jurisdictions would not be significantly affected as the price of new motor vehicles should not be impacted. Accordingly, no Regulatory Flexibility Analysis has been prepared.

Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 on "Federalism." It has been determined that the rulemaking action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for purposes of the National Environmental Policy Act. The rulemaking action would not have a significant effect upon the environment.

Civil Justice Reform

This rule would not have any retroactive effect. Under 49 U.S.C. 30103 (formerly section 103(d) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Forty-nine U.S.C. 30161 (formerly Section 105 of the Act (15 U.S.C. 1394)) sets forth a procedure for judicial review of final rules establishing, amending, or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

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

1. The authority section continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30161; delegation of authority at 49 CFR 1.50.

2. In § 571.108, S5.1.2(c) is revised to read:

§ 571.108 Standard No. 108; Lamps, reflective devices, and associated equipment.

* * * * *

S5.1.2 * * *

(c) After the outdoor exposure test, plastic materials used for reflex reflectors and for lenses used in front of reflex reflectors shall not show surface deterioration, crazing, dimensional changes, color bleeding, delamination, loss of surface luster, or haze that exceeds 7 percent as measured under ASTM D 1003–61.

Issued on: October 27, 1994.

Christopher A. Hart,

Deputy Administrator.

[FR Doc. 94–27152 Filed 11–1–94; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018 AC97

Endangered and Threatened Wildlife and Plants; Emergency Reclassification of the Snake River Spring/Summer Chinook Salmon and the Snake River Fall Chinook Salmon From Threatened to Endangered Status

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Emergency rule.

SUMMARY: The Fish and Wildlife Service is reclassifying the Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) and the Snake River fall chinook salmon from threatened to endangered status under the emergency provisions of the Endangered Species Act of 1973 (Act). This reflects a determination by the National Marine Fisheries Service, which has jurisdiction for these species, that the species warrant emergency reclassification based on a projected decline in adult Snake River chinook salmon abundance. This determination by NMFS was published in the August 18, 1994, **Federal Register**.

EFFECTIVE DATE: This emergency rule is effective from August 18, 1994, to May 26, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Jamie Rappaport Clark, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Mail Stop 452, Arlington, Virginia 22203 (703/358-2171).

SUPPLEMENTARY INFORMATION: Under the Endangered Species Act (16 U.S.C. 1531 et seq.), and in accordance with Reorganization Plan No. 4 of 1970, the National Marine Fisheries Services (NMFS), National Oceanic and Atmospheric Administration, Department of Commerce, is responsible for the Snake River spring/summer and fall chinook salmon. Under section 4(a)(2) of the Act, NMFS must decide whether a species under its jurisdiction should be classified as endangered or threatened. The Fish and Wildlife Service (Service) is responsible for the actual addition, deletion and amendment of the List of Endangered and Threatened Wildlife in 50 CFR 17.11(h) (List).

NMFS published its determination of threatened status for the Snake River spring/summer chinook salmon and the Snake River fall chinook salmon on April 22, 1992 (57 FR 14653). Accordingly, the Service added the species to the List on September 23, 1993 (58 FR 49880). On August 18, 1994, NMFS published an emergency interim rule in the **Federal Register** (59 FR 42529) reclassifying the Snake River spring/summer chinook salmon and the Snake River fall chinook salmon from threatened to endangered status based on new data that indicates that critically low salmon returns are expected for 1994. Accordingly, the Service is amending the List, pursuant to the emergency provisions of section 4(b)(7) of the Act, to reflect the revised status.

During the 240 days this emergency rule is in effect, NMFS will initiate and complete a rulemaking (with a public comment period) to extend the reclassification of Snake River spring/summer and fall chinook salmon to endangered status under the Act until such time as reclassification or delisting is warranted. This action of the Service to amend the List in accordance with the determination by NMFS is nondiscretionary. Therefore, in view of the public comment period that will be provided by NMFS on the proposed reclassification, the Service finds that good cause exists to omit the notice and public comment procedures of 5 U.S.C. 553(b) and to make this action effective on August 18, 1994, the date of publication of NMFS' emergency interim rule, waiving the 30-day effective date provision of 5 U.S.C. 553(d).

National Environmental Policy Act

The 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).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Export, Import, Reporting and recordkeeping requirements, and Transportation.

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

§ 17.11 [Amended]

2. Section 17.11(h) is amended by suspending the two entries in the table for the Snake R. Vertebrate populations of "Salmon, chinook" under FISHES, effective August 18, 1994, to May 26, 1995.

3. Section 17.11(h) is amended by adding the following entries to the table immediately after the two suspended Snake R. Vertebrate populations of "Salmon, chinook" under FISHES, to be effective from August 18, 1994, to May 26, 1995, and to read as follows:

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
.	.	.	.	.	.	.	.
FISHES							

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
Salmon, chinook	Oncorhynchus tshawytscha.	North Pacific Basin from U.S.A. (CA) to Japan.	Snake R. (U.S.A.—ID, OR, WA) (mainstem and the following subbasins-Tucannon R., Grande Ronde R., Imnaha R., and Salmon R.) spring/summer run, natural population(s), wherever found.	E	516,557	NA	NA
Salmon, chinook	Oncorhynchus tshawytscha.	North Pacific Basin from U.S.A. (CA) to Japan.	Snake R. (U.S.A.—ID, OR, WA) (mainstem and the following subbasins-Tucannon R., Grande Ronde R., Imnaha R., Salmon R., and Clearwater R.) fall run, natural population(s), wherever found.	E	516,557	NA	NA
*	*	*	*	*	*		*

Dated: September 23, 1994.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 94–27124 Filed 11–1–94; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 638

[Docket No. 940677–4177; I.D. 090994D]

Coral and Coral Reefs of the Gulf of Mexico and the South Atlantic

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

ACTION: Closure.

SUMMARY: NMFS closes the fishery for live rock in the exclusive economic zone (EEZ) off the southern Atlantic states. This action is necessary to prevent exceeding the 1994 harvest quota.

EFFECTIVE DATE: November 1, 1994, through December 25, 1994.

FOR FURTHER INFORMATION CONTACT: Georgia Cranmore, 813–570–5305.

SUPPLEMENTARY INFORMATION: Coral and coral reefs in the EEZ off the southern Atlantic states and in the Gulf of Mexico are managed under the Fishery Management Plan for Coral and Coral Reefs of the Gulf of Mexico and the South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils and is implemented through regulations at 50 CFR part 638 under the authority of the Magnuson Fishery Conservation and Management Act.

Under an emergency interim rule effective through September 26, 1994 (59 FR 32938, June 27, 1994), and extended through December 25, 1994 (59 FR 47563, September 16, 1994), NMFS established a 1994 harvest quota of 485,000 lb (219,992 kg) for live rock in the EEZ off the southern Atlantic states. Section 638.28(d) of that emergency interim rule requires the Assistant Administrator for Fisheries, NOAA (AA), to close the live rock fishery in the EEZ off the southern Atlantic states when the 1994 harvest quota is reached, or is projected to be reached.

The AA has determined that the quota will be reached on October 31, 1994. Accordingly, the live rock fishery in the South Atlantic EEZ is closed effective 12:01 a.m., local time, November 1, 1994, through December 25, 1994, the end of the period of effectiveness of the emergency interim rule. During the closure, live rock may not be harvested or possessed in the EEZ off the southern Atlantic states, and the purchase, barter, trade, and sale of live rock in or from the EEZ off the southern Atlantic states is prohibited. The latter prohibition does not apply to live rock that was harvested prior to November 1, 1994.

Classification

This action is required by 50 CFR 638.28(d) and is exempt from review under E.O. 12866.

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

Dated: October 27, 1994.

David S. Crestin,

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

[FR Doc. 94–27083 Filed 10–27–94; 4:33 pm]

BILLING CODE 3510–22–F

50 CFR Part 672

[I.D. 090892B]

RIN 0648–AD44

Groundfish of the Gulf of Alaska; Correction

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

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to final regulations (I.D. 090892B), which were published Wednesday, October 5, 1994. The regulation established standard groundfish product types and standard product recovery rates for purposes of managing the groundfish fisheries off Alaska.

EFFECTIVE DATE: November 4, 1994.

FOR FURTHER INFORMATION CONTACT: William D. Chappell, 301-713-2341.

SUPPLEMENTARY INFORMATION: On October 5, 1994 (59 FR 50699), NMFS published a final rule to implement a regulatory amendment establishing standard groundfish product types and standard product recovery rates (PRRs)

for purposes of managing the groundfish fisheries off Alaska and specify certain product types and PRRs that may be used to calculate round-weight equivalents of pollock for purposes of calculating amounts of pollock roe that may be retained onboard a vessel during the pollock fishery. The final rule is to be effective November 4, 1994. In that rule, the amendatory instruction that revises § 672.20 was inadvertently omitted.

Correction of Publication

Accordingly, the publication on October 5, 1994 (59 FR 50699) of the final regulations (I.D. 090892B), which were the subject of FR Doc. 94–24637, is corrected as follows:

§ 672.20 [Corrected]

On page 50701, in the middle column before § 672.20, the following amendatory instruction is added to read as follows:

"3. In § 672.20, paragraph (i)(4) is removed, paragraphs (i)(5) through (7) are redesignated as (i)(4) through (6), paragraph (i)(3) is revised, and a new paragraph (j) is added to read as follows:".

Dated: October 26, 1994.

Charles Karnella,

Acting Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 94–27084 Filed 11–01–94; 8:45 am]

BILLING CODE 3510–22–F

50 CFR Part 675

[Docket No. 931100–4043; I.D. 102894A]

Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Apportionment of reserve.

SUMMARY: NMFS is apportioning reserve to certain target species in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow for ongoing harvest and account for previous harvest of the total allowable catch (TAC).

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), October 28, 1994, until 12 midnight, A.l.t., December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the U.S. BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The Director, Alaska Region, NMFS, has determined that the initial TACs specified for Pacific ocean perch in the Bering Sea subarea (BS), and for yellowfin sole and arrowtooth flounder in the Bering Sea and Aleutian Islands management area, need to be supplemented from the nonspecific reserve in order to continue operations and account for prior harvest. Therefore, in accordance with § 675.20(b), NMFS is apportioning from the reserve to TACs for the following species: (1) For the BS-286 metric tons (mt) to Pacific ocean perch; (2) for the BSAI-22,549 mt to yellowfin sole and 1,500 mt to arrowtooth flounder.

These apportionments are consistent with § 675.20(a)(2)(i) and do not result in overfishing of a target species or the "other species" category, because the revised TACs are equal to or less than specifications of acceptable biological catch.

Classification

This action is taken under 50 CFR 675.20 and is exempt from review under E.O. 12866.

The Assistant Administrator for Fisheries, NOAA, has determined, under section 553(d)(3) of the Administrative Procedure Act and 50 CFR 675.20(b)(2), that good cause exists for waiving the opportunity for public comment and the 30-day delayed effectiveness period for this action. Fisheries are currently taking place that will be supplemented by this apportionment. Delaying the implementation of this action would be disruptive and costly to these ongoing operations.

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

Dated: October 28, 1994.

David S. Crestin,

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

[FR Doc. 94–27180 Filed 10–28–94; 1:44 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 59, No. 211
Wednesday, November 2, 1994

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

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50, 55, AND 73

RIN 3150–AF18

Reduction of Reporting Requirements Imposed on NRC Licensees

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to reduce reporting requirements currently imposed on water-cooled nuclear power reactor, research and test reactor, and nuclear material licensees. This action would reduce the regulatory burden on NRC licensees. The proposed rule would implement an NRC initiative to review its current regulations with the intent to revise or eliminate duplicative or unnecessary reporting requirements. The proposed amendments would: (1) Eliminate the current requirement for licensees to submit summary reports of containment leakage rate tests to the NRC (10 CFR Part 50—Appendix J), but preserve the requirements in §§ 50.72 and 50.73 under which licensees currently report any instances of leakage exceeding authorized limits in the technical specifications of the license; (2) revise 10 CFR 55.25 to refer licensees to a similar reporting requirement in 10 CFR 50.74(c) and require notification of operator incapacity only in case of permanent disability or illness; and (3) eliminate the requirement for quarterly submittal of safeguards event logs presently contained in 10 CFR 73.71(c)(2) and Appendix G to Part 73.

DATES: The comment period expires December 19, 1994. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Service Branch. Comments may be delivered to One White Flint North, 11555 Rockville Pike, Rockville, MD, between 7:45 a.m. and 4:15 p.m. on Federal workdays.

Copies of the draft regulatory analysis, the finding of no significant impact, the supporting statement submitted to OMB, and comments received may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Naiem S. Tanious, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415–6103.

Background

On January 7, 1994, the Executive Director for Operations (EDO) sent to the Commission SECY–94–003, "Plan for Implementing Regulatory Review Group Recommendations." The Commission approved these recommendations for reducing regulatory burden on its licensees. This proposed rule is one of several rulemaking and other regulatory actions that the NRC staff is developing to implement those recommendations.

During the NRC staff review of the regulations, **Federal Register** notices were published on February 24, 1992 (57 FR 6299) and June 19, 1992 (57 FR 27394) that solicited the views of the public, the nuclear power industry, and other interested parties regarding reduction of the regulatory burden and reporting requirements. Comments were received in response to those notices. A summary of the comments received that are pertinent to this action is included in this document.

Discussion

These proposed amendments would: (1) Eliminate the current requirement for licensees to submit summary reports of containment leakage rate tests to the NRC (10 CFR Part 50–Appendix J), but preserve the requirements in §§ 50.72 and 50.73 under which licensees currently report any instances of leakage exceeding authorized limits in the technical specifications of the license; (2) revise 10 CFR 55.25 to refer licensees to a similar reporting requirement in 10 CFR 50.74(c) and require notification of operator incapacity only in case of permanent disability or illness; and (3) eliminate the requirement for quarterly submittal of safeguards event logs presently contained in 10 CFR 73.71(c)(2) and Appendix G to Part 73.

Although these proposed reduction in reporting requirements were discussed in **Federal Register** notices published on February 24, 1992 (57 FR 6299) and June 19, 1992 (57 FR 27394), the public is again invited to submit comments. Specifically, the NRC requests comments and supporting rationale on the appropriateness of eliminating or consolidating these reporting requirements and whether the public health and safety will be adversely affected by these changes.

Elimination of Reporting Requirements from 10 CFR Part 50, Appendix J

10 CFR Part 50, Appendix J, currently requires all water-cooled nuclear power reactor licensees to conduct containment leakage testing. The containment leakage tests demonstrate that the containment system meets all the leakage criteria specified in the technical specifications of the licenses. Currently, Section V.B. of Appendix J requires licensees to submit a summary report of the results of all leak rate tests and any associated corrective actions. Under this proposed rulemaking, licensees of water-cooled nuclear power reactors will continue to conduct containment leakage testing and to prepare the summary report. However, they would not be required to submit the summary report to the NRC. They would still be required to report to the NRC instances of leakage in excess of authorized limits, via a written licensee event report,[1] as now required by § 50.73(a)(2)(ii). If such a leakage condition is found during operation, an immediate notification by telephone is required by § 50.72(b)(1)(ii). If the leakage condition is found during shutdown the telephone notification is required by § 50.72(b)(2)(i).

The NRC believes that the elimination of the requirement to submit the summary report to the NRC of leakage tests when these results are within acceptance limits would have no impact on the overall health and safety of the public. Because these tests have been performed and evaluated frequently by

[1] These reports would be required when total containment as-found, minimum pathway leak rate exceeds the limiting condition for operation (LCO) in the facility's technical specification.

the nuclear power industry, any misinterpretation of testing requirements is highly unlikely. Moreover, licensees would still be required to prepare the summary reports and make those reports available for review and inspection at the respective plant sites. Having these reports available at the plant sites should be sufficient for normal record reviews, and for any necessary in-depth reviews. Therefore, the NRC proposes to eliminate the requirement to report results of tests within specified limits.

Consolidation of 10 CFR 50.74 and 10 CFR 55.25 Reporting Requirements

If an operator licensed pursuant to 10 CFR 55, becomes ill or disabled to the point that he or she no longer can safely perform their duties, the reactor licensee is required to report the occurrence of disability under both 10 CFR 50.74(c) and 10 CFR 55.25. The NRC is proposing to require only a single report by eliminating the reporting requirements in 10 CFR 55.25 and modifying 10 CFR 55.25 to refer facility licensees to 10 CFR 50.74(c).

In addition, when 10 CFR Part 55 was promulgated, the intent of § 55.25 was to receive reports only of permanent or potentially permanent illness or disability of licensed operators that would prevent them from safely carrying out their responsibilities. However, this intent, is not explicitly stated in either § 55.25 or § 50.74(c). To remove this ambiguity, the word "permanent" is added in both §§ 50.74(c) and 55.25. (A more detailed discussion on "permanent" versus "temporary," illness, or disability can be found in the NRC publication NUREG–1262,[2] "Answers to Questions at Public Meetings Regarding Implementation of Title 10, Code of Federal Regulations, Part 55 on Operators' Licenses," November 1987, page 21, question 91).

Public Comments

Only two comments were received concerning the reporting requirements for power reactor licensees. Neither suggested elimination of any power reactor reporting requirement. However, both suggested that the redundant requirements of 10 CFR Parts 50 and 55 addressing illness or disability of licensed operator be consolidated in 10 CFR 50.74.

Elimination of Reporting Requirements in 10 CFR Part 73.71(c)(2)

10 CFR Part 73.71(c)(1) requires that licensees maintain a current log for recording safeguards events. An event that must be recorded in the log is defined in Appendix G, Part 73 as "Any failure, degradation, or discovered vulnerability in a safeguard system. * * *."[3] 10 CFR 73.71(c)(2) requires that a copy of the log be submitted quarterly to the NRC.

The NRC proposes to eliminate the requirement that licensees submit copies of the safeguard event logs. Until recently, the NRC staff published an annual report which contained trending analysis of log events. However, the NRC now believes that the greatest benefits of dissemination of these statistics on safeguards equipment performance and lessons learned about the causes and prevention of safeguards equipment malfunctions have been realized, and that continuing to publish that report is no longer cost effective. However, licensees will still be required to enter events in the logs, and make those logs available for review and inspection at the respective plant sites. Having the logs available at the plant site should be sufficient for normal record reviews, and any necessary in-depth reviews. Therefore, the NRC believes that public health and safety will not be adversely affected if the logs are no longer submitted to the NRC.

Public Comments

The former Nuclear Management and Resources Council, now known as the Nuclear Energy Institute (NEI), commented that power reactor licensees should be deleted from the list of licensees subject to the provisions of 10 CFR 73.71(c). According to NEI, comparisons among plants using the data provided in the logs are not meaningful because the number of events reported by each site is dramatically influenced by a number of site-specific variables such as the number and design of system components and unique physical arrangements. NEI stated that comments received from industry were almost unanimous in advising that licensees receive insignificant information from the NRC's quarterly "Safeguards Events Analysis Report." NEI further commented that the real benefit in recording safeguards events lies in its usefulness as a management tool to measure a plant's specific performance, independent of other facilities.

One licensee commented that if the requirement to submit a log to the NRC were not deleted, the frequency of submittal should be reduced from 4 times each year to 2 times each year as required for submittal of fitness-for-duty performance data in 10 CFR 26.71(d). The licensee noted that timeliness would not be adversely impacted in a significant way by annual or semiannual rather than quarterly reporting. The licensee also suggested that evaluation of trends is more meaningful when based on events over 6 months or a year rather than only 3 months.

The NRC believes that, in the early years of this program, there was considerable benefit from comparisons of the performance of a site's security equipment with the performance of the rest of the industry, notwithstanding differences in site-specific variables. However, the NRC now believes that the greatest benefits have been realized and that continuing the program as a regulatory tool has a diminishing cost benefit. As such, the NRC agrees with the comments that the primary benefit in logging events is the usefulness of the log as a means for the licensees to track and trend the performance of the safeguards systems at their own plants. In fact, the NRC has already discontinued publication of the "Safeguards Events Analysis Report." Although the NRC is proposing to eliminate the requirement that licensees submit their safeguards event logs, licensees would still be required to enter events into their logs and maintain those logs on site for review by the NRC inspectors.

Written Reports

This proposed rule would not require additional written reports. On the contrary, under this proposed rule, reporting will be reduced for all licensees under 10 CFR Parts 50, 55, and 73.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in the categorical exclusion, 10 CFR 51.22(c)(3)(iii). Therefore, neither an environmental impact

[2] Copies of NUREG–1262 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Mail Stop SSOP, Washington, DC 20402–9328. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower level), Washington, DC 20555–0001.

[3] The full definition in 10 CFR Part 73, Appendix G, Section II is: (a) Any failure, degradation, or discovered vulnerability in a safeguard system that could have allowed unauthorized or undetected access to a protected area, material access area, controlled access area, vital area, or transport had compensatory measures not been established. (b) Any other threatened, attempted, or committed act not previously defined in Appendix G with the potential for reducing the effectiveness of the safeguard system below that committed to in a licensed physical security or contingency plan or the actual condition of such reduction in effectiveness.

statement nor an environmental assessment has been prepared for this regulation.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

Because the rule will relax existing information collection requirements, the public burden for this collection of information is expected to be reduced by approximately 10 hours per licensee. This reduction includes the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. Send comments regarding the estimated burden reduction or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (T–6 F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202 (3150–0011, 3150–0018, 3150–0002), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The draft analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the draft analysis may be obtained from Naiem S. Tanious, telephone (301) 415–6103. The Commission requests public comment on the draft regulatory analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the ADDRESSES heading.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule affects the nuclear power reactors, research and test reactors, and some material licensees. The companies and organizations that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act of the size standards established by the NRC (56 FR 56671; November 6, 1991).

Backfit Analysis

The NRC has determined that the backfit rule 10 CFR 50.109, does not apply to this proposed rule because these amendments do not involve any provisions which would impose backfits on licensees as defined in § 50.109(a)(1). Information collection and reporting requirements are not subject to the backfit rule; moreover, the changes proposed in this rulemaking relax existing requirements.

List of Subjects

10 CFR Part 50

Antitrust, Classified information, Criminal Penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 55

Criminal Penalties, Manpower training programs, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 73

Criminal Penalties, Hazardous materials transportation, Export, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 553; the Commission is proposing to adopt the following amendments to 10 CFR Parts 50, 55, and 73.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for 10 CFR Part 50 continues to read as follows:

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

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat 3123, (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C 2237).

2. In § 50.74, paragraph (c) is revised to read as follows:

§ 50.74 Notification of change in operator or senior operator status.

* * * * *

(c) Permanent disability or illness as described in § 55.25 of this chapter.

3. In 10 CFR Part 50 Appendix J, Section III, paragraphs A.1. (a), (b), and (d); Section IV. paragraph A., and Section V. paragraphs A. and B., are revised to read as follows:

Appendix J to Part 50—Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors.

* * * * *

III. *Leakage Testing Requirements.*

* * * * *

A. *Type A test-1. Pretest requirements.* (a) Containment inspection in accordance with V. A. shall be performed as a prerequisite to the performance of Type A tests. During the period between the initiation of the containment inspection and the performance of the Type A test, no repairs or adjustments shall be made so that the containment can be tested in as close to the "as is" condition as practical. During the period between the completion of one Type A test and the initiation of the containment inspection for the subsequent Type A test, repairs or adjustments shall be made to components whose leakage exceeds that specified in the technical specification as soon as practical after identification. If during a Type A test, including the supplemental test specified in III.A.3.(b), potentially excessive leakage paths are identified which will interfere with satisfactory completion of the test, or which result in the Type A test not meeting the acceptance criteria III.A.4.(b) or III.A.5.(b), the Type A test shall be terminated and the leakage through such paths shall be measured using local leakage testing methods. Repairs and/or adjustments to equipment shall be made and Type A test performed. The corrective action taken and the change in leakage rate determined from the tests and overall integrated leakage determined from local leak and Type A tests shall be included in the summary report required by V.B.

(b) Closure of containment isolation valves for the Type A test shall be accomplished by normal operation and without any preliminary exercising or adjustments (e.g., no tightening of valve after closure by valve motor). Repairs of maloperating or leaking valves shall be made as necessary. Information on any valve closure malfunction or valve leakage that require corrective action before the test, shall be included in the summary report required by V.B.

* * * * *

(d) Those portions of the fluid systems that are part of the reactor coolant pressure boundary and are open directly to the containment atmosphere under post-accident conditions and become an extension an extension of the boundary of the containment shall be opened or vented to the containment atmosphere prior to and during the test. Portions of closed systems inside containment that penetrate containment and rupture as a result of a loss of coolant accident shall be vented to the containment atmosphere. All vented systems shall be drained of water or other fluids to the extent necessary to assure exposure of the system containment isolation valves to containment air test pressure and to assure they will be subjected to the post accident differential pressure. Systems that are required to maintain the plant in a safe condition during the test shall be operable in their normal mode, and need not be vented. Systems that are normally filled with water and operating under post-accident conditions, such as the containment heat removal system, need not be vented. However, the containment isolation valves in the systems defined in III.A.1.(d) shall be tested in accordance with III.C. The measured leakage rate from these tests shall be included in the summary required by V.B.

* * * * *

IV. Special Testing Requirements.

A. *Containment modification.* Any major modification, replacement of a component which is part of the primary reactor containment boundary, or resealing a seal-welded door, performed after the preoperational leakage rate test shall be followed by either a Type A, Type B, or Type C test, as applicable for the area affected by the modification. The measured leakage from this test shall be included in the summary report required by V.B. The acceptance criteria of III.A.5.(b), III.B.3., or III.C.3., as appropriate, shall be met. Minor modifications, replacements, or resealing of seal-welded doors, performed directly prior to the conduct of a scheduled Type A test do not require a separate test.

* * * * *

V. Inspection and Reporting of Tests.

A. *Containment inspection.* A general inspection of the accessible interior and exterior surfaces of the containment structures and components shall be performed prior to any Type A test to uncover any evidence of structural deterioration which may affect either the containment structural integrity or leak-tightness. If there is evidence of structural deterioration, Type A tests shall not be performed until corrective action is taken in accordance with repair procedures, non destructive examinations, and tests as specified in the applicable code specified in § 50.55a at the commencement of repair work. Such structural deterioration and corrective actions taken shall be included in the summary test report required by V.B.

B. *Report of Test Results.* 1. The preoperational and periodic tests must be documented in a readily available summary report that will be made available for inspection, upon request, at the nuclear power plant. The summary report shall include a schematic arrangement of the leakage rate measurement system, the instrumentation used, the supplemental test method, and the test program selected as applicable to the preoperational test, and all the subsequent periodic tests. The report shall contain an analysis and interpretation of the leakage rate test data for the Type A test results to the extent necessary to demonstrate the acceptability of the containment's leakage rate in meeting acceptance criteria.

2. For each periodic test, leakage test results from Type A, B, and C tests shall be included in the summary report. The summary report shall contain an analysis and interpretation of the Type A test results and a summary analysis of periodic Type B and Type C tests that were performed since the last type A test. Leakage test results from type A, B, and C tests that failed to meet the acceptance criteria of III.A.5(b), III.B.3, and III.C.3, respectively, shall be included in a separate accompanying summary report that includes an analysis and interpretation of the test data, the least squares fit analysis of the test data, the instrumentation error analysis, and the structural conditions of the containment or components, if any, which contributed to the failure in meeting the acceptance criteria. Results and analyses of the supplemental verification test employed to demonstrate the validity of the leakage rate test measurements shall also be included.

PART 55—OPERATORS' LICENSES

4. The authority citation for 10 CFR Part 55 continues to read as follows:

Authority: Secs. 107, 161, 182, 68 Stat. 939, 948, 953, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2137, 2201, 2232, 2282); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Sections 55.41, 55.43, 55.45, and 55.59 also issued under sec. 306, Pub. L. 97–425, 96 Stat. 2262 (42 U.S.C. 10226). Section 55.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237).

5. Section 55.25 is revised to read as follows:

§ 55.25 Incapacitation because of disability or illness.

If, during the term of the license, the licensee develops a permanent physical or mental condition that causes the licensee to fail to meet the requirements of § 55.21 of this part, the facility licensee shall notify the Commission, within 30 days of learning of the diagnosis, in accordance with § 50.74(c). For conditions for which a conditional license (as describing in § 55.33(b) of this part) is requested, the facility licensee shall provide medical certification on Form NRC 396 to the Commission (as described in § 55.23 of this part).

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

6. The authority citation for 10 CFR Part 73 continues to read as follows:

Authority: Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245 (42 U.S.C. 5841, 5844).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C, 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99–399, 100 Stat. 876 (42 U.S.C. 2169).

7. In § 73.71, paragraph (c)(2) is deleted, paragraph (c)(1) is redesignated as paragraph (c), and paragraph (d) is revised to read as follows:

§ 73.71 Reporting of safeguards events.

* * * * * *

(d) Each licensee shall submit to the Commission the 30-day written reports required under the provisions of this section that are of a quality which will permit legible reproduction and processing. If the facility is subject to § 50.73 of this chapter, the licensee shall prepare the written report of NRC Form 366. If the facility is not subject to § 50.73 of this chapter, the licensee shall not use this form but shall prepare the written report in letter format. The report must include sufficient information for NRC analysis and evaluation.

8. In 10 CFR Part 73, Appendix G, the title of Section II is revised to read as follows:

Appendix G to Part 73—Reportable Safeguards Events

* * * * *

II. *Events to be recorded within 24 hours of discovery in the safeguards event log.*

* * * * *

Dated at Rockville, Maryland, this 20th day of October, 1994.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 94–27126 Filed 11–1–94; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–CE–12–AD]

Airworthiness Directives; Beech Aircraft Corporation 33, 35, and 36 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive 92–08–07, which currently requires inspecting (one-time) the wing front spar carry-through frame structure for cracks on certain Beech 33, 35, and 36 series airplanes, and, if found cracked, repairing or reinforcing. The Federal Aviation Administration (FAA) has received 43 reports of wing front spar carry-through frame structure cracks on the affected airplanes during the inspection required by AD 92–08–07. The proposed action would make this one-time inspection repetitive. The actions specified by the proposed AD are intended to prevent spar carry-through structure failure, which could result in severe structural damage to the wing.

DATES: Comments must be received on or before January 6, 1995.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–CE–12–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Engler, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4122; facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA- public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 94–CE–12–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–CE–12–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

AD 92–08–07, Amendment 39–8218 (57 FR 13004, April 15, 1992), currently requires inspecting (one-time) the wing front spar carry-through frame structure for cracks on certain Beech 33, 35, and 36 series airplanes, and, if found cracked, repairing or reinforcing. These actions are accomplished in accordance with Beech Service Bulletin (SB) No. 2360, dated November 1990.

Since this AD became effective, the FAA has received 43 reports of wing front spar carry-through frame structure cracks on Beech 33, 35, and 36 series airplanes during the inspection required by AD 92–08–07. Several of these affected airplanes had cracks between huckbolts that incur heavy loads and along the radius of the carry-through web in critical primary airframe structure. These cracks, if not detected and corrected, could result in wing front spar carry-through structure failure, which could result in severe structural damage to the wing.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that the inspection required by AD 92–08–07 should be repetitive.

Since an unsafe condition has been identified that is likely to exist or develop in other Beech 33, 35, and 36 airplanes of the same type design, the proposed AD would supersede AD 92–08–07 with a new AD that would require repetitively inspecting the wing front spar carry-through structure for cracks, and, if found cracked, repairing or replacing. The proposed action would be accomplished in accordance with Beech SB No. 2360, dated November 1990.

The FAA estimates that 11,000 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 8 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $4,840,000. This figure does not account for repetitive inspections. The only difference between the cost analysis for this proposed action and AD 92–08–07 (which would be superseded by this proposed action) is the cost of these repetitive inspections. The FAA has no way of determining the number of repetitive inspections an owner/operator may incur.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 92–08–07, Amendment 39–8218 (57 FR 13004, April 15, 1992), and by adding a new airworthiness directive to read as follows:

Beech Aircraft Corporation: Docket No. 94–CE–12–AD; Supersedes AD 92–08–07, Amendment 39–8218.

Applicability: The following model and serial number airplanes, certificated in any category:

Models	Serial numbers
35–33, 35–A33, 35–B33, 35–C33, E33, F33, and G33.	CD–1 through CD–1304
35–C33A, E33A, and F33A	CE–1 through CE–1192
E33C and F33C	CJ–1 through CJ–179
H35, J35, K35, M35 N35, P35, S35, V35, V35A, and V35B.	D–4866 through D–10403
36 and A36	E–1 through E–2397
A36TC and B36TC	EA–1 through EA–471

Compliance: Required initially upon the accumulation of 1,500 hours time-in-service (TIS) or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished, and thereafter as indicated.

To prevent spar carry-through structure failure, which could result in severe structural damage to the wing, accomplish the following:

(a) Inspect the wing front spar carry-through frame (web) structure for cracks in accordance with the instructions in Beech Service Bulletin (SB) No. 2360, dated November 1990.

(b) If cracks are found in the bend radius and not in the web face in the areas of the huckbolt fasteners during the inspection specified in paragraph (a) of this AD, accomplish the following at the time specified in accordance with the instructions in Beech SB No. 2360:

(1) For cracks up to 2.25 inches, accomplish one of the following as applicable:

(i) If not more than one crack on either side of the wing forward spar carry-through frame structure bend radius is found, prior to further flight, stop drill each crack at the crack ends. Within the next 200 hours TIS and thereafter at intervals not to exceed 200 hours TIS, reinspect each crack for progression and repair accordingly. Upon the installation of the applicable P/N 36–4004 Kit, the repetitive inspection time may be extended to 500 hours TIS.

(ii) If more than one crack is found on either side of the wing forward spar carry-through frame structure bend radius, prior to further flight, install the applicable Beech P/N 36–4004 Kit, and reinspect thereafter at intervals not to exceed 500 hours TIS.

(2) For cracks between 2.25 and 4.0 inches, accomplish one of the following as applicable:

(i) If not more than one crack on either side of the wing forward spar carry-through frame structure bend radius is found, prior to further flight, stop drill each crack at the crack ends, and within the next 100 hours TIS, install the applicable Beech P/N 36–4004 Kit. Reinspect thereafter at intervals not to exceed 500 hours TIS.

(ii) If more than one crack is found on either side of the wing forward spar carry-through frame structure bend radius, prior to further flight, install the applicable P/N 36–4004 Kit, and reinspect thereafter at intervals not to exceed 500 hours TIS.

(3) For cracks exceeding 4.0 inches, prior to further flight, install the applicable Beech P/N 36–4004 Kit, and reinspect at intervals not to exceed 500 hours TIS.

(c) If cracks are found in the web face in the area of the huckbolt fasteners but not in the bend radius during the inspections specified in paragraph (a) of this AD, accomplish the following at the time specified in accordance with the instructions in Beech SB No. 2360, but do not stop drill the cracks because it is possible to damage the structure behind the web face:

(1) For cracks less than 1.0 inch in length, accomplish one of the following as applicable:

(i) If not more than one crack on either side of the wing forward spar carry-through frame structure web face is found, within the next 200 hours TIS and thereafter at intervals not to exceed 200 hours TIS, reinspect each crack for progression and repair accordingly. Upon the installation of the applicable P/N 36–4004 Kit, the repetitive inspection time may be extended to 500 hours TIS.

(ii) If more than one crack is found on either side of the wing forward spar carry-through frame structure web face, prior to further flight, install the applicable Beech P/N 36–4004 Kit, and reinspect thereafter at intervals not to exceed 500 hours TIS.

(2) For cracks more than 1.0 inch in length, accomplish one of the following as applicable:

(i) If not more than one crack on either side of the wing forward spar carry-through frame structure web area is found, within the next 25 hours TIS, install the applicable Beech P/N 36–4004 Kit. Reinspect thereafter at intervals not to exceed 500 hours TIS.

(ii) If more than one crack is found on either side of the wing forward spar carry-through frame structure bend radius, prior to further flight, install the applicable Beech P/N 36–4004 Kit, and reinspect thereafter at intervals not to exceed 500 hours TIS.

(3) If a crack passes through two fasteners but is less than 0.5 inches beyond either fastener, accomplish one of the following as applicable:

(i) If not more than one crack on either side of the wing forward spar carry-through frame structure web area is found, within the next 25 hours TIS, install the applicable Beech P/N 36–4004 Kit, and reinspect at intervals not to exceed 500 hours TIS.

(ii) If more than one crack is found on either side of the wing forward spar carry-through frame structure bend radius, prior to further flight, install the applicable Beech P/N 36–4004 Kit, and reinspect at intervals not to exceed 500 hours TIS.

(4) If a crack passes through two fasteners but is more than 0.5 inches beyond either fastener, prior to further flight, install the applicable Beech P/N 36–4004 Kit. Reinspect thereafter at intervals not to exceed 500 hours TIS.

(d) If cracks are found in both the web face in the area of the huckbolt fasteners and the bend radius during the inspections required in paragraph (a) of this AD, accomplish the following in accordance with the instructions in Beech SB No. 2360:

(1) If only one crack is found on either side of the airplane, prior to further flight, repair each crack in accordance with the criteria and instructions in paragraphs (b)(1) through (b)(3) or (c)(1) through (c)(4) of this AD, as applicable. Reinspect thereafter at intervals not to exceed 500 hours TIS.

(2) If more than one crack is found on either side of the airplane, accomplish one of the following as applicable:

(i) For any crack that is 1.0 inch or more in length, prior to further flight, install the applicable Beech P/N 36–4004 Kit. Reinspect thereafter at intervals not to exceed 500 hours TIS.

(ii) For any crack under 1.0 inch in length, within the next 200 hours TIS and thereafter at intervals not to exceed 200 hours TIS, reinspect each crack for progression and repair accordingly. Upon the installation of the applicable P/N 36–4004 Kit, the repetitive inspection time may be extended to 500 hours TIS.

(e) If a fuselage skin crack is found around the opening of the lower forward carry-through fitting, prior to further flight, obtain repair instructions from the manufacturer through the Wichita Aircraft Certification Office (ACO) at the address specified in paragraph (g) of this AD, and incorporate these instructions. Reinspect thereafter at intervals not to exceed 500 hours TIS.

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the

Manager, Wichita ACO, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

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

(h) All persons affected by this directive may obtain copies of the document referred to herein upon request to the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(i) This amendment supersedes AD 08–07, Amendment 39–8218.

Issued in Kansas City, Missouri, on October 7, 1994.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–27111 Filed 11–1–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 92-ASW-37]

Airworthiness Directives; Sikorsky Aircraft Model S-76B Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a notice of proposed rulemaking (NPRM) that proposed a new airworthiness directive (AD), applicable to Sikorsky Aircraft Model S–76B helicopters. That action would have limited the applicability of the inspections of the left and right engine input drive shaft assemblies (shaft assemblies) for loose balance weights or cracks to those shaft assemblies of original (or initial) design only, and would have excluded redesigned shaft assemblies from those inspections. Since the issuance of the NPRM, the FAA has received a report of a fatigue crack in a redesigned shaft assembly indicating a need to continue the existing inspections of the redesigned shaft assembly. Accordingly, the proposed rule is withdrawn.

FOR FURTHER INFORMATION CONTACT: Mr. Terry Fahr, Aerospace Engineer, Boston Aircraft Certification Office, ANE–153, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 238–7155, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to supersede an existing airworthiness directive (AD), applicable to Sikorsky Aircraft Model S–76B helicopters, was published in the **Federal Register** on November 2, 1992 (57 FR 49431). The proposed rule would have limited the applicability of AD 91–19–02 by requiring initial and repetitive 25 hours time-in-service inspections of the shaft assemblies of original (or initial) design only, excluding the redesigned shaft assemblies from the inspections. That action was prompted by the introduction of a redesigned shaft assembly that was designed to eliminate the cause of cracks in the original shaft assemblies. The proposed actions were intended to prevent failure of certain shaft assemblies and subsequent loss of power to the helicopter rotor system.

Since the issuance of that NPRM, the FAA has received a report of a fatigue crack in a redesigned shaft assembly. Therefore, the FAA issued Priority Letter AD 93–1–05 on June 4, 1993, to require inspections of the redesigned shaft assemblies at intervals not to exceed 6 hours time-in-service from the last inspection.

Upon further consideration, the FAA has determined that the proposed rule to exclude redesigned shaft assemblies from the AD inspections is no longer appropriate. Accordingly, the proposed rule is hereby withdrawn.

Withdrawal of this notice of proposed rulemaking constitutes only such action, and does not preclude the agency from issuing another notice in the future, nor does it commit the agency to any course of action in the future.

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore, is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket 92–ASW–37, published in the **Federal Register** on November 2, 1992, (57 FR 49431), is withdrawn.

Issued in Fort Worth, Texas, on October 26, 1994.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 94–27112 Filed 11–1–94; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 94–NM–148–AD]

Airworthiness Directives; Airbus Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A320 series airplanes. This proposal would require inspections to determine proper adjustment of the gap tolerances of the seat track joints at frame 64, and correction of discrepancies. This proposal would also require eventual repositioning or replacing the seat tracks on all affected airplanes, which would terminate the requirement of repetitively removing or repositioning the seat tracks. This proposal is prompted by in-service inspection reports, which have revealed that a gap between the forward and aft seat track at frame 64 could exceed the tolerance limit due to a method used on the assembly line to control the position of the seat track. The actions specified by the proposed AD are intended to ensure that the gap tolerances of the seat track joints do not exceed the tolerance limit and subsequently lead to separation of the passenger seats from the seat track under emergency landing conditions.

DATES: Comments must be received by December 29, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–148–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–148–AD". The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–148–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A320 series airplanes. The DGAC advises that in-service inspection reports have revealed that the gap between the forward and aft seat track at frame 64 (left- and right-hand) could be exceeding the 2.8 mm (.11 inch) tolerance limit. Investigation revealed that the cause has been attributed to the method used on the assembly line to control the position of the seat track. This method is inadequate in monitoring the gap between the forward and aft seat track of the passenger seats at frame 64. Incorrectly installed seat tracks, if not corrected, could result in a gap that exceeds the tolerance limit, and could subsequently lead to separation of the passenger seats from the seat track under emergency landing conditions.

Airbus has issued All Operator Telex (AOT) 53–01, dated August 27, 1992, which describes procedures for:

1. Performing a one-time visual inspection to determine if a seat fitting having an x-plunger behind a z-stud is installed at the seat track joint at frame 64;

2. Measuring the gap between the forward and aft seat tracks, if any seat fitting having an x-plunger is installed;

3. Applying sealing material at the seat tracks, if the gap is less than or equal to 2.8 mm; and

4. Removing or repositioning the seat, if the gap is greater than 2.8 mm.

Airbus has also issued Service Bulletin A320–53–1088, dated May 10, 1993, which describes procedures for repositioning or replacing the seat tracks.

The DGAC classified the AOT and service bulletin as mandatory and issued French Airworthiness Directive 93–081–042(B), dated May 26, 1993, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a one-time visual inspection to determine if a seat fitting having an x-plunger behind a z-stud is installed at the seat track joint at frame 64, and correction of discrepancies. The proposed AD would also require repositioning or replacing the seat tracks, which would terminate the requirement of repetitively removing or repositioning the seat tracks. The actions would be required to be accomplished in accordance with the service bulletin described previously. If any cabin equipment other than passenger seats is installed at frame 64, the correction would be required to be accomplished in accordance with a method approved by the FAA.

The FAA estimates that 85 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 7 work hours per airplane to accomplish the proposed inspection at an average labor rate is $55 per work hour. Based on these figures, the total cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $32,725, or $385 per airplane.

It would take approximately 54 work hours per airplane to accomplish the proposed modification at an average labor rate of $55 per work hour. Required parts would be supplied by the manufacturer at no cost to the operators. Based on these figures, the total impact of the modification proposed by this AD on U.S. operators is estimated to be $252,450, or $2,970.

Based on above figures, the total cost impact of the proposed inspection and modification on U.S. operators is estimated to be $285,175, or $3,355/per airplane.

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Industrie: Docket 94–NM–148–AD.

Applicability: Model A320 series airplanes; manufacturer's serial numbers 002 through 008 inclusive, 010 through 014 inclusive, 016 through 078 inclusive, 080 through 122 inclusive, 124 through 179 inclusive, 183 through 194 inclusive, 196 through 228 inclusive, 230 through 251 inclusive, and 253 through 255 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent separation of the passenger seats from the seat track during an emergency landing, accomplish the following:

(a) Within 450 flight cycles after the effective date of this AD, perform a visual inspection to determine if a seat fitting having an x-plunger behind a z-stud is installed at the seat track joint at frame 64, in accordance with Airbus All Operator Telex (AOT) 53–01, dated August 27, 1992.

(b) If such a seat fitting is installed, prior to further flight, measure the gap between the forward and aft seat tracks in accordance with the Airbus AOT 53–01, dated August 27, 1992.

(1) If the gap is less than or equal to 2.8 mm, prior to further flight, apply sealing material at the seat tracks, in accordance with the AOT.

(2) If the gap is greater than 2.8 mm, prior to further flight, accomplish the requirements of either paragraph (b)(2)(i) or (b)(2)(ii) of this AD, as applicable.

(i) For airplanes equipped with passenger seats at frame 64: Accomplish either paragraph (b)(2)(i)(A) or (b)(2)(i)(B) of this AD:

(A) Remove or reposition the seat in accordance with Airbus AOT 53–01, dated August 27, 1992. Thereafter, repeat the removal or repositioning whenever the cabin configuration is changed until the accomplishment of paragraph (c) of this AD. Or

(B) Reposition or replace the seat tracks in accordance with Airbus Service Bulletin A320–53–1088, dated May 10, 1993. Such repositioning or replacement constitutes terminating action for the requirements of this AD.

(ii) For airplanes equipped with equipment other than passenger seats at frame 64: Prior to further flight, correct the discrepancy in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(c) Within 30 months after the effective date of this AD, reposition or replace the seat tracks, in accordance with Airbus Service Bulletin A320–53–1088, dated May 10, 1993. Accomplishment of this repositioning or replacement constitutes terminating action for the requirements of this AD.

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

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

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on October 27, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–27153 Filed 11–1–94; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Chapter I

[Docket No. RM94–20–000]

Inquiry Concerning Alternative Power Pooling Institutions Under the Federal Power Act

Issued: October 26, 1994.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of inquiry and request for comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is requesting comments on issues related to alternative power pooling institutions. It also requests comments on the role of traditional power pools in an era of increased competition. This Notice of Inquiry is needed because of the increasing access to transmission services in the electric utility industry and the concomitant increase in competition.

DATES: Written comments must be received by the Commission no later than March 2, 1995. Reply comments must be received by the Commission no later than April 3, 1995.

ADDRESSES: Send comments to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT:

Janice Macpherson, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, Telephone: (202) 208–0921, (legal issues)

J. Stephen Henderson, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, Telephone: (202) 208–0100 (technical issues)

or

Michael A. Coleman, Office of Electric Power Regulation, Federal Energy Regulation Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, Telephone: (202) 208–1236.

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

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

Notice of Inquiry

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

October 26, 1994.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is initiating this proceeding to solicit comments from interested persons on issues related to alternative power pooling institutions.[1]

Since the inception of power pools, fundamental changes have occurred in the electric utility industry. Most significant are the enactment of the Energy Policy Act of 1992 (EPAct)[2] and the emerging development of a competitive bulk power market. The Commission has recently announced in a series of orders its policy of promoting competitive bulk power markets, and has emphasized the critical role of comparable transmission access in meeting that goal.

Given the ongoing changes in the competitive environment of the electric utility industry—in particular, the potential for substantially increased access to transmission—we must consider whether we are appropriately balancing our dual objectives of promoting coordination and competition. Indeed, industry participants in many regions are responding to competitive changes by exploring the possibility of changes in, or alternatives to, traditional power pools.

The Commission believes that the new alternative power pooling institutions have great potential. In particular, they may be of assistance in facilitating the resolution of some difficult federal-state jurisdictional issues and in developing mechanisms for resolving or minimizing stranded cost issues. We therefore want to explore them in detail. We are particularly interested in determining whether alternative power pooling institutions may have special transmission pricing needs.[3]

We also wish to re-examine the role of more traditional power pools in an era of increased competition.

For these reasons, we are initiating a notice of inquiry on alternative power pooling institutions. This notice has three parts. First, we relate our understanding of an innovative power pooling concept proposed by two utilities in Southern California in response to the California Public Utilities Commission's (California Commission) inquiry into retail access (the "Blue Book Proposal").[4] We also note our interest in any other alternative pooling institutions that are being explored today. Second, we briefly describe power pools as they have evolved to date in order to provide a comparison of traditional power pools with emerging, innovative proposals. Third, we ask interested parties to respond to specific questions, as well as to provide us with any other comments they may have, on alternative power pooling institutions and existing power pools.

We note that a major focus of this notice of inquiry is on power pooling to accomplish short-term transactions, rather than long-term regional planning, which we addressed in our Policy Statement on Regional Transmission Groups (RTGs).[5] While power pools do some transmission planning, it is not necessarily of a regional or long-term nature. In contrast, as envisioned in our policy statement on RTGs, RTGs may be better able to focus on long-term and regional transmission planning. In this sense, RTGs and poolcos, at a minimum, would be complementary, rather than competing, institutions. Indeed, the same institution could perform both functions. For example, some RTGs may decide to develop mechanisms to accommodate short-term transactions within the RTG. The Commission is interested in exploring whether RTGs would be appropriate institutions to accommodate power pooling.

II. Alternative Power Pooling Institutions

Increased competition in the electric utility industry may signal the need for alternative power pooling arrangements. We are interested in considering new arrangements that could better capture the benefits of competition in bulk power markets without unnecessarily sacrificing coordination benefits. Serious discussion is occurring in California at the present time concerning an alternative power pooling arrangement.

A. The Poolco Concept

Two utilities (San Diego Gas & Electric Company and Southern California Edison Company) have each proposed creating a regional pooling company, or "poolco," in response to the California Commission's Blue Book Proposal. Both proposals discuss some form of restructuring, either vertical disintegration or the relinquishment of transmission control. Divestiture has not been proposed. However, the utilities may intend to create subsidiary companies for each function that would remain affiliated.

Although the two proposals vary in some details, they share many fundamental characteristics. Basically, the poolco would be an independent entity that would not own any (or would own only a limited number of) facilities, but would control the operation of some or all generators, and all transmission facilities, in a region. The poolco would be open to all generators connected to the grid, who would automatically receive any transmission service needed to sell power into the regional pool. In effect, the poolco would be responsible for creating and maintaining a regional spot market for electricity. The spot price in each trading period (perhaps hour-by-hour) would be readily available and made known to all market participants.

Generating resources would be centrally dispatched on an hourly basis by the poolco in much the same way as in current power pools. The principal difference appears to be that generators would be dispatched based on the bid price they submit to the poolco, rather than on their running costs. The poolco would operate a least-cost (in the sense of lowest bid) dispatch that accounts for any transmission constraints in the same manner as an existing power pool or a single utility dispatch center. Generators would be paid the market-clearing price[6] during each hour, as opposed to the bid price that each

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[1] Section 202(a) of the FPA reflects Congress' desire to promote and encourage the voluntary interconnection and coordination of utility facilities. While the Department of Energy now has primary responsibility for Section 202(a) of the Federal Power Act, see 42 U.S.C. 7151, 7172, all voluntary coordination and interconnection agreements involving public utilities must be filed with the Commission. The Commission, therefore, continues to play a pivotal role in this area.

In addition, section 205(a) of the Public Utility Regulatory Policies Act of 1978 (PURPA) authorizes the Commission to exempt electric utilities, in whole or in part, from state law, rule or regulation which prohibits or prevents voluntary coordination. Under PURPA section 205(b)(2), the Commission also may recommend to electric utilities that they enter into negotiations concerning pooling arrangements.

[2] Pub. L. No. 102–486, 106 Stat. 2776 (1992).

[3] Concurrently, the Commission is issuing a policy statement on transmission pricing in Docket No. ER93–19–000. *See* Inquiry Concerning the Commission's Pricing Policy for Transmission Services Provided by Public Utilities Under the FPA, Policy Statement, FERC Stats. & Regs. ¶ _____ (1994).

[4] Proposed Policies Governing Restructuring of California's Electric Services Industry and Reforming Regulation, 151 PUR4th 73 (California Public Utilities Commission 1994).

[5] Policy Statement Regarding Regional Transmission Groups, 58 FR 41626 (Aug. 5, 1993), III FERC Stats. & Regs., Regulations Preambles ¶ 30,976 (1993).

[6] The market-clearing price is the highest bid price of any generator that is selected to provide service to the poolco in an hour. Each successful bidder would receive this price, regardless of whether its bid price was less than the market-clearing price.

generator submitted to the poolco.[7] Likewise, distributors would pay the market-clearing price in each hour. Consequently, the poolco would break even in its basic dispatch function, since distributors would pay to the poolco what the generators would receive from the poolco.

In effect, the poolco would become the market clearinghouse for the hourly energy market. Under the poolco concept, dispatch benefits are implicitly allocated among sellers and buyers by the spot trading at a market-clearing price. The poolco would have no further role in dividing or allocating benefits. Also, the proposed poolco would have no role in long-term energy or capacity markets. Generators and distributors could enter into contracts outside the poolco.

Under San Diego's poolco concept as currently proposed,[8] spot prices would vary from one geographical location to another to reflect transmission constraints.[9] This would allow the spot trading to be conducted at a price that reflects the real ability and limitations of the grid to move power from low-cost to high-cost areas. The proposal includes opportunity cost pricing for grid congestion, as well as tradable capacity rights.

While the poolco concept contains many similarities to existing power pools, it appears that significant differences exist between a traditional power pool and a poolco, particularly with respect to both generation and transmission pricing. Although a traditional power pool generally has flexible cost-based pricing schemes,[10] we understand that a fundamental characteristic of the California poolco concept is that all short-term power sales would occur at a market-clearing price. In other words, whereas in a traditional power pool the offer-price mechanisms are cost-based, in the California poolco proposal they would be based on economic bids with an incentive to bid at or near the utility's marginal running costs.

Another difference between traditional power pools and the California poolco proposals is their membership. Today, some power pool agreements include explicit membership criteria. Most include no explicit provisions addressing the admission of new members. However, most existing pools to some extent limit membership. On the other hand, the California poolco proposals, as we understand them, would require open membership for at least all bulk power participants.

The California poolco proposals represent an interesting alternative approach to achieving operating efficiency and competition in hourly electricity markets. However, the proposals are in an early stage of development and a number of significant transmission issues apparently have not yet been resolved (for example, how transmission owners would be compensated for the existing facilities, how to determine priorities for use of the transmission grid, how to allocate expansion costs and how to induce appropriate expansion). Since the California poolco proposals raise several questions and issues that need additional consideration, we have included a list of questions in section III.C of this Notice on which we seek comments from interested persons.

B. Other Alternative Power Pooling Institutions

There may be other alternative pooling proposals of which the Commission is not aware. The above discussion is not intended to limit the scope of this inquiry. The Commission is interested in all innovative pooling proposals intended to capture the benefits of competitive bulk power markets while preserving those coordination benefits that are consistent with competition.

The issue of alternative power pooling arrangements, and the California poolco proposal in particular, is part of a larger discussion concerning the future structure of the electric power industry in the United States. In addition to the California poolco concept, other innovative institutions have been proposed which, as the Commission comprehends them, might either work in tandem with a poolco, or separately from a poolco to facilitate the development of a more competitive bulk power market. For example, some have suggested that the electric power industry could be restructured to include: (1) generating companies, known as "gencos," which are groupings of generators that may or may not be affiliated with utilities that compete to sell electricity in the wholesale spot and contract markets; (2) transmitters, known as "transcos" or "gridcos," which are companies that would separately own and maintain a regional transmission grid; and (3) distributors, known as "discos," which are utilities that would operate the local distribution systems and purchase energy in the competitive wholesale market for resale to ultimate customers.

In such a restructured market, the poolco could be a fourth player that could control the operation of the generation and transmission facilities owned by gencos and gridcos; *i.e.*, the poolco could dispatch the system based on buy/sell offers from individual gencos and discos. In addition, the poolco could provide any necessary ancillary services (*e.g.*, load following, spinning reserves, and reactive power) at cost.

In addition to proposals to restructure the electric power industry along functional lines, there may be other alternative institutional structures for the industry that warrant consideration in this inquiry. The Commission is interested in expanding its appreciation of any such proposals for alternative institutional structures. In particular, the Commission is interested in the extent to which such alternative institutional structures might facilitate the achievement of a more competitive bulk power market in a way that the current institutional structure of the industry may not. We have included several questions in this regard as part of section IV. of this notice.

III. Existing Power Pools

In order to fully understand the issues presented by alternative power pooling institutions, it is necessary to understand existing power pools. In addition, given the competitive changes in the industry and the fact that new pooling alternatives are emerging, it is appropriate to consider whether existing power pools are functioning appropriately and, if not, to consider what changes are necessary.

Historically, utilities began coordination activities by entering into simple bilateral arrangements, progressing gradually to more complex contractual agreements. Such agreements may simply cover an exchange of energy and power, or they may cover a variety of services. They generally are not considered to be pooling agreements unless they include coordination of reserve generating capacity and, in most cases, some coordination of planning and

[7] This method of pricing creates an incentive for each generator to bid near its marginal running cost, since it would risk losses if it bids less than its running costs and the poolco selects it to run, and it would risk losses if it bids more than its running costs and the poolco does not select it to run.

[8] We understand that both San Diego's and Edison's proposals continue to be revised, and that the two proposals may become more similar as details are worked out.

[9] Under Edison's proposal, in contrast, spot prices would not reflec. transmission constraints.

[10] These range from split-savings (*e.g.*, Pennsylvania-New Jersey-Maryland Interconnection (PJM)) to a rate that falls under a price cap based on pool members' composite costs (Mid-Continent Area Power Pool (MAPP)).

construction in addition to operating coordination. [11]

Traditional power pools have provided to their members significant economic benefits and operating efficiencies, including: reduced operating costs resulting from joint dispatch; reduced fixed costs resulting from joint construction of generating units and reserve sharing; and increased system reliability resulting from reserve sharing and regional planning.

Existing pools vary a great deal in the extent to which they are integrated, i.e., to which they plan and operate their individual systems as a single system.[12] The most highly integrated pools are referred to as "tight" pools.[13] Tight pools extensively coordinate their planning and operations in both the long and short run, and in theory provide the greatest benefits. They provide for joint planning on a highly coordinated basis and for centralized dispatch of generating facilities. They also establish contractual requirements with respect to generating capacity and operating reserves, together with financial penalties to enforce reserve requirements. [14]

One of the key characteristics of a tight power pool is central dispatch, which ensures short-term efficiency by dispatching the pool's combined generating resources to meet the pool's combined loads, without regard to unit ownership. The benefits of central dispatch (i.e., the savings realized by dispatching jointly rather than individually) are shared among pool members. [15]

A long-term benefit of a tight power pool is joint action to enhance reliability. A tight pool coordinates maintenance to ensure that adequate reserves are maintained, that is, units are taken out of service on a staggered basis. Also, tight pools undertake some regional planning of production and transmission to facilitate joint solutions to regional needs and problems.

Finally, tight pools conduct transactions with neighboring pools to realize additional economy savings and to increase reliability whenever possible.

Tight power pools generally require that members provide transmission access to other members without a direct charge for economy trades effected through central dispatch as compensation for use of their facilities. However, the transmission providers may be assigned a share of the savings resulting from the central dispatch. Affiliated power pools, i.e., the registered holding companies, have more extensive transmission access provisions that generally include some form of transmission equalization payments among members.

Pools that are characterized by a lower level of coordination are called "loose pools." [16] For example, while the participating utilities work together to establish principles and practices for interconnected operation, review area power supply problems and establish criteria for power supply adequacy, exchange generation and transmission construction plans, and plan coordinated efforts to attain optimal economy and reliability, there is no central dispatch and there may be less joint planning.

As discussed in section IV of this Notice, the Commission seeks comment on a number of questions pertaining to existing power pools (both tight pools and loose pools), and their strengths and weaknesses in light of emerging competitive bulk power markets.

IV. Request for Comments

In order to assess the merits of alternative power pooling institutions, including the California poolco proposals, and to evaluate whether our existing policies will impede the development of such institutions, the Commission seeks comments from interested industry participants. We also believe that this proceeding is an appropriate forum to consider whether any changes should be made in our policies concerning existing power pools. Our intention is to ensure that our policies, while continuing to maintain adequate and reliable service, are consistent with the development of a competitive bulk power market. Answers to the questions below should refer to the number(s) of the specific question(s) when possible. In addition commenters may address any other matters related to these issues. We are interested in all aspects of potential changes in, or alternatives to, existing power pools.

Question 1. What alternative power pooling institutions might be beneficial? What are the strengths and weaknesses of these alternatives? What special transmission pricing needs, if any, would such alternative pooling institutions have? What specific benefits would an alternative bring that are not available today? What specific benefits of existing pools would be lost? What, if any, benefits would alternative power pooling institutions provide compared to bilateral trading? How would alternative power pooling institutions differ from a regime of bilateral trading?

Question 2. Do any current Commission policies impede the formation of beneficial alternative power pooling institutions? What changes in our existing policies, if any, including pricing policies, are needed to encourage pools that facilitate competitive bulk power markets?

Question 3. In discussing any alternative power pooling institution, please address how the adequacy of generation and transmission services would be ensured, *e.g.*, maintenance of adequate generation and transmission reserves and construction of needed generating and transmission capacity? How would reliability be ensured, *e.g.*, control of transmission systems, voltage support, reactive power, loop flow, load following, backup services and other control area services?

Question 4. What are the conditions required for alternative power pooling institutions to be beneficial, *e.g.*, a minimum number of sellers or buyers, a minimum geographic size, maximum market share for any seller or buyer, open membership, appropriate governance rules? Should participation by generators in the alternative pool's area be voluntary or mandatory?

Question 5. Do alternative power pooling institutions have the potential to help resolve or minimize stranded cost issues? If so, how?

Question 6. How would specific alternative power pooling institutions be regulated? In

[11] Although the terms "pooling" and "coordination" are sometimes used interchangeably, generally, the term "coordination" refers to the whole spectrum of relationships between utilities, and "pooling" refers to more formalized agreements between utilities to operate and plan their systems in a manner that achieves the greatest regional economy and reliability.

[12] Other pooling arrangements may coordinate extensively, but only involve a few companies, e.g., the coordination arrangement between Detroit Edison Company and Consumers Power Company. Some coordination arrangements often referred to as power pools are, in fact, simply vehicles for bilateral trades of economy energy, such as Western Systems Power Pool (WSPP) and Florida Energy Broker.

[13] There are three tight power pools operating today. NEPOOL operates in six New England states, and its 90 members include investor-owned utilities (IOUs) and publicly-owned utilities. The New York Power Pool (NYPP) operates in the State of New York, and its members include the seven IOUs in the State and the Power Authority of the State of New York. PJM operates in the Mid-Atlantic region, and its eight members include only IOUs.

[14] There are also several affiliated utility systems (registered holding companies under the Public Utility Holding Company Act of 1935) that operate as tight power pools. Southern Company, Entergy Corporation, American Electric Power Company, Allegheny Power System, Central & South West Corporation, General Public Utilities (which is itself a member of PJM), and Northeast Utilities (which is itself a member of NEPOOL). Together, these affiliated utility systems and tight pools account for approximately 40 percent of the generating capacity in the Eastern Interconnection.

[15] Even when pool members undertake bilateral trades with other pool members to increase their revenues from pool interchange, the pool dispatch is unaffected. The bilateral agreement is simply a mechanism for adjusting the pool's after-the-fact benefit sharing formula.

[16] An example of a loose pool is MAPP, which operates in the Midwest. Its members (as well as associated members and a liaison participant) include IOUs, publicly-owned entities, generating and transmitting cooperatives, Canadian crown corporations and one Federal power marketing administration (the Western Area Power Administration).

particular, can these institutions be designed to fit easily into the existing Federal-State regulatory structure so as to avoid duplicating the regulation of pool functions?

Question 7. What are the merits of proposals to restructure the electric power industry along functional lines such as the genco-gridco-disco delineation? Should the Commission be prepared to proceed with poolco-type proposals in advance of any functional utility restructuring efforts, or should the Commission refuse to act on poolco-type proposals unless the functional restructuring occurs simultaneously? Does such a restructuring have merit even if an alternative power pooling arrangement is not adopted? Would such a restructuring facilitate the development of a more competitive bulk power market in a way that the current institutional structure of the electric power industry cannot?

Question 8. In addition to the proposal mentioned in the preceding question, are there other alternative institutional structures for the electric power industry that warrant the Commission's consideration in this Inquiry?

Question 9. What are the strengths and weaknesses of today's power pools? We are particularly interested in concrete examples related to existing power pools. Should the Commission consider changing any existing power pool practices or policies to facilitate competitive bulk power markets?

Question 10. Would changes to existing power pools be preferable to creating new pooling institutions? Is an RTG an appropriate institution to become a power pool? Or should the RTG's transmission planning function be kept separate from the pool's generation market-clearing function?

Question 11. Can a pool provide advantages to its members without unduly preferring members to non-members? How should pool members relate to non-members in an open access market? Are any improvements in information availability necessary for existing pools or alternative pooling institutions to be more beneficial? What reciprocity conditions are appropriate between pool members and non-members? How would a state policy of retail access affect pool membership conditions and reciprocity obligations? What if retail access were available in only some states in the pool?

Question 12. How should the Commission's recently-announced policy concerning comparability of transmission services be implemented with respect to alternative power pooling institutions and/or existing power pools?

V. Public Comment Procedures

The Commission invites all interested parties to submit an original and 14 copies of their written comments. Comments should not exceed 100 pages in length. In addition, commenters should submit an executive summary not to exceed five pages.

The Commission will also permit interested persons to submit reply comments in response to the initial comments filed in this proceeding. Reply comments should not exceed 50 pages in length.

Persons with common interests or views are encouraged to submit joint comments. Commenters should double space their comments, provide a concise description identifying the commenter, and should reference Docket No. RM94–20–000. In addition, commenters should submit a copy of their comments on a 3½ inch diskette in ASCII II format. Initial and reply comments must be filed with the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, no later than March 2, 1995 for initial comments and April 3, 1995 for reply comments.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Section, 941 North Capitol Street, NE., Washington, D.C. 20426, during regular business hours.

By direction of the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27090 Filed 11–1–94; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 42, 48, 70, 71, 75, 77, and 90

RIN 1219–AA79

Decertification of Approved Instructors and Certified and Qualified Persons

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish uniform procedures under the Federal Mine Safety and Health Act of 1977 (Mine Act) for the Mine Safety and Health Administration (MSHA) to decertify persons who have been designated as MSHA-approved instructors and those individuals certified or qualified to perform certain mining related tasks under the applicable training, safety and health regulations. These proposed decertification procedures would also apply to those persons who are deemed certified by MSHA as a result of their certification through State programs recognized by the agency. The proposal would provide notice of potential decertification by MSHA and would provide procedural due process, including a notice of proposed action, an informational meeting with the district manager, notice of the district manager's decision, appeal rights to the appropriate administrator, and a *de novo* post-decertification evidentiary hearing before an administrative law judge of the U.S. Department of Labor. In addition, the proposal would provide a new paragraph to replace the decertification of diesel mechanics previously proposed.

DATES: Written comments must be submitted by January 6, 1995.

ADDRESSES: Send comments to the Office of Standards, Regulations and Variances, MSHA, Room 631, Ballston Tower #3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

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

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

This proposed rule contains no information collection requirements.

II. Background

In order to maintain safe and healthful working conditions in mines, MSHA recognizes that certain tasks and duties must be performed by individuals with the proper knowledge and expertise. MSHA has promulgated regulations in Title 30 of the Code of Federal Regulations (30 CFR), parts 48, 70, 71, 75, 77, and 90, that require particular activities to be performed by persons who have demonstrated their expertise or proficiency to the agency or to a State mining agency, who have been recognized as competent through training, testing or experience, and who have been formally "approved," "certified," or "qualified" by MSHA or a State to perform these activities.

MSHA regulations require some form of approval, certification, or qualification for a variety of activities. At coal mines, certification requirements apply to underground coal mine foremen, assistant foremen, and preshift examiners who, among other things, must be able to check for evidence of methane gas and identify other safety hazards. Individuals who collect respirable dust samples, maintain and calibrate dust sampling equipment, test noise levels, or examine surface coal mine work areas for hazardous conditions must also be certified by MSHA. Regulations for coal mines also require the qualification of persons who perform electrical work, examine impoundment structures, test methane and oxygen levels, operate hoists, or use explosives. Finally, MSHA

approves instructors to provide training to coal, metal and nonmetal miners.

Depending upon the type of approval, certification or qualification sought, an individual can become certified or qualified through an MSHA-administered program, or a State-administered program recognized by MSHA. Six activities require an approval, certification or qualification issued solely by MSHA: Respirable dust sampling; maintenance and calibration of respirable dust sampling equipment; noise level testing; examination of impoundments; electrical work (several States have electrical qualification programs approved by MSHA); and the training and retraining of miners.

MSHA certifies and qualifies individuals to perform work in the remaining job categories, but also recognizes State certifications for the following: blasters; foremen; assistant foremen; preshift examiners; persons who conduct surface examinations; gas testers, and hoist operators. Because MSHA accepts State certifications for these job categories, the agency does not require an MSHA-issued certification except where there is no State certification program.

Certification and qualification procedures require an individual to show the necessary competency in the appropriate areas. In general, an individual obtains an MSHA certification or qualification by attending an MSHA-sponsored or approved training program; by demonstrating the ability to perform the activities and duties stated in the regulations; or by successfully passing an examination. MSHA currently administers examinations for certification or qualification for dust sampling, noise level testing, maintenance and calibration of dust sampling equipment, electrical work, and examination of impoundments. In order to remain qualified to perform electrical work, the qualified person must satisfactorily complete an MSHA-approved coal mine electrical retraining program annually. All other certifications or qualifications have an indefinite duration requiring no recertification, except for those persons referred to in § 75.100(c)(2) and 77.100(b)(2).

Most State certifications are conditional upon minimum age and years of mining experience, undergoing required training, and passing a relevant examination. In many instances, States also require refresher training at specified intervals. The following coal-producing States have one or more certification programs: Alabama, Alaska, Arizona, Arkansas, Colorado, Illinois, Indiana, Kentucky, Montana, New Mexico, North Dakota, Ohio, Oklahoma, Pennsylvania, Tennessee, Utah, Virginia, West Virginia, and Wyoming. These States do not all maintain the same number and types of certification programs, nor does MSHA recognize all State certifications. For instance, all of these States, with the exception of Alaska, maintain programs for the certification of responsible individuals. MSHA recognizes all of these types of certifications. On the other hand, although Arkansas, Illinois, and Pennsylvania have electrical certification programs, MSHA does not recognize their State electrical certifications for compliance with Federal regulations.

Currently, 30 CFR part 48 specifies procedures for revocation of the approval of part 48 training instructors. Under 30 CFR 48.3(i) and 48.23(j), a person's approval to conduct training under part 48 can be revoked for good cause which may include failure to instruct a course within a 24-month period. It may also include failure to follow the approved training plan, inadequate teaching skills, or lack of subject matter knowledge. This proposed rule would revise and expand part 48 procedures.

This proposed rule would also for the first time establish formal procedures for the revocation of the certifications or qualifications of individuals as well as the termination of MSHA's acceptance of an individual's State certification or qualification. Although an individual may continue to hold a State certification, MSHA could discontinue its recognition or acceptance of the State certification by following the procedures in this part. Revisions to the applicable sections of 30 CFR parts 70, 71, 75, 77 and 90 are included within the proposed rule. MSHA anticipates extensive coordination with the States regarding pursuit of decertification actions within those States whose certifications MSHA recognizes. MSHA will be cognizant of any State decertification actions, initiated independently of those actions specifically referred or sought by MSHA, prior to the initiation of decertification actions by MSHA under this proposed rule.

MSHA has reviewed the existing certification and qualification programs (and their attendant policies and procedures) administered by MSHA and the States. MSHA has concluded that decertification procedures are necessary to assure that specific activities are conducted only by persons who do so in compliance with the applicable regulations, or who are competently fulfilling their work responsibilities. The agency has previously taken decertification action against certain individuals on a limited basis. MSHA has determined that formalizing the process and standardizing the procedures would assure that adequate notice is provided and sufficient due process is afforded to affected individuals.

MSHA has also re-examined the proposed decertification process specifically applied to qualified diesel mechanics and published in the Federal Register on October 4, 1989, (54 FR 40996) as part of its comprehensive proposal for the approval and use of diesel equipment in underground coal mines. Because of the generic nature of the procedures published and proposed today, the agency does not believe that it is necessary to have a separate procedure for qualified diesel mechanics. This procedure was published under proposed § 75.1916(h) (54 FR 40996). Consequently, today's proposal also contains a new paragraph to amend proposed § 75.1915 which will serve to apply today's proposed part 42 to any qualification requirements for diesel mechanics which become a final rule. It is MSHA's intent to delete any reference to the decertification procedures referred to in proposed § 75.1916(h) when that regulation becomes final.

Although the assessment of civil penalties and the initiation of criminal action against operators or agents under 110 of the Mine Act do serve as effective enforcement measures, they may not, in all instances, induce necessary compliance with regulations. MSHA believes that the emphasis in the certification and qualification programs should be on maintaining the integrity of the certifications and the qualifications that are granted by ensuring that only those individuals who adequately discharge the obligations which a certification requires continue to hold such certification. The status of being certified or qualified is a privilege, not a right, and only those who carry out the responsibilities that are inherent in these credentials should be permitted to hold them.

Uniform decertification procedures would provide another approach for MSHA to direct a change in the actions and attitudes of certified and qualified persons who do not comply with health and safety regulations. Temporary or permanent decertification should compel compliance with the law, as decertification could adversely affect that person's livelihood, and in the most severe instances, result in loss of

employment. This proposed rule will encourage certified and qualified persons to maintain their level of competence and follow required procedures, by establishing appropriate remedial measures when MSHA identifies a certified or qualified person or an approved instructor who is not fulfilling his or her responsibilities, either deliberately or as the result of accident, oversight, or lack of training. MSHA believes that establishing uniform decertification procedures will ensure that certified and qualified persons fulfill their responsibilities with due regard for compliance with safety and health standards.

III. Discussion of Proposed Rule

Section 42.1 Purpose and Scope

This part would establish the criteria and procedures for revocation of the authority given to persons to perform certain tasks that must be done by a certified or qualified person, or an approved instructor. In general, temporary or permanent decertification would be directed toward individuals who either repeatedly exhibit clear disregard for compliance with training, health or safety standards or other relevant regulations, or who commit a particular offense that is evidence of a serious disregard for the health and safety of miners affected by their activities.

When evidence indicates that a certified person does not adhere to the required procedures that are necessary to fulfill his or her certified or qualified duties, or has failed to adequately fulfill his or her work responsibilities, the appropriate MSHA district manager would initiate the decertification process. During the course of the decertification process, the district manager would determine if the certified person's actions are intentional or the result of accident, oversight, or lack of training. Based upon the facts in each case, the district manager would decide the appropriate deterrent or remedial measures to be taken, such as those described below. MSHA intends that the agency's district managers would also be able to propose temporary or permanent decertification.

The issuance of warning letters, proposal of remedial measures or temporary or permanent decertifications are actions intended to augment existing enforcement policies and procedures. When a certified person fails to adhere to required procedures due to accident, oversight, or lack of training, the district manager would generally issue a warning letter or propose remedial measures, such as additional training. If, after these initial measures are taken, the certified or qualified person continues to disregard proper procedures, MSHA would pursue temporary or permanent decertification.

Temporary or permanent decertification would be directed toward individuals who repeatedly exhibit disregard for health and safety, and also in instances when a particular single offense is of such a serious nature that temporary or permanent decertification should be pursued. In some cases, a section 110 investigation, resulting in either the assessment of civil penalties against the certified person or the pursuit of criminal proceedings, will occur concurrently with temporary or permanent decertification. However, in particularly egregious cases, the district manager may propose temporary or permanent decertification before any section 110 investigation is completed.

In summary, the district manager may choose to issue a warning letter, propose remedial action, or propose temporary or permanent decertification prior to, or concurrent with, action taken as a result of a section 110 investigation within the context of MSHA's current enforcement hierarchy.

Also, the district manager may use these actions in circumstances where civil penalties under section 110(c) of the Mine Act are not applicable, for example, because the individual in question is not a corporate agent. Decertification action would allow for actions against individuals in such cases that do not currently receive additional enforcement actions.

Additionally, while MSHA has authority to enter mine property but cannot cite an operator or contractor for refusal to allow the agency's examination of dust sampling equipment that is not located on mine property, the district manager may take action against the responsible certification holders by proposing temporary or permanent decertification when the certification holders have violated the regulations.

MSHA's current policy and procedures for revocation of approval to be a part 48 training instructor allow the instructor to present evidence or witnesses to substantiate his or her position, either through a meeting or written submission to MSHA. The person may appeal adverse actions to the appropriate MSHA administrator. MSHA believes that these same procedures also would be appropriate for those persons who would be subject to decertification under this proposed rule. To ensure equitable and uniform treatment in all decertification actions, the scope of this rulemaking would include all activities for which MSHA issues certifications or qualifications, including the part 48 instructor program. The proposed rule includes additional provisions for the issuance of warning letters and the person's right to a post-decertification hearing before the Department of Labor's Office of Administrative Law Judges.

In addition, the proposed rule would address the withdrawal of MSHA's recognition of an individual's State certification when circumstances warrant such action. MSHA believes that a single rule will afford the same level of due process for all proposed temporary and permanent decertifications. Because MSHA recognizes many State certification programs, cooperation between MSHA and State mining agencies is crucial to the success of any decertification program. Federal and State mine safety and health programs are more effective when the two government bodies operate cooperatively. In instances where the State confers upon an individual a certification which is recognized by MSHA, the agency would inform the appropriate State agencies that it has determined that an individual's actions may warrant the temporary or permanent decertification of the State-issued certification. In those States which have procedures to decertify individuals, MSHA would work closely with the State to investigate the matter and provide assistance in determining an appropriate course of action. In those cases where the State concludes that decertification is not appropriate and decides to take only limited action or no further action, but MSHA continues to believe stringent action is necessary, MSHA may decide to use the procedures outlined in this proposed rule to terminate MSHA's recognition of the individual's State certification for purposes of compliance with Federal regulations. MSHA would therefore retain the right to suspend or terminate its recognition of a person's State certification even if the State has chosen not to pursue temporary or permanent decertification.

Section 42.2 Definitions

The following definitions would apply in this part:

Administrator. Administrator would mean MSHA's Administrator for Coal Mine Safety and Health or Administrator for Metal and Nonmetal Mine Safety and Health, as appropriate.

Certified. Certified would mean certified, qualified, or approved by MSHA, either directly or through a State

program recognized by MSHA, to perform tasks or duties for which this chapter requires such specific authority. Similarly, certification would mean certification, qualification, or approval.

Decertify. Decertify would mean to temporarily or permanently revoke a person's certification, qualification, or approval. If MSHA recognizes a person's certification by a State, then decertify would mean that MSHA would no longer recognize that person's State certification for purposes of compliance with this chapter. Decertification would mean temporary or permanent revocation of a person's certification, qualification, or approval.

Section 42.3 Warning Letter

Proposed § 42.3 would provide that when the evidence indicates that a certified person has failed to follow the tasks set by this chapter, or the person no longer satisfies the requirements for retention of certification, or a certified person's conduct leads to or contributes to a violation of any training, safety or health standard, the district manager may send a warning letter to that person by certified mail, return receipt requested. This section would provide that the district manager may notify the certified person through the warning letter that his or her conduct has been deficient without requiring any further action, or may require remedial measures to be undertaken by the certified person. In short, the warning letter must specify the basis for the warning. In some instances, MSHA may choose to forego the issuance of a warning letter and move directly to issue a notice of proposed action under § 42.4 of this part.

MSHA believes that certain types of deficient conduct on the part of a certified person may not require remedial action or would not require, or provide a sufficient basis for, the more severe sanctions of temporary or permanent decertification. In those instances, a warning letter from the district manager to the certified person would be sufficient to put the certified person on notice that his or her conduct in the performance of regulated duties was not commensurate with that normally required of a certified individual. The district manager may also include in the letter a statement that further deficient conduct may lead to decertification action by the Agency.

Under proposed § 42.3(b)(2), the warning letter would also provide a vehicle for the Agency to require the certified individual to take some remedial action in order to retain his or her status. In these instances, MSHA district managers would specify what type of remedial action on the part of the certified person would be necessary to retain certification. MSHA intends that it would also be able to take action, such as allowing the certified person to work only under supervision or requiring retraining where the circumstances would warrant it.

The proposed rule in § 42.3(b)(3) would also give the certified person 15 days from receipt to respond to the warning letter from the district manager or to initiate the required remedial action. MSHA foresees that some certified persons may choose to ignore the warning letter from the district manager, or notify the district manager that they object to the implementation of remedial action. If no response is forthcoming from the certified person, or the certified person failed to perform the required remedial action, the district manager would have the option of sending a notice of proposed action under proposed § 42.4 to initiate temporary or permanent decertification.

Section 42.4 Notice of Proposed Action

Proposed § 42.4(a) would provide that when the evidence indicates that a certified person has not undertaken remedial action required by the district manager or that the temporary or permanent decertification is warranted because of the certified person's disregard of training, safety or health standards, or the certified person's conduct has led to or contributed to a violation of training, safety or health standards, the district manager would notify the certified person of the proposed action by a certified letter, return receipt requested.

The notice would contain sufficient information to apprise the person of the action being initiated against him or her and the basis for the proposed action. Specifically, the notice would inform the certified person under proposed § 42.4(a) (1) and (2) whether the district manager was proposing temporary or permanent decertification. Under § 42.4(b) (1), (2), and (3) of the proposal, the notice would describe how the certified person failed to appropriately discharge his or her responsibilities. This part of the notice would specifically describe the certified person's conduct or actions giving rise to the decertification action. Under § 42.4(c), the notice also would give the person 15 calendar days from the date of its receipt to submit information to or request an informational meeting with the district manager to discuss the proposed action. The notice would inform the person that if he or she fails to respond within 15 days, the administrative record of the matter would close and MSHA would temporarily or permanently decertify the person.

MSHA intends that this notice would not replace the issuance of citations for violations of regulations, but rather would supplement these normal enforcement actions and would serve as an additional measure to induce compliance. MSHA anticipates that many cases could be resolved without proceeding to an informational meeting because the certified person would respond to the notice, submit explanatory information to the district manager, or correct inadequate performance to the district manager's satisfaction.

A copy of the notice of proposed action and the return receipt, in conjunction with documentary evidence such as inspectors' notes or informational submissions, would remain on file in the district office and become a part of the administrative record of the action under proposed § 42.5(c).

Proposed § 42.4(c) would also allow the certified person to submit information in place of or in addition to an informational meeting. When no informational meeting is requested, the certified person would be able to submit relevant information to the district manager within 15 calendar days from the date the person received the notice of proposed action. After this 15-day period, the administrative record would be closed.

Section 42.5 Informational Meeting

Section 42.5 of the proposed rule would provide an opportunity for the certified person to present evidence or information on his or her behalf to the district manager relevant to the circumstances which gave rise to the initiation of the decertification action.

Under proposed § 42.5(a), if the certified person requests an informational meeting with the district manager within 15 calendar days from the date of receipt of the warning letter, the district manager would be required to hold such meeting within 15 calendar days of the certified person's request. MSHA intends that the certified person would have the right to legal representation at this meeting.

During the meeting proposed under § 42.5(b), the Agency would provide the certified person with an opportunity to present evidence or witnesses to support his or her position. In addition, this part of the proposed rule under § 42.5(b) (1) through (6) would require the district manager to inform the certified person of the following at the

informational meeting; the deficiencies in performance, and how the certified person had failed to appropriately fulfill required responsibilities; the proposed remedial action and the reasons for the action; the close of the administrative record 15 calendar days after the informational meeting date to allow for the submission of additional information; the projected date of the district manager's final decision; and the certified person's right to appeal this decision to the appropriate administrator under proposed § 42.6. MSHA anticipates that the district manager may also send a letter requesting additional information which the district manager has determined is necessary to make a decision in the case. Such a letter would set reasonable time limits for the certified person to respond with the requested information.

A detailed record of the meeting would be required to be kept under proposed § 42.5(c). The record of the informational meeting would be kept in a format agreed to by the parties, such as a tape-recorded transcription or detailed notes kept by a designated individual, and would be made a part of the administrative record for the action.

Section 42.6 Notice of District Manager's Decision

After an informational meeting, if requested, has been held, the district manager would proceed to issue a decision on the proposed action issued under § 42.6. Proposed § 42.6 would provide guidance to the district manager for the form and content of his or her decision.

Proposed § 42.6(a) would set a time limitation for the district manager to act after the administrative record closes in a decertification case, and would provide that the decision be based on a complete evaluation of the whole administrative record. The district manager would have 30 days to issue a decision once the administrative record closes. MSHA believes that the 30-day period is an appropriate amount of time for the district manager to carefully review and consider all of the evidence, and to issue a written decision.

Under proposed § 42.6(a) (1), (2), and (3), the Agency's district managers would have the power to suspend a person's certification for a finite period of time; permanently decertify the individual with no opportunity for reapplication; or allow the district manager to take any other appropriate action such as requiring the individual to undergo additional training or testing to retain his or her certification. This range of options would give the district manager authority to address each case in a manner that would be tailored to the facts presented by each case.

For example, while the Agency has recently permanently decertified seven people after criminal convictions stemming from respirable dust fraud, 73 people have also been temporarily decertified for periods ranging from one to four years for respirable dust fraud. Additionally, two training instructors have been permanently decertified and one training instructor has been temporarily decertified for a three-year period. One person has been temporarily decertified to perform noise surveys for a two-year period and two individuals have been permanently decertified from performing noise surveys. One individual has been temporarily decertified as an approved electrical qualifications instructor for a two-year period. The above pleas or convictions, and related decertification actions, were the result of criminal charges for offenses ranging from the creation and/or submission of fraudulent respirable dust samples and cards, noise surveys, and training certificates, through conspiracy, mail fraud and charges under the Racketeer Influence Corrupt Organizations (RICO) statute.

When the district manager determines that temporary decertification is appropriate under proposed § 42.6(a)(1), MSHA contemplates that at the end of the suspension period the temporarily decertified person would not be automatically certified but would make application as any other person to obtain certification. He or she would be required to fulfill all procedural steps for certification, as well as any additional special conditions that the district manager might have imposed when the certified person was temporarily decertified. For example, if a certified person was temporarily decertified and allowed to reapply for certification pending the completion of certain training, the certified person would need to demonstrate that the training had been completed prior to reapplying for certification. MSHA has provided procedural guidance for recertification under proposed § 42.10 of this rule.

The proposed rule under § 42.6(a)(2) would allow a district manager to order permanent decertification for any person who had shown evidence of a significant disregard for the health or safety of miners. For example, the Agency believes that egregious behavior, which may constitute a serious violation of safety and health regulations, exposes miners to unsafe or unhealthy conditions, and presents a clear disregard for the safety or health of miners, would warrant the sanction of permanent decertification. MSHA's aforementioned permanent decertifications to date have focused on such demonstrated behavior.

The proposed rule under § 42.6(b) (1) through (6) would require the administrative record to include certain information. The content of the administrative record is important in that it would give the certified person a basis for understanding the nature of the action being taken against him or her and would provide documentation of the evidence underlying the action. In addition, the district manager would have the ability to review all the relevant facts and information in the case before reaching a decision. This information would include the notes or transcript from any informational meeting which was held, as well as other relevant evidence. MSHA believes that other relevant evidence may include background information such as information on the mine or mines where the certified person worked; relevant correspondence between the district manager and the certified person concerning the decertification action; any relevant documentary evidence such as certification papers, or certification examinations; possible district investigation reports on the actions of the certified person; and any witness statements which were made as part of the informational meeting or submitted separately to the district manager. Within 30 calendar days after the close of the administrative record, the district manager would review and evaluate all submissions to the record, and send a written decision to the certified person informing him or her of the results of the district manager's review.

Proposed § 42.6(c) would require that the district manager's decision be in writing and include certain information. The district manager's written decision would inform the certified person of the district manager's conclusions. For example, the letter may state that the record contains information which refutes the allegations in the notice of proposed action, and that the matter has been closed. The decision could contain a description of the remedial action that the certified person must take in order to retain his or her certification. Finally, the decision could also serve as a notice of temporary decertification, with time limits and conditions for re-certification, or as a notice of permanent decertification, if such a result were warranted by the evidence.

The proposed rule would require that the district manager's written decision detail the specific facts which provide

the basis for the decertification action, and include a clear and concise statement of the reasons for the decision reached by the district manager. The proposed rule would also provide that the decision would contain notification of the certified person's right to appeal any adverse decision to the administrator under § 42.6(c)(3). Section 42.6(c)(4) would also require that the district manager's decision contain a statement that the administrative record is available for review at the MSHA district office, and that the certified person may obtain a copy upon request. Because certain appeal rights may attach, MSHA is proposing under § 42.6(d) that the Agency would send the decision by certified mail, return receipt requested. The decision would be effective 15 calendar days after receipt by the certified person, unless it is appealed.

Section 42.7 Appeal to the Administrator

Proposed § 42.7 would allow a certified person to appeal an adverse decision of temporary or permanent decertification or other remedial action ordered by the district manager to the appropriate MSHA Administrator for Coal Mine Safety and Health or Metal/Nonmetal Mine Safety and Health. This appeal would be required to be submitted in writing.

Specifically, proposed § 42.7(a) would allow a certified or qualified person to appeal, in writing, the decision of the district manager to the appropriate MSHA administrator. The administrator must receive this appeal within 15 calendar days from the individual's receipt of the certified letter containing the district manager's decision notice ordering remedial action, or temporary or permanent decertification.

Upon receipt of the written appeal, the administrator would send written acknowledgment of the appeal to the certified person, including an acknowledgment of an automatic stay of the remedial action or temporary or permanent decertification. The stay would remain in effect pending the outcome of the appeal under proposed § 42.7(b) (1) and (2), and would allow a certified person to retain certification until the administrator reached a decision in the matter. MSHA believes that an automatic stay would be appropriate because the matter would still be under consideration by the Agency. The decision by the administrator would not be reached until after the administrator has had the opportunity to review the record and make a decision.

Under § 42.7(b)(3) of the proposal, the district office would be required to forward a copy of the administrative record to the administrator.

In addition, the proposal would allow the certified person to request a meeting with the administrator under proposed § 42.7(b)(4). Such a meeting must be requested by the certified person within 15 days of the certified person's receipt of the administrator's written acknowledgment of the appeal. When such a meeting is requested by the certified person, MSHA intends that the administrator would be permitted to consider evidence in addition to that presented to and considered by the district manager. MSHA intends that this subsection would allow the certified person to submit relevant information to the administrator in lieu of a face-to-face meeting.

Proposed § 42.7(c) would provide the administrator with a time limit of 30 days to issue a written decision after either his or her receipt of the administrative record and district manager's decision, or 30 days after his or her meeting with the certified person. MSHA believes that this is a reasonable amount of time for the administrator to review the evidence and issue a reasoned decision. In some instances, post-meeting submissions to the administrator may extend the time to issue a written decision.

Section 42.7(c) (1) and (2) would provide that the administrator would have several possible options after his or her evaluation of all of the evidence. The administrator could issue a decision that upholds the decision of the district manager, and in such a case the remedial action or temporary or permanent decertification would become effective 30 days after receipt by the certified person except as provided in § 42.8(e). The administrator could also issue a decision overturning the district manager's decision. Finally, the administrator may also refer the matter back to the district manager with appropriate instructions, based on the receipt of new evidence or information that was not available to, or considered by, the district manager at the time that his or her decision was rendered.

Proposed § 42.7(d) would require that the written decision contain a clear statement of the basis for the decision, including specific references to the evidence contained in the record that was considered in arriving at the determination. The written decision would be served upon the certified person by certified mail, return receipt requested.

Section 42.8 Hearing Before an Administrative Law Judge

Because the individual who is temporarily or permanently decertified may suffer a reduction in pay and possibly loss of his or her livelihood, the issue of due process for such individuals is a central concern of this rulemaking. MSHA is therefore committed to providing meaningful procedural safeguards at an appropriate level of due process. *Morrisey* v. *Brewer*, 408 U.S. 471 (1972). Thus, MSHA's multi-level review scheme within the Agency incorporating informal pre-decertification proceedings such as a notice of charges, explanation of the evidence, and an opportunity for the certified person to present "his side of the story" should be sufficient to satisfy the test of "what process is due" when the informal pre-decertification proceedings are followed by a full post-decertification evidentiary hearing. *Cleveland Board of Education* v. *Loudermill*, 470 U.S. 532 (1985). MSHA has carefully considered whether a certified person should get a formal pre-decertification evidentiary hearing. At this point in the rulemaking process, MSHA believes that the procedural due process safeguards proposed here are adequate under the requirements of the United States Constitution.

In addition, MSHA believes that the potential harm to miner health and safety which may result from protracted pre-decertification litigation is an issue which must be carefully considered. Therefore, under proposed § 42.8(a)(1), a person whose temporary or permanent decertification has been upheld by the administrator may obtain a *de novo* hearing before the Office of Administrative Law Judges, United States Department of Labor, by filing a request for a hearing with the administrator within 30 calendar days after receipt of the administrator's decision. The administrator would refer the request for hearing, along with the district manager's decision, and the administrator's decision to the Office of Administrative Law Judges within 10 calendar days of receipt of the hearing request.

The starting date of the temporary or permanent decertification would not be affected by the certified person's decision to obtain a post-decertification hearing. The temporary or permanent decertification would be effective 30 days after the certified person's receipt of the administrator's decision, except as provided in proposed § 42.8(e).

The request for a hearing under 42.8(a)(2) would include a summary of the issues involved and the specific

objections that the certified person has to the administrator's decision.

Under proposed § 42.8(c), the administrative law judge assigned to hear the case would expedite the hearing of the case because of the possibility that temporary or permanent decertification may significantly impair the certified person's livelihood. In addition to expediting the hearing, the administrative law judge would render his or her final decision in the case within 45 days of the close of the record.

Proposed § 42.8(d) would provide that decertification hearings before the Department of Labor Office of Administrative Law Judges would be governed by the rules of practice and procedure for hearings before the Office of Administrative Law Judges at 29 CFR part 18.

Under proposed § 42.8(e), a request for a stay would be filed within 30 calendar days after receipt of the administrator's decision. The request for a stay would automatically stay the administrator's decision until the administrative law judge could rule on the stay request. The automatic stay would allow the administrative law judge sufficient time to obtain jurisdiction to rule on the request for a stay, and it would allow the status of the certified person to remain unchanged until the stay request was decided by the administrative law judge.

In determining whether to grant a stay, the proposal would require under § 42.8(f) that the administrative law judge would be required to consider the certified person's likelihood of success on the merits, and the potential harm to mine safety and health if the certified person were allowed to continue his or her work during the pendency of the case before the administrative law judge. The administrative law judge would also be required to clearly state the reasons for the granting or denial of a stay in any subsequent order concerning the granting or denial of the stay.

MSHA envisions that a decision of the case rendered by an administrative law judge could then be appealed to the appropriate United States Court of Appeals. In the Mine Act, the Congress established a scheme whereby judicial review of all record-based Agency determinations is available only in the courts of appeal. After fully examining this statutory review scheme, MSHA believes that all judicial review of Secretarial action under the Mine Act lies exclusively in the courts of appeal, whether such review is specifically provided or whether the Mine Act is silent as to judicial review. See, *Bituminous Coal Operators' Ass'n.* v. *Marshall*, 82 F.R.D. 350 (D.D.C. 1979).

Section 42.9 Notice of Decertification.

After a decision to temporarily or permanently decertify an individual becomes final, the district manager would immediately notify, in writing, the mine operator or operators for whom the certified person performs such work that he or she has been temporarily or permanently decertified. The district manager would also notify the appropriate Coal Mine Safety and Health or Metal and Nonmetal Mine Safety and Health Technical Compliance and Investigation Division (TCID) and the Qualification and Certification Unit of MSHA. The TCID would notify other district offices of the temporary or permanent decertification so that all districts would be aware of the change in status of the certified person.

Section 42.10 Recertification

A person who has been temporarily decertified may apply for recertification by MSHA after the end of the temporary decertification period. To obtain recertification, the person must fulfill the requirements for certification or qualification as required under the applicable regulations before a new certification or qualification is issued. In addition, if the district manager, administrator or administrative law judge imposed additional requirements for recertification beyond the basic application, the certified person must also show that those requirements have been fulfilled. MSHA intends that applications for recertification would be forwarded by the Qualification and Certification Unit to the Technical Compliance and Investigation Division, which is responsible for coordinating those cases involving revocation of certification. By transferring cases involving decertification from the district offices to a single administrative office, the Agency would eliminate the likelihood that a person whose certification is suspended or revoked could become recertified without fulfilling the necessary requirements.

IV. Executive Order 12866 and the Regulatory Flexibility Act

The analysis contained in this preamble meets the Agency's responsibilities under Executive Order 12866 and the Regulatory Flexibility Act. Under Executive Order 12866, MSHA has made a preliminary assessment of the costs and benefits of the proposed rule. The proposed rule does not meet the criteria of a significant regulatory action and, therefore, MSHA has not prepared a separate analysis of costs and benefits.

The Executive Order also requires Federal agencies to seek the views of State governments on regulatory actions that would affect them. MSHA intends to work closely with the States that have certification programs to coordinate implementation of this proposal. The Regulatory Flexibility Act requires MSHA to consider the proposed rule's impact on small entities. MSHA defines small entities as mines with 20 or fewer employees. This proposal would not have a significant economic impact on a substantial number of such small mines.

The proposal addresses procedures for decertifying individuals, either temporarily or permanently, who have failed to maintain the knowledge and skills required to perform certain tasks or duties of an "approved," "certified" or "qualified" person or who have failed to comply with the law in their role as an approved, certified or qualified person. Any costs associated with the requirement that an individual be certified to perform a specific task or duty are not included in this analysis. Such costs are attributed to the Agency's existing certification requirements, and this rule does not impose any new such requirements.

MSHA estimates that about 105,000 individuals have been certified by the Agency to perform required procedures. Many of these individuals have been certified in more than one area. In addition, MSHA estimates that about 20,000 mine foremen have been certified by State governments.

It is clear from MSHA's enforcement experience that some certified persons do not adhere to the Agency's requirements. Therefore, the proposed rule establishes procedures for temporary or permanent decertification of such individuals.

MSHA has not attributed any costs to the pay loss or potential loss of employment a certified person faces if Agency action ultimately leads to that individual's decertification. Such costs result from the individual's failure to follow Federal requirements, which in many instances could potentially endanger other miners. As such, these costs are far outweighed by no longer allowing the individual to jeopardize the safety and health of other miners. For the certified person, these losses would occur from the loss of pay differential or ultimately the loss of employment. For the mine operator, these losses might range from the cost of retraining the individual to significant lost production if the operator cannot readily replace someone

who has been decertified. In order for the mine to continue production after MSHA has decertified an individual, the mine operator would need to hire a replacement who has the proper certification or qualification or have one of the more experienced miners achieve certification or qualification status.

MSHA has not attempted to calculate the financial losses that might accrue should an Agency decertification action ultimately be overturned on appeal or if an individual convinces the district manager that decertification action in not warranted. At this time, MSHA is unable to estimate how many such cases would occur.

MSHA anticipates that the majority of actions under the proposed rule would begin with a letter from the MSHA district manager to the certified person warning that the person's conduct in performing certain tasks is deficient. As proposed, the warning letter may or may not require that remedial measures be undertaken by the individual.

MSHA estimates that it would issue about 50 warning letters each year for the first few years—about half of which would require some remedial action such as passing a skills test or undergoing retraining. Of the 50 warning letters each year, MSHA estimates that about 20 would be issued to mine foremen who must be certified to perform various inspection and examination activities, about 25 would be issued for coal dust sampling and 5 would be issued to miners certified to perform such activities as electrical work or blasting. After the first few years, MSHA anticipates that the Agency would need to issue fewer warning letters as mine operators and certified individuals become more aware of the Agency's intent to ensure that these individuals perform their tasks as required.

The proposed rule also would allow the district manager to forego the warning letter and send out a notice proposing to temporarily or permanently decertify an individual who repeatedly exhibits disregard for health and safety, and also in instances where a particular single offense is of such a serious nature that decertification is warranted. MSHA estimates that the Agency annually would issue about 10 temporary and 10 permanent decertifications without first issuing a warning letter. MSHA expects that temporary decertifications would last an average of one year and would require the individual to reapply for certification and, perhaps, complete additional requirements, such as retraining or testing. In all, MSHA estimates that the Agency would undertake in total about 70 decertification-related actions a year (50 actions beginning with a warning letter and 20 actions without a warning letter).

MSHA has attributed most of the costs of this proposal to legal fees. In many instances, MSHA expects that the certified persons facing adverse Agency action would hire an attorney. The costs of such legal fees would vary widely depending on the nature of the action, the level to which the case is appealed, and the legal fees of the attorney. Although a few individuals may not seek legal counsel, others might retain an attorney upon the initial receipt of a warning letter. In some instances, the attorney's services would not be needed beyond the initial response to the district manager. In other instances, in-depth legal advice may be sought at each level of appeal all the way through the Federal Court of Appeals. In general, however, MSHA believes that most individuals would not pursue appeal beyond the level of the Department of Labor's Administrative Law Judges. MSHA estimates that initially about 30 percent of the 70 actions taken by the Agency each year (or 21 individual cases) would result in appeals to the Departmental level. Legal fees vary from region to region and law firm to law firm, ranging from as high as $400 per hour to as low as $50 per hour. In this analysis, MSHA has used an average cost of $120 per hour. Assuming it takes an attorney about 40 hours to prepare and appeal a client's case up through the Departmental level, costs of the proposed rule arising from legal fees would total about $100,800 a year, or $4,800 per contest. Of course, the fees for appealing a single case through the Federal Court of Appeals may total significantly more than $4,800. Conversely, the use of an attorney to draft a response to the district manager to a warning letter could cost as little as $50.

In addition, MSHA has assumed that the certified person would have to take time off from work to address decertification actions initiated by the Agency. The average total compensation (wages plus fringe benefits) for a certified person ranges from $24.74 to $28.50 per hour or an average of $26.50 per hour. Assuming that all 70 certified persons each takes an average of 20 hours off from work to avail themselves of the procedures of the proposal, then the annual loss of income attributable to responding to Agency's actions under the proposal would total about $37,100.

MSHA estimates that the total annual cost of this proposed rule to be about $137,900 ($100,800 related to legal fees and $37,100 related to income loss during the appeal process). The Agency specifically requests comments concerning these cost estimates; comments, including rationale, should be as specific as possible.

Although MSHA does not have data at this time to estimate quantitative benefits, the Agency has determined that the qualitative benefits of this proposed rule are improved safety and health conditions for miners. The possibility of a temporary or permanent decertification should be an effective incentive for certified and qualified persons to perform their duties and tasks as required. The potential loss of pay or possible unemployment resulting from decertification should serve as a strong, economic incentive for certified persons to comply with the required procedures. As the tasks and duties of certified persons are critical to the safety and health of miners, ensuring that these activities are performed in the required manner should result in fewer fatalities, injuries, and accidents.

A recent example of the need for formal decertification procedures involves the submission of fraudulent respirable coal mine dust samples by some individuals certified to take them. To ensure the integrity of the respirable dust program, the Agency needs more efficient decertification procedures to serve as a more effective deterrent to such illegal activities.

As a result of plea agreements or criminal convictions stemming from respirable dust fraud, MSHA has permanently decertified 7 people and temporarily decertified another 73 individuals for periods ranging from one to four years for respirable dust fraud. The Agency temporarily decertified about sixty-five percent of these individuals for a one-year period and about thirty percent for a three-year period.

Additionally, as the result of recent investigations, MSHA has permanently decertified two training instructors and temporarily decertified one training instructor for a three-year period. As a result of continuing criminal proceedings, the Agency also temporarily decertified for a two-year period one person who performed noise surveys and permanently decertified two individuals who performed noise surveys. MSHA temporarily decertified for a two-year period another individual who was an approved electrical qualifications instructor.

List of Subjects in 30 CFR Parts 42, 48, 70, 71, 75, 77 and 90

Decertification, Mine safety and health.

Dated: October 26, 1994.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

For the reasons set out in the preamble, it is proposed to amend 30 CFR chapter I as follows:

1. A new part 42 is added to read as follows:

PART 42—DECERTIFICATION OF APPROVED INSTRUCTORS AND CERTIFIED AND QUALIFIED PERSONS

Sec.
42.1 Purpose and scope.
42.2 Definitions.
42.3 Warning letter.
42.4 Notice of proposed action.
42.5 Informational meeting.
42.6 Notice of district manager's decision.
42.7 Appeal to the administrator.
42.8 Hearing before an administrative law judge.
42.9 Notice of decertification.
42.10 Recertification.

Authority: 30 U.S.C. 811.

§ 42.1 Purpose and scope.

This part establishes the criteria and procedures for suspension or revocation of the authority given to individuals to perform certain tasks or duties that must be done by an approved instructor, or a certified or qualified, person. These procedures apply to all persons recognized by MSHA as certified, qualified, or approved under chapter I of this title.

§ 42.2 Definitions.

The following definitions apply in this part:

Administrator. MSHA's Administrator for Coal Mine Safety and Health or Administrator for Metal and Nonmetal Mine Safety and Health, as appropriate.

Certified. To be certified, qualified, or approved in accordance with the requirements of MSHA regulations, either directly or through a State program recognized by MSHA, to perform tasks or duties for which this chapter requires such specific authority. Similarly, certification means certification, qualification, or approval.

Decertify. To temporarily or permanently revoke a person's certification, qualification, or approval. If MSHA recognizes a person's certification by a State, then decertify means that MSHA will no longer recognize that person's State certification for purposes of compliance with this chapter. Decertification means temporary or permanent revocation of a person's certification, qualification, or approval.

§ 42.3 Warning letter.

(a) If a certified or qualified person or approved instructor fails to follow the procedures set by this chapter for performing a task or duty requiring certification or qualification, or the person no longer meets the requirements to retain his or her certification or qualification or status as an approved instructor, or the certified person's conduct leads to, or contributes to the violation of any training, safety or health standard, the district manager may send a warning letter to that person in writing by certified mail, return receipt requested.

(b) The warning letter shall state—

(1) That the certified or qualified person or approved instructor is receiving a warning letter of deficient conduct in performing certain tasks or duties pertaining to his or her certification, qualification or approval, and that further deficient conduct may lead to other action by MSHA; and

(2) Any remedial action that must be initiated by the certified or qualified person or approved instructor to retain his or her status.

(3) The certified or qualified person or approved instructor shall have 15 days from the date of receipt of the warning letter to respond to the district manager or begin remedial action as stated in the letter.

§ 42.4 Notice of proposed action.

(a) When the district manager has reason to believe that a certified person's conduct has led to, or contributed to a violation of training, safety or health standards, or that the certified person has failed to respond or deficiently responded to a requirement made by the district manager under § 42.3, the district manager may notify that person in writing by certified mail, return receipt requested, that—

(1) The certification, qualification or approval which the person presently holds is proposed to be temporarily suspended; or

(2) The certification, qualification or approval which the person presently holds is proposed to be permanently revoked.

(b) The notice of proposed action shall state—

(1) The performance required by the person under the applicable regulations;

(2) How the individual failed to comply with the regulations; or

(3) How the individual failed to adequately fulfill his or her responsibilities as an approved instructor or certified or qualified person.

(c) The notice shall give the certified person 15 calendar days from the date of its receipt to submit information to or request an informational meeting with the district manager to discuss the circumstances which prompted the issuance of the notice. The notice shall state that if the person does not respond within the allotted time, the administrative record of the matter will close and MSHA may take action including, but not limited to, temporary decertification or permanent decertification.

§ 42.5 Informational meeting.

(a) If the certified person requests an informational meeting with the district manager under § 42.4(c), the district manager or the district manager's representative shall hold such a meeting within 15 calendar days of receipt of the person's request.

(b) At the informational meeting, the district manager shall—

(1) State the issues identified in the notice of proposed action;

(2) State whether temporary or permanent decertification is under consideration and the information supporting such proposed action;

(3) Provide an opportunity for the person to present evidence or witnesses to substantiate his or her position;

(4) Notify the certified person of the anticipated date of the district manager's final decision;

(5) Notify the certified person of the right to appeal any adverse decision rendered under § 42.6; and,

(6) Notify the person that the administrative record will remain open for 15 calendar days after the meeting date for the submission of additional information.

(c) The district manager or designee shall keep a detailed record of the meeting and make it a part of the administrative record for the action.

§ 42.6 Notice of district manager's decision.

(a) The district manager shall issue a decision on whether to temporarily or permanently decertify, or take other appropriate action against a certified person within 30 calendar days after the close of the administrative record. This decision shall be based on a thorough evaluation of the entire administrative record. The district manager may—

(1) Temporarily decertify the person for a specific period of time;

(2) Permanently decertify the person; or

(3) Take any other action appropriate to the circumstances based on the evidence in the administrative record.

(b) The administrative record shall include the following:

(1) Background information.

(2) Relevant correspondence between the district manager and the certified person.

(3) Relevant documentary evidence.

(4) Relevant district investigation reports.

(5) Notes or transcripts of any informational meeting.

(6) Witness statements.

(c) The district manager's decision shall be in writing and shall contain the following information:

(1) A statement of the decision.

(2) A summary of the information supporting the decision or action.

(3) Notification of the certified person's right to appeal the decision to the administrator if the decision involves an adverse action against the certified person.

(4) A statement that the administrative record is available for review at the district office and that a copy is available upon request.

(d) The decision shall be sent to the certified person by certified mail, return receipt requested, and shall become effective 15 calendar days after it is received, unless appealed to the administrator under § 42.7.

§ 42.7 Appeal to the administrator.

(a) A person subject to temporary or permanent decertification under § 42.6 may appeal the district manager's decision to the appropriate administrator. The appeal shall be filed in writing with the administrator within 15 calendar days of the certified person's receipt of the decision.

(b) Upon receipt of the appeal, the administrator shall—

(1) Acknowledge in writing the receipt of the certified person's appeal;

(2) Stay the district manager's decision pending the outcome of the appeal to the administrator;

(3) Obtain a copy of the administrative record and the district manager's decision from the appropriate district manager; and

(4) Notify the certified person that within 15 days of receipt of the letter that he or she may request a meeting with the administrator.

(c) Within 30 calendar days after receiving the administrative record and district manager's decision, or after holding a meeting with the certified person if one is requested, the administrator shall—

(1) Issue a written decision based on the record compiled by the district manager and any new information received; or

(2) Refer the matter back to the district manager for reconsideration based on the receipt of new information.

(d) The administrator's decision shall contain a statement of the factual basis for the decision, including specific references to the evidence that was considered in arriving at the decision.

(e) The administrator's decision shall be sent to the person by certified mail, return receipt requested, and shall be effective 30 days after receipt, except as provided in § 42.8(e).

§ 42.8 Hearing before an administrative law judge.

(a) A person whose temporary or permanent decertification has been affirmed by the administrator may request a de novo hearing before the Office of Administrative Law Judges, U.S. Department of Labor.

(1) The request shall be filed with the administrator within 30 calendar days after receipt of the administrator's decision.

(2) The request shall include a concise summary of the certified person's position on the issues of fact or law desired to be raised, including specific objections to the administrator's decision.

(b) Within 10 calendar days of receipt of a request for hearing, the administrator shall refer to the Chief Administrative Law Judge the district manager's decision, the administrator's decision, and the certified person's request for a hearing.

(c) To the extent possible, any hearing shall be expedited by the administrative law judge, and the final decision of the administrative law judge shall be issued within 45 days after the close of the record.

(d) Hearings before an administrative law judge shall be governed by the rules of procedure under 29 CFR Part 18—Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges.

(e) A request for a stay shall be filed within 30 calendar days after receipt of the administrator's decision. Any request for a stay filed with the administrative law judge will automatically stay the administrator's decision until the administrative law judge rules on the stay request.

(f) In determining whether to grant a stay of the administrator's decision, the administrative law judge shall consider the certified person's likelihood of success on the merits, and the potential harm to mine safety and health if the certified person remains certified during the pendency of the appeal. The administrative law judge shall state how such factors were weighed in any order granting or denying such a stay.

(g) Any party may appeal the final decision of the administrative law judge to the United States Court of Appeals for the District of Columbia Circuit or the circuit where the miner resides.

§ 42.9 Notice of decertification.

If a person is temporarily or permanently decertified, MSHA shall send a copy of the final decision to the operator of any mine affected by the person's activities.

§ 42.10 Recertification.

(a) To obtain recertification, a person who has been temporarily decertified under the procedures of this part shall—

(1) Reapply for certification after a period established by the district manager in the initial decision, or by the administrator or administrative law judge on subsequent appeal; and

(2) Satisfy the applicable certification requirements under chapter I of this title; and

(3) Provide any required documentation that additional requirements for recertification imposed by the district manager, administrator or administrative law judge have been fulfilled.

(b) Applications for recertification shall be submitted to the Chief, Technical Compliance and Investigation Division, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, VA 22203.

PART 48—[AMENDED]

2. The authority citation for part 48 continues to read as follows:

Authority: 30 U.S.C. 811 and 825.

3. Section 48.3 is amending by revising the section heading and paragraph (i) to read as follows:

§ 48.3 Training plans; time of submission; where filed; information required; time for approval; method for disapproval; commencement of training; approval of instructors; decertification of instructors.

* * * * *

(i) Instructors may have their approval revoked by MSHA for good cause which may include not teaching a course at least once every 24 months. Any person approved as a training instructor shall be subject to the decertification procedures under part 42 of this chapter.

* * * * *

4. Section 48.23 is amended by revising the section heading and paragraph (i) to read as follows:

§ 48.23 Training plans; time of submission; where filed; information required; time for approval; method for disapproval; commencement of training; approval of instructors; decertification of instructors.

* * * * *

(i) Instructors may have their approval revoked by MSHA for good cause which may include not teaching a course at least once every 24 months. Any person approved as a training instructor shall be subject to the decertification procedures under part 42 of this chapter.

* * * * *

PART 70—[AMENDED]

5. The authority citation for part 70 continues to read as follows:

Authority: 30 U.S.C. 811 and 813(h).

6. Section 70.202 is amended by adding a new paragraph (d) to read as follows:

§ 70.202 Certified person; sampling.

* * * * *

(d) Any person certified to conduct respirable dust sampling shall be subject to the decertification procedures under part 42 of this chapter.

7. Section 70.203 is amended by adding a new paragraph (d) to read as follows:

§ 70.203 Certified person; maintenance and calibration.

* * * * *

(d) Any person certified to maintain and calibrate approved sampling devices shall be subject to the decertification procedures under part 42 of this chapter.

8. Section 70.504–1 is amended by adding a new paragraph (d) to read as follows:

§ 70.504–1 Persons qualified to measure noise exposures; minimum requirements.

* * * * *

(d) Any person qualified to take noise exposure measurements shall be subject to the decertification procedures under part 42 of this chapter.

9. Section 70.504–2 is revised to read as follows:

§ 70.504–2 Certification of qualified persons.

(a) Upon a satisfactory showing that a person has met the minimum requirements for taking noise exposure measurements set forth in § 70.504–1, MSHA shall certify that the person has the ability and capacity to conduct tests of the noise exposure in a coal mine and to report and certify the results of such tests to the Secretary and the Secretary of Health and Human Services.

(b) Any person certified to conduct tests of the noise exposure in a coal mine and to report and certify the results of such tests to the Secretary and the Secretary of Health and Human Services shall be subject to the decertification procedures under part 42 of this chapter.

PART 71—[AMENDED]

10. The authority citation for part 71 continues to read as follows:

Authority: 30 U.S.C. 811 and 813(h).

11. Section 71.202 is amended by adding a new paragraph (d) to read as follows:

§ 71.202 Certified person; sampling.

* * * * *

(d) Any person certified to conduct respirable dust sampling shall be subject to the decertification procedures under part 42 of this chapter.

12. Section 71.203 is amended by adding a new paragraph (d) to read as follows:

§ 71.203 Certified person; maintenance and calibration.

* * * * *

(d) Any person certified to maintain and calibrate approved sampling devices shall be subject to the decertification procedures under part 42 of this chapter.

PART 75—[AMENDED]

13. The authority citation for part 75 continues to read as follows:

Authority: 30 U.S.C. 811, 957, and 961.

14. Section 75.100 is amended by adding a new paragraph (d) to read as follows:

§ 75.100 Certified person.

* * * * *

(d) Any person certified to perform certain examinations and tests under the provisions of subpart D of this part shall be subject to the decertification procedures under part 42 of this chapter.

15. Section 75.150 is amended by adding a new paragraph (c) to read as follows:

§ 75.150 Tests for methane and for oxygen deficiency; qualified person.

* * * * *

(c) Any person qualified to perform tests for methane and for oxygen deficiency shall be subject to the decertification procedures under part 42 of this chapter.

16. Section 75.153 is amended by adding a new paragraph (h) to read as follows:

§ 75.153 Electrical work; qualified person.

* * * * *

(h) Any person qualified under this section to perform electrical work shall be subject to the decertification procedures under part 42 of this chapter.

17. Section 75.154 is revised to read as follows:

§ 75.154 Repair of energized surface high voltage lines; qualified person.

(a) An individual is a qualified person within the meaning of § 75.705 for the purpose of repairing energized surface high-voltage lines only if the individual has had at least 2 years experience in electrical maintenance, and at least 2 years experience in the repair of energized high-voltage lines located on poles or structures.

(b) Any individual qualified for the purpose of repairing energized surface high voltage lines shall be subject to the decertification procedures under part 42 of this chapter.

18. Section 75.155 is amended by adding a new paragraph (d) to read as follows:

§ 75.155 Qualified hoisting engineer; qualifications.

* * * * *

(d) Any person qualified as a hoisting engineer shall be subject to the decertification procedures under part 42 of this chapter.

19. Section 75.1915 as added in the proposed rule of October 4, 1989 (54 FR 40995) is amended by adding a new paragraph (f) to read as follows:

§ 75.1915 Training and qualification of diesel mechanics.

* * * * *

(f) Any person qualified as a diesel mechanic shall be subject to the decertification procedures under part 42 of this chapter.

PART 77—[AMENDED]

20. The authority citation for part 77 continues to read as follows:

Authority: 30 U.S.C. 811, 957, 961.

21. Section 77.100 is amending by adding a new paragraph (c) to read as follows:

§ 77.100 Certified person.

* * * * *

(c) Any person certified to perform certain examinations and tests under this part shall be subject to decertification under part 42 of this chapter.

22. Section 77.101 is amended by adding a new paragraph (c) to read as follows:

§ 77.101 Tests for methane and for oxygen deficiency; qualified person.

* * * * *

(c) Any person qualified to perform tests for methane and oxygen deficiency

shall be subject to decertification under part 42 of this chapter.

23. Section 77.103 is amended by adding a new paragraph (h) to read as follows:

§ 77.103 Electrical work; qualified person.

* * * * *

(h) Any person qualified under this section to perform electrical work shall be subject to decertification under part 42 of this chapter.

24. Section 77.104 is revised to read as follows:

§ 77.104 Repair of energized surface high voltage lines; qualified person.

(a) An individual is a qualified person within the meaning of § 77.704 for the purpose of repairing energized surface high-voltage lines only if the individual has had at least 2 years experience in electrical maintenance, and at least 2 years experience in the repair of energized high-voltage lines located on poles or structures.

(b) Any individual qualified for the purpose of repairing energized surface high-voltage lines shall be subject to decertification under part 42 of this chapter.

25. Section 77.105 is amended by adding a new paragraph (c) to read as follows:

§ 77.105 Qualified hoistman; slope or shaft sinking operation; qualifications.

* * * * *

(c) Any person qualified as a hoistman shall be subject to decertification under part 42 of this chapter.

26. Section 77.216–3 is amended by adding a new paragraph (h) to read as follows:

§ 77.216–3 Water, sediment, or slurry impoundments and impounding structures; inspection requirements; correction of hazards; program requirements.

* * * * *

(h) Any person qualified to inspect water, sediment, or slurry impoundments shall be subject to decertification under part 42 of this chapter.

PART 90—[AMENDED]

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

Authority: 30 U.S.C. 811 and 813(h).

28. Section 90.202 is amended by adding a new paragraph (d) to read as follows:

§ 90.202 Certified person; sampling.

* * * * *

(d) Any person certified to conduct respirable dust sampling shall be subject to decertification under part 42 of this chapter.

29. Section 90.203 is amended by adding a new paragraph (d) to read as follows:

§ 90.203 Certified person; maintenance and calibration.

* * * * *

(d) Any person certified to maintain and calibrate approved sampling devices shall be subject to decertification under part 42 of this chapter.

[FR Doc. 94–27117 Filed 11–1–94; 8:45 am]

BILLING CODE 4510–43–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN22–3–6576; FRL–5096–9]

Approval and Promulgation of an Implementation Plan for Vehicle Miles Traveled; Indiana

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) proposes to approve a request for a State Implementation Plan (SIP) revision, addressing the Lake and Porter County ozone nonattainment area, submitted by the State of Indiana for the purpose of offsetting any growth in emissions from growth in vehicle miles traveled (VMT) or number of vehicle trips, and to attain reduction in motor vehicle emissions, in combination with other emission reduction requirements, as necessary to comply with Reasonable Further Progress (RFP) milestones and attainment requirements of the Clean Air Act (Act). The rationale for this proposed approval is set forth below; additional information is available at the address indicated below.

DATES: Comments on this proposed rule must be received on or before December 2, 1994.

ADDRESSES: Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR–18J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

Copies of the documents relevant to this action are available for inspection during normal business hours at the following location: Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Please contact Patricia Morris at (312) 353–8656 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Patricia Morris, Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8656.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182(d)(1)(A) of the Act, as amended in 1990 (Act), requires States containing ozone nonattainment areas classified as "severe" pursuant to section 181(a) of the Act to adopt transportation control measures (TCMs) and transportation control strategies to offset any growth in emissions from growth in VMT or number of vehicle trips, and to attain reductions in motor vehicle emissions (in combination with other emission reduction requirements) as necessary to comply with the Act's RFP milestones and attainment requirements. The requirements for establishing a VMT Offset program are discussed in the April 16, 1992, General Preamble to title I of the Act (57 FR 13498), in addition to section 182(d)(1)(A) of the Act.

For certain programs required under the Act (including VMT–Offset), USEPA had earlier adopted a policy pursuant to section 110(k)(4) of the Act to conditionally approve SIPs that committed to provide the USEPA with specific enforceable measures by a date certain. That interpretation was challenged in *Natural Resources Defense Council v. Browner*, consolidated lawsuits brought in the United States Court of Appeals for the District of Columbia Circuit. In a full opinion, dated May 6, 1994 (and in a March 8, 1994 Order and April 22, 1994 Amended Order issued earlier), the Court found that USEPA's conditional approval interpretation exceeded USEPA's statutory authority. While the Court did not specifically address the VMT Offset program in its orders or opinions, USEPA believes that the Court's general conclusions that the USEPA's construction of the conditional approval provision was unlawful precludes USEPA from taking action to approve any submitted VMT Offset committal SIPs.

On September 10, 1993, the USEPA published a proposed rule (58 FR 47701) to conditionally approve Indiana's commitment for the VMT–

Offset requirement. In light of the Court opinion, Indiana has withdrawn the committal SIP in a letter dated July 5, 1994.

In light of the outcome of the litigation, USEPA has decided that it would be appropriate to interpret the VMT Offset provision of the Act to account for how States can practicably comply with each of the provision's elements. The VMT Offset provision requires that States submit by November 15, 1992, specific enforceable TCMs and strategies to offset any growth in emissions from growth in VMT or number of vehicle trips sufficient to allow total area emissions to comply with the RFP and attainment requirements of the Act.

The USEPA has observed that these three elements (i.e., offsetting growth in mobile source emissions, attainment of the RFP reduction, and attainment of the ozone National Ambient Air Quality Standards (NAAQS) create a timing problem of which Congress was perhaps not fully aware. As discussed in USEPA's April 16, 1992, General Preamble to title I, ozone nonattainment areas affected by this provision were not otherwise required to submit SIPs that show attainment of the 1996 15% RFP milestone until November 15, 1993, and likewise are not required to demonstrate post-1996 RFP and attainment of the NAAQS until November 15, 1994. The SIP demonstrations due on November 15, 1993, and on November 15, 1994, are broader in scope than growth in VMT or trips in that they necessarily address emission trends and control measures for non motor vehicle emission sources and, in the case of attainment demonstrations, complex photochemical modeling studies.

The USEPA does not believe that Congress intended the VMT Offset provision to advance the dates for these broader submissions. Further, USEPA believes that the November 15, 1992, date would not allow sufficient time for States to have fully developed specific sets of measures that would comply with all of the elements of the VMT Offset requirements of section 182(d)(1)(A) over the long term. Consequently, USEPA believes it would be appropriate to interpret the Act to provide the following alternative set of staged deadlines for submittal of elements of the VMT Offset SIP.

Under this interpretation, the three required elements of section 182(d)(1)(A) are separable, and can be divided into three separate submissions that could be submitted on different dates. Section 179(a) of the Act, in establishing how USEPA would be required to apply mandatory sanctions if a State fails to submit a full SIP also provides that the sanctions clock starts if a State fails to submit one or more SIP elements, as determined by the Administrator. The USEPA believes that this language provides USEPA the authority to determine that the different elements of a SIP submission are separable. Moreover, given the continued timing problems addressed above, USEPA believes it is appropriate to allow States to separate the VMT Offset SIP into three elements, each to be submitted at different times: (1) The initial requirement to submit TCMs that offset growth in emissions; (2) the requirement to comply with the 15% periodic reduction requirement of the Act; and (3) the requirement to comply with the post-1996 periodic reduction and attainment requirements of the Act.

Under this approach, the first element, the emissions offset element, was due on November 15, 1992. The USEPA believes this element is not necessarily dependent on the development of the other elements. The State could submit the emissions growth offset element independent of an analysis of that element's consistency with the periodic reduction and attainment requirements of the Act. Emissions trends from other sources need not be considered to show compliance with this offset requirement. As submitting this element in isolation does not implicate the timing problem of advancing deadlines for RFP and attainment demonstrations, USEPA does not believe it is necessary to extend the statutory deadline for submittal of the emissions growth offset element.

The second element, which requires the VMT Offset SIP to comply with the 15% RFP requirement of the Act, was due on November 15, 1993, which is the same date on which the 15% RFP SIP itself was due under section 182(b)(1) of the Act. The USEPA believes it is reasonable to extend the deadline for this element to the date on which the entire 15% SIP was due, as this allows States to develop the comprehensive strategy to address the 15% reduction requirement and assure that the TCM elements required under section 182(d)(1)(A) are consistent with the remainder of the 15% demonstration. Indeed, USEPA believes that only upon submittal of the broader 15% plan can a State have had the necessary opportunity to coordinate it's VMT strategy with it's 15% plan.

The third element, which requires the VMT Offset SIP to comply with the post-1996 RFP and attainment requirements of the Act, will be due on November 15, 1994, the statutory deadline for those broader submissions. The USEPA believes it is reasonable to extend the deadline for this element to the date on which the post-1996 RFP and attainment SIPs are due for the same reasons it is reasonable to extend the deadline for the second element. First, it is arguably impossible for a State to make the showing required by section 182(d)(1)(A) for the third element until the broader demonstrations have been developed by the State. Moreover, allowing States to develop the comprehensive strategy to address post-1996 RFP and attainment by providing a fuller opportunity to assure that the TCM elements comply with the broader RFP and attainment demonstrations, will result in a better program for reducing emissions in the long term.

On November 17, 1993, Indiana submitted to USEPA documentation to fulfill the first and second elements of the VMT–Offset SIP. A public hearing was held on December 14, 1993, and documentation on the public hearing was submitted to complete the SIP revision request. Indiana does not at this time anticipate the need for additional TCMs to meet the attainment demonstration requirement but will submit any necessary TCMs with the attainment demonstration SIP.

Evaluation of the State Submittal

Section 182(d)(1)(A) of the Act requires the State to offset any growth in emissions from growth in VMT. As discussed in the General Preamble, the purpose is to prevent a growth in motor vehicle emissions from canceling out the emission reduction benefits of the federally mandated programs in the Act. The USEPA interprets this provision to require that sufficient measures be adopted so that projected motor vehicle volatile organic compound (VOC) emissions will never be higher during the ozone season in one year than during the ozone season in the year before. When growth in VMT and vehicle trips would otherwise cause a motor vehicle emissions upturn, this upturn must be prevented. The emissions level at the point of upturn becomes a ceiling on motor vehicle emissions. This requirement applies to projected emissions in the years between the submission of the SIP revision and the attainment deadline and is above and beyond the separate requirements for the RFP and the attainment demonstrations. The ceiling level is defined therefore, up to the point of upturn, as motor vehicle emissions that would occur in the ozone season of that year, with VMT growth, if all measures for that area in that year were implemented as required by the

Act. When this curve begins to turn up due to growth in VMT or vehicle trips, the ceiling becomes a fixed value. The ceiling line would include the effects of Federal measures such as new motor vehicle standards, phase II RVP controls, and reformulated gasoline, as well as the Act mandated SIP requirements.

The State of Indiana has demonstrated in its submittal of November 17, 1993, that the predicted growth in VMT in Lake and Porter Counties, Indiana, is not expected to result in a growth in motor vehicle emissions that will negate the effects of the reductions mandated by the Act. Further, Indiana has projected motor vehicle emissions to the year 2007 and, using the most current socioeconomic data, has not predicted an upturn in motor vehicle emissions. In the event that the projected socioeconomic data and associated VMT grow more rapidly than currently predicted, Indiana is required by section 182(c)(5) to track actual VMT starting with 1996 and every three years there after to demonstrate that the actual VMT is equal to or less than the projected VMT. TCMs will be required to offset VMT that is above the projected levels (section 182(c)(5)).

The VMT offset submittal from Indiana dated November 17, 1993, contains the final report "TCMs to Offset Emissions from VMT Growth in Northwestern Indiana." The report used the most current socioeconomic data and the travel network model in conjunction with the MOBILE5a to estimate mobile source emissions to the attainment year of 2007.

This report also documents the progress Indiana has made in evaluating TCMs to reduce growth in VMT and thus reduce emissions. Indiana may choose to take credit for TCM emission reductions as part of the post 1996 RFP requirement or to meet the attainment requirement. Not only has Indiana evaluated the effectiveness and predicted impact of a number of TCMs but actual implementation of selected TCMs has been ongoing. For example, a new inter city bus route to link the cities of Hammond, East Chicago and Gary, Indiana has been started. These three cities have operated established intra city bus routes for many years and this is the first route to link the already existing transit services for these cities.

These specific TCMs however, are not a part of the current SIP revision request and are not a required portion of this SIP revision. Thus, Indiana is not currently taking credit for the emission reductions from these TCM measures and the State is not bound to implement or continue to implement any specific TCMs. These measures, however, illustrate Indiana's work in evaluating and implementing TCMs to meet the requirements of the Act. Also, the TCMs may be used in subsequent SIP submittals as necessary to meet the post 1996 RFP requirement or the attainment requirement.

Additionally, Indiana is implementing TCMs to complement the employee commute options (ECO) program which requires a 25 percent reduction in single occupancy vehicle usage for home to work trips for employers of 100 or more persons. Activities include: Planning and promotion, new bus routes, improved transit service, and carpooling match-up services. A number of TCMs have been implemented in Lake and Porter Counties through use of the Department of Transportation's congestion mitigation and air quality funds under the Intermodal Surface Transportation Efficiency Act. These projects have included: purchasing clean fueled buses, operation of new bus service, improved transit service and ECO activities. In conclusion, Indiana is evaluating and implementing TCMs as expeditiously as possible even when the emissions projections indicate that mobile source emissions will continue to decline without additional TCMs.

Indiana submitted a 15 percent RFP SIP for northwest Indiana to the USEPA in November 1993, but the submittal was found incomplete in a letter dated January 25, 1994. The RFP SIP lacked enforceable regulations and a public hearing. The public hearing was held on March 29, 1994. Although the RFP SIP is still incomplete due to the lack of enforceable regulations. Indiana's submittal does indicate that TCM's would not be necessary to attain the 15% reduction required by 1996. The RFP SIP asserts that a 15% reduction in emissions could be achieved by 1996 through the feasible measures detailed in the SIP submittal. Under the approach contained in the submittal, the State would achieve the 15% reduction in VOCs through measures other than relying on TCMs. The majority of the reduction would be obtained from stationary source shut downs. Other measures include enhanced vehicle inspection and maintenance and reformulated gasoline. For the attainment demonstration which is due November 14, 1994, Indiana has indicated that it will include TCMs as necessary to reach attainment.

Summary of Findings

In the requested SIP revision submittal, Indiana has projected motor vehicle emissions until the statutory attainment year of 2007 using the most recent population and economic growth projections. These projections went through public hearing and comment on December 14, 1993. Using current VMT forecasts, these projections show that motor vehicle emissions are not expected to rise above the ceiling level through the year 2007.

In addition, Indiana has identified and evaluated a number of specific TCMs to reduce single occupancy vehicle usage. Several of these identified TCMs are currently being implemented. The VMT offset submittal from Indiana dated November 17, 1993, contains the final report "TCMs to Offset Emissions from VMT Growth in Northwestern Indiana." This report documents the progress Indiana has made in evaluating TCMs to reduce growth in VMT and thus reduce emissions. Indiana has evaluated the effectiveness and predicted impact of a number of TCMs through actual implementation of selected TCMs, although these TCMs are not a part of the SIP revision and Indiana is not taking emission reduction credit for these TCMs.

Indiana has met the first and second requirements of the VMT offset plan. Indiana has identified and evaluated TCMs to reduce VMT. Regarding the first requirement, Indiana has demonstrated in the November 17, 1993, submittal that projected growth in VMT is not expected to result in an increase in emissions from motor vehicles and is not expected to negate the progress in emissions reductions required to meet attainment of the standard by 2007. Regarding the second element, Indiana listed in its incomplete 15% RFP submittal feasible measures intended to meet the 15% reduction by 1996 without relying on TCMs and has shown that further TCMs are not necessary to meet the second element of section 182(d)(1)(A). The third requirement is for Indiana to use TCMs as necessary to meet the attainment of the standard. This third requirement will be submitted with the attainment demonstration SIP and will be addressed in future proposed and final rules.

III. Proposed Rulemaking Action and Solicitation of Comments

Based on the submittal accompanying the State's SIP revision request, USEPA proposes to approve the SIP revision submitted by the State of Indiana as satisfying the first two of the three VMT offset plan requirements. Public comments are solicited on the requested SIP revision and on USEPA's proposed rulemaking action. Comments received

by December 2, 1994, will be considered in the development of USEPA's final rule.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the Federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. See *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 30, 1994.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 94–27174 Filed 11–1–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Parts 63 and 70

[ADR–FRL–5100–6]

Peer Review of the Proposed Section 112(g) Hazard Ranking; Document; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting of the peer reviewers.

SUMMARY: Notice is hereby given that a meeting of the peer reviewers of the proposed hazard ranking document of section 112(g) of the Clean Air Act Amendments (1990 Amendments) will be held.

DATES: November 18, 1994. The meeting will be from 8:30 a.m. to 12:00 p.m. on November 18 and is open to the public.

ADDRESSES: EPA's Office of Administration Auditorium, 79 T.W. Alexander Drive, Research Triangle Park, North Carolina.

SUPPLEMENTARY INFORMATION: The main purpose of this meeting is to allow the public to give comment to the peer reviewers on the proposed hazard ranking technical support document which describes the EPA's approach to relatively rank the 189 Hazardous Air Pollutants (HAP) listed in the 1990 Amendments. The section 112(g) rulemaking was proposed April 1, 1994 (59 FR 15504). Copies of the technical support document are available via the Technology Transfer Network [a network of electronic bulletin boards developed and operated by the EPA's Office of Air Quality Planning and Standards, phone (919) 541–5384] or by contacting the EPA office of Air and Radiation Docket [Docket # A–91–64, phone (202) 260–7548].

The designated federal official for the meeting will be Mr. Robert Kellam. Anyone wishing to make an oral presentation at the meeting should contact Dr. Jane Caldwell (U.S. EPA, Office of Air Quality Planning and Standards, Emission Standards Division, Maildrop 13, Research Triangle Park, North Carolina 27711 (919) 541–0328 Fax: (919) 541–4028) by November 15, 1994. In general each individual or group making an oral presentation will be limited to fifteen minutes but the time allowed will be dependent on the number of speakers. Seating at the meeting will be on a first come first serve basis.

Section 112 of the 1990 Amendments establishes a control technology-based program to reduce stationary source emissions of HAP. In section 112(b) of the Clean Air Act, the 189 HAP are defined as hazardous for the purposes of regulation. Section 112(g) requires control technology reviews for new, modified and reconstructed major sources of these pollutants. Increases in hazardous air pollution emissions from existing major sources are not considered a modification if they can be offset by equal or greater decreases in HAP deemed "more hazardous". Furthermore, the HAP "with no safety threshold of exposure" may only be offset by other such "nonthreshold" pollutants. Therefore, threshold and nonthreshold pollutants must be identified and are subject to offsetting restrictions. The proposed section 112(g) rulemaking contains the EPA's guidance that identifies the relative hazard to human health of these hazardous pollutants and application of that characterization for determining allowing offsets.

Dated: October 27, 1994.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 94–27171; Filed 11–1–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 180

[PP 2E4148/P589; FRL–4907–5]

RIN 2070–AC18

Sodium Chlorate; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to establish an exemption from the requirement of a tolerance for residues of sodium chlorate in or on the raw agricultural commodity potato when applied as a defoliant in accordance with good agricultural practices. The Interregional Research Project No. 4 (IR-4) requested this exemption.

DATES: Comments, identified by the document control number [PP 2E4148/P589], must be received on or before December 2, 1994.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as

"Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt Jamerson, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA 22202, (703)-308-8783.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition (PP) 2E4148 to EPA on behalf of the Agricultural Experiment Station of California. Pesticide petition 2E4148 requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), establish an exemption from the requirement of a tolerance for residues of sodium chlorate on potatoes when used as a defoliant in accordance with good agricultural practices.

The data submitted in the petition and all other relevant material have been evaluated. The toxicological data considered in support of the exemption from the requirement of a tolerance include:

1. A 90-day subchronic feeding study in rats given gavage doses of 0, 10, 100, or 1,000 milligrams (mg)/kilogram(kg)/day with a no-observed-effect level (NOEL) of 100 mg/kg. Rats given doses of 1,000 mg/kg/day showed decreased hemoglobin concentration, hematocrit, and red blood cell counts.

2. A subchronic study in monkeys given drinking water containing 25, 50, 100, 200, or 400 mg/liter of sodium chlorate with no adverse clinical or hematological findings reported.

3. Mutagenicity studies including gene mutation tests in Salmonella species (Ames test) and Chinese hamster lung cells, structural chromosome aberrations test in mice (a micronucleus assay for chromosome damage), and other genotoxic effects (unscheduled DNA synthesis in HeLa cells) were all negative for mutagenic effects. A DNA repair test was positive for primary DNA damage in repair-deficient bacterial cultures of Escherichia coli.

4. A developmental toxicity study in rats given gavage doses 0, 10, 100, and 1,000 mg/kg with no maternal or developmental toxicity observed under the conditions of the study.

The toxicology data provided are sufficient to demonstrate that there are no foreseeable human health hazards likely to arise from dietary exposure resulting from the proposed use of sodium chlorate on potatoes.

The nature of the residues in plants is understood; sodium chlorate will be reduced to sodium chloride in the presence of organic material. The residues in plants will, therefore, be composed of sodium chlorate and sodium chloride. Magnitude of residue studies report no detectable residues of sodium chlorate on potatoes from the proposed use pattern. There is also no reasonable expectation of secondary residues in meat, milk, poultry, or eggs from the proposed use.

No enforcement actions based on the level of residues in food are expected. Therefore, the requirement for an analytical method for enforcement purposes is not applicable to the exemption from the requirement of a tolerance.

Based on the information and data considered, the Agency concludes that a tolerance is not needed to protect the public health. Therefore, it is proposed that the exemption from the requirement of a tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 2E4148/P589]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"), (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

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

List of Subjects in 40 CFR Part 180

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

Dated: October 17, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

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

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

§ 180.1020 [Amended]

2. By amending § 180.1020 *Sodium chlorate; exemption from the requirement of a tolerance* by adding and alphabetically inserting the

commodity "Potatoes" to the list therein.

[FR Doc. 94-26795 Filed 11-1-94; 8:45 am]

BILLING CODE 6560-50-F

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40 CFR Part 180

[PP 4F4387/P592; FRL-4915-7]

RIN 2070-AC18

Pasteuria Penetrans; Proposed Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes establishing an exemption from the requirement of a tolerance for residues of the biological pesticide *Pasteuria penetrans* in or on all raw agricultural commodities when used as a nematicide in producing fruits and vegetables, except roots and tubers, in greenhouses. Walt Disney World Co. requested this exemption.

DATES: Comments, identified by the document control number, [PP 4F4387/P592], must be received on or before December 2, 1994.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Leonard S. Cole, Acting Product Manager (PM 21), Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6900.

SUPPLEMENTARY INFORMATION: EPA received from Walt Disney World Co., P.O. Box 10000, Lake Buena Vista, FL 32830, pesticide petition (PP) 4F4387 on July 14, 1994, proposing to amend 40 CFR part 180 by establishing a regulation under the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a, to exempt from the requirement of a tolerance the residues of the biological pesticide *Pasteuria penetrans* in or on all raw agricultural commodities when used as a nematicide in producing fruits and vegetables (other than vegetables whose roots or tubers are considered to be food items) in greenhouses at The Land in EPCOT Center at Walt Disney World. This petition is not associated with an application for pesticide registration. The establishment of this tolerance exemption would not relieve manufacturers, distributors, or sellers of this pesticide of any obligation they may have under the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 et seq.

Pasteuria penetrans is a naturally occurring soil microbe that is a parasite of species of the nematode genus *Meloidogyne*. *Pasteuria penetrans* reproduces by means of endospores which remain dormant in the soil until contacted by a migrating juvenile nematode. The spore attaches itself to the nematode and is carried by the nematode into a plant root. The endospore germinates and invades the body of the nematode where it eventually produces new endospores that are released into the soil following the death of the nematode and decomposition of root tissue. The infected nematodes do not produce eggs and therefore do not reproduce.

The information submitted in support of this petition and all other relevant material have been evaluated. Literature citations regarding the nature of this organism were considered adequate to support an exemption from the requirement of a tolerance for the limited use of this biological pesticide. Additionally, since *Pasteuria penetrans* can only be grown in association with the host nematode, it is not possible to conduct standard toxicological tests with this organism.

Pasteuria penetrans is not known to be pathogenic, infective, or toxic to humans. The specificity of the organism as a parasite only on nematodes of the genus *Meloidogyne* would make it extremely unlikely to infect any other unrelated organism. *Pasteuria penetrans* is a common inhabitant of soils in areas infested with nematodes, including the area of Florida where the organism will be used. The microorganism will only be applied to the soil in greenhouses, and use in this manner would result in its presence only in the soil and roots of plants grown in the greenhouses. The proposed exemption excludes plant roots which will be used for food purposes since the nematode and the associated parasite will be contained in the root portion of such plants. Since there are no data available regarding any possible effects from the consumption of elevated levels of either nematodes or their parasites, roots and tubers which may contain these organisms have been excluded from this exemption from tolerance requirements. Above-ground parts of plants harvested from treated soil would not be expected to contain levels of *Pasteuria penetrans* above that normally found in crops harvested under natural conditions and consumed on a daily basis. The information submitted is adequate to show that there are no forseeable human or domestic health hazards likely to arise from the use of the product as a nematicide in connection with the production of fruits and vegetables in greenhouses.

Although the submitted petition for an exemption from tolerance requirements for *Pasteuria penetrans* limited the use of the organism to greenhouses at The Land in EPCOT Center at Walt Disney World, the Agency believes that this limitation is overly restrictive. Based on the lack of any known hazards from the use of this organism in the manner described, the Agency has elected not to impose a geographic restriction for the use of this biological nematicide. *Pasteuria penetrans* is considered useful for the purpose for which the exemption from the requirement of a tolerance is sought. Based on the information considered, the Agency concludes that establishment of the exemption will protect the public health. Therefore, the regulation is proposed as set forth below.

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended which contains any of the ingredients listed herein may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 4F4387/P592]. All

written comments filed in response to these petitions will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

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

List of Subjects in 40 CFR Part 180

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

Dated: October 14, 1994.

Steven L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

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

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

2. In subpart D, by adding new § 180.1135, to read as follows:

§ 180.1135 Pasteuria penetrans; exemption from the requirement of a tolerance.

The biological nematicide *Pasteuria penetrans* is exempted from the requirement of a tolerance in or on all raw agricultural commodities, except roots and tubers, when used as a nematicide in the production of fruits and vegetables in greenhouses.

[FR Doc. 94–26800 Filed 11–1–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 180

[OPP–300364; FRL–4912–7]

RIN 2070–AC18

Acrylic Acid-Stearyl Methacrylate Copolymer; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that an exemption from the requirement of a tolerance be established for residues of acrylic acid-stearyl methacrylate copolymer (CAS Reg. No. 27756-15-6) when used as an inert ingredient (emulsifier, suspending agent, or rheology modifier) in pesticide formulations applied to growing crops, raw agricultural commodities after harvest, or animals. B. F. Goodrich Co. petitioned for this proposed regulation.

DATES: Comments, identified by the document control number [OPP-300364], must be received on or before December 2, 1994.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver to: Rm. 1132, Crystal Mall Bldg. #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI).

Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Tina Levine, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 2800 Crystal Drive, North Tower, 6th floor, Arlington, VA 22202, (703)-308-8393.

SUPPLEMENTARY INFORMATION: The B. F. Goodrich Co., 3925 Embassy Parkway, Akron, OH 44313-1799, submitted pesticide petition (PP) 4E4298 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 346a(e)), propose to amend 40 CFR part 180 by establishing an exemption from the requirement of a tolerance for residues of acrylic acid-stearyl methacrylate copolymer (CAS Reg. No. 27756-15-6) when used as an inert ingredient (emulsifier, suspending agent, or rheology modifier) in pesticide formulations applied to growing crops, or to raw agricultural commodities after harvest, or to animals.

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

Subsequent to the publication of the proposal of B. F. Goodrich's request on February 25, 1994 (59 FR 9165), the Agency received a comment from the requestor (B. F. Goodrich) objecting to the proposed rule's requirement of a 1,250,000 minimum number-average molecular weight for the copolymer, stating that it was inconsistent with the October 28, 1992 final rule and would "* * * place an unnecessary burden on

both Industry and the Agency to list the same copolymer every time there is a desire to use a high molecular weight polymer not meeting a 1,250,000 requirement." The referenced final rule (57 FR 48736) established an exemption from the requirement of a tolerance for residues of acrylic acid-stearyl methacrylate copolymer under 40 CFR 180.1001(d), for use on growing crops, without containing a molecular weight limitation. The commentor stated that it was not their intention to limit the tolerance exemption for acrylic acid-stearyl methacrylate copolymer to a minimum number average molecular weight of 1,250,000 in the proposed rule and sought to eliminate the molecular weight limitation.

The Agency agrees that an apparent inconsistency exists. The basis for the February 25, 1994, proposed rule was conformance to the criteria described in 40 CFR 723.250, which requires a reference to a minimum molecular weight. The previously established tolerance exemption under 40 CFR 180.1001(d) also relied on the fact that acrylic acid-stearyl methacrylate copolymer conformed to 40 CFR 723.250; however, a minimum number-average molecular weight was inadvertently omitted from that rule.

Additional information was requested to be submitted by the petitioner to support the use of a new minimum-number average molecular weight for acrylic acid stearyl methacrylate copolymer which would still conform to 40 CFR 723.250. The requested information was provided, and the Agency is hereby proposing that the exemption from the requirement of a tolerance for acrylic acid-stearyl methacrylate copolymer specify the minimum number-average molecular weight as 2,500. EPA is deleting the entry for this chemical under 40 CFR 180.1001(d) because the requested expansion to section 180.1001(c) incorporates uses on growing crops as well as raw agricultural commodities.

The data submitted in the petition and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients published in the **Federal Register** of April 22, 1987 (52 FR 13305), the Agency set forth a list of studies which would generally be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. However, where it can be determined without that data that the inert ingredient will present minimal or no risk, the Agency generally does not require some or all of the listed studies to rule on the proposed tolerance or exemption from the requirement of a tolerance for an inert ingredient. The Agency has decided that no data, in addition to that described below, for acrylic acid-stearyl methacrylate copolymer will need to be submitted. The rationale for this decision is described below.

In the case of certain chemical substances that are defined as "polymers," the Agency has established a set of criteria which identify categories of polymers that present low risk. These criteria (described in 40 CFR 723.250) identify polymers that are relatively unreactive and stable compared to other chemical substances as well as polymers that typically are not readily absorbed. These properties generally limit a polymer's ability to cause adverse effects. In addition, these criteria exclude polymers about which little is known. The Agency believes that polymers meeting the criteria noted above will present minimal or no risk. Acrylic acid-stearyl methacrylate copolymer conforms to the definition of a polymer given in 40 CFR 723.250(b)(11) and meets the following criteria that are used to identify low-risk polymers:

1. The minimum number-average molecular weight of the acrylic acid-stearyl methacrylate copolymer is 2,500. Substances with molecular weights greater than 400 generally are not absorbed through the intact skin, and substances with molecular weights greater than 1,000 generally are not absorbed through the intact gastrointestinal (GI) tract. Chemicals not absorbed through skin or GI tract generally are incapable of eliciting a toxic response.

2. Acrylic acid-stearyl methacrylate copolymer is not a cationic polymer, nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

3. Acrylic acid-stearyl methacrylate copolymer does not contain less than 32.0 percent by weight of the atomic element carbon.

4. Acrylic acid-stearyl methacrylate copolymer contains as an integral part of its composition the atomic elements carbon, hydrogen, nitrogen, and oxygen.

5. Acrylic acid-stearyl methacrylate copolymer does not contain as an integral part of its composition, except as impurities, any elements other than those listed in 40 CFR 723.250(d)(3)(ii).

6. Acrylic acid-stearyl methacrylate copolymer is not a biopolymer, a synthetic equivalent of a biopolymer, or a derivative or a modification of a biopolymer that is substantially intact.

7. Acrylic acid-stearyl methacrylate copolymer is not manufactured from reactants containing, other than impurities, halogen atoms or cyano groups.

8. Acrylic acid-stearyl methacrylate copolymer does not contain a reactive functional group that is intended, or reasonably anticipated, to undergo further reaction.

9. Acrylic acid-stearyl methacrylate copolymer is not designed, or reasonably anticipated, to substantially degrade, decompose, or depolymerize.

Based on the information above and review of its use, EPA has found that, when used in accordance with good agricultural practice, this ingredient is useful and a tolerance is not necessary to protect the public health. Therefore, EPA proposes that the exemption from the requirement of a tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, that contains any of the ingredients listed herein, may request within 30 days after the publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number [OPP-300364]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 2 of Executive Order 12866.

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

List of Subjects in 40 CFR Part 180

Environments Protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: September 26, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

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

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

2. In § 180.1001, paragraphs (c) and (e) are amended in the tables therein by adding and alphabetically inserting the inert ingredient, and paragraph (d) is amended in the table therein by removing the entry for acrylic acid-stearyl methacrylate copolymer (CAS Reg. No. 27756-15-6), to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
* * *	*	* * *
Acrylic acid-stearyl methacrylate copolymer (CAS Reg. No. 27756-15-6), minimum number average molecular weight 2,500.	.....	Emulsifier, suspending agent, or rheology modifier.
* * *	*	* * *

* * * * *

(e) * * *

Inert ingredients	Limits	Uses
* * *	*	* * *
Acrylic acid-stearyl methacrylate copolymer (CAS Reg. No. 27756-15-6), minimum number average molecular weight 2,500.	.....	Emulsifier, suspending agent, or rheology modifier.
* * *	*	* * *

[FR Doc. 94–26809 Filed 11–1–94; 8:45 am]

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40 CFR Part 721

[OPPTS–50611; FRL–4582–2]

RIN 2070–AB27

Dihydro-7a-methyl-1*H*,3*H*,5*H*-oxazolo[3,4-c]oxazole; Proposed Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for the chemical substance described as dihydro-7a-methyl-1*H*,3*H*,5*H*-oxazolo[3,4-c]oxazole, which is the subject of premanufacture notice (PMN) P–91–1324. This proposal would require certain persons who intend to manufacture, import, or process this substance for a significant new use to notify EPA at least 90 days before commencing any manufacturing or processing activities for a use designated by this SNUR as a significant new use. The required notice would provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it can occur.

DATES: Written comments must be received by EPA on or before December 2, 1994.

ADDRESSES: All comments must be sent in triplicate to: OPPT TSCA Document Receipt Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–G99, 401 M St., SW., Washington, DC 20460. Comments that are claimed as confidential business information (CBI) must be clearly marked CBI. If CBI is claimed, three additional copies of the comments without the CBI must also be submitted. Nonconfidential versions of comments on this proposed rule will be placed in the rulemaking record and will be available for public inspection in the TSCA Nonconfidential Information Center (NCIC) located in Rm. NE–B607. Comments should include the docket control number. The docket control number for the chemical substance in this SNUR is OPPTS–50611. Unit VI. of this preamble contains additional information on submitting comments containing information claimed as CBI.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: This proposed SNUR would require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of the substance dihydro-7a-methyl-1*H*,3*H*,5*H*-oxazolo[3,4-c]oxazole for the significant new uses described herein. The required notice would provide EPA with information with which to evaluate an intended use and associated activities.

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use. Section 26(c) of TSCA authorizes EPA to take action under section 5(a)(2) with respect to a category of chemical substances. Persons subject to this SNUR would comply with the same notice

requirements and EPA regulatory procedures as submitters of premanufacture notices under section 5(a)(1) of TSCA. In particular, these requirements include the information submission requirements of section 5(b) and (d)(1), the exemptions authorized by section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities for which it has received a SNUR notice. If EPA does not take action, section 5(g) of TSCA requires EPA to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR part 707.

II. Applicability of General Provisions

General regulatory provisions applicable to SNURs are codified at 40 CFR part 721, subpart A. Regulatory provisions covering user fees applicable to significant new use notices are codified at 40 CFR part 700 under the authority of TSCA section 26(b). Interested persons may refer to these sections for further information.

III. Background

EPA is proposing to establish significant new use and recordkeeping requirements for the following chemical name dihydro-7a-methyl-1*H*,3*H*,5*H*-oxazolo[3,4-c]oxazole. The proposed SNUR designates as significant new uses:

1. Exposure to the PMN substance without ocular protection (chemical goggles or equivalent eye protection).

2. Any predictable or purposeful release of the PMN substance to surface water above 500 ppb (parts per billion).

On August 19, 1991, EPA received a PMN (P–91–1324) for dihydro-7a-methyl-1*H*,3*H*,5*H*-oxazolo[3,4-c]oxazole. EPA had concerns that the substance may be a severe eye irritant based on test data available on other aliphatic amines and oxazoles. Also, based on that data, irritation to the exposed eye is exacerbated by irrigation. In a letter to the Company dated December 6, 1991, EPA predicted that releases of spent metalworking fluids containing the PMN substance could result in surface water concentrations as high as 16 ppm (parts per million). Assuming rapid hydrolysis of the PMN substance, the resulting surface water concentration is expected to significantly exceed the Agency's level of concern for the hydrolysis product. To mitigate the Agency's concern regarding aquatic toxicity, the company was required to perform a 96–h bioassay in algae (40 CFR 797.1050), a 48–h LC50 test in daphnids (40 CFR 797.1300), and a 96–h LC50 test in fish (40 CFR 797.1400). Based on the results of this information, the Agency would reassess its surface water concentration estimates for the PMN substance and its hydrolysis products. The letter also recommended that each worker exposed to the PMN substance be required to wear adequate ocular protection once they were allowed to manufacture or import.

EPA has concerns for environmental effects of the PMN substance based on quantitative structure activity relationships ("QSARs") derived from test data on analogous aliphatic amines and oxazoles. The following ecotoxicity values for the PMN substance were predicted: 307 mg/L for fish 96–h LC50, 19 mg/L for daphnid 48–h LC50, and 21 mg/L for algal 96–h EC50, and algal chronic value (ChV) = 3.4 mg/L, with a concentration of concern of 0.200 mg/L.

The Company suspended the PMN review period and conducted the 96–h bioassay in algae, 48–h LC50 test in *Daphnia*, and 96–h LC50 test in fish. The data was completed and submitted to the Agency for validation and review. The results of the studies were acceptable; however, suggestions from the Agency in performing the studies were not followed.

For the aquatic toxicity testing, the Agency recommended that the PMN substance be tested two ways: The PMN substance added directly to the exposure vessels and organisms added within 10 minutes, and the PMN substance tested completely hydrolyzed.

The Company tested the PMN substance two ways, but they did not test by direct dilution. Direct dilution is adding the PMN substance directly to exposure vessels without the preparation of a stock solution. They prepared an aqueous stock solution which they added to the exposure vessels. Preparing an aqueous stock solution resulted in some unknown amount of hydrolysis, thus reducing the difference between the two recommended tests, i.e. unhydrolyzed PMN versus completely hydrolyzed PMN substance. The Agency accepted the test data, however, because (1) the unhydrolyzed PMN substance was predicted to be less toxic than the hydrolysis products of the PMN substance and (2) the hydrolysis $t_{1/2}$ (half-life) of the PMN substance appeared to be much shorter than predicted during the initial review. The results from the first type, i.e., case (1), of toxicity study were as follows:

Fish 96–h LC50	46.0 mg/L
Daphnid 48–h LC50	34.0
Green algal 96–h EC50	1.33
Fish chronic value (ChV)	5.0
Daphnid ChV	3.0
Algal ChV	1.0

The fish and daphnid ChVs were predicted assuming an acute to chronic ratio (ACR) = 10.0. In reviewing the studies where complete hydrolysis had taken place, i.e., case (2), the results were as follows:

Fish 96–h LC50	200.0 mg/L
Daphnid 48–h LC50	100.0
Green algal 96–h EC50	5.8
Fish ChV	20.0
Daphnid ChV	10.0
Algal ChV	4.6
Assessment factor (AsF)	10.0
Concentration of concern (COC)	0.500 mg/L (ppm)

The fish and daphnid acute toxicity values were predicted by calculating the difference between the partially and completely hydrolyzed chemical using test data for green algal 96–h EC50 values, i.e., a factor of 4.0. The fish and daphnid ChVs were predicted assuming an ACR = 10.0. No other additional testing was recommended by the Agency.

The review period inadvertently expired prior to EPA making a final determination on the PMN substance. The Company stated that they did not expect to commence manufacturing the PMN substance any time in the near future, but did not withdraw the PMN from review.

The only releases which may exceed the concern concentration would occur during use. It was predicted that 99 percent of the PMN substance would undergo hydrolysis; however, negligible removal of the hydrolysis products was expected during wastewater treatment. The surface water concentration of hydrolysis products resulting from releases from large metalworking shops is the only situation in which EPA expects the concern concentration would be exceeded.

Based on the completed review of toxicity data on the PMN chemical submitted to the Agency and the use scenario described in the PMN application, releases to surface water exceeding 500 ppb would be toxic to aquatic organisms. Therefore, the issuance of a Non-5(e) Notice and

Comment SNUR requiring the use of ocular protection for workers who will be exposed to the PMN substance and any releases of the PMN substance to surface water resulting in surface water concentrations above 500 ppb would be considered a significant new use.

IV. Applicability of SNUR to Uses Occurring Before Effective Date of the Final SNUR

EPA has decided that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of the date of proposal rather than as of the effective date of the final rule. If uses which commence between that date and the effective date of the final rule were considered ongoing, rather than new, any person could defeat the SNUR by initiating a significant new use before the effective date. This would make it difficult for EPA to establish SNUR notice requirements. Thus, persons who begin commercial manufacture, import, or processing of the substance for uses identified in this SNUR after the proposed date of the final rule will have to cease any such activity before the effective date of the rule. To resume their activities, such persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires. EPA, not wishing to unnecessarily disrupt the activities of persons who begin commercial manufacture, import, or processing of a significant new use before the effective date of the SNUR, has promulgated provisions to allow such persons to comply with this proposed SNUR before it is promulgated. If a person were to meet the conditions of advance compliance as codified at § 721.45(h), the person would be considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the substance between proposal and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

V. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, and processors of the chemical substance. The Agency's complete economic analysis is available in the public record for this proposed rule (OPPTS–50611).

VI. Comments Containing Confidential Business Information

Any person who submits comments claimed as CBI must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with procedures in 40 CFR part 2. Any party submitting comments claimed to be confidential must prepare and submit a nonconfidential public version in triplicate of the comments that EPA can place in the public file.

VII. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPPTS–50611). The record includes basic information considered by the Agency in developing this proposed rule. EPA will supplement the record with additional information as it is received.

EPA will accept additional materials for inclusion in the record at any time between this proposal and designation of the complete record. EPA will identify the complete rulemaking record by the date of promulgation. A public version of the record, without any CBI, is available in the TSCA Nonconfidential Information Center (NCIC) from 12 noon to 4 p.m., Monday through Friday, except legal holidays. The TSCA NCIC is located in Rm. NE–B607, 401 M St., SW., Washington, DC.

VIII. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines a "significant regulatory action" as an action likely to lead to a rule: (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order. Pursuant to the terms of this Executive Order, it has been determined that this rule is not "significant" and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this proposed rule would not have a significant impact on a substantial number of small businesses. EPA has determined that approximately 10 percent of the parties affected by the rule could be small businesses. However, EPA expects to receive few SNUNs for these substances. Therefore, EPA believes that the number of small businesses affected by the rule will not be substantial, even if all of the SNUR notice submitters were small firms.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this proposed rule under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and has assigned OMB control number 2070-0012. Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch (2131), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information requirements contained in this proposal.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Reporting and recordkeeping requirements, Significant new uses.

Dated: October 25, 1994.

Joseph A. Carra,

Acting Director, Office of Pollution Prevention and Toxics.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

PART 721—[AMENDED]

1.The authority citation for part 721 would continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. By adding new § 721.5540 to subpart E to read as follows:

§ 721.5540 Dihydro-7a-methyl-1*H*,3*H*,5*H*-oxazolo[3,4-c]oxazole.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance dihydro-7a-methyl-1*H*,3*H*,5*H*-oxazolo[3,4-c]oxazole is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in 40 CFR § 721.63(a)(2)(iii) (data indicate that irritation is exacerbated by irrigation), (a)(3).

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (where N = 500 ppb).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* The recordkeeping requirements specified in § 721.125(a) through (e), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

[FR Doc. 94–27102 Filed 11–1–94; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 11

RIN 1090–AA21

Natural Resource Damage Assessments: Type A Procedure for Great Lakes Environments

AGENCY: Office of the Secretary, Interior.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On August 8, 1994, the Department of the Interior issued a notice of proposed rulemaking (59 FR 40319) to revise the natural resource damage assessment regulations. The natural resource damage assessment regulations establish procedures for assessing damages for injury to natural resources resulting from a discharge of oil into navigable waters under the Clean Water Act, or a release of a hazardous substance under the Comprehensive Environmental Response, Compensation, and Liability Act. The August 8, 1994 proposed rule describes a procedure for simplified assessments for relatively minor discharges or releases in Great Lakes environments. The Department is extending the period for comment on the proposed rule and soliciting comment on an additional aspect of the type A procedure.

DATES: Comments will be accepted through February 6, 1995.

ADDRESSES: Comments should be sent in duplicate to the Office of Environmental Policy and Compliance, Attn: NRDA Rule—GLE, Room 2340, Department of the Interior, 1849 C Street, NW, Washington, DC 20240 (regular business hours 7:45 a.m. to 4:15 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Stephen F. Specht at (202) 208–3301, or SSPECHT@IOS.DOI.GOV on Internet.

SUPPLEMENTARY INFORMATION: The natural resource damage assessment regulations establish procedures that Federal, State, and Tribal natural resource trustees may use to obtain compensation from liable parties for natural resource injuries under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C. 9601 et seq.) and the Clean Water Act, as amended (33 U.S.C. 1251 et seq.). The regulations provide an administrative process for conducting assessments as well as two types of technical procedures for the actual determination of injuries and damages. "Type A" procedures are standard procedures for simplified assessments requiring minimal field observation in cases of minor discharges or releases in certain environments. "Type B" procedures are site-specific procedures for detailed assessments in other cases.

On August 8, 1994, the Department of the Interior published a proposed rule to amend the regulations to include an additional type A procedure for assessing natural resource damages in Great Lakes environments. The proposed procedure incorporates a computer model called the Natural Resource Damage Assessment Model for Great Lakes Environments Version 1.31 (NRDAM/GLE).

The comment period on the August 8, 1994, proposed rule was originally set to close on November 7, 1994. The Department has received numerous requests for additional time to comment on the proposed rule. The requesters have emphasized the large volume of technical documentation accompanying the NRDAM/GLE, all of which is subject to public review and comment. Some requesters are assembling multidisciplinary teams to assist in the review of the model and associated databases. The Department appreciates the level of technical review that is underway and is therefore extending the comment period by 90 days.

The Department also solicits comment on an additional aspect of the proposed type A procedure for Great Lakes environments. The proposed NRDAM/GLE is supported by a geographic information system (GIS) that supplies geographically distributed information to the submodels. The submodels divide the Great Lakes into a series of rectangular grids. The proposed NRDAM/GLE assigns a habitat type to each cell within the grids. Under the August 8, 1994 proposed rule, trustee officials would not be allowed to modify the habitat designations in the final version of the model if they wished to obtain a rebuttable presumption for their assessments. The Department specifically requested commenters to review the habitat designations and provide information about possible revisions that should be made in the final version of the model. 59 FR 40330.

The Department remains committed to ensuring that the final version of the NRDAM/GLE reflects the most accurate habitat information available. However, the Department is now soliciting comment on whether to revise the rule to allow trustee officials to modify the habitat designations in the final version of the NRDAM/GLE and still obtain a rebuttable presumption. Allowing trustee officials to modify the habitat designations might enable fine-tuning of the model to better reflect reality. On the other hand, type A procedures are designed to simplify assessments, reduce fieldwork, and narrow the potential areas of dispute. Providing an option to modify the habitat designations could undermine these goals. Therefore, the Department solicits comment on whether the final rule should allow trustee officials to modify the habitat designations and, if so, under what conditions.

Dated: October 28, 1994.

Theresa Trujeque,

Acting Assistant Secretary—Policy, Management, and Budget.

[FR Doc. 94–27225 Filed 11–1–94; 8:45 am]

BILLING CODE 4310–RG–P–M

FEDERAL MARITIME COMMISSION

46 CFR Part 540

[Docket No. 94–06; Docket No. 94–21]

Financial Responsibility Requirements for Nonperformance of Transportation; Inquiry Into Alternative Forms of Financial Responsibility for Nonperformance of Transportation

AGENCY: Federal Maritime Commission.

ACTION: Clarification.

SUMMARY: The language of the Notice of Inquiry published in this matter is revised to clarify that we are seeking comment on accepting, as evidence of financial responsibility, liens, mortgages or other security instruments.

DATES: Comments due on or before November 28, 1994.

ADDRESSES: Send comments (original and 20 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol St., NW., Washington, DC 20573–0001, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Bryant L. VanBrakle, Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, 800 North Capitol St., NW., Washington, DC 20573–0001, (202) 523–5796.

SUPPLEMENTARY INFORMATION: The Federal Maritime Commission ("Commission" or "FMC") published a Notice of Inquiry into alternative forms of financial responsibility for nonperformance of transportation in the October 14, 1994 **Federal Register** (59 FR 52133). Subsequent review after publication disclosed that the Notice of Inquiry failed to include language to make clear that we are seeking comment on accepting, as evidence of financial responsibility, liens, mortgages or other security instruments. Accordingly, the Notice is being revised in the following respects:

1. The second sentence of Part B ("Reinforced Self-Insurance") is revised to read:

> The Commission is concerned that its present self-insurance standards may be inadequate, but it will consider an approach whereby it would restore its former ((net worth = 100% UPR) + (working capital = 100% UPR)) standard,[17] but require prospective self-insurers to provide alternative coverage for a percentage (*e.g.*, 50% or 25%) of their uncovered UPR, through either a traditional guaranty, surety, escrow agreement, lien or mortgage or other security instrument, or through participation in a coverage association along the above-described lines.

2. The last sentence of Part C ("Coverage Requirements") is revised to read as follows:

> We also solicit comments on liens or mortgages or any other form of security or proposal that would provide adequate coverage for the travelling public.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 94–27087 Filed 11–1–94; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 68

[CC Docket No. 94–102, RM–8143; FCC 94–237]

Enhanced 911 Emergency Calling

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This Notice of Proposed Rulemaking (NPRM) proposes to amend rules to ensure the compatibility of enhanced 911 services with private branch exchanges (PBXs), other private dispersed telephone systems, and wireless services. This action responds to a petition for rulemaking (RM–8143) to amend the rules to require compatibility of PBXs with enhanced 911 emergency calling systems, a petition for reconsideration filed in the Commission's proceeding on personal communications services, and issues raised in an Emergency Access Position Paper filed recently with the Commission.

DATES: Comments must be received on or before January 9, 1995, reply comments must be received on or before February 8, 1995.

ADDRESSES: Office of the Secretary, Federal Communications Commissions, 1919 M Street, NW., Washington, DC 20554, with copy to Suzanne Hutchings, Mail Stop Code 1600B2, FCC, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Suzanne Hutchings, Attorney, Domestic Services Branch, Domestic Facilities Division, Common Carrier Bureau, (202) 634–1802; or John Reed, Engineer, Office of Engineering and Technology, (202) 653–7313.

SUPPLEMENTARY INFORMATION: This summarizes the NPRM in CC Docket No. 94–102 and RM–8143 (FCC 94–237) adopted September 19, 1994 and released October 19, 1994, which bears the title "Revision of the Commission's rules to ensure compatibility with enhanced 911 emergency calling systems."

The NPRM and supporting file are available for inspection and copying during the weekday hours of 9 a.m. to 4:30 p.m. in the FCC Reference Center, room 239, 1919 M St., NW., Washington, DC. Copies may be purchased from the Commission's duplicating contractor, ITS, Inc., 2100 M St., NW., suite 140, Washington, DC 20037, phone (202) 857–3800. The NPRM will be published in the FCC Record.

Summary of NPRM

1. Background

A petition for rulemaking was filed by Adcomm Engineering Co. (Adcomm), to amend part 68 of the rules to require interoperability between PBXs and enhanced 911 emergency calling systems. See FCC Report No. 1922 (RM–8143) released December 29, 1992. The Texas Advisory Commission on State Emergency Communications (TX–ACSEC) under the Office of the Attorney General for the state of Texas filed a petition for reconsideration in the Commission's proceeding on personal communications services (PCS) (GEN Dkt. 90–314) requesting Commission action to ensure the compatibility of PCS with enhanced 911 emergency calling systems. This NPRM also addresses an Emergency Access Position Paper, filed by the Associated Public Safety Communications Officials-International, Inc. (APCO), the National Emergency Number Association (NENA), the National Association of State Nine One One Administrators (NASNA), and the Personal Communications Industry Association (PCIA), which presents the consensus recommendations of these organizations to assist in developing appropriate standards for emergency access from wireless service systems to 9–1–1 systems. We seek comment on proposals for insuring the compatibility of PBXs and other dispersed private telephone systems with enhanced 911 emergency services. Second, we propose to adopt rules that would require wireless services to include features that will make enhanced 911 services available to mobile radio callers.

2. Dispersed Private Telephone Systems and Enhanced 911 Systems

The NPRM proposes to require that PBX and similar equipment: (a) have the capability of automatically providing a caller's number and location to the public safety answering points (PSAPs) where the calls are received; (b) permit callers to obtain access to a PSAP by dialing 911, *i.e.*, without dialing "9" or another access code to obtain an outside dialtone; and (c) have the capability to alert, and provide calling information to, an attendant at the location served by a dispersed private telephone system so that an attendant may assist in responding to an emergency. These requirements would apply to PBX equipment manufactured or imported one year after rules ultimately adopted in this proceeding or installed eighteen months after that date. Under the proposed rules, PBX equipment manufactured or imported during the first year must be labeled with emergency dialing instructions both on the device and on the outside of the packaging in which it is marketed.

3. Wireless Services and Enhanced 911 Systems

We propose to require commercial mobile radio services (CMRS) that provide, or are capable of providing, real time voice services to include features that will make enhanced 911 services available to mobile radio callers. These features include Station Number Identification (SNI), Automatic Location Information (ALI), and Selecting Routing (SR).

We propose that: (a) Customers of mobile radio services be able to obtain access to emergency services by dialing 911 without having to dial additional digits; (b) such callers be able to place 911 calls without meeting any mobile radio service user validation requirements; and (c) mobile radio service calls to 911 be placed at the beginning of any queue of calls awaiting availability of radio or network resources. The NPRM proposes to require that mobile radio services furnish information necessary for emergency service providers to locate a 911 caller who is using a mobile radio unit, and that mobile radio services permit PSAPs to call back immediately a mobile unit from which a 911 call has been received. The NPRM seeks comment on a proposal that mobile radio equipment that does not conform to the performance criteria proposed in the NPRM must be labelled with a warning that access to 911 is limited and a description that specifies those limitations. Further, the NPRM seeks comment on whether mobile radio services should provide PSAPs with common channel signalling information elements, including subscriber's name and routing information, to direct the call to the proper PSAP. In addition, the NPRM requests comment on ensuring access to 911 service by text telephone devices (TTY) that use wireless services. The NPRM seeks comment on when these requirements should be imposed, and seeks analysis of the technical and cost considerations involved.

4. Additional Considerations

The NPRM seeks comment on whether or what privacy considerations should apply to the provision of enhanced 911 services, and seeks analysis of any additional issues that should be considered to ensure that the benefits of 911 services are not diminished by new developments.

Initial Regulatory Flexibility Analysis

Reasons for Action

This Notice of Proposed Rule Making responds to the petitions submitted by TX–ACSEC and Adcomm to address issues raised by the provision of enhanced 911 services through commercial mobile radio systems, private branch exchanges, and other dispersed private telephone system equipment. Telephone stations for wireline stations served by PBX or similar equipment and for wireless services are not adequately identifying caller location to permit a timely response by emergency services personnel.

Objectives

The objective of this proposal is to ensure access to enhanced 911 emergency systems on the public switched telephone network for callers served by private branch exchange other dispersed private telephone systems, and for callers served by certain mobile services.

Legal Basis

The proposed action is authorized under sections 47 U.S.C. 151, 154, 155, 201–05, 208, 215, 218, 226, 227, 302, 303, 313, 314, 332, 403, 404, 410, 522.

Reporting, Record Keeping and Other Compliance Requirements

Private branch exchanges and other dispersed private telephone systems will be required to maintain records for calling number identification, caller location identification, and a call-back number for each of their calling stations. Commercial mobile radio services will be required to identify the location of mobile transmitters and provide call-back numbers for them. Equipment used for private branch exchanges and other dispersed private systems and commercial mobile radio services will have to be capable of providing this information to the local telephone exchanges to which they are connected. Local telephone exchanges will incur costs storing and relaying this information to enhanced 911 public service answering points.

Federal Rules Which Overlap, Duplicate or Conflict With These Rules

None.

Description, Potential Impact and Number of Small Entities Involved

The proposed changes in the regulations would affect a number of entities both large and small. An estimate of such parties affected is approximately 65 million new wireless services users and approximately 4 million PBX equipment owners.

Any Significant Alternatives Minimizing the Impact on Small Entities Consistent with Stated Objectives

With respect to PBX equipment, the NPRM asks whether the proposed rules must be applied where the equipment serves a physically small location, such as a single story building, or a small number of closely situated telephone stations.

Ex Parte Presentations

This is a nonrestricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally 47 CFR 1.1202, 1.1203 and 1.1206(a).

Filing Comments

Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before January 9, 1995, and reply comments on or before February 8, 1995. To file formally in this proceeding, interested parties must file an original and four copies of all comments, reply comments, and supporting documents with the reference number "CC Docket 94–012" on each document. If interested parties want each Commissioner to receive a personal copy of comments, interested parties must file an original plus nine copies. Interested parties should send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and

reply comments will be available for public inspection during regular business hours in the FCC Reference Center, room 239, Federal Communications Commission, 1919 M Street, NW., Washington, DC. Copies of comments and reply comments may be purchased from the Commission's duplicating contractor: ITS, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 68

Communications equipment, Labelling requirements, Telephone.

Proposed Rules

Part 68 of Chapter I of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 68—CONNECTION OF TERMINAL EQUIPMENT TO THE TELEPHONE NETWORK

1. The authority citation for Part 68 continues to read as follows:

Authority: Sections 1, 4, 5, 201–205, 208, 215, 218, 226, 227, 303, 313, 314, 403, 404, 410, 522 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 155, 201–205, 208, 215, 218, 226, 227, 303, 313, 314, 403, 404, 410, 522.

2. Section 68.1 is revised to read as follows:

§ 68.1 Purpose.

The purpose of the rules and regulations in this part is to provide for uniform standards for the protection of the telephone network from harms caused by the connection of terminal equipment and associated wiring thereto, for the correct operation of terminal equipment with public emergency access networks, and for the compatibility of hearing aids and telephones.

3. Section 68.3 is proposed to be amended by adding the following definitions in alphabetical order to read as follows:

§ 68.3 Definitions.

* * * * *

Dispersed private telephone system: A PBX or similar multi-line telephone system whose connection to the telephone network carries emergency calls from more than one emergency response location.

* * * * *

Emergency response location: A specific site, corresponding to a calling station in a dispersed private telephone system.

* * * * *

Enhanced 9–1–1: A telephone network feature that automatically provides emergency response agencies with telephone directory number and location information on calls placed to the national emergency number, 9–1–1.

Enhanced 9–1–1 compatibility: The ability to relay a number associated with each served emergency response location.

Enhanced 9–1–1 emergency services trunk: Any 2-wire or 4-wire telephone connection that provide access to Enhanced 9–1–1 service.

* * * * *

Restriction: The blocking of specific dial codes and sequences during call initiation.

* * * * *

4. Section 68.106 is proposed to be amended by adding paragraph (f) to read as follows:

§ 68.106 Notification to telephone company.

* * * * *

(f) *Dispersed private telephone system trunk and station number verification for Enhanced 911 purposes.* Customers who install dispersed private telephone systems after [18 months after effective date of order adopting rules in this proceeding] shall provide the telephone company with:

(1) The number of trunk connections desired;

(2) The number of stations that may originate emergency calls;

(3) The number of, and identification of emergency response locations that will require number identification; and

(4) The FCC Registration Number of the equipment being used. The telephone company will provide 10-digit numbers for the identified emergency response locations.

5. Section 68.228 is proposed to be added to read as follows:

§ 68.228 Enhanced 911 trunk and station number verification.

(a) *Verification requirements.*

(1) *General.* The proper transmission of station number identification (SNI) for the station dialing the emergency number 911 shall be verified as part of initial installation and subsequent changes in emergency response location data.

(2) *Station number identification.* The 10-digit station number identification transmitted for 911 calls shall be verified to:

(i) Be in the group of station numbers assigned to the trunk by the telephone company and, (ii) Be assigned to the specific emergency response location of the corresponding calling station.

(b) *Verfication personnel.* Work associated with the verification of Enhanced 911 emergency services trunk operation shall be performed under the supervision and control of a supervisor as defined in paragraph (c) of this section. The supervisor and installer may be the same person.

(c) *Supervision.* Work by installation personnel shall be performed under the responsible supervision and control of a person who:

(1) Has at least 6 months of on-the-job experience in the installation of telephone terminal equipment;

(2) Has been trained in the operation of Enhanced 911 emergency services trunks and in the performance of operations needed to verify proper identification procedures and results;

(3) Or, regardless of compliance with paragraphs (c)(1) and (c)(2) of this section, is a licensed professional engineer in the jurisdiction in which the installation is performed.

(d) *Verification procedure.* The installation supervisor shall provide written notification to the telephone company that the required verification tests have been performed, including the following information:

(1) The responsible supervisor's full name, address and business telephone number; and

(2) The date when Enhanced 911 trunks will go into service, the date when the verification tests were completed, and a list of trunk identification numbers and station numbers verified.

(e) *Verification of changes.* Addition or deletion of Enhanced 911 data base entries will be cause for verification of operation.

§ 68.308 [Amended]

6. Section 68.308 is proposed to be amended by revising in the table following paragraph (b)(5) the heading "Public Switched Network Ports (2-Wire)" to read "Public Switched Network Ports (2-Wire) and Enhanced 911 Trunks".

7. Section 68.320 is proposed to be added to read as follows:

§ 68.320 Enhanced 911 compatibility: technical standards.

(a) *Trunk interface.* Enhanced 911 trunks are analog two-wire or four-wire channels supporting either E&M type 1 or E&M type 3 signaling.

(b) *Station number identification signaling.* The station number identification (SNI) code assigned to the emergency response location of a 911 caller will be sent from the registered equipment to the telephone company 911 system using multifrequency (MF) tone pulses, prompted by a solid off-hook indication from the telephone network.

(c) *Operability.* It shall be possible to access the Enhanced 911 trunk in emergencies whether or not system features are used that block access to normal dial trunks (*i.e.*, restriction of all calls beginning with "9"). Access shall be provided whether users dial 911 or additional digits preceding 911.

(d) *Equipment levels.* The minimum number of Enhanced 911 emergency services trunks connecting a private switch to the telephone network shall be one (1). Additional trunks may be used at the user's option. Additional trunks shall be added to maintain an availability of P=0.01 based on the number of users served.

(e) *Attendant notification.* Equipment manufactured or imported after [one year after the effective date of the order adopting rules in this proceeding], or installed after [18 months after the effective date of the order adopting rules in this proceeding], must be capable of notifying an attendant or on-premises personnel, if present, and of providing station number identification and emergency response location to the attendant when a 911 call is dialed.

(f) *Information requirements.* Equipment manufactured or imported after [one year after the effective date of the order adopting rules in this proceeding], or installed after [18 months after the effective date of the order adopting rules in this proceeding], must have the capability to provide the caller's station number identification, caller location identification, and call-back number to PSAP personnel.

(g) *Labeling requirements.* PBX and dispersed telephone systems manufactured or imported one year from [the effective date of the final rule] shall comply with this section. Equipment of earlier manufacture shall comply with this section if installed [18 months from the effective date of the section] or any time thereafter. Such equipment must be reregistered by the manufacturer or other person responsible for equipment compliance with part 68, if already registered but not compliant with § 68.320. PBX equipment and associated station equipment that is domestically manufactured or imported on or after [30 days, but not later than one year, from the effective date of the order adopting rules in this proceeding] that does not comply with § 68.320 must be labelled by the manufacturer with a warning describing its limitations for those attempting to use it to call enhanced 911. The warning must appear on the devices and on the outside of the packaging in which it is marketed. The domestic manufacture or importation of PBX equipment that does not comply with § 68.320 must cease as of one year from [the effective date of the final rule].

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–27134 Filed 11–1–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 94–37; Notice 1]

RIN 2127–AF 22

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes amendments to the Federal motor vehicle standard on lighting to substitute SAE J576 JUL91 for the currently incorporated J576c as the referenced standard on plastics materials, to substitute ASTM D 1003–92 for ASTM D 1003–61 in the test procedures, to allow alternative processing techniques, sample sizes and thickness tolerances to those presently specified. Alternatively, the notice proposes amendments to the existing requirements that would accomplish the same ends. This action is taken pursuant to a grant of a petition for rulemaking submitted by Heraeus DSET Laboratories, Inc.

DATES: The due date for comments is January 3, 1995. The amendments would be effective 180 days after publication of the final rule in the **Federal Register**, or November 1, 1995, whichever is later.

ADDRESSES: Comments must refer to the docket and notice numbers set forth above and be submitted (preferably in 10 copies) to Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, DC 20590. The Docket is open 9:30 a.m. to 4 p.m., Monday through Friday. Submissions containing information for which confidential treatment is requested should be submitted (in three copies) to Chief Counsel, National Highway Traffic Safety Administration, Room 5219, 400 Seventh Street SW., Washington, DC 20590, and seven additional copies from which the purportedly confidential information has been deleted should be sent to the Docket section.

FOR FURTHER INFORMATION CONTACT: Kenneth O. Hardie, Office of Rulemaking, NHTSA (202–366–6987).

SUPPLEMENTARY INFORMATION: Heraeus DSET Laboratories, Inc. ("DSET"), of Phoenix, Arizona, petitioned NHTSA for rulemaking to amend Federal Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment.* Specifically, DSET asked that paragraph S5.1.2 be amended "to update the weathering and heat testing requirements of plastic material used for optical parts such as lenses and reflectors." Currently, these materials are required to conform to SAE Recommended Practice J576c, May 1970. DSET wants NHTSA "to allow alternative processing techniques besides injection molding to produce test specimens, to allow test specimen sizes other than a 3 inch diameter disc and to change the specimen thickness tolerances from ±0.005 inch to ±.010 inch." Those requirements for injection molding and for the diameter and thickness of the test specimen are set forth in J576c, May 1970.

The petition set forth five reasons in support. The first is that the requirement in Standard No. 108 (SAE J576c) that test samples be injection molded is "technology limiting" and other methods of test specimen fabrication exist and should be allowed. SAE J576 JUL91 allows alternative processing techniques to produce test specimens.

Secondly, SAE J576 JUL91 contains no sample shape or diameter requirement, in contrast to Standard No. 108's present restriction to a round sample of 3-inch diameter. DSET submits that there is no technical reason to continue the limit for the test specimen.

Third, DSET stated that no technical reason exists to limit the test specimen thickness tolerance to 0.005 inch (or 0.13 mm as NHTSA expresses it). Accordingly, the petitioner recommends ±0.010 inch (0.25 mm), "since this appears to be a more reasonable tolerance that almost all plastic lens materials manufacturers can meet." The petitioner said that many manufacturers currently have trouble meeting the ±0.005 inch tolerance.

Fourth, DSET believes that States impose a burden on manufacturers to test according to Standard No. 108. Although 49 U.S.C. Chapter 301 and Standard No. 108 do not require a manufacturer to conduct testing in producing and certifying a vehicle or

item of equipment (the requirement is that the product meet all applicable Federal motor vehicle safety standards when tested according to the procedures specified), DSET says that many State laws require proof of testing according to Standard No. 108. This means that even if there are alternative processing techniques for plastics that have been developed as a result of advancing technology, the manufacturer is obliged to follow the test procedures of Standard No. 108.

Finally, DSET said that SAE J576c has been out of print for many years. Its unavailability has resulted in manufacturers routinely submitting "test specimens that do not meet the ±0.005 inch thickness tolerance or the 3 [inch] diameter size requirement."

The agency has reviewed DSET's petition and has found that there is a reasonable possibility that the amendments asked for would occur at the conclusion of a rulemaking proceeding. Accordingly, the agency has granted DSET's petition. The requested changes would appear to simplify the test requirements of Standard No. 108 without degrading safety. These changes would also allow more flexibility in the preparation of test specimens.

However, NHTSA is concerned that simple substitution of the 1991 version of SAE J576 for the 1970 one might result in an unintended burden upon industry, as the updated version contains some requirements that are different from and in addition to those of the 1970 version. In addition, the ASTM D–1003 requirements currently referenced in S5.1.2 of Standard No. 108 are those of 1961. NHTSA is proposing to amend S5.1.2 to replace the reference to the 1961 version of ASTM D–1003 with a 1992 version and seeks comment on this change. The differences between the two versions include subtle changes to the text in virtually every section and the agency is unable to judge whether these changes would result in an increased burden to industry. Because of this uncertainty, the agency is proposing as an alternative a means of implementing DSET's request that does not include a reference to the revised standards. NHTSA welcomes informed comment on this issue. As a consequence of its age, a 33-year-old ASTM specification may be technologically limiting, as well as difficult to obtain. As noted above, strict adherence to older procedures which States may require means that manufacturers could not avail themselves of newer, less restrictive processing techniques if such exist.

As noted, NHTSA is proposing alternative amendments of S5.1.2 as a means of implementing its grant of DSET's petition. The agency asks commenters for their views on each of the alternatives.

Alternative 1

This alternative would substitute SAE J576 JUL91 for SAE J576c, May 1970, and make conforming amendments in the text of S5.1.2. This alternative would also replace ASTM D–1003–61 with ASTM D–1003–92 with respect to measurement of haze (which, as proposed at 58 FR 13042, would not exceed 7 percent). A specimen thickness tolerance of ±0.25 mm (0.010 in.) would also be allowed as there is no technical reason to limit the test specimen thickness tolerance to ±0.005 in., and the value proposed by NHTSA as recommended by DSET appears to be a more reasonable tolerance for test specimens.

Two new paragraphs would be added, maintaining the performance requirements required of plastic materials by SAE J576c for the heat test, and specifying positioning of test samples during the test. These have been omitted from J576 JUL91. NHTSA believes the J576c heat test should be retained because the test is the only heat resistance requirement in Standard No. 108. The test acts to eliminate flagrantly inferior material for reflex reflectors. (Use of material with insufficient high temperature performance can result in reflectors that lose color and reflectivity.) The positioning of test samples will allow the sample to droop if its strength is adversely affected by the test.

Alternative 2

This alternative would retain the current SAE and ASTM specifications but would allow processing techniques other than injection molding to produce equivalent test specimens, test specimens other than a disc of 3-inch diameter, and a test specimen thickness tolerance of ±0.010 inch.

Request for Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Effective Date

The effective date of the final rule would be 180 days after its publication in the **Federal Register**.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

The Office of Management and Budget has determined that it will not review this rulemaking action under Executive Order 12866. It has been determined that the rulemaking action is not significant under Department of Transportation regulatory policies and procedures. The purpose of the rulemaking action is to update testing procedures. Since it is not anticipated that the final rule will have any significant cost or other impacts, preparation of a full regulatory evaluation is not warranted.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National

Environmental Policy Act. It is not anticipated that a final rule based on this proposal would have a significant effect upon the environment. The composition of plastic materials used in optical parts would not change from those presently in production.

Regulatory Flexibility Act

The agency has also considered the impacts of this rulemaking action in relation to the Regulatory Flexibility Act. I certify that this rulemaking action would not have a significant economic impact upon a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared. Manufacturers of motor vehicles and motor vehicle equipment, those affected by the rulemaking action, are generally not small businesses within the meaning of the Regulatory Flexibility Act. Further, small organizations and governmental jurisdictions would not be significantly affected because the price of new vehicles and vehicle equipment would not be impacted.

Executive Order 12612 (Federalism)

This rulemaking action has also been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and NHTSA has determined that this rulemaking action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice

A final rule based on this proposal would not have any retroactive effect. Under 49 U.S.C. § 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. 49 U.S.C. § 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

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

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

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.108 would be amended by revising paragraph S5.1.2, in one of the two manners proposed below, as follows:

§ 571.108 Motor Vehicle Safety Standard No. 108 Lamps, Reflective Devices, and Associated Equipment.

Option 1

* * * * *

S5.1.2 Plastic materials used for optical parts such as lenses and reflectors shall conform to SAE Recommended Practice J576 JUL91, except that:

(a) Plastic lenses (other than those incorporating reflex reflectors) used for inner lenses or those covered by another material and not exposed directly to sunlight shall meet the requirements of paragraphs 3.3 and 4.2 of SAE J576 JUL91 when covered by the outer lens or other material;

(b) After the outdoor exposure test, the haze and loss of surface luster of plastic materials used for lamp lenses shall not be greater than 30 percent haze as measured by ASTM D 1003–92, *Haze and Luminous Transmittance of Transparent Plastic*;

(c) After the outdoor exposure test, plastic materials used for reflex reflectors and for lenses used in front of reflex reflectors shall not show surface deterioration, crazing, dimensional changes, color bleeding, delamination, loss of surface luster, or haze that exceeds 7 percent as measured under ASTM D 1003–92.

(d) The tolerance of the thickness of the test specimens specified in paragraph 3.2.2 of SAE J576 JUL91 may vary by as much as ±0.25 mm.

(e) After exposure to the heat test as specified in paragraph (f) of this section, and after cooling to room ambient temperature, a test specimen shall show no discernable change in shape and general appearance when compared with an unexposed specimen. The trichromatic coefficients of the samples shall conform to the requirements of SAE J578a, "Color Specification for Electric Signal Lighting Devices", October 1966.

(f) Two samples of each thickness of each plastic material are used in the heat test. Each sample is supported at the bottom, with at least 51 mm. of the sample above the support, in the vertical position in such a manner that, on each side, the minimum uninterrupted area of exposed surface is not less than 3225 sq. mm. The samples are placed for two hours in a circulating air oven at 79 ±3 degrees C.

Option 2

S5.1.2 Plastic materials used for optical parts such as lenses and reflectors shall conform to SAE Recommended Practice J576c, May 1970, except that:

(a) Plastic lenses (other than those incorporating reflex reflectors) used for inner lenses or those covered by another material and not exposed directly to sunlight shall meet the requirements of paragraphs 3.4 and 4.2 of SAE J576c, when covered by the outer lens or other material;

(b) After the outdoor exposure test, the haze and loss of surface luster of plastic materials used for lamp lenses shall not be greater than 30 percent haze as measured by ASTM D 1003–61, *Haze and Luminous Transmittance of Transparent Plastic*;

(c) After the outdoor exposure test, plastic materials used for reflex reflectors and for lenses used in front of reflex reflectors shall not show surface deterioration, crazing, dimensional changes, color bleeding, delamination, loss of surface luster, or haze that exceeds 7 percent as measured under ASTM D 1003–61;

(d) Samples of plastic to be tested need not be injection molded as specified in paragraph 3.3.1 of SAE J576c, nor discs of a diameter of 76 mm.; and

(e) The tolerance specified in paragraph 3.3.2 of SAE J576c shall be 0.25 mm.

Issued on October 27, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–27151 Filed 11–1–94; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

[I.D. 102694B]

North Pacific Fishery Management Council; Teleconference

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

ACTION: Notice of teleconference.

SUMMARY: The North Pacific Fishery Management Council (Council) will hold a teleconference on November 14, 1994. The teleconference will begin at 9 a.m., Alaska local time.

The primary subject of the conference will be possible time/area closures for

the groundfish fisheries to protect red king crab in Bristol Bay. The Council will receive reports on groundfish and crab concentrations and decide if an emergency rule to implement an area closure is warranted. Possible adjustments to the 1995 recommended vessel incentive program rate standards for the Bering Sea/Aleutian Island "other trawl" category will also be discussed. Listening sites for the public are being arranged for Anchorage, Homer, Kodiak, Juneau, Sitka, AK, and Seattle, WA.

FOR FURTHER INFORMATION CONTACT: For information on listening sites, contact Helen Allen or David Witherell, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 217–2809.

SUPPLEMENTARY INFORMATION: The listening sites for this teleconference are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Judy Willoughby, (907) 271–2809, at least 5 working days prior to the meeting date.

Dated: October 27, 1994.

David S. Crestin,

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

[FR Doc. 94–27086 Filed 11–1–94; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 59, No. 211
Wednesday, November 2, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Materials Processing Equipment Technical Advisory Committee; Notice of Closed Meeting

A meeting of the Materials Processing Equipment Technical Advisory Committee will be held December 14, 1994, 9:00 a.m., in the Herbert C. Hoover Building, Room 1617M(2), 14th Street & Pennsylvania Avenue, N.W., Washington, D.C. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials processing and related technology.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. export control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with concurrence of the General Counsel, formally determined on January 6, 1994, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, D.C. 20230. For further information, contact Lee Ann Carpenter on (202) 482–2583.

Dated: October 27, 1994.

Lee Ann Carpenter,

Director, Technical Advisory Committee Unit.

[FR Doc. 94–27116 Filed 11–1–94; 8:45 am]

BILLING CODE 3510–DT–M

Foreign-Trade Zones Board

[Order No. 707]

Expansion of Foreign-Trade Zone 158; Vicksburg/Jackson, Mississippi Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, an application from the Vicksburg/Jackson Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone No. 158, for authority to expand its general-purpose zone at sites in the Vicksburg/Jackson, Mississippi, area, within the Vicksburg/Jackson Customs port of entry, was filed by the Foreign-Trade Zones (FTZ) Board on August 18, 1993 (Docket 46–93, 58 FR 46628, 9/2/93) and amended on June 23, 1994;

Whereas, notice inviting public comment was given in the **Federal Register** and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board has found that the requirements of the Act and the regulations would be satisfied, and that the proposal would be in the public interest provided approval is subject to a 2,000-acre activation limit;

Now, Therefore, the Board hereby orders:

The grantee is authorized to expand its zone as requested in the application, as amended, subject to the Act and the Board's regulations, including Section 400.28, and subject to a 2,000-acre activation limit.

Signed at Washington, DC, this 23rd day of October 1994.

Susan G. Esserman,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 94–27184 Filed 11–1–94; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–588–035]

Cadmium From Japan, Revocation of the Antidumping Finding

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of Revocation of Antidumping Finding.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its revocation of the antidumping finding on cadmium from Japan because it is no longer of any interest to domestic interested parties.

EFFECTIVE DATE: November 2, 1994.

FOR FURTHER INFORMATION CONTACT: Roy F. Unger Jr. or Michael Panfeld, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 482–0651.

SUPPLEMENTARY INFORMATION:

Background

The Department may revoke an antidumping finding if the Secretary concludes that the finding is no longer of any interest to domestic interested parties. We conclude that there is no interest in an antidumping finding when no interested party has requested an administrative review for five consecutive review periods and when no domestic interested party objects to revocation (19 CFR 353.25(d)(4)(iii)).

On August 1, 1994, the Department published in the **Federal Register** (59 FR 38956) its notice of intent to revoke the antidumping finding on cadmium from Japan (August 4, 1972).

Additionally, as required by 19 CFR 353.25(d)(4)(ii), the Department served written notice of its intent to revoke this antidumping finding on each domestic interested party on the service list. Domestic interested parties who might object to the revocation were provided the opportunity to submit their comments not later than the last day of the anniversary month.

In this case, we received no requests for review for five consecutive review periods. Furthermore, no domestic interested party, as defined under § 353.2 (k)(3), (k)(4), (k)(5), or (k)(6) of the Department's regulations, has

expressed opposition to revocation. Based on these facts, we have concluded that the antidumping finding on cadmium from Japan is no longer of any interest to interested parties. Accordingly, we are revoking this antidumping finding in accordance with 19 CFR 353.25(d)(4)(iii).

Scope of the Order

Imports covered by the revocation are shipments of cadmium from Japan. This merchandise is currently classifiable under Harmonized Tariff Schedules (HTS) item number 8107.10.00. The HTS number is provided for convenience and customs purposes. The written description remains dispositive.

This revocation applies to all unliquidated entries of cadmium from Japan entered, or withdrawn from warehouse, for consumption on or after August 1, 1994. Entries made during the period August 1, 1993, through July 30, 1994, will be subject to automatic assessment in accordance with 19 CFR 353.22(e). The Department will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after August 1, 1994, without regard to antidumping duties, and to refund any estimated antidumping duties collected with respect to those entries. This notice is in accordance with 19 CFR 353.25(d).

Dated: October 26, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94–27186 Filed 11–1–94; 8:45 am]

BILLING CODE 3510–DS–P

Revocation of the Antidumping Findings

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of Revocation of Antidumping Findings.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its revocation of the antidumping findings on titanium sponge from Estonia, Armenia, Azerbaijan, Belarus, Kyrgyzstan, Latvia, Lithuania, Moldova, Tajikistan, Turkmenistan, and Uzbekistan because it is no longer of any interest to domestic interested parties.

EFFECTIVE DATE: November 2, 1994.

FOR FURTHER INFORMATION CONTACT: David Genovese or Michael Panfeld, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 482–4697.

SUPPLEMENTARY INFORMATION:

Background

The Department may revoke an antidumping finding if the Secretary concludes that the finding is no longer of any interest to domestic interested parties. We conclude that there is no interest in an antidumping finding when no interested party has requested an administrative review for five consecutive review periods and when no domestic interested party objects to revocation (19 CFR 353.25(d)(4)(iii)).

On August 1, 1994, the Department published in the **Federal Register** (59 FR 38956) its notice of intent to revoke the antidumping findings on titanium sponge from Estonia, Armenia, Azerbaijan, Belarus, Kyrgyzstan, Latvia, Lithuania, Moldova, Tajikistan, Turkmenistan, and Uzbekistan (August 28, 1968).

Additionally, as required by 19 CFR 353.25(d)(4)(ii), the Department served written notice of its intent to revoke these antidumping findings on each domestic interested party on the service list. Domestic interested parties who might object to the revocation were provided the opportunity to submit their comments not later than the last day of the anniversary month.

In this case, we received no requests for review for five consecutive review periods. Furthermore, no domestic interested party, as defined under § 353.2 (k)(3), (k)(4), (k)(5), or (k)(6) of the Department's regulations, has expressed opposition to revocation. Based on these facts, we have concluded that the antidumping findings on titanium sponge from Estonia, Armenia, Azerbaijan, Belarus, Kyrgyzstan, Latvia, Lithuania, Moldova, Tajikistan, Turkmenistan, and Uzbekistan are no longer of any interest to interested parties. Accordingly, we are revoking these antidumping findings in accordance with 19 CFR 353.25(d)(4)(iii).

Scope of the Findings

Imports covered by these revocations are shipments of titanium sponge from Estonia, Armenia, Azerbaijan, Belarus, Kyrgyzstan, Latvia, Lithuania, Moldova, Tajikistan, Turkmenistan, and Uzbekistan. This merchandise is currently classifiable under Harmonized Tariff Schedules (HTS) item number 8108.10.5010. The HTS number is provided for convenience and customs purposes. The written description remains dispositive.

These revocations apply to all unliquidated entries of titanium sponge from Estonia, Armenia, Azerbaijan, Belarus, Kyrgyzstan, Latvia, Lithuania, Moldova, Tajikistan, Turkmenistan, and Uzbekistan, entered, or withdrawn from warehouse, for consumption on or after August 1, 1994. Entries made during the period August 1, 1993 through July 30, 1994, will be subject to automatic assessment in accordance with 19 CFR 353.22(e). The Department will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after August 1, 1994, without regard to antidumping duties, and to refund any estimated antidumping duties collected with respect to those entries. This notice is in accordance with 19 CFR 353.25(d).

Dated: October 26, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94–27187 Filed 11–1–94; 8:45 am]

BILLING CODE 3510–DS–P

[C–355–001]

Leather Wearing Apparel From Uruguay; Revocation of Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of Revocation of Countervailing Duty Order.

SUMMARY: The Department of Commerce (the Department) is revoking the countervailing duty order on leather wearing apparel from Uruguay because it is no longer of interest to interested parties.

EFFECTIVE DATE: November 2, 1994.

FOR FURTHER INFORMATION CONTACT: Brian Albright or Mercedes Fitchett, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On July 5, 1994, the Department of Commerce published in the **Federal Register** (59 FR 34410) its intent to revoke the countervailing duty order on leather wearing apparel from Uruguay (47 FR 31032; July 17, 1982). Additionally, as required by 19 CFR 355.25(d)(4)(ii), the Department served certified written notice of its intent to revoke this countervailing duty order on

each party listed on its most current service list. Domestic interested parties who might object to the revocation were provided 30 days to submit their comments.

Scope of the Order

Imports covered by this order are shipments of Uruguayan leather wearing apparel and parts and pieces thereof. This product is currently classified under item numbers 4203.10.4030, 4203.10.4060, 4203.10.4085, and 4203.10.4095 of the *Harmonized Tariff Schedule* of the United States.

Determination To Revoke

The Department may revoke a countervailing duty order if the Secretary of Commerce concludes that the order is no longer of interest to interested parties. We conclude that there is no interest in a countervailing duty order when no interested party has requested an administrative review for at least five consecutive review periods and when no domestic interested party objects to the revocation (19 CFR 355.25(d)(4)(iii)).

In this case, we received no request for review for five consecutive review periods. Furthermore, no domestic interested party as defined under § 355.2 (i)(3), (i)(4), (i)(5), or (i)(6) of the Department's regulations, has expressed opposition to revocation. Therefore, we have concluded that the countervailing duty order covering leather wearing apparel from Uruguay is no longer of interest to interested parties, and we are revoking this countervailing duty order in accordance with 19 CFR 355.25(d)(4)(iii).

This revocation applies to all shipments of leather wearing apparel from Uruguay exported on or after January 1, 1993. Shipments of this merchandise exported during the period January 1, 1993 through December 31, 1993, will be subject to automatic assessment in accordance with 19 CFR 355.22(g)(1). Further, as required by 19 CFR 355.25(d)(5), the Department is terminating the suspension of liquidation on the subject merchandise as of the effective date of this notice and will instruct the Customs Service to liquidate, without regard to countervailing duties, all unliquidated entries of this merchandise exported on or after January 1, 1994.

This notice is published in accordance with 19 CFR 355.25(d)(4)(iii).

Dated: October 26, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94–27062 Filed 11–1–94; 8:45 am]

BILLING CODE 3510–DS–P

[C–357–404]

Certain Textiles Mill Products From Argentina; Notice of Proposed Amended Conversion

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Certain Textile Mill Products from Argentina: Notice of Proposed Amendment to the Existing Conversion of the Scope of the Order from the Tariff Schedules of the United States Annotated to the Harmonized Tariff Schedule.

SUMMARY: On January 1, 1989, the United States fully converted to the international harmonized system of tariff classification. On January 11, 1989, the Department of Commerce (the Department) published the Conversion to Use of the Harmonized Tariff Schedule of Classifications for Antidumping and Countervailing Duty Proceedings (54 FR 993; January 11, 1989) (1989 Conversion) for all antidumping and countervailing duty orders in effect or investigations in progress as of January 1, 1989. The Department now proposes to amend the 1989 Conversion governing the countervailing duty order on certain textile mill products from Argentina. Interested parties are invited to comment on this proposed amended conversion.

EFFECTIVE DATE: November 2, 1994.

FOR FURTHER INFORMATION CONTACT: Megan Waters or Kelly Parkhill, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, Washington, DC 20230, telephone (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

In 1985, the Department issued a countervailing duty order on Certain Textile Mill Products from Argentina (C–357–404) (50 FR 9846; March 12, 1985). The scope of this order was originally defined solely in terms of the Tariff Schedules of the United States Annotated (TSUSA) item numbers; no narrative product description was provided. On January 1, 1989, the United States fully converted from the TSUSA to the Harmonized Tariff Schedule (HTS). Section 1211 of the Omnibus Trade and Competitiveness Act of 1988 directed the Department to "take whatever actions are necessary to conform, to the fullest extent practicable, with the tariff classification system of the Harmonized Tariff Schedule [for] all * * * orders * * *" in effect at the time of the implementation of the HTS.

Accordingly, on January 11, 1989, after reviewing comments received from the public, the Department published the 1989 Conversion for all antidumping and countervailing duty orders in effect or investigations in progress as of January 1, 1989 (54 FR 993). The notice also included the conversion of the scope of the referenced textile mill product order from TSUSA to HTS item numbers. The 1989 Conversion was based on a one-to-one correspondence of the TSUSA and HTS item numbers. In the notice, the Department stated that the conversion could be amended, as warranted, at any time during the applicable proceeding as a result of the submission of comments or new factual information.

As a result of comments submitted to the Department by the importing public and advice received from the U.S. Customs Service, the Department determined that the 1989 Conversion did not accurately reflect the scope of the countervailing duty order on Certain Textile Mill Products from Argentina and, therefore, that the conversion should be amended.

To rectify the problems in the 1989 Conversion, the Department, with the assistance of the U.S. Customs Service and the U.S. International Trade Commission, has once again compared the TSUSA-defined scope and the HTS-defined scope provided by the 1989 Conversion, and identified those HTS numbers that more reasonably correspond with the TSUSA-defined scope of the countervailing duty order on Certain Textile Mill Products from Argentina. A new proposed amended conversion is found in the attached appendix.

Request for Public Comments

We invite interested parties to submit comments on the proposed amended conversion within 30 days of the publication of this notice. All comments must be in writing (10 copies), addressed to the attention of the Director, Office of Countervailing Compliance, International Trade Administration, Central Records Unit, Room B–099, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Dated: October 18, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

APPENDIX: PROPOSED AMENDED HTS LIST FOR CERTAIN TEXTILE MILL PRODUCTS FROM ARGENTINA (C–357–404)

5111.1170	[1]5111.1960	5111.2090	5111.3090
5112.1120	[1]5112.1990	5112.2030	5112.3030
5250.1110	5205.1210	5205.1310	5112.1410
[2]5205.2400	5205.3100	5205.3200	5205.3300
5207.1000	5207.9000	5407.9105	5407.9205
5407.9305	5407.9405	5515.1305	5510.1310
5801.3600	6302.6000	6305.2000	6305.9000

Notes:
[1] Coverage limited to fabric, valued not over $19.84/kg.
[2] Coverage limited to yarn, not exceeding 68 nm.

[FR Doc. 94–27185 Filed 11–1–94; 8:45 am]
BILLING CODE 3510–DS–P

International Trade Administration, Commerce

Notice of Scope Rulings

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of scope rulings and anticircumvention inquiries.

SUMMARY: The Department of Commerce (the Department) hereby publishes a list of scope rulings and anticircumvention inquiries completed between April 1, 1994, and June 30, 1994. In conjunction with this list, the Department is also publishing a list of pending requests for scope clarifications and anticircumvention inquiries. The Department intends to publish future lists within 30 days of the end of each quarter.

EFFECTIVE DATE: November 2, 1994.

FOR FURTHER INFORMATION CONTACT: Jason R. Field or Wendy J. Frankel, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 482–5222/5253.

Background

The Department's regulations (19 CFR 352.29(d)(8) and 355.29(d)(8)) provide that on a quarterly basis the Secretary will publish in the **Federal Register** a list of scope rulings completed within the last three months.

This notice lists scope rulings and anticircumvention inquiries completed between April 1, 1994, and June 30, 1994, and pending scope clarification and anticircumvention inquiry requests. The Department intends to publish in October 1994 a notice of scope rulings and anticircumvention inquiries completed between July 1, 1994, and September 30, 1994, as well as pending scope clarification and anticircumvention inquiry requests.

The following lists provide the country, case reference number, requester(s), and a brief description of either the ruling or product subject to the request.

I. Scope Rulings Completed Between April 1, 1994, and June 30, 1994

Country: People's Republic of China

A–570–504: *Petroleum Wax Candles*

A.J. Cohen—Set 155 holiday taper wax candles are within the scope of the order, and Set 154 holiday taper wax candles are outside the scope of the order. Signed 6/6/94.

Kole Imports—Certain holiday taper wax candles are outside the scope of the order. Signed 6/6/94.

Country: Brazil

A–351–603: *Brass Sheet and Strip*

Eluma International Inc.—Certain brass circles are outside the scope of the order. Signed 6/6/94.

Country: Japan

A–588–405: *Cellular Mobile Telephones and Subassemblies*

Mitsubishi Electric Corp., Mitsubishi Electronics America, Inc., Mitsubishi Consumer Electronics America, Inc.—Electronic Models MT109 and MT119 Portable Cellular Telephones are outside the scope of the order. Signed 6/6/94.

Antel Communications Corporation and Tottori Sanyo Electric Co., Ltd.—Sanyo Model CMP 351 portable cellular telephone and Antel Model STR 1600 portable cellular telephone are outside the scope of the order. Signed 5/4/94.

Toyocom U.S.A. Inc.—Temperature compensated crystal oscillators (TCXOs) and High Frequency Crystal Mechanical filters (HCM filters) are outside the scope of the order. Signed 5/27/94.

A–588–823: *Professional Electric Cutting Tools*

Makita Inc., Makita, U.S.A.—Router models 3621 and 3621A are outside the scope of the order. Signed 4/12/94.

Makita Inc., Makita, U.S.A.—Planner model 1912B is outside the scope of the order. Signed 6/6/94.

Country: Germany

A–428–801: *Antifriction Bearings (other than Tapered Roller Bearings) and Parts Thereof*

SKF—Certain textile machinery components are outside the scope of the order. Signed 6/6/94.

Country: Taiwan

A–570–808: *Lug Nuts*

Consolidated International—Certain hex size lug nuts are within the scope of the order. Signed 4/19/94.

II. Anticircumvention Rulings Completed Between April 1, 1994, and June 30, 1994

None.

III. Scope Inquiries Terminated Between April 1, 1994, and June 30, 1994

Country: People's Republic of China

A–570–504: *Petroleum Wax Candles*

E & G Company—Clarification to determine whether certain musical holiday wax candles are within the scope of the order. Terminated 4/29/94.

Country: Japan

A–588–823: *Professional Electric Cutting Tools*

Makita Inc., Makita, U.S.A.—Clarification to determine whether a bench top tile saw is within the scope of the order. Terminated 4/19/94.

IV. Anticircumvention Inquiries Terminated Between April 1, 1994, and June 30, 1994

Country: Japan

A–588–807: *Industrial Belts and Components*
BRECOFLEX Corp.—Anticircumvention inquiry to determine whether the order is being circumvented by the processing of Japanese belting into belts in Mexico before importation into the United States. Terminated 5/6/94.

V. Pending Scope Clarification Requests as of June 30, 1994

Country: Mexico
A–201–805: *Circular Welded Non-Alloy Steel Pipe*
Allied Tube & Conduit Corp., American Tube Co., Century Tube Corp., CSI Tubular Productions, Inc., Laclede Steel Co., LTV Tubular Productions Co., Sawhill Tubular Division, Sharon Tube Co., Tex-Tube Division, Western Tube & Conduit Corp., Wheatland Tube Co.—Clarification to determine whether pipe produced to API 5L line pipe specifications or to both ASTM A–53 standard pipe specification and the API 5L line pipe specification (dual-certified pipe), when intended for use as standard pipe or when actually used as standard pipe, is within the scope of the order. Affirmative preliminary scope ruling issued on 1/13/94.
Country: Brazil
A–351–809: *Circular Welded Non-Alloy Steel Pipe*
Allied Tube & Conduit Corp., American Tube Co., Century Tube Corp., CSI Tubular Productions, Inc., Laclede Steel Co., LTV Tubular Productions Co., Sawhill Tubular Division, Sharon Tube Co., Tex-Tube Division, Western Tube & Conduit Corp., Wheatland Tube Co.—Clarification to determine whether pipe produced to API 5L line pipe specifications or to both ASTM A–53 standard pipe specification and the API 5L line pipe specification (dual-certified pipe), when intended for use as standard pipe or when actually used as standard pipe, is within the scope of the order. Affirmative preliminary scope ruling issued on 1/13/94.
A–351–503: *Iron Construction Castings*
Southland Marketing—Clarification to determine whether certain cast iron grates and frames are within the scope of the order.
Country: People's Republic of China
A–570–001: *Potassium Permanganate*
Aerostat Inc.—Clarification to determine whether certain plastic ignitor spheres are within the scope of the order.
A–570–504: *Candles*
Two's Company—Clarification to determine whether certain decorated pillar candles and red and gold angel taper candles are within the scope of the order.
West Coast Liquidators—Clarification to determine whether certain holiday object candles and certain holiday figurine tapers are within the scope of the order.
Star Merchandise—Clarification to determine whether certain wax-filled containers are within the scope of the order.
Scentex, Inc.—Clarification to determine whether Earth Scents brand potpourri candle is within the scope of the order.
Success Sales—Clarification to determine whether certain holiday pillar candles are within the scope of the order.
A–570–502: *Iron Construction Castings*
Jack's International—Clarification to determine whether certain cast iron area drains are within the scope of the order.
Country: Korea
A–580–809: *Circular Welded Non-Alloy Steel Pipe*
Allied Tube & Conduit Corp., American Tube Co., Century Tube Corp., CSI Tubular Productions, Inc., Laclede Steel Co., LTV Tubular Productions Co., Sawhill Tubular Division, Sharon Tube Co., Tex-Tube Division, Western Tube & Conduit Corp., Wheatland Tube Co.—Clarification to determine whether pipe produced to API 5L line pipe specifications or to both ASTM A–53 standard pipe specification and the API 5L line pipe specification (dual-certified pipe), when intended for use as standard pipe or when actually used as standard pipe, is within the scope of the order. Affirmative preliminary scope ruling issued on 1/13/94.
Country: Venezuela
A–307–805: *Circular Welded Non-Alloy Steel Pipe*
Self-initiation. Clarification to determine wither pipe produced to API 5L line pipe specifications or to both ASTM A–53 standard pipe specification and the API 5L line pipe specification (dual-certified pipe), when intended for use as standard pipe or when actually used as standard pipe, is within the scope of the order. Affirmative preliminary scope ruling issued on 1/13/94.
Country: Japan
A–588–802: *3½" Microdisks*
TDK Inc., TDK Electronics Co.—Clarification to determine whether certain web roll media are within the scope of the order.
A–5588–014: *Tuners*
Alpine Electronics—Clarification to determine whether certain car radio/stereo and/or replacement parts, comprised of four subassemblies and their components, are within the scope of the finding.
Fujitsu Ten Corporation of America—Clarification to determine whether certain "front end" components of car tuners are within the scope of the finding.
A–588–405: *Cellular Mobile Telephones and Subassemblies*
Matsushita Communication Industrial Co., Ltd., and its related entities—Clarification to determine whether certain portable telephones, subassemblies, and components thereof are within the scope of the order (five products).
Mitsubishi Electric Corp., Mitsubishi Electronics America, Inc., Mitsubishi Consumer Electronics America, Inc.—Clarification to determine whether model 2000 cellular mobile telephone is within the scope of the order.
TDK Corporation of America—Clarification to determine whether Duplexers, Voltage Control Oscillators, and Isolators are within the scope of the order.
JRC International—Clarification to determine whether model PTR–830 portable cellular telephone is within the scope of the order.
A–588–823: *Professional Electric Cutting Tools*
Makita Inc., Makita U.S.A.—Clarification to determine whether Wood Surfacer model LP1812C is within the scope of the order.
A–588–604: *Tapered Roller Bearings and Parts Thereof*
Koyo Seiko—Clarification to determine whether certain forgings are within the scope of the order. Affirmative preliminary ruling issued on 2/28/94.
A–588–814: *Polyethylene Terephthalate (PET) Filim*
Kimoto U.S.A. Inc.—Clarification to determine whether certain Anti-Static Clear Film is within the scope of the order.
Tektronix Inc., Tektronix Asia—Clarification to determine whether overhead projection film model 4681 and model 4684 are within the scope of the order.
A–588–055: *Acrylic Sheet*
Sumitomo Chemical America, Inc.—Clarification to determine whether

acrylic sheet with light scattering properties is within the scope of the order.

Country: Argentina

C–357–803: *Leather*

Petitioners—Clarification to determine whether upper bovine leather without hair on, not whole, prepared after tanning its within the scope of the countervailing duty order.

County: Sweden

A–401–040: *Stainless Steel Plate*

Armco, Inc., G.O. Carlson, Allegheny Ludlum Corp., and Washington Steel Corp.—Clarification to determine whether Stavax, Ramax, and 904L are within the scope of the finding.

Avesta Sheffield—Clarification to determine whether stainless steel "hot bands" are within the scope of the finding.

Country: Germany

A–428–801: *Antifriction Bearings (other than Tapered Roller Bearings) and Parts Thereof*

Rotek—Clarification to determine whether certain "slewing rings" are within the scope of the order.

Kaydon—Clarification to determine whether certain "slewing rings" are within the scope of the order.

Consolidated Saw Mill International (CSMI) Inc.—Clarification to determine whether certain Cambio bearings contained in its sawmill debarker are within the scope of the order.

VI. Pending Anticircumvention Inquiry Requests as of June 30, 1994

Country: Mexico

A–201–806: *Steel Wire Rope*

Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers—Anticircumvention inquiry to determine whether a producer of steel wire rope in Mexico is circumventing the antidumping order by importing steel wire strand into the United States where it is wound into steel wire rope.

VII. Correction to Scope Rulings Completed Between January 1, 1994, and March 31, 1994

Country: Japan

A–588–405: *Cellular Mobile Telephone and Subassemblies*

Sony Corporation and Sony Electronics Inc.—Model CM–H333 and subassemblies thereof are outside the scope of the order. Signed 1/28/94.

Interested parties are invited to comment on the accuracy of the list of pending scope clarification requests. Any comments should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: October 17, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94–27063 Filed 11–1–94; 8:45 am]

BILLING CODE 3510–DS–M

Minority Business Development Agency

Business Development Center Applications: Columbia, SC

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications for its Columbia, South Carolina Minority Business Development Center (MBDC).

The purpose of the MBDC Program is to provide business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of client services to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business. the MBDC will provide service in the Columbia, South Carolina Metropolitan Area. The award number of the MBDC will be 04–10–95003–01.

DATES: The closing date for applications is December 16, 1994. Applications must be received in the Atlanta Regional Office on or before December 16, 1994. A pre-application conference will be held on November 29, 1994, at 9 a.m., at the Atlanta Regional Office.

ADDRESSES: U.S. Department of Commerce, Minority Business Development Agency, Atlanta Regional Office, 401 West Peachtree Street, NW., Suite 1715, Atlanta, Georgia 30308–3516.

FOR FURTHER INFORMATION CONTACT: Robert Henderson at (404) 730–3300.

SUPPLEMENTARY INFORMATION: Contingent upon the availability of Federal funds, the cost of performance for the first budget period (12 months) from April 1, 1995 to March 31, 1996, is estimated at $198,971. The total Federal amount is $169,125 and is composed of $165,000 plus the Audit Fee amount of $4,125. The application must include a minimum cost share of 15% $29,846 in non-federal (cost-sharing) contributions for a total project cost of $198,971. Cost-sharing contributions may be in the form of cash, client fees, third party in-kind contributions, non-cash applicant contributions or combinations thereof.

The funding instrument for this project will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

Applications will be evaluated on the following criteria: the knowledge, background and/or capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (45 points), the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (25 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award. Periodic reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

The MBDC shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDC may charge client fees for services rendered. Fees may range from

$10 to $60 per hour based on the gross receipts of the client's business.

Anticipated processing time of this award is 120 days. Executive order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Federal funds for this project include audit funds for non-CPA recipients. In event that a CPA firm wins the competition, the funds allocated for audits are not applicable. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Pre-Award Costs

Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Outstanding Account Receivable

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy

All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination

The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements

A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications

All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension

Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug Free Workplace

Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying

Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000 or the single family maximum mortgage limit for affected programs, whichever is greater.

Anti-Lobbying Disclosures

Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications

Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Buy American-Made Equipment or Products

Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–121, Sections 606 (a) and (b).

(Catalog of Federal Domestic Assistance)

11.800 Minority Business Development Center.

Dated: October 26, 1994.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 94–27113 Filed 11–1–94; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

[I.D. 072894C]

Marine Mammals

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

ACTION: Extension of comment period on draft stock assessments and Potential Biological Removal (PBR) workshop reports.

SUMMARY: NMFS is extending the comment period on its stock assessments and PBR workshop report in consideration of the complexity of the issues surrounding both the stock assessments and the PBR workshop report.

DATES: Comments on the draft stock assessment reports and the report of the PBR workshop must be received by December 1, 1994.

ADDRESSES: Send comments to Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226; Fax: (301) 713–0376.

FOR FURTHER INFORMATION CONTACT: Thomas C. Eagle with the Office of Protected Resources at (301) 713–2319.

SUPPLEMENTARY INFORMATION: On August 9, 1994, NMFS published a **Federal Register** notice announcing the availability of draft stock assessment reports and PBR workshop reports (59 FR 40527). The stock assessment reports are required under the new section 117 of the Marine Mammal Protection Act Amendments of 1994 (Public Law 103–238). A summary of the stock assessment reports, specifying geographical range, regional designation, minimum abundance estimate, PBR, and estimated human-caused mortality for each stock, was followed by a designation of strategic or nonstrategic. The PBR workshop, consisting of NMFS and U.S. Fish and Wildlife Service scientists, was convened to develop an initial approach for promoting consistent national interpretation of parameters to be used in draft stock assessment reports, including the calculation of PBR.

The initial comment period for NMFS draft stock assessment and PBR workshop reports was scheduled to end on November 7, 1994. In response to concern that the public comment period was inadequate, given the scope of the issues surrounding the assessments and the workshop reports, NMFS extends the comment period and welcomes comments received by December 1, 1994. Comments must be received in the Office of Protected Resources by December 1 to be fully considered. Therefore, those submitting comments close to that date should fax their comments or call to ensure their comments arrived via mail.

Dated: October 26, 1994.

William W. Fox, Jr.,

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

[FR Doc. 94–27085 Filed 11–01–94; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 102694C]

North Pacific Fishery Management Council; Plan Team Meetings

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

ACTION: Notice of meetings.

SUMMARY: The North Pacific Fishery Management Council's Gulf of Alaska and Bering Sea/Aleutian Islands groundfish fishery management plan teams will hold a meeting on November 14–18, 1994, at the Alaska Fisheries Science Center, 7600 Sand Point Way, NE., Room 2079, Building 4, Seattle, WA.

The meetings will begin at 1 p.m. on November 14. The agenda includes the following:

1. Review available stock assessments and catch statistics and prepare final stock assessment documents for the 1995 groundfish fisheries in the Gulf of Alaska and Bering Sea/Aleutian Islands;
2. Review status of plan amendment analyses, and provide input as necessary; and
3. Prioritize research needs.

FOR FURTHER INFORMATION CONTACT: David Witherell or Jane DiCosimo, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Judy Willoughby, (907) 271–2809, at least 5 days prior to the meeting date.

Dated: October 27, 1994.

David S. Crestin,

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

[FR Doc. 94–27189; Filed 11–1–94; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 102694A]

North Pacific Fishery Management Council; Committee Meeting

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

ACTION: Notice of committee meeting.

SUMMARY: The North Pacific Fishery Management Council has appointed an industry committee to study the issue of insurance coverage for fisheries observers, including ways to decrease costs and methods to more evenly distribute the costs of observer coverage throughout the North Pacific fishing fleet. The Committee will hold its first meeting on November 4, 1994, at the Alaska Fisheries Science Center, 7600 Sand Point Way, NE., Seattle, WA.

The meeting will begin at 9 a.m., in Room 1055 (Observer Training Room) in Building 4.

FOR FURTHER INFORMATION CONTACT: Chris Oliver, Deputy Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Judy Willoughby, (907) 271–2809, at least 5 days prior to the meeting date.

Dated: October 27, 1994.

David S. Crestin,

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

[FR Doc. 94–27181 Filed 10–28–94; 1:44 pm]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

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

October 27, 1994.

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

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

EFFECTIVE DATE: November 3, 1994.

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

SUPPLEMENTARY INFORMATION:

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

The current limit for Categories 340/640 is being increased for swing and carryforward. The limit for Categories 341/641 is being reducing to account for the swing being applied.

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

see 59 FR 1935, published on January 13, 1994.

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

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 27, 1994.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 7, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Mauritius and exported during the twelve-month period which began on January 1, 1994 and extends through December 31, 1994.

Effective on November 3, 1994, you are directed to amend further the directive dated January 7, 1994 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Mauritius:

Category	Adjusted twelve-month limit [1]
Levels not in a group	
340/640	588,000 dozen of which not more than 319,580 dozen shall be in Categories 340–Y/640–Y [2].
341/641	302,631 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1993.

[2] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

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

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–27114 Filed 11–1–94; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Thailand

October 27, 1994.

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

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

EFFECTIVE DATE: October 27, 1994.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6717. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

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

The current limits for certain categories are being adjusted, variously, for swing and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 59 FR 21962, published on April 28, 1994.

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

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 27, 1994.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on April 21, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 1994 and extends through December 31, 1994.

Effective on October 27, 1994, you are directed to amend the directive dated April 21, 1994 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Thailand:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
219	4,768,413 square meters.
313	16,299,054 square meters.
369–D [2]	182,238 kilograms.
369–S [3]	252,483 kilograms.
604	596,327 kilograms of which not more than 382,316 kilograms shall be in Category 604–A [4].
619	5,734,742 square meters.
Sublevels in Group II	
334/634	524,881 dozen.
335/635/835	417,213 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1993.

[2] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[3] Category 369–S: only HTS number 6307.10.2005.

[4] Category 604–A: only HTS number 5509.32.0000.

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

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–27115 Filed 11–1–94; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Public Scoping Meeting for the Relocation of Navy Reservists From Naval Reserve Readiness Center at Lake Union and the Replacement of the Army Reserve Center at Fort Lawton, Seattle, WA

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR Parts 1500–1508), the Department of the Navy and Department of Army announce their intention to conduct a

scoping meeting for the preparation of a Draft Environmental Impact Statement (DEIS) for the proposed relocation of Navy reservists from the Naval Reserve Readiness Center at Lake Union and the replacement of the Army Reserve training facilities currently located in the 500 Area at Fort Lawton.

This notice augments the Notice of Intent to prepare a DEIS for this proposed action that was published in the October 12, 1994 **Federal Register**.

The Chief of Naval Reserve and U.S. Army Reserve Command's preferred alternative is to construct and operate a 120,000 square foot Joint Use Reserve Center in the southwest corner of Fort Lawton, near the existing 124th Army Reserve Command Headquarters. The DEIS will consider other sites on Fort Lawton, as well as other Federally-owned sites in the Seattle area. The DEIS will also evaluate taking no action, and constructing separate as well as joint facilities.

A public scoping meeting has been scheduled to solicit comments about the issues that need to be addressed in the DEIS. The meeting will be held at 7:00 PM on November 17, 1994 at the Blaine Elementary School auditorium, 2550 34th Ave. West, Seattle, WA. A brief presentation identifying the proposed action and the EIS process will precede a request for public comments. It is important that federal, state, and local agencies, and interested individuals take the opportunity to identify environmental concerns that should be addressed in the DEIS.

Agencies and the public are also invited and encouraged to provide written comments on the scoping issues in addition to, or in lieu of, oral comments at the coping meeting. Each speaker will be limited to five minutes at the meeting. Written comments must be received by December 15, 1994. Comments should be sent to Engineering Field Activity Northwest, Naval Facilities Engineering Command, Attn: Mr. Don Morris, Code 232DM, 3505 NW Anderson Hill Road, Silver Dale, WA 98383–7929. Questions concerning this notice should be directed to Mr. Morris at (206) 396–5976.

Dated: October 28, 1994.

Saundra K. Melancon,

Alternate Federal Register Liaison Officer.

[FR Doc. 94–27150 Filed 11–1–94; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

Indian Education National Advisory Council; Meeting

AGENCY: National Advisory Council on Indian Education, Education.

ACTION: Notice of partially closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Indian Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES AND TIME: November 14–17, 1994 from 9:00 a.m. until 5:00 p.m. daily or until the conclusion of business.

ADDRESSES: The meeting will be held at the Denver Marriott Southeast, Interstate 25 at Hampden Avenue, Denver, Colorado 80222, (303) 758–7000.

FOR FURTHER INFORMATION CONTACT: Robert K. Chiago, Executive Director, National Advisory Council on Indian Education, 330 C Street SW., Room 4072, Switzer Building, Washington, DC 20202–7556. Telephone: (202) 205–8353.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is established under section 5342 of the Indian Education Act of 1988 (25 U.S.C. 2642). The council is established to, among other things, assist the Secretary of Education in carrying out responsibilities under the Indian Education Act of 1988 (Part C, Title V, Pub. L. 100–297) and to advise Congress and the Secretary of Education with regard to federal education programs in which Indian children or adults participate or from which they can benefit and submit a list on nominees for the position of Director, Office of Indian Education.

The Chairman of the National Advisory Council on Indian Education, Eddie L. Tullis, has called for a meeting of the full Council, November 14–17, 1994. On Monday morning from 9:00 a.m. to 12:00 p.m. the agenda will include a general business session and the following activities: election of new officers for the 1995 fiscal year; committee development; and an update of the reauthorization of the Elementary and Secondary Education Act which includes the Indian Education Act.

The closed portion of the meeting will be held on Monday afternoon from 1:00 p.m. to 5:00 p.m. and will be devoted to discussing personnel issues related to the search process for a director for the Office of Indian Education and the internal staffing structure of the NACIE office. All discussions held in conjunction with the selection of a director for the Office of Indian Education and NACIE's internal organization will involve matters which relate solely to the internal personnel rules and practices of the Council and are likely to disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (2) and (6) of section 552b(c) of the Government in the Sunshine Act (Pub. L. 94–409; 5 U.S.C. 552b(c).

Tuesday's agenda is open and will include any unfinished business from the previous day's morning session; work as previously delegated by committee; and the development of a fiscal year 1995 workplan and future goals of the Council. Wednesday and Thursday will be devoted to work group discussions that will further outline the work of the council for the current fiscal year and beyond based on the recently reauthorized Elementary and Secondary Education Act of 1994. Included also will be an opportunity for public participation in Council discussions. Interested individuals may contact the NACIE office for a final agenda the week prior to the meeting date.

Records shall be kept of all Council proceedings and are available for public inspection at the office of the National Advisory Council on Indian Education located at 330 C Streets SW., room, 4072, Washington, DC 20202–7556 from the hours of 9:00 a.m. to 4:30 p.m. Monday through Friday, except holidays.

Dated: October 21, 1994.

Robert K. Chiago,

Executive Director, National Advisory Council on Indian Education.

[FR Doc. 94–27194 Filed 11–1–94; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER92–592–004, et al.]

Yankee Atomic Electric Company, et al.; Electric Rate and Corporate Regulation Filings

October 26, 1994.

Take notice that the following filings have been made with the Commission:

1. Yankee Atomic Electric Company

[Docket No. ER92-592-004]

Take notice that on October 20, 1994, Yankee Atomic Electric Company (Yankee), tendered for filing its compliance refund report pursuant to the Commission's order issued June 15, 1994.

Copies of the tendered filing have been served by Yankee upon the other parties to the above-captioned proceeding.

Comment date: November 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Northwest Regional Transmission Association

[Docket No. ER95-19-000]

Take notice that on October 20, 1994, Portland General Electric Company (PGE) tendered for filing on behalf of itself, Puget Sound Power & Light Company, City of Tacoma Department of Public Utilities, Western Montana Generation and Transmission Cooperative, Inc., Pacific Northwest Generating Cooperative, and Tenaska Power Services (together, the Filing Parties) a letter of support for the Northwest Regional Transmission Association from PacifiCorp.

Comment date: November 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. New England Power Company

[Docket No. ER95-35-000]

Take notice that on October 13, 1994, New England Power Company, tendered for filing its Interconnection System Study Agreement with Altresco Lynn Limited Partnership.

Comment date: November 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. The Potomac Edison Company

[Docket No. ER95-39-000]

Take notice that on October 14, 1994, The Potomac Edison Company, tendered for filing proposed changes in its FERC Electric Tariff, First Revised Volume No. 3. The proposed changes would increase revenues from jurisdictional sales and service by $3.81 million based on the twelve month period ending December 31, 1995. The proposed effective date for the increased rates is January 1, 1995.

Copies of the filing have been provided to the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: November 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Illinois Power Company

[Docket No. ER95-42-000]

Take notice that on October 18, 1994, Illinois Power Company (Illinois) tendered for filing an Interchange Agreement between Illinois and Electric Clearinghouse, Inc. (ECI). Illinois states that the purpose of this agreement is to provide for the buying and selling of capacity and energy between Illinois and ECI.

Comment date: November 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. New York State Electric & Gas Corporation

[Docket Nos. ER95-44-000 and EC95-2-000]

Take notice that on October 18, 1994, New York State Electric & Gas Corporation (NYSEG), tendered for filing the following: (1) A request for authorization to sell facilities used for transmission of electric energy in interstate commerce, pursuant to § 203(a) of the Federal Power Act, and (2) an amendment to its Agreement with Niagara Mohawk Power Corporation (NMPC), designated NYSEG Rate Schedule FERC No. 90, pursuant to § 203(b) of the Federal Power Act.

The filings concern the sale (the "Transaction") of 10.04 miles of 69 kV electric transmission line and certain related facilities and property rights to NMPC; and an amendment to a facilities charge agreement. To the extent necessary, NYSEG requests waiver of the notice requirements so that the Transaction may take place and the amendment may become effective in accordance with the terms of the amendment.

Copies of the filing were served upon the Niagara Mohawk Power Corporation and on the Public Service Commission of the State of New York.

Comment date: November 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Montaup Electric Company

[Docket No. ER95-45-000]

Take notice that on October 18, 1994, Montaup Electric Company tendered for filing its FERC Electric Tariff, Original Volume No. III, Unit Sale Tariff and its FERC Electric Tariff, Original Volume No. IV, System Sales and Exchange Tariff. Tariff III provides for sales for resale of unit capacity and associated energy and Tariff IV provides for sales for resale of system capacity and associated energy. Tariff IV also allows a buyer to provide capacity from one of its units. Montaup requests that the tariffs be allowed to become effective 60 days from to date of filing, on December 18, 1994.

Comment date: November 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Puget Sound Power & Light Company

[Docket No. ER95-47-000]

Take notice that on October 19, 1994, Puget Sound Power & Light Company (Puget) tendered for filing, as an initial rate schedule, the PNW AC Intertie Capacity Ownership Agreement by and between the United States of America Department of Energy acting by and through the Bonneville Power Administration (Bonneville) and Puget, together with exhibits thereto (the Agreement). A copy of the filing was served upon Bonneville.

Puget states that the Agreement relates to the purchase by Puget of a certain amount of the transfer capability of Bonneville's PNW AC Intertie and also provides for Puget to (a) return to Bonneville an amount of electric energy to compensate Bonneville for transmission losses and (b) under certain conditions, to permit Bonneville to use Puget's unused share of the transfer capability of Bonneville's PNW AC Intertie.

Comment date: November 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. San Diego Gas & Electric Company

[Docket No. ER95-51-000]

Take notice that on October 20, 1994, San Diego Gas & Electric Company (SDG&E), tendered for filing and acceptance, pursuant to 18 CFR § 35.12, an Interchange Agreement (Agreement) between SDG&E and the City of Burbank (Burbank).

SDG&E requests that the Commission allow the Agreement to become effective on the 2nd day of January, 1995, or at the earliest possible date.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Burbank.

Comment date: November 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. Central Hudson Gas & Electric Corporation

[Docket No. ER95-53-000]

Take notice that on October 20, 1994, Central Hudson Gas & Electric Corporation (CHG&E), tendered for filing, pursuant to 18 CFR § 35.13, proposed changes in its FERC Rate Schedule No. 3 for borderline sales to

New York State Electric & Gas Corporation. CHG&E is requesting an effective date of December 21, 1993, for this tariff rate change. Accordingly, CHG&E has also requested a waiver of Commission's notice requirements for good cause shown.

CHG&E has sent a copy of this filing to New York State Electric & Gas Corporation, P.O. Box 3287, Ithaca, NY 14852–3287.

Comment date: November 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

11. Duke Power Company

[Docket No. ER95–54–000]

Take notice that on October 20, 1994, Duke Power Company (Duke), filed contract amendments to Rate Schedules contained in Duke's interchange agreements with South Carolina Electric & Gas Company (SCE&G) (Duke Rate Schedule FERC No. 293). The purpose of this filing is to amend the existing Spinning Reserve Service Schedules to lessen the amount of time one company can obtain emergency capacity from the other without a demand charge and eliminate those references to Spinning Reserve which are not consistent with the operating guidelines of the North American Electric Reliability Council (NERC).

Comment date: November 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

12. Indianapolis Power & Light Company

[Docket No. ER95–55–000]

Take notice that on October 21, 1994, Indianapolis Power & Light Company (IPL), tendered for filing an initial rate schedule consisting of the Interconnection Agreement between IPL and the Indiana Municipal Power Agency.

Copies of this filing were sent to the Indiana Municipal Power Agency and the Indiana Utility Regulatory Commission.

Comment date: November 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

13. Portland General Electric Company

[Docket No. ER95–56–000]

Take notice that on October 21, 1994, Portland General Electric Company (PGE), tendered for filing a Short-Term Utility Replacement Energy Agreement between Puget Sound Power & Light Company, Portland General Electric Company, PacifiCorp, the Washington Water Power Company, Colockum Transmission Company, Inc., and the Bonneville Power Administration (BPA), BPA Contract No. DE-MS79–94BP94427. Copies of this filing have been served on the parties included in the service list attached to the filing letter.

The Agreement provides for BPA to sell flow augmentation replacement energy to PGE. PGE asks that the Commission find that the Agreement does not need to be filed with the Commission; and in the alternative, that the Agreement be effective sixty (60) days after the date of the instant filing, or on the date of acceptance by the Commission, whichever is sooner.

Comment date: November 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

14. Southern Company Services, Inc.

[Docket No. ER95–59–000]

Take notice that on October 21, 1994, Southern Company Services, Inc., acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (the "Southern Companies"), submitted for filing Amendment No. 5 to the Intercompany Interchange Contracted dated October 31, 1988. In addition, Southern Companies have filed amendments to certain unit power and interchange agreements between Southern Companies and Florida Power & Light Company, Florida Power Corporation, Jacksonville Electric Authority, the City of Tallahassee, Florida, South Carolina Public Service Authority, Duke Power Company, Cajun Electric Power Cooperative, Inc., and Gulf States Utilities Company, respectively. Southern Companies also have informed the Commission of a proposed change in practice under Southern Companies' interchange contracts with Tennessee Valley Authority, Mississippi Power & Light Company, and South Carolina Electric & Gas Company. The purpose of this filing is to declare changes in practice and to amend energy rates contained in the foregoing agreements to reflect the energy-related costs incurred by Southern Companies to ensure compliance with the Phase I sulfur dioxide emissions limitations of the Clean Air Act Amendment of 1990.

Comment date: November 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

15. Goal Line, L.P.

[Docket Nos. QF92–179–002 and EL95–6–000]

Take notice that on October 18, 1994, Goal Line, L.P. (Goal Line), tendered for filing a request for limited waiver of the Commission's Regulations under the Public Utility Regulatory Policies Act of 1978 (PURPA). Goal Line requests the Commission to temporarily waive the operating and efficiency standards for qualifying cogeneration facilities as set forth in § 292.205 of the Commission's Regulations, implementing Section 201 of PURPA, as amended, 18 CFR 292.205, with respect to its 49.8 MW cogeneration facility located in Escondido, California. Specifically, Goal Line requests waiver of the operating and efficiency standards for the calendar year 1994.

Comment date: Thirty days from the date of publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

16. Tenaska IV Texas Partners, Ltd.,

[Docket No. QF94–84–002]

On October 20, 1994, Tenaska IV Texas Partners, Ltd., (Applicant), of 1044 North 115 Street, Suite 400, Omaha, Nebraska 68154, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the topping-cycle cogeneration facility will be located in Cleburne, Texas, and will consist of a combustion turbine generator, a heat recovery boiler equipped with duct burning, and an extraction/condensing steam turbine generator. Steam recovered from the facility will be used by the applicant for the manufacturing of distill water for sale to a third party. The primary energy source will be natural gas. The maximum net electric power production capacity of the facility will be 284 MW. Construction of the facility is scheduled to begin in April, 1995.

Comment date: Thirty days from the date published in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

17. The Wisconsin Public Power Incorporated System

[Docket No. TX95–2–000]

Take notice that on October 17, 1994, The Wisconsin Public Power Incorporated System (WPPI) tendered for filing an application requesting that the Commission order Wisconsin Electric Power Company (WEPCO), Wisconsin Power and Light Company (WP&L), and Wisconsin Public Service Corporation (WPS) jointly, joint network tariff to provide network transmission services on a joint, single-system basis to WPPI. The application was filed pursuant to Section 211 of the Federal

Power Act, as amended by Energy Policy Act of 1992 (16 U.S.C. 824j).

In its application, WPPI requests that network service be provided commencing on May 1, 1995, and continuing on a long-term basis thereafter. The total transmission capacity requested would be sufficient for WPPI to integrate its load in eastern Wisconsin (now approximately 482 MW) with WPPI's resources. The service requested is network service over the integrated transmission grid of the EWU. The service requested includes both long and short-term firm and non-firm use, comparable in all respects to the EWU's use of the EWU grid. WPPI seeks services that will allow it, subject to existing power purchase contracts, (i) to schedule power and energy from a variety of sources within and outside of the EWU grid to WPPI's loads within the control areas of WP&L, WEPCO and WPS on an economic dispatch basis and in response to planned and unplanned outages and (ii) to engage in coordination purchases and sales using the EWU grid in the same manner as the owners of that grid schedule their power and energy transactions. The service would be costed on single-system basis for the EWU, with one joint rate for use of the integrated transmission system of three utilities. Revenues would be shared by the EWU. WPPI also requested that the EWU unbundle their transmission services from power sales services.

Copies of the application have been served upon the affected parties, WEPCO, WP&L, WPS, the Public Service Commission of Wisconsin, and upon Madison Gas & Electric Company.

Comment date: November 9, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27142 Filed 11–1–94; 8:45 am]

BILLING CODE 6717–01–P

Notice of Environmental Compliance Training Course

October 27, 1994.

The Office of Pipeline Regulation (OPR) staff will convene another session of its environmental compliance training course. This is a result of the positive response to our first sessions held in 1992 and 1993. We are holding this course so that additional members of the regulated pipeline industry and interested individuals and organizations can gain an understanding of the requirements and objectives of the Commission in ensuring compliance with all environmental certificate conditions and meeting its responsibilities under the National Environmental Policy Act and other laws and regulations.

We encourage interested organizations and the public to take advantage of this course.

This session will include clarification based on questions and comments on the previous course and will contain updated material based on our experience in checking compliance in the field. It will include the following topics:

- Postcertificate clearance filings;
- Environmental inspection as it relates to:
- Right-of-way preparation;
- Temporary erosion control;
- Cultural resources/Paleontology;
- Waterbody crossings;
- Wetland construction;
- Residential area construction;
- Right-of-way restoration; and
- Techniques for environmental compliance.

The two-day training course will be held December 14 and 15, 1994, at the Red Lion Hotel, 3203 Quebec Street, Denver, Colorado, 80207. Attendees must call (303) 321–3333 by November 30, 1994 and identify themselves as FERC Seminar attendees to receive the discounted group rate.

The OPR staff and Enserch Environmental Corporation, the Commission's environmental support contractor for natural gas projects, will conduct the training. There is no fee for the course, but you must pre-register because space is limited.

If you would like to attend the December 14, 1994 session, please call the telephone number listed below to obtain a registration form.[1] Because space is limited, please mail or fax the registration form within 15 days of publication of this notice to: Ms. Donna Connor, Enserch Environmental Corporation, 211 Congress Street, 7th Floor, Boston, MA 02110, Telephone: (617) 542–8805, Fax: (617) 695–1587.

You will receive confirmation of pre-registration and additional information before the training course.

Additional training may be offered in 1995 based on the level of interest. Please indicate on the registration form whether you would like this course to be offered again, or if you are interested in any other courses with different topics or audiences. Please indicate your preferences for location and time of year. Suggestions on format are welcome. If other sessions or courses are planned, information will be published in the **Federal Register** and sent to you announcing the dates and locations.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27089 Filed 11–1–94; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 2323–012; 2334–001; Deerfield River, VT, MA]

New England Power Co. Western Massachusetts Electric Co.; Notice of Intention To Prepare an Environmental Impact Statement and Conduct Public Scoping Meetings

October 27, 1994.

The Federal Regulatory Commission (FERC) has received applications for two new licenses for the continued operation of the Deerfield River Project No. 2323, and the Gardners Falls Project No. 2334. The projects are located on the Deerfield River, in Windham and Bennington Counties, Vermont, and Franklin and Berkshire Counties, Massachusetts.

The FERC staff has determined that licensing these projects would constitute a major federal action significantly affecting the quality of the human environment. Therefore, the staff intends to prepare an environmental impact statement (EIS) on the hydroelectric projects in accordance with the National Environmental Policy Act. The staff's EIS will objectively consider both site specific and cumulative environmental effects of the projects and reasonable alternatives, and will include an economic, financial and engineering analysis.

[1] The registration form referenced in this notice is not being printed in the **Federal Register**. Copies of the form were sent to those receiving this notice in the mail.

A draft EIS will be issued and circulated for review by all interested parties. All comments filed on the draft EIS will be analyzed by the staff and considered in a final EIS. The staff's conclusions and recommendations will then be presented for the consideration of the Commission in reaching its final licensing decisions.

Scoping Meetings

FERC staff will conduct three scoping meetings. The two evening scoping meetings, one each in Massachusetts and Vermont, are primarily for public input while the day-time meeting will focus on resource agency and non-governmental organization (NGO) concerns. All interested individuals, organizations, and agencies are invited to attend and assist the staff in identifying the scope of environmental issues that should be analyzed in the EIS.

To help focus discussions, a preliminary scoping document outlining subject areas to be addressed at the meeting will be distributed by mail to interested parties on the FERC mailing list. Copies of the preliminary scoping document will also be available at the scoping meetings.

The times and locations of the scoping meetings are as follows:

Massachusetts Public Scoping Meeting

Tuesday, November 15, 1994, 7:00 p.m. to 10:00 p.m., Mohawk Trail Regional High School, Buckland, Massachusetts

Vermont Public Scoping Meeting

Wednesday, November 16, 1994, 7:00 p.m. to 10:00 p.m., Wilmington High School, Wilmington, Vermont

Agency Scoping Meeting

Thursday, November 17, 1994, 9:00 a.m. to 12 noon, New England Power Company, Shelburne Falls, Massachusetts

Objectives

At the scoping meetings, the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the planned EIS; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue, (3) encourage statements from experts and the public on issues that should be analyzed in the EIS, including viewpoints in opposition to, or in support of, the staff's preliminary views, (4) determine the relative depth of analysis for issues to be addressed in the EIS, and (5) identify resource issues that are not important and do not require detailed analysis.

Procedures

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission proceeding on the Deerfield River projects under consideration. Individuals presenting statements at the meetings will be asked to sign in before the meeting starts and to clearly identify themselves for the record.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist the staff in defining and clarifying the issues to be addressed in the EIS.

Participants wishing to make oral comments in the public meeting are asked to keep them to five minutes to allow everyone the opportunity to speak.

Persons choosing not to speak at the meetings, but who have views on the issues, may submit written statements for inclusion in the public record at the meeting. In addition, written scoping comments may be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426. All correspondence should clearly show one or more of the following captions on the first page: Deerfield River Project No. 2323–012; and, Gardners Falls Project No. 2334–001.

All those that are formally recognized by the Commission as intervenors in the Deerfield and Gardners Falls projects' proceedings are asked to refrain from engaging the staff in discussions of the merits of the projects outside of any announced meetings.

Further, parties are reminded of the Commission's Rules of Practice and Procedure, which require parties filing documents with the Commission, to serve a copy of the document on each person whose name is on the official service list, including agents of the applicants.

For further information, please contact Michael Dees at (202) 219–2807.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27095 Filed 11–1–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–1542–000]

Black Hills Power and Light Co.; Notice of Filing

October 27, 1994.

Take notice that on September 12, 1994, Black Hills Power and Light Company tendered for filing an executed copy of the service agreement to purchase non-firm power and energy under proposed Rate Schedule EP–1 currently pending before the Commission in the above-referenced 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 (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before November 7, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27098 Filed 11–1–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–1613–000]

Hadson Electric, Inc.; Notice of Filing

October 27, 1994.

Take notice that on September 28, 1994, Hadson Electric, Inc. submitted for filing additional information requested by staff in the above-referenced 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, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before November 7, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27143 Filed 11–1–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94-1593-000]

National Power Exchange, Corp.; Notice of Issuance of Order

October 27, 1994.

On August 18, 1994 and August 29, 1994, National Power Exchange, Corp. (NPEC) submitted for filing a rate schedule under which NPEC will engage in wholesale electric power and energy transactions as a marketer. NPEC also requested waiver of various Commission regulations. In particular, NPEC requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by NPEC.

On October 7, 1994, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by NPEC should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, NPEC is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interests, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of NPEC's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is November 7, 1994.

Copies of the full text of the order are available from the Commission's Public Reference Branch, Room 3308, 941 North Capitol Street, N.E. Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 94-27099 Filed 11-01-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-394-001]

Panhandle Eastern Pipe Line Co.; Notice of Proposed Changes in FERC Gas Tariff

October 27, 1994.

Take notice that on October 21, 1994, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets:

Substitute Original Sheet No. 321R
Substitute Original Sheet No. 321S

The proposed effective date of the revised tariff sheets is October 1, 1994.

Panhandle states that this filing is in compliance with the Commission's October 6, 1994, Order Accepting And Suspending Tariff Sheets Subject to Refund and Conditions, And Establishing a Technical Conference (October 6, 1994) in the above referenced proceeding.

Panhandle states that in the October 6, 1994 Order, the Commission approved the method of recovery of the miscellaneous stranded costs, but it required Panhandle to eliminate a portion of the proposed tariff language contained in § 18.14(b) and remove the definition of Miscellaneous Stranded Costs contained in § 18.14(c)(1). Panhandle has revised the language in Section 18.14 in compliance with Ordering Paragraph (B) of the October 6, 1994 Order.

Panhandle states that copies of its filing have been served on all affected customers, all parties to this proceeding and applicable state regulatory commissions.

Any person desiring to protest the said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before November 3, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94-27100 Filed 11-1-94; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. EA-102]

Application to Export Electricity Enron Power Marketing, Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Enron Power Marketing, Inc., (Enron) has requested authorization to export electric energy to Mexico. Enron is a marketer of electric energy. It does not own or control any electric generation or transmission facilities.

DATES: Comments, protests, or requests to intervene must be submitted on or before January 3, 1995.

ADDRESSES: Comments, protests, or requests to intervene should be addressed as follows: Office of Coal & Electricity (FE-52), Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202-586-9624 or Michael T. Skinker (Program Attorney) 202-586-6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act.

On October 4, 1994, Enron filed an application with the Office of Fossil Energy (FE) of the Department of Energy (DOE) for authorization to export electric energy to Mexico pursuant to section 202(e) of the Federal Power Act. Enron owns no generation or transmission facilities but has been certified by the Federal Energy Regulatory Commission (FERC) as a power marketer. Enron expects the majority of its transactions to be short-term sales of electricity for which contracts have yet to be negotiated.

This is the first application for export that FE has accepted from an individual entity that does not own or operate physical facilities. The FE decision to accept an application from a power marketer, as opposed to the "traditional" electric power entities which own and/or operate physical facilities, is based on the marketer taking possession of the electric energy inside the United States. This situation is distinguished from the power broker which simply facilitates a sale of electric energy without ever taking ownership of the commodity.

The electric energy Enron proposes to transmit to Mexico would be purchased from electric utilities and Federal power marketing agencies. Enron asserts that

such energy would be surplus to the requirements of the entities from which it would be purchased. Enron would arrange for the exported energy to be wheeled from the selling entities, over existing domestic transmission facilities, and delivered to the foreign purchaser over one or more of the following international transmission lines: San Diego Gas and Electric Company's (SDG&E) 230-kilovolt (kV), Miguel-Tijuana transmission line (PP-68); the SDG&E 69-kV line at San Ysidro (PP-49); the SDG&E 230-kV, Imperial Valley-La Rosita line (PP-79); El Paso Electric Company's 115-kV lines at Diablo, New Mexico (PP-92) and Ascarate, Texas (PP-48-A); Central Power and Light Company's 138-kV and 69-kV transmission lines at Brownsville, Texas (PP-94); and the 138-kV transmission lines permitted to Mexico's Comision Federal de Electricidad at Eagle Pass (PP-50), Loredo (PP-57), and Falcon Dam (PP-57) in Texas.

Enron has suggested that the initial FE authorization be sufficient for all short-term exports of 90 days duration or less, at unspecified rates of transmission, over any of the international transmission facilities identified above.

For exports over 90 days duration, Enron has suggested that it notify FE prior to commencing exports and that it provide the following information: (1) The name of the purchaser(s); (2) the term of the agreement; (3) the contract transmission route(s) and the name of the companies providing transmission wheeling services; (4) the related FERC Rate Schedule, if applicable; and (5) the point(s) of exportation. Enron further suggests that FE publish a notice of the proposed transaction in the **Federal Register**, stating that the transaction would be deemed approved and allowed to commence unless, within 10 days of publication of such notice, (1) a protest is filed, or (2) FE notifies Enron that the transaction is not approved. Subject to the foregoing, Enron could commence exportation at the end of a 10-day comment period. In the case of either a protest or notification of disapproval by FE, exports could not commence without specific authorization by FE.

Before FE takes any final action on applications to export, it first must determine that the proposed action will not impair the sufficiency of electric supply within the United States or will not impede or tend to impede the coordination in the public interest of facilities in accordance with section 202(e) of the Federal Power Act. For applications from "traditional" electric power systems, the standard procedure is for the applicant to submit various technical studies which demonstrate the operation of the regional electric power supply system with the applicant exporting specified levels of power over identified international transmission lines. The applicant also is required to demonstrate that it would have sufficient generating capacity to sustain the proposed export under the terms and conditions of its export agreement, while still complying with any established reserve criteria.

Since marketers generally could not be seen as having any "native load" requirements, the latter criterion of maintaining sufficient reserve margins appears inappropriate and unnecessary in this instance. Conversely, FE feels that the issue of coordinated use of regional transmission (i.e., parallel path flow) becomes more critical in the case of marketers because of the unspecified nature of the transactions, in terms of the magnitude and sources of the export, and the export points.

FE recognizes the right of the marketer to compete in the electric power arena, as well as the legitimate reliability/operating concerns of the "traditional" electric power systems. Therefore, FE is proposing an alternative means for determining the reliability impacts in the case of exports by marketers. In lieu of the technical studies (power flow, transient stability, etc.) usually submitted in support of an export application, FE will consider accepting executed transmission wheeling/access agreements between the marketer/applicant and the owners of the transmission systems reasonably expected to be involved in providing transmission service to the export point. FE is considering requiring the submission of these transmission access agreements prior to any exports (short- or long-term) occurring over any particular export point. If an export order is granted, the applicant could "activate" any or all export points by submitting appropriate transmission agreements. After submission of the agreement(s), the applicant would be permitted to engage in short-term exports immediately, and long-term exports subject to the procedures discussed above.

FE is soliciting comments particularly on the procedures it is considering for addressing electric reliability concerns and the authorizing of exports of longer than 90 day duration.

Procedural Matters

Any person desiring to be heard or to protest this application should file a petition to intervene or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Rules of Practice and Procedure (18 CFR 385.211, 385.214).

Any such petitions and protests should be filed with the DOE on or before the date listed above. Additional copies of such petitions to intervene or protests also should be filed directly with: Steven J. Kean, Vice President, Regulatory Affairs, Enron Power Marketing, Inc., PO Box 1188, Houston, Texas 77251-1188. (710) 853-1586. FAX (713) 646-3490 and David B. Ward, Flood & Ward, 1000 Potomac Street, NW, Suite 402, Washington, DC 20007. (202) 298-6910. FAX (202) 298-6914.

Pursuant to 18 CFR 385.211, protests and comments will be considered by the DOE in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene under 18 CFR 385.214. Section 385.214 requires that a petition to intervene must state, to the extent known, the position taken by the petitioner and the petitioner's interest in sufficient factual detail to demonstrate either that the petitioner has a right to participate because it is a State Commission; that it has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a consumer, customer, competitor, or a security holder of a party to the proceeding; or that the petitioner's participation is in the public interest.

A final decision will be made on this application after a determination is made by the DOE that the proposed action will not impair the sufficiency of electric supply within the United States or will not impede or tend to impede the coordination in the public interest of facilities in accordance with section 202(e) of the Federal Power Act.

Before an export authorization may be issued, the environmental impacts of the proposed DOE action (i.e., granting the export authorization, with any conditions and limitations, or denying it) must be evaluated pursuant to the National Environmental Policy Act of 1969.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC, on October 27, 1994.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94-27191 Filed 11-1-94; 8:45 am]

BILLING CODE 6450-01-P

[FE Docket No. 94-79-NG]

BC Gas Utility Ltd.; Order Granting Blanket Authorization To Import and Export Natural Gas, Including Liquefied Natural Gas, From and to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting BC Gas Utility Ltd. (BC Gas) authorization to import and export natural gas, including liquefied natural gas, from and to Canada. Specifically, BC Gas is authorized to import up to 25 Bcf of Canadian natural gas, including LNG, and to export up to 25 Bcf of domestic natural gas, including LNG. The term of this authorization is for two years beginning on the date of the first import or export delivery.

BC Gas' order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 14, 1994.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94-27193 Filed 11-1-94; 8:45 am]

BILLING CODE 6450-01-P

[FE Docket No. 94-82-NG]

Wisconsin Gas Co.; Order Granting Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Wisconsin Gas Company authorization to import from Canada up to 1,924 Mcf per day of natural gas. The gas would be purchased from Western Gas Marketing Limited over a period of 10 years beginning November 1, 1994.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C. on October 17, 1994.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94-27192 Filed 11-1-94; 8:45 am]

BILLING CODE 6450-01-P

[Docket No. FE C&E 94-9—Certification Notice—137]

LSP-Cottage Grove, L.P.; Notice of Filing of Coal Capability Powerplant and Industrial Fuel Use Act

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: On October 18, 1994, LSP-Cottage Grove, L.P. submitted a coal capability self-certification pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of self-certification filings are available for public inspection, upon request, in the Office of Fuels Programs, Fossil Energy, Room 3F-056, FE-52, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586-9624.

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 et seq.), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a baseload powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of October 18, 1994. The Secretary is required to publish a notice in the Federal Register that a certification has been filed. The following owner/operator of a proposed new baseload powerplant has filed a self-certification in accordance with section 201(d).

Owner: LSP-Cottage Grove, L.P., Bozeman, MT

Operator: LSP-Cottage Grove, Inc., Bozeman, MT

Location: Near the southern end of Washington County, Cottage Grove, MN

Plant Configuration: Topping cycle cogeneration

Capacity: 245 megawatts

Fuel: Natural gas

Purchasing Utilities: Northern States Power Company

In-Service Date: January 1, 1995

Issued in Washington, D.C., October 27, 1994.

Anthony J. Como,

Director, Office of Coal and Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94-27190 Filed 11-1-94; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-5100-9]

National Advisory Council for Environmental Policy and Technology; Ecosystems Implementation Tools Committee; Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92-463, EPA gives notice of a two-day meeting of the Ecosystems Implementation Tools Committee of the National Advisory Council for Environmental Policy and Technology (NACEPT). NACEPT provides advice and recommendations to the Administrator of EPA on a broad range of environmental policy issues, and this meeting is being held to discuss the Ecosystems Implementation Tools Committee agenda for the coming year. The Administrator has asked NACEPT to concentrate on ecosystem management and how long-term ecological, economic, and social needs can be integrated to achieve a place-based approach to environmental management.

The Ecosystems Implementation Tools Committee will evaluate opportunities to re-orient the Agency's use of its existing authorities to integrate ecosystem management into its decision-making processes; identify incentives and barriers to promoting an ecosystems orientation or place-based approach to environmental protection; and identify opportunities for partnership-building with other federal agencies as well as co-regulators at the state, local, tribal levels.

The Ecosystems Implementation Tools Committee and NACEPT include a representative cross-section of EPA's partners and constituents. However, in order to gain additional insights and perspectives from all interested parties

as this Committee begins its work, time has been allotted during the meeting for oral comments from the public. Any member of the public wishing to present oral comments on any of these issues can schedule an appointment by contacting Gwendolyn Whitt or Debra Miller at the address and telephone numbers below. Due to time constraints, oral presentations will be strictly held to five minutes, and slots are limited. Available time slots will be allocated on a first-come, first serve basis to those scheduling a presentation in advance. Written comments will be accepted at any time prior to, or at, the meeting.

DATES: The two-day public meeting will be held on Monday, December 5, 1994, from 9 a.m. to 5 p.m. and on Tuesday, December 6, 1994 from 8:30 a.m. to 1:00 p.m.

ADDRESSES: The meeting will be held on both days at the Quality Hotel Capitol Hill, 415 New Jersey Avenue, NW., Washington, DC 20001. Written Comments should be sent to: Gwendolyn C. L. Whitt or Debra A. Miller DFO, Ecosystems Implementation Tools Committee/NACEPT, Office of Cooperative Environmental Management, U.S. EPA (1601F), 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Gwendolyn C. L. Whitt or Debra A. Miller, Designated Federal Official, Direct lines (202) 260–9484, or 260–9937, respectively Secretary's line (202) 260–6891.

Dated: October 24, 1994.

Gwendolyn C. L. Whitt,

Designated Federal Official.

Debra A. Miller,

Designated Federal Official.

[FR Doc. 94–27173 Filed 11–1–94; 8:45 am]

BILLING CODE 6560–50–M

[OPP–00395; FRL–4918–9]

State FIFRA Issues Research and Evaluation Group (SFIREG); Working Committees on Registration/ Classification and Certification/ Enforcement; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committees on Registration/Classification and Certification/Enforcement will hold a 3-day meeting, beginning on Monday, November 14, 1994, and ending on Wednesday, November 16, 1994. This notice announces the location and times for the meetings and sets forth tentative agenda topics. The meetings are open to the public.

DATES: The SFIREG Working Committee on Registration/Classification meets alone on Monday, November 14, 1994, from 8:30 a.m. to 5 p.m., the two Working Committees will meet together on Tuesday, November 15, 1994, from 9:30 a.m. to 5 p.m. The Working Committee on Certification/Enforcement will meet alone on Wednesday, November 16, 1994, from 8:30 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at: Double Tree Hotel, Horton Plaza–910 Broadway Circle, San Diego, CA 92101, Telephone: (619) 239–3216.

FOR FURTHER INFORMATION CONTACT: By mail: Shirley M. Howard, Office of Pesticide Programs (7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Room 1100, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA (703) 305–5306.

SUPPLEMENTARY INFORMATION: The tentative agenda of the SFIREG Working Committee on Registration Classification includes the following:.

1. Draft guidance for 24(c) update.
2. Status of reduced risk strategies.
3. EPA–USDA Memorandum of Understanding On Pesticide Alternatives.
4. Discussion of minor uses and reregistration impacts.
5. Status of aluminum sulfate as a pesticide.
6. Other topics as appropriate.

The agenda for the joint session of the SFIREG Working Committees on Registration/Classification and Certification/Enforcement includes the following:

1. Update on endangered species.
2. Status of drift reduction labeling.
3. Draft guidance on outdoor residential and commercial pesticide application.
4. Status of proposed FIFRA 25(b) exemptions.
5. Discussion of "split" labels.
6. Update on the worker protection standard implementation.
7. Spray drift control slide presentation.
8. Use of 2,4–D for preplant burndown on cotton.
9. Other topics as appropriate.

The agenda for the SFIREG Working Committee on Certification/Enforcement includes the following:

1. Discussion of bee labeling for enforcement.
2. Discussion of penalty assessments.
3. Status of cross contamination of bulk pesticides issues paper.
4. Update on the Field Operations Division's Certification/Training and Occupational Safety reorganization.
5. Other topics as appropriate.

Dated: October 27, 1994.

Judy K. Heckman,

Acting Director, Field Operations Division, Office of Pesticide Programs.

[FR Doc. 94–27178 Filed 11–1–94; 8:45 am]

BILLING CODE 6560–50–M

[PF–611; FRL–4915–8]

Pesticide Tolerance Petitions; Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces two initial filings for pesticide petitions (PP) proposing the establishment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities, and it announces an initial filing of a food additive petition (FAP) and its subsequent withdrawal.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, contact the PM named in each petition at the following office location/ telephone number:

Product Manager	Office location/telephone number	Address
Phillip O. Hutton (PM 18)	Rm. 213, CM #2, 703-305-7690	1921 Jefferson Davis Hwy., Arlington, VA.
Dennis Edwards (PM 19)	Rm. 207, CM #2, 703-305-6386	Do.

SUPPLEMENTARY INFORMATION: EPA has received initial filings of pesticide petitions and a food additive petition (FAP) and one subsequent withdrawal as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

Initial Filings

1. *PP 4F4402*. Biosys, 1057 East Meadow Circle, Palo Alto, CA 94303, has submitted the petition for exemption from the requirement of a tolerance for residues of the microbial pest control agent *Anagrapha facifera* MNPV (celery looper) in or on all raw agricultural commodities. (PM 18)

2. *PP 4F4372*. W.R. Grace & Co., 7379 Route 32, Columbia, MD 21044, has submitted the petition for exemption from the requirement of a tolerance for residues of the microbial pest control agent *Paecilomyces fumosoroseus*. Apopka Strain 97 when used on greenhouse and terrestrial food crops. (PM 18)

Initial Filing (With Subsequent Withdrawal)

3. *FAP 4H5702*. General Mills, P.O. Box 1113, Minneapolis, MN 55440, proposed to amend 40 CFR 185.1000 to establish a time-limited tolerance for residues of chlorpyrifos (*O,O*-diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate at 0.4 ppm in or on finished oat-containing cereal products produced on or before June 15, 1994, from oats that received post-harvest treatment with chlorpyrifos. This tolerance would have expired on June 15, 1995. In a letter dated September 27, 1994, General Mills withdrew the petition. (PM 19).

Authority: 7 U.S.C. 136a.

Dated: October 6, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–27177; Filed 11–1–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30375; FRL–4917–5]

Certain Companies; Applications To Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by December 2, 1994.

ADDRESSES: By mail submit comments identified by the document control number [OPP–30375] and the registration/file number, attention Product Manager (PM) named in each application at the following address: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (7505C), Attn: (Product Manager (PM) named in each registration), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

In person: Contact the PM named in each registration at the following office location/telephone number:

Product Manager	Office location/telephone number	Address
PM 18 Phil Hutton,	Rm. 213, CM #2 (703–305–7690)	Environmental Protection Agency 1921 Jefferson Davis Hwy Arlington, VA 22202
PM 21 Leonard Cole (Acting),	Rm. 229, CM #2 (703–305–6900)	-Do-
PM 23 Joanne I. Miller,	Rm. 237, CM #2 (703–305–7830)	-Do-
PM 31 Marshall Swindell,	Rm. 272, CM #2 (703–305–6908)	-Do-

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients Not Included In Any Previously Registered Products

1. File Symbol: 67250–T. Applicant: Biosys, 1057 East Meadow Circle, Palo Alto, CA 94303. Product name: *Anagrapha falcifera* MNPV PIB's. Insecticide. Active ingredients: *Anagrapha falcifera* MNPV polyhedral inclusion bodies (PIB's) aqueous suspension at a concentration of 1 X 10^9 AfMNPV, PIB's/ml 1 X 10^9 AfMNPF PIB's at 100 percent. Proposed classification/Use: None. For use only in the manufacture of finished products for control of certain lepidopterous pest species on vegetable crops. (PM 18)

2. File Symbol: 11688–RL. Applicant. W. R. Grace and Company, 7379 Route 32, Columbia, MD 21044. Product name: PFR-MUP. Biological Insecticide. Active ingredient: *Paecilomyces fumosoroseus* Apopka Strain 97 at 7 percent. Proposed

classification/Use: None. For manufacturing use only. (PM 18)

3. File Symbol: 11688–RA. Applicant: W. R. Grace and Co. Product name: PFR-97™ WDG. Biological Insecticide. Active ingredient: *Paecilomyces fumosoroseus* Apopka Strain 97 at 12.5 percent. Proposed classification/Use: None. For use against whiteflies, aphids, thrips, and spider mites on ornamentals and food crops in greenhouses and outdoors. (PM 18)

4. File Symbol: 275–OO. Applicant: Abbott Laboratories, Chemical and Agricultural Products Division, 1401 Sheridan Road, North Chicago, IL 60064-4000. Product name: ABG 9008 Biological Nematicide Technical Powder. Nematicide. Active ingredient: Dried fermentation solids and solubles of *Myrothecium verrucaria* at 98.0 percent. Proposed classification/Use: None. For manufacturing use only. (PM 21)

5. File Symbol: 275–RNN. Applicant: Abbott Laboratories. Product name: ABG 9008 Biological Nematicide Wettable Powder. Nematocide. Active ingredient: Dried fermantation solids and solubles of *Myrothecium verrucaria* at 100 percent. Proposed classification/Use: None. For use as soil application on food, fiber, and ornamental crops for control of nematodes. (PM 21)

6. File Symbol: 64296–RU. Applicant: EcoScience Corporation, One Innovation Drive, Worcester, MA 01605. Product name: Bio-Save 11 Biofungicide 10 WP. Biological Fungicide. Active ingredient: *Pseudomonas syringae*, (Strain ESC 11) at 10 percent. Proposed classification/Use: None. For postharvest application on apples, pears, and citrus. (PM 21)

7. File Symbol: 64296–RG. Applicant: EcoScience Corp. Product name: ESC-11 Biofungicide Technical. Biological Fungicide. Active ingredient: *Pseudomonas syringae*, (Strain ESC-11) at 96 percent. Proposed classification/Use: None. For formulation use only. (PM 21)

8. File Symbol: 10772–E. Applicant: Church and Dwight Co., Inc, 469 North Harrison St., Princeton, NJ 08543–5297. Product name: Armicarb Potassium Bicarbonate, F.C.C. Fungicide. Active ingredient: Potassium bicarbonate at 99.9 percent. Proposed classification/Use: None. Manufacturing use for formulation of end-use products; for disease control on fruit, vegetables, ornamental crops, and turf. (PM 21)

9. File Symbol: 10772–G. Applicant: Church and Dwight Co., Inc. Product name: Armicarb Sodium Bicarbonate, F.C.C. Fungicide. Active ingredient: Sodium bicarbonate at 99.9 percent. Proposed classification/Use: None. Manufacturing use for formulation of end-use products; for disease control on fruit, vegetables, ornamental crops, and turf. (PM 21)

10. File Symbol: 524–UAA. Applicant: Monsanto Agricultural Company, 800 North Lindbergh Blvd., St. Louis, MO 63167. Product name: Battalion Herbicide. Herbicide. Active ingredient: Halosulfuron methyl 5-[[(4,6-dimethoxy-2-pyrimidinyl)amino] carbonylaminosulfonyl]-3-chloro-1-methyl-1- *H*-pyrazole-4-carboxylate at 14.9 percent. Proposed classification/Use: None. Preemergent control of weeds in field corn. (PM 23)

11. File Symbol: 524–UAI. Applicant: Monsanto Co. Product name: Manage Herbicide. Herbicide. Active ingredient: Halosulfuron methyl 5-[[(4,6-dimethoxy-2-pyrimidinyl)amino] carbonylaminosulfonyl]-3-chloro-1-methyl-1- *H*-pyrazole-4-carboxylate at 48 percent. Proposed classification/Use: None. For use to control weeds in turfgrass. (PM 23)

12. File Symbol: 524–UAL. Applicant: Monsanto Co. Product name: Permit Herbicide. Herbicide. Active ingredient: Halosulfuron methyl 5-[[(4,6-dimethoxy-2-pyrimidinyl)amino] carbonylaminosulfonyl]-3-chloro-1-methyl-1- *H*-pyrazole-4-carboxylate at 72.3 percent. Proposed classification/Use: None. For postemergent control of weeds in field corn, field corn grown for seed, and sorghum (milo). (PM 23)

13. File Symbol: 524–UAT. Monsanto Co. Product name: MON 12000 Herbicide. Herbicide. Active ingredient: Halosulfuron methyl 5-[[(4,6-dimethoxy-2-pyrimidinyl)amino] carbonylaminosulfonyl]-3-chloro-1-methyl-1- *H*-pyrazole-4-carboxylate at 99.4 percent. Proposed classification/Use: None. For manufacturing and formulation into herbicides only. (PM 23)

14. File Symbol: 57978–G. Applicant: Sutton Laboratories, Inc., 116 Summit Avenue, Chatum, NJ 07928. Product name: Suttoncide A. Microbiocide. Active ingredient: Sodium hydroxymethylamino acetate at 95 percent. Proposed classification/Use: None. For use as an industrial preservative for coatings, adhesives, printing inks, pastes, and polishes. (PM 31)

15. File Symbol: 57978–L. Applicant: Sutton Laboratories. Product name: Germall II. Microbiocide. Active ingredient: Urea, *N*-(1,3-bis(hydroxymethyl)-2,5-dioxo-4-imidazolidinyl)-*N,N'*-bis(hydroxymethyl)- at 97 percent. Proposed classification/Use: None. For use as an industrial preservative for coatings, adhesives, printing inks, pastes, and polishes. (PM 31)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operation Division office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the FOD office (703–305–5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: October 21, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–26912 Filed 11–1–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–50801; FRL–4914–2]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits (EUPs) to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR part 172, which defines EPA procedures with respect to the use of pesticides for experimental use purposes.

FOR FURTHER INFORMATION CONTACT: By mail: Phillip O. Hutton, Product Manager (PM) 18, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 213, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–7690.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

66736–EUP–1. Extension. Ciba-Geigy Corporation, P.O. Box 12257, Research Triangle Park, NC 27709–2257. In the **Federal Register** of March 11, 1994 (59 FR 11600), EPA announced receipt of an application for an extension EUP for a transgenic plant pesticide from Ciba-Geigy Corporation. Interested parties were invited to submit written comment by April 11, 1994. Three comments were received during the comment period with two comments from grower groups and one comment from a seed trade association. All comments were supportive of the EUP. One comment was received, after the comment period closed, from Senators J. Robert Kerrey and Jim Exon also supporting the EUP. The approved experimental use permit allows the use of 197.1 grams of the *Bacillus thuringiensis* δ-endotoxin (produced by a bacterially derived CryIA(b) gene in corn plants) in seeds planted on 190 acres of corn to evaluate the control of the European corn borer and other lepidopteran pests. The program is authorized only in the States of California, Colorado, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, North Dakota, Ohio, Pennsylvania, South Dakota, and Wisconsin and the Commonwealth of Puerto Rico. The experimental use permit is effective for plantings from April 12, 1994 to March 31, 1995, and associated activities such as collection of field data and harvesting and processing of seed after last planting. Corn grown under this permit will not be permitted to enter commerce.

524–EUP–82. Issuance. Monsanto Company, 700 Chesterfield Parkway North, St. Louis, MO 63198. In the **Federal Register** of February 23, 1994 (59 FR 8616), EPA announced receipt of an application for an EUP for a transgenic plant pesticide from Monsanto Company. Interested parties were invited to submit written comments by March 25, 1994; no comments were received. The approved experimental use permit allows the use of 205.43 grams of the *Bacillus thuringiensis* cryIA(b)δ-endotoxin (produced by a bacterially derived CryIA(b) gene in corn plants) in seeds planted on 604.6 acres of corn to evaluate the control of the European corn borer, the fall armyworm, and the corn earworm. The program is authorized only in the States of Colorado, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Missouri, Nebraska, New York, North Carolina, Ohio, Pennsylvania, South Dakota, Tennessee, Texas, Virginia, and Wisconsin and the Commonwealth of Puerto Rico. The experimental use permit is effective for plantings from April 18, 1994 to February 28, 1995, and associated activities such as collection of field data and harvesting and processing of seed after last planting. This permit is issued with the limitation that all crops are destroyed or used for research purposes only.

67979–EUP–1. Issuance. Northrup King Company, 7500 Olson Memorial Highway, Golden Valley, MN 55427. In the **Federal Register** of April 13, 1994 (59 FR 17535), EPA announced receipt of an application for an EUP for a transgenic plant pesticide from Northrup King Company. Interested parties were invited to submit written comments by May 13, 1994. No comments were received. The approved experimental use permit allows the use of 0.013 grams of a *Bacillus thuringiensis* cryIA(b)δ-endotoxin (produced by a bacterially derived CryIA(b) gene in corn plants) in seeds planted on 44.90 acres of corn to evaluate the control of the European corn borer. The experimental use permit is effective for plantings from May 19, 1994 to May 1, 1995, and associated activities such as collection of field data and harvesting and processing of seed after last planting. The program is authorized only in the States of Hawaii, Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, Nebraska, Ohio, and Wisconsin and the Commonwealth of Puerto Rico. This permit is issued with the limitation that all crops are destroyed or used for research purposes only.

Persons wishing to review these experimental use permits are referred to the designated product manager. Inquires concerning these permits should be directed to the person cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Experimental use permits.

Dated: September 28, 1994.

Lois Rossi,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–27175 Filed 11–1–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30351A; FRL–4913–6]

Ciba-Geigy Corp.; Approval of a Pesticide Product Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application submitted by Ciba-Geigy Corporation, to conditionally register the pesticide product Irgarol 1051, containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Marshall Swindell, Product Manager (PM) 31, Registration Division (7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 270, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703–305–6908).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of June 10, 1993 (58 FR 32533), which announced that Ciba-Geigy Corp., Additives Division, Three Skyline Drive, Hawthorne, NY 10532, had submitted an application to conditionally register the pesticide product Irgarol 1051, (EPA File Symbol 40810–RR), containing the active ingredient *N*-cyclopropyl-*N'*-(1,1-dimethylethyl)-6-(methylthio)-1,3,5-triazine-2,4-diamine at 96 percent, an active ingredient not included in any previously registered product.

The application was approved on September 9, 1994, as Irgarol 1051 for use in formulating antifoulant paints in boats and vessels only. The product was assigned (EPA Registration Number 40810–11).

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects on

the environment; and that use of the pesticide is in the public interest.

The Agency has considered the available data on the risks associated with the proposed use of *N*-cyclopropyl-*N'*-(1,1-dimethylethyl)-6-(methylthio)-1,3,5-triazine-2,4-diamine, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of *N*-cyclopropyl-*N'*-(1,1-dimethylethyl)-6-(methylthio)-1,3,5-triazine-2,4-diamine during the period of conditional registration is not expected to cause any unreasonable adverse effect on the environment, and that use of the pesticide is in the public interest.

This product is conditionally registered in accordance with FIFRA section 3(c)(7)(A). Additional ecological effects data and environmental fate data will be required from end-use formulators for antifoulant boat bottom paints. All data, especially data which is currently held in reserve may be required to be submitted for review. If these conditions are not complied with the registration will be subject to cancellation in accordance with FIFRA section 6(e).

Consistent with section 3(c)(7)(C), the Agency has determined that this conditional registration is in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

More detailed information on this registration is contained in an EPA Pesticide Fact Sheet on *N*-cyclopropyl-*N'*-(1,1-dimethylethyl)-6-(methylthio)-1,3,5-triazine-2,4-diamine.

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202 (703–305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, D.C. 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: September 26, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–26812 Filed 11–1–94; 8:45 am]

BILLING CODE 6560–50–F

[PF–607; FRL–4911–2]

Pesticide Tolerance Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the filing of pesticide petitions (PP) and food/feed additive petitions (FAP) proposing the establishment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, contact the PM named in each petition at the following office location/telephone number:

Product Manager	Office location/telephone number	Address
Dennis Edwards (PM 19)	Rm. 207, CM #2, 703-305-6386	1921 Jefferson Davis Hwy., Arlington, VA.
Steve Robbins (PM 21)	Rm. 227, CM #2, 703-305-6900	Do.
Cynthia Giles-Parker (PM 22)	Rm. 229, CM #2, 703-305-5540	Do.
Joanne Miller (PM 23)	Rm. 237, CM #2, 703-305-7830	Do.
Rober Taylor (PM 25)	Rm. 241, CM #2, 703-557-6800	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions and food/feed additive petitions as follows that propose establishment and/or amendment of tolerances or regulations for residues of certain pesticide chemicals in or on certain agricultural commodities.

Initial Filings

1. *PP 4F4321.* Ciba-Plant Protection, Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419-8300, proposes to amend 40 CFR part 180 by establishing a tolerance to permit residues of the fungicide propiconazole (1-[[1-(2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1H-1,2,4-triazole) in or on the crop grouping stone fruits at 1.0 part per million (ppm). (PM 21)

2. *PP 4F4334*. Vanson, 8840 152nd Ave., Northeast, Redmond, WA, 98052-3535, proposes to amend 40 CFR part 180 by establishing an exemption from the requirement of a tolerance for residues in or on rice, grain to permit the use of poly-d-glucosamine (Chitosan) as a seed treatment on rice. (PM 23)

3. *PP 4F4336*. Ciba Plant Protection, Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419-8300, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of the new herbicide prosulfuron, 1-(4-methoxy-6-methyl-triazin-2-yl)-3-[2-(3,3,3-trifluoropropyl)-1-phenylsufonyl] urea, in or on the following raw agricultural commodities: corn, forage at 0.02 ppm; corn, fodder at 0.02 ppm; corn, grain at 0.02 ppm; corn, fresh (including sweet kernels plus cobs with husks removed) at 0.02 ppm; milk at 0.02 ppm; meat, fat and meat byproducts, kidney and liver of cattle, goats, hogs, horses, and sheep at 0.10 ppm; poultry, fat, kidney, liver, meat and meat byproducts at 0.10 ppm; eggs at 0.10 ppm. (PM 25)

4. *PP 4F4337*. Gustafson, Inc., P.O. Box 660065, Dallas, TX 75266-0065, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of imidacloprid, 1-[(chloro-3-pyridinyl) methyl]-N-nitro-2-imidazolidinimine, and its metabolites (calculated as imidacloprid), in or on wheat, forage at 7.0 ppm, wheat, straw at 0.3 ppm, wheat, grain at 0.1 ppm, barley, forage at 1.2 ppm, barley, straw at 0.2 ppm, barley, grain at 0.1 ppm, sorghum, forage at 0.1 ppm, sorghum, straw at 0.1 ppm, sorghum, grain at 0.1 ppm, beets, sugar (roots) at 0.1 ppm, and beets, sugar (tops) at 0.1 ppm (PM 19).

5. *PP 4F4338*. Monsanto Co., Suite 1100, 700 14th St., NW., Washington, DC 20005, proposes to amend 40 CFR 180.364(a) by establishing a regulation to permit combined residues of glyphosate (N-(phosphonomethyl) glycine) and its metabolite aminomethylphosphonic acid (AMPA) resulting from the application of the isopropylamine salt of glyphosate and/or the monoammonium salt of glyphosate in or on citrus fruits at 0.5 ppm. (PM 25)

6. *PP 4F4340*. Valent U.S.A. Corp., 1333 North California Blvd., Suite 600, P.O. Box 8025, Walnut Creek, CA 94596-8025, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of clethodim ((E)-(±)-2-[1-[[(3-chloro-2-propenyl)oxy]imino]propyl]-5-[2-(ethylthio)propenyl]-3-hydroxy-2-cyclohexen-1-one) and its metabolites containing the 2-cyclohexen-1-one moiety in or on sugar beet, roots, at 0.2 ppm, sugar beet, tops, at 0.5 ppm, and onion (dry bulb) at 0.5 ppm. (PM 23).

7. *FAP 4H5688*. ISK Biotech Corp., 5966 Heisley Rd., P.O. Box 8000, Mentor, OH 44061-8000, proposes to amend 40 CFR part 186 by establishing a feed additive regulation to permit the residues of DCPA (Dacthal W75) in or on bean cannery wastes, tomato pomace, and potato peels. (PM 23)

8. *FAP 4H5700*. Gustafson, Inc., P.O. Box 660065, Dallas, TX 75266-0065, proposes to amend 40 CFR part 180 by establishing a feed additive regulation to permit residues of imidacloprid, 1-[(-chloro-3-pyridinyl) methyl]-N-nitro-2-imidazolidinimine, and its metabolites (calculated as imidacloprid), in or on the following processed commodities: Beets, sugar, molasses at 0.2 ppm. (PM 19)

9. *FAP 4H5705*. Monsanto Co., 700 14th St., NW., Suite 1100, Washington, DC 20005, proposes to amend 40 CFR 185.3500 by establishing a feed additive regulation to permit the residues of glyphosate, N-(phosphonomethyl)glycine, and its metabolite aminomethylphosphonic acid in or on citrus, pulp, dried at 1.0 ppm. (PM 25)

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Food and feed additives, Pesticides and pests.

Authority: 7 U.S.C. 136a.

Dated: September 16, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–26807; Filed 11–1–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–180951; FRL–4914–3]

Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to 12 States below. One crisis exemption was initiated by the Montana Department of Agriculture. These exemptions, issued during the months of May, June, and July 1994, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. EPA has denied two specific exemption requests. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific and crisis exemption for its effective date.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption for the name of the contact person. The following information applies to all contact persons: By mail: Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, CS #1, 2800 Jefferson Davis Highway, Arlington, VA, (703–308–8417).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. Arkansas State Plant Board for the use of lambda-cyhalothrin on wheat to control the armyworms; May 9, 1994, to June 30, 1994. Arkansas had initiated a crisis exemption for this use. (Andrea Beard)

2. California Environmental Protection Agency, Department of Pesticide Regulation, for the use of myclobutanil on strawberries to control powdery mildew; July 28, 1994, to July 27, 1995. (Susan Stanton)

3. California Environmental Protection Agency, Department of Pesticide Regulation, for the use of imidacloprid on tomatoes to control the sweet potato or silverleaf whitefly; June 1, 1994, to June 1, 1995. A notice of receipt published in the **Federal Register** of April 15, 1994 (59 FR 18118). The situation was determined to be urgent and nonroutine, since this is a newly introduced pest, and registered materials were not providing adequate control. Significant economic losses were expected. (Andrea Beard)

4. Colorado Department of Agriculture for the use of bifenthrin on corn to control spider mites; July 1, 1994, to August 31, 1994. (Andrea Beard)

5. Idaho Department of Agriculture for the use of imidacloprid on apples to control aphids; May 31, 1994, to September 15, 1994. A notice of receipt published in the **Federal Register** of April 20, 1994 (59 FR 18816). The situation was determined to be urgent and nonroutine due to loss of effective alternative products. Significant economic losses were expected as a result. (Andrea Beard)

6. Kansas Department of Agriculture for the use of bifenthrin on corn to control spider mites; July 1, 1994, to August 31, 1994. (Andrea Beard)

7. Maryland Department of Agriculture for the use of clomazone on snap beans to control broadleaf weeds; July 19, 1994, to August 20, 1994. (Margarita Collantes)

8. Michigan Department of Agriculture for the use of chlorothalonil on asparagus to control purple spot disease; July 12, 1994, to November 1, 1994. (Susan Stanton)

9. Michigan Department of Agriculture for the use of triadimefon on asparagus to control asparagus rust; July 15, 1994, to November 1, 1994. (Susan Stanton)

10. New Mexico Department of Agriculture for the use of cyfluthrin on chili peppers to control pepper weevils; July 8, 1994, to September 30, 1994. (Libby Pemberton)

11. Ohio Department of Agriculture for the use of cypermethrin on green onions to control thrips; July 1, 1994, to September 30, 1994. (Larry Fried)

12. Oklahoma Department of Agriculture for the use of bifenthrin on corn to control spider mites; July 1, 1994, to August 25, 1994. (Andrea Beard)

13. Oregon Department of Agriculture for the use of imidacloprid on apples to control aphids; May 31, 1994, to September 15, 1994. A notice of receipt published in the **Federal Register** of April 6, 1994 (59 FR 16204). The situation was determined to be urgent and nonroutine due to loss of effective alternative products. Significant economic losses were expected as a result. (Andrea Beard)

14. Utah Department of Agriculture for the use of imidacloprid on apples to control aphids; May 31, 1994, to September 15, 1994. A notice of receipt published in the **Federal Register** of April 6, 1994 (59 FR 16204). The situation was determined to be urgent and nonroutine due to loss of effective alternative products. Significant economic losses were expected as a result. (Andrea Beard)

15. Washington Department of Agriculture for the use of esfenvalerate on cranberries to control black vine weevils; July 6, 1994, to August 31, 1994. (Libby Pemberton)

A crisis exemption was initiated by the Michigan Department of Agriculture on July 13, 1994, for the use of avermectin on potatoes to control the Colorado potato beetle. This program has ended. (Libby Pemberton)

EPA has denied a specific exemption request from the:

1. Georgia Department of Agriculture for the use of Pirate insecticide on cotton to control the sweet potato whitefly. A notice of receipt published in the **Federal Register** of June 22, 1994 (59 FR 32207). The exemption was denied because the proposed use poses a risk of unreasonable adverse effects on nontarget birds and aquatic organisms, including endangered species. Although some growers may incur significant economic losses, the expected Statewide losses do not justify the use of this unregistered pesticide. (Susan Stanton)

2. Louisiana Department of Agriculture and Forestry for the use of Pirate insecticide on cotton to control beet armyworms. A notice of receipt published in the **Federal Register** of June 22, 1994 (59 FR 32205). The exemption was denied because the proposed use poses a risk of unreasonable adverse effects on nontarget birds and aquatic organisms, including endangered species. An emergency condition does not exist. (Susan Stanton)

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Agricultural commodities, Crisis exemptions, Pesticides and pests.

Dated: October 13, 1994.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 94-26806 Filed 11-1-94; 8:45 am]

BILLING CODE 6560-50-F

[PP 4G4290/T667; FRL 4914-9]

Linuron; Establishment of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established temporary tolerances for residues of the herbicide linuron in or on certain raw agricultural commodities. These temporary tolerances were requested by Resource Seeds, Inc.

DATES: These temporary tolerances expire September 1, 1996.

FOR FURTHER INFORMATION CONTACT: By mail: Robert Taylor, Product Manager (PM) 25, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 245, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305-6800.

SUPPLEMENTARY INFORMATION: Interregional Research Project No. 4, State Agricultural Experimental Station, Rutgers University, P.O. Box 231, New Brunswick, NJ 8903-0231, has requested in pesticide petition (PP) 4G4290, the establishment of temporary tolerances for residues of the herbicide linuron [3-(3,4-dichlorophenyl)-1-methoxy-1-methylurea] in or on the raw agricultural commodities lupine grain, lupine forage, and lupine hay at 1.0 part per million (ppm). These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit 67651-EUP-1, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Resource Seeds, Inc., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire September 1, 1996. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirement of section 3 of Executive Order 12866.

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

Authority: 21 U.S.C. 346a(j).

List of Subjects

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

Dated: October 13, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–26797 Filed 11–1–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30228B; FRL–4769–9]

Rohm and Haas Co.; Approval of Pesticide Product Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application submitted by Rohm and Haas Company to conditionally register the pesticide product Anti-Foulant C-9211M containing a new active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Marshall Swindell, Acting Product Manager (PM) 31, Registration Division (7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 272, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703–305–6908).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the **Federal Register** of November 16, 1983 (48 FR 52124), which announced that Rohm and Haas Co., Independence Mall West, Philadelphia, PA 19105, had submitted an application to register the pesticide product Anti-Foulant C-9211M (EPA File Symbol 707–RTL) containing the active ingredients 4,5-dichloro-2-*n*-octyl-3(2*H*)-isothiazolone at 35.0 percent and 4-chloro-2-*n*-octyl-3-(2*H*)-isothiazolone at 5.0 percent, active ingredients not included in any previously registered product.

This application was approved on February 28, 1994, as Anti-Foulant C-9211M, containing the active ingredient 4,5-dichloro-2-*n*-octyl-3(2*H*)-isothiazolone at 30.0 percent, (EPA Registration Number 707–175) for use in the formulation of marine antifoulant paints.

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking because a period reasonably sufficient for generation of the data has not elapsed since the Administrator first imposed the data requirements, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects on the environment; and that use of the pesticide is in the public interest.

The Agency has considered the available data on the risks associated with the proposed use of 4,5-dichloro-2-*n*-octyl-3(2*H*)-isothiazolone, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of 4,5-dichloro-2-*n*-octyl-3(2*H*)-isothiazolone during the period of conditional registration is not expected to cause any unreasonable adverse effect on the environment, and that use of the pesticide is in the public interest.

This conditional registration has been issued even though at this time, no additional ecological effects and environmental fate data will be required for this manufacturing use product. However, additional requirements for environmental fate and ecological effects data are being held in reserve pending the review of leaching studies and will be requested for this manufacturing use product. The leaching from the matrix data will be required for end-use formulators. The data only supports the formulation of marine antifloulant paints for boats and vessels only. If these conditions are not complied with, the registration will be subject to cancellation in accordance with FIFRA section 6(e).

Consistent with section 3(c)(7)(C), the Agency has determined that this conditional registration is in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

More detailed information on this conditional registration is contained in an EPA Pesticide Fact Sheet on 4,5-dichloro-2-*n*-octyl-3(2*H*)-isothiazolone.

A copy of the fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager listed above. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202 (703–305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 401 M St., SW., Washington, DC 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: September 28, 1994.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 94–26813 Filed 11–1–94; 8:45 am]

BILLING CODE 6560–50–F

[PF–610; FRL–4915–5]

Pesticide Tolerance Petitions; Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces two amendments to filings for pesticide petitions (PP) proposing the establishment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental

Protection Agency, 401 M St., Sw., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, contact the PM named in each petition at the following office location/telephone number:

Product Manager	Office location/telephone number	Address
Cynthia Giles-Parker (PM 22)	Rm. 229, CM #2, 703-305-5540.	1921 Jefferson Davis Hwy., Arlington, VA.
Joanne Miller (PM 23)	Rm. 237, CM #2, 703-557-7830.	Do.

SUPPLEMENTARY INFORMATION: EPA has received amended pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

Amended Filings

1. *PP 2F4154.* In the **Federal Register** of June 29, 1994 (59 FR 33504), EPA issued a notice of an amended petition filed by Rohm & Haas Co., Independence Mall West, Philadelphia, PA 19105 (amendment to petition filed in the **Federal Register** of December 30 1992 (57 FR 62334; Dec. 30, 1992)) proposing to amend 40 CFR part 180 by establishing a regulation to permit residues of fenbuconazole and its metabolites in or on bananas (whole fruit) at 0.3 part per million (ppm) of which not more than 0.05 ppm is contained in banana pulp. The amended petition is further amended to specify that the residues of fenbuconazole and its metabolites are combined and expressed parent equivalent to determine the total raw agricultural commodity (RAC) residue on bananas. The Rohm & Haas Co. requests that the following permanent tolerances be established for the total fenbuconazole residues: bananas (whole fruit) at 0.3 ppm of which not more than 0.05 ppm is contained in banana pulp. (PM 22)

2. *PP 3F4193.* In the **Federal Register** of October 21, 1993 (58 FR 54354), EPA issued a notice that Monsanto Co., 700 14th St., NW., Washington, DC 20005, proposed to amend 40 CFR part 180 by establishing a regulation to permit residues of Permit Herbicide (methyl 5-[(4,6-dimethoxy-2-pyrimidinyl)amino] carbonylaminosulfonyl-3-chloro-1-methyl-1H-pyrazole-4- carboxylate, and its metabolites determined as 3-chloro-1-methyl-5-sulfamoylpyrazole-4-carboxylic acid and expressed as parent equivalents), in or on corn, field grain at 0.1 ppm, corn, field forage at 0.3 ppm, corn, field fodder at 1.3 ppm, and grain sorghum (milo) grain at 0.02 ppm (lower limit of method validation), grain sorghum (milo) forage at 0.07 ppm, grain sorghum (milo) stover at 0.08 ppm, grain sorghum (milo) silage at 0.14 ppm, grain sorghum (milo) hay, no tolerance proposals. Monsanto Co. has submitted to EPA an amended petition proposing to amend 40 CFR part 180 by establishing a regulation to permit residues in or on corn, field grain at 0.1 ppm, corn, field forage at 0.3 ppm, corn, field fodder at 1.5 ppm, grain sorghum (milo) grain at 0.1 ppm, grain sorghum (milo) forage at 0.3 ppm, grain sorghum (milo) fodder/stover at 0.1 ppm, and meat and meat byproducts (cattle, goats, hogs, horses, and sheep) at 0.1 ppm. The amended petition also proposes to amend 40 CFR part 180 by establishing a regulation to permit indirect or inadvertent residues when present as a result of application to field corn and/or grain sorghum (milo) in or on soybean seed at 0.5 ppm, soybean forage at 0.5 ppm, soybean hay at 0.5 ppm, and wheat grain at 0.1 ppm, wheat forage at 0.1 ppm, and wheat straw at 0.2 ppm. (PM 23)

Authority: 7 U.S.C. 136a.

Dated: October 7, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–26810; Filed 11–1–94; 8:45 am]

BILLING CODE 6560–50–F

[PF–612; FRL–4917–3]

Pesticide Tolerance Petitions; Corrections and Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces two corrections to filings for pesticide petitions (PP) proposing the establishment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities, and it announces two amendments to petitions.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, contact the PM named in each petition at the following office location/telephone number:

Product Manager	Office location/telephpone number	Address
George LaRocca (PM 13)	Rm. 204, CM #2, 703-305-6100	1921 Jefferson Davis Hwy., Arlington, VA.
Leonard Cole (Acting PM 21)	Rm. 227, CM #2, 703-305-6900	Do.

SUPPLEMENTARY INFORMATION: EPA has received amended/corrected pesticide petitions (PP) and a feed additive petition (FAP) as follows, proposing the establishment and/or amendment of regulations for residues of certain chemicals in or on various commodities.

Amended Filings

1. *PP 4F4186.* In the **Federal Register** of October 21, 1993 (58 FR 54354), EPA issued the notice of the petition filed by Valent U.S.A. Corp., 1333 N. California Blvd., Suite 600, Walnut Creek, CA 94596, proposing to amend 40 CFR part 180 by establishing a regulation to permit residues of fenpropathrin (*alpha*-cyano-3-phenoxybenzyl 2,2,3,3-tetramethylcyclopropane-carboxylate) in or on strawberries at 2 parts per million (ppm) and tomatoes (fresh market, Florida only) at 0.5 ppm. Valent has submitted a revised petition that proposes establishing tolerances for fenpropathrin in or on the following raw agricultural commodities: strawberries (caps removed) at 2.0 ppm; tomatoes at 0.6 ppm; meat and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.1 ppm; fat of cattle, goats, hogs, horses, and sheep at 1.0 ppm; milk fat (reflecting 0.11 ppm in whole milk) at 2.75 ppm; and poultry meat, fat, and meat byproducts and eggs at 0.02 ppm. (PM 13)

2. *FAP 3H5661.* In the **Federal Register** of October 21, 1993 (58 FR 54354), EPA issued the notice of the petition filed by Valent U.S.A. Corp., 1333 N. California Blvd., Suite 600, P.O. Box 8025, proposing amend 40 CFR part 186 by establishing a regulation to permit residues of fenpropathrin (*alpha*-cyano-3-phenoxybenzyl 2,2,3,3-tetramethylcyclopropane- carboxylate) in or on tomato cannery waste at 5 ppm. Valent has submitted a revised petition that proposes estblishing tolerances for fenpropathrin in or on the following feed commodities: tomato pomace, wet at 6 ppm and tomato pomace, dried at 30 ppm. (PM 13)

Corrected Petitions

3. *PP 4F4351.* In the **Federal Register** of September 28, 1994 (59 FR 49397), EPA issued the notice of the petition from Ecogen, Inc., 2005 Cabot Blvd. West, Langhorne, PA 19047, proposing to amend 40 CFR 180.1001(c) and (d) by establishing an exemption from the requirement of a tolerance for the insecticide *Candida oleophila* isolate I-182 in or on all raw agricultural commodities. The petition is corrected to specify that *Candida oleophila* isolate I-182 is a biological fungicide, not an insecticide, and that the petition proposes amendment to 40 CFR part 180, not 40 CFR 180.1001(c) and (d). (PM 21)

4. *PP 4F4354.* In the **Federal Register** of September 28, 1994 (59 FR 49397), EPA issued the notice of the petition from Merck & Co., Inc., P.O. Box 450, Three Bridges, NJ 0887-0450, proposing to amend 40 CFR part 180 by establishing a tolerance regulation to permit residues of the herbicide abamectin and its 8,9 isomer in or on cucurbits (melons, cucumber, and squashes). The petition is corrected to specify that abamectin and its 8,9 isomer is an insecticide, not a herbicide, and that a tolerance of 0.005 ppm in or on cucurbits is proposed. (PM 13).

Authority: 7 U.S.C. 136a.

Dated: October 20, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–27179; Filed 11–1–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30374; FRL–4915–3]

Yoshitomi Pharmaceutical Industries, Ltd.; Approval of a Pesticide Product Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application submitted by Yoshitomi Pharmaceutical Industries, Ltd., to register the pesticide product RYH-86NA, containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Ruth Douglas, Product Manager (PM) 32, Registration Division (7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 278, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703–305–7964).

SUPPLEMENTARY INFORMATION: EPA received an application from Yoshitomi Pharmaceutical Industries, Ltd., 6-9, Hiranomachi 2-Chome Chou-ku, Osaka 541, Japan to register the pesticide product RYH-86NA (EPA File Symbol 63898–R), containing the active ingredient 4,5 dichloro-1,2-dithiol-3-one at 48.20 percent, an active ingredient not included in any previously registered product. However, since the notice of receipt of application to register this product did not publish in the **Federal Register**, as required by section 3(c)(4) of FIFRA, as amended, interested parties may submit written comments within 30 days from the date of publication of this notice.

The application was approved on August 11, 1994, as RYH-86NA for formulation into end-use products only (EPA Registration Number 63898–1).

The Agency has considered all required data on risks associated with the proposed use of 4,5 dichloro-1,2-dithiol-3-one, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health safety determinations which show that use of 4,5 dichloro-1,2-dithiol-3-one when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

More detailed information on this registration is contained in an EPA Pesticide Fact Sheet on 4,5 dichloro-1,2-dithiol-3-one.

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public

inspection in the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202 (703-305-5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, D.C. 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: October 13, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94-26811 Filed 11-01-94; 8:45 am]

BILLING CODE 6560-50-F

[FRL-5100-8]

Proposed Administrative Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; Request for Public Comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA), notice is hereby given of the proposed *de minimis* administrative cost recovery settlement entered into by EPA Region IX and the Respondents listed in Appendix A, set forth below. The proposed settlement was entered into under the authority granted EPA in section 122(h) of CERCLA, and provides that each respondent will reimburse the EPA its proportional share of the costs incurred at, or in connection with, an emergency removal conducted at the King Neptune Site in Bell Gardens, Calfironia in May-June, 1992.

For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the settlement. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. The Agency's response to any comments received will be available for inspection at the U.S. Environmental Protection Agency, Region IX, (RC-1), 75 Hawthorne Street, San Francisco, CA. 94105, Attention: Steve Armsey, Regional Hearing Clerk.

ADDRESSES: A copy of the proposed settlement may be obtained from Steve Armsey, U.S. EPA Region IX Hearing Clerk (RC-1), 75 Hawthorne St., San Francisco, CA. 94105. Comments should reference the King Neptune Superfund Site and EPA Docket No. 94-13.

FOR FURTHER INFORMATION CONTACT: David Rabbino, Office of Regional Counsel, U.S. EPA, Region IX, 75 Hawthorne St., San Francisco, CA. 94105, Telephone: (415) 744-1336.

Dated: October 26, 1994.

Jeff Zelikson, Director,

Hazardous Waste Management Division

King Neptune Lead Site; PRPs Settled

1 Alexian Brothers Hospital.
2 Alta Bates Community Hospital.
3 Alvarado Community Hospital.
4 Anaheim Medical.
5 Auburn Faith Hospital.
6 Bay General Hospital.
7 Bay Harbor Hospital.
8 Beverly Hospital.
9 Boswell Memorial Hospital.
10 Broadway Hospital.
11 Burbank Community Hospital Foundation.
12 California Hospital.
13 Cancer Foundation of Santa Barbara.
14 Cedars of Lebanon Hospital.
15 Center City Hospital.
16 Chico Community Hospital.
17 Children's Hospital.
18 Chula Vista Community.
19 City of Hope Medical Center.
20 Colusa County Hospital.
21 Community Hospital.
22 Community Hospital.
23 Community Hospital of Fresno.
24 Community Hospital of Los Angeles.
25 Community Hospital of North Hollywood.
26 Community Hospital of San Buenaventure.
27 Corona Community Hospital.
28 Costa Mesa Memorial Hospital.
29 Cottage Hospital.
30 Dameron Hospital.
31 Daniel Freeman Memorial Hospital.
32 Desert Hospital.
33 Desert Springs Hospital.
34 Doctors Hospital.
35 Doctors Hospital.
36 Dominican Hospital.
37 Downey Community Hospital.
38 Dr. David M. Brotman Memorial Hospital.
39 El Camino Hospital.
40 El Centro Community Hospital.
41 Enloe Memorial Hospital.
42 Feather River Hospital.
43 Foothill Presbyterian Hospital.
44 Fountain Valley Hospital.
45 Franklin Hospital.
46 Fremont Medical Center.
47 Garfield Hospital.
48 Glendale Memorial.
49 Glendora Community Hospital.
50 Good Samaritan Hospital.
51 Good Samaritan Hospital.
52 Granda Hills Community.
53 Grossmont Hospital.
54 Harbor General Hospital.
55 Harold D. Chope Community Hospital.
56 Hawthorne Community Hospital.
57 Henry Mayo Newhall Memorial Hospital.
58 Holy Cross Hospital.
59 Huntington Inter-Community Hospital.
60 Huntington Memorial Hospital.
61 Inter Community Hospital.
62 John Muir Memorial Hospital.
63 John Wesley Hospital.
64 Kaiser Foundation Hospital.
65 Kaiser Foundation Hospital.
66 Kaiser Foundation Hospital.
67 Kaiser Foundation Hospital.
68 Kaiser Foundation Hospital.
69 Kaiser Foundation Hospital.
70 Kaiser Hospital.
71 Kaiser Hospital.
72 Kaiser Hospital.
73 Kaiser Hospital.
74 Kaiser Hospital.
75 Kaiser Hospital.
76 Kaiser Permanente Hospital.
77 Kaiser Permanente Medical Center.
78 Kaiser Permanente Medical Center.
79 Kaweah Delta District Hospital.
80 La Habra Hospital.
81 Lodi Community Hospital.
82 Long Beach Community Hospital.
83 Los Angeles County-USC Hospital.
84 Los Medanos Community Hospital.
85 Los Roble Hospital.
86 Marian Hospital.
87 Marin General Hospital.
88 Martin Luther Hospital.
89 Martin Luther King Hospital.
90 Marys Help Hospital.
91 Maryvale Samaritan Hospital.
92 Memorial Hospital of Gardena.
93 Memorial Hospital of Panorama City.
94 Mercy General Hospital.
95 Mercy Hospital.
96 Mercy Hospital.
97 Mercy San Juan Hospital.
97 Merritt Hospital.
99 Metodist Hospital.
100 Methodist Hospital of Southern California.
101 Midway Hospital.
102 Mission Bay Hospital.
103 Mission Community Hospital.
104 Naval Regional Medical Center.
105 Navy Hospital.
106 Northridge Hospital.
107 Ontario Community Hospital.
108 Orange County General Hospital.
109 O'Connor Hospital.
110 Pacific Hospital Long Beach.
111 Palmdale General.
112 Palo Alto Medical Clinic.
113 Palomar Memorial Hospital.
114 Paramount General.
115 Peninsula Hospital.
116 Peninsula Hospital & Medical Center.
117 Pioneer Hospital.
118 Placentia Linda Community.
119 Pomona Valley Community Hospital.
120 Presbyterian Hospital.

121 Providence Hospital.
122 Queen of the Valley Hospital.
123 Radiology Medical Group (N.M.).
124 Redlands Community Hospital.
125 Rees-Stealy Medical Clinic.
126 Ridgecrest Community Hospital.
127 Riverside General Hospital.
128 Riverside Hospital.
129 Riverview Hospital.
130 Roseville Community Hospital.
131 Ross General Hospital.
132 Salinas Valley Medical Center.
133 San Antonio Community County Hospital.
134 San Clemente General Hospital.
135 San Dimas Community Hospital.
136 San Francisco General Hospital.
137 San Gabriel Community.
138 San Joaquin General Hospital.
139 San Joaquin Hospital.
140 San Jose Hospital.
141 Santa Ana Community.
142 Santa Monica Hospital.
143 Santa Rosa Memorial Hospital.
144 Santa Teresita Hospital.
145 Scripps Memorial Hospital.
146 Serra Memorial Hospital.
147 Sharp New Community.
148 Sherman Oaks Community Hospital.
149 Sierra Hospital.
150 Simi Valley Hospital.
151 Sonoma Valley Hospital.
152 South Bay Hospital.
153 South Coast Community.
154 Southern Nevada Memorial.
155 St. Bernardines Hospital.
156 St. Francis Hospital.
157 St. Johns Hospital.
158 St. Johns Hospital.
159 St. Joseph Hospital.
160 St. Joseph Hospital.
161 St. Josephs Hospital.
162 St. Josephs Hospital.
163 St. Luke Hospital of Pasadena.
164 St. Lukes Hospital.
165 St. Mary Desert Hospital.
166 St. Marys Hospital.
167 St. Marys Long Beach.
168 St. Rose Hospital.
169 Sunrise Hospital.
170 Sutter General Hospital.
171 S.C.P.M.G./Kaiser Hospital.
172 Temple Hospital.
173 Torrance Memorial Hospital.
174 Tri-City Hospital.
175 Tucson General Hospital.
176 UCLA Medical Center Hospital.
177 University Hospital.
178 University of California.
179 Vallejo General Hospital.
180 Valley Hospital Ltd.
181 Valley Memorial Hospital.
182 Valley Presbyterian Hospital.
183 Verdugo Hills Hospital.
184 Vesper Memorial Hospital.
185 Veterans Administration Hospital.
186 Washington Hospital.
187 West Adams Community Hospital.
188 West Anaheim Community.
189 Westlake Community Hospital.
190 Westminster Hospital.
191 White Memorial Medical Center.

[FR Doc. 94–27172 Filed 11–1–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5100–1]

Proposed Administrative Settlement Under 122(h)(1), Triangle Petroleum Site, Fruita, Mesa County, CO

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of proposed Administrative Settlement; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9622(i), as amended by the Superfund Amendments and reauthorization Act ("CERCLA"), notice is hereby given of a proposed administrative settlement concerning the Triangle Petroleum Site in Fruita, Mesa County, Colorado. The proposed administrative settlement resolves an EPA claim under section 107 of CERCLA, 42 U.S.C. 9607, against Big and Little Tractor Repair; Cyprus Orchard Valley Coal Mine; City of Delta; Clymer's Ranch and Livestock; EIMCO Coal Machinery, Inc.; Fruita Consumers Cooperative; Groendyke Transport Inc.; Holsum Bakery Interstate Brands Corporation; Town of Hotchkiss; J.W. Brewer Tire Company; J.C. Thompson; Lucas Industrial Repair, Inc.; Master Petroleum Co.; Mountain West; Paul's Truck and Wash Service; Pepsi Cola West; Red Hat Produce, Inc.; Riggle Oil Company; Ryder Truck Rental, Inc.; San Juan County; United Companies of Mesa County; Valley Farms, Inc.; Van Waters & Rogers Inc.; Wagner Equipment Co.; Western Implement Company; Browning-Ferris Industries of Colorado, Inc.; Estate of Russell T. Lund, Jr., and Russell T. Lund III, as Personal Representative of the Estate of Russell T. Lund, Jr. (hereafter referred to as the "Settling Parties"). The settlement requires the Settling Parties to pay $138,941.01 to the Hazardous Substance Superfund.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency's response to any comments received will be available for public inspection at EPA Region VIII's Superfund Records Center, which is located on the 8th floor of the North Tower, at 999 18th Street, Denver, Colorado.

DATES: Comments must be submitted by December 2, 1994.

ADDRESSES: An original and two copies of comments must be sent to James R. Rhodes, Enforcement Specialist, Triangle Petroleum Site Team, EPA Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2405.

FOR FURTHER INFORMATION CONTACT: Wendy Silver, Office of Regional Counsel, (303) 294–7568.

SUPPLEMENTARY INFORMATION: EPA alleges that the Settling Parties are responsible parties pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a), and are jointly and severally liable for response costs incurred at or in connection with the Site.

By the terms of the proposed settlement, the Settling Parties will pay $138,941.01 to the Hazardous Substance Superfund within 30 days of the effective date of this Agreement. In return, EPA agrees that the Settling Parties shall have resolved any and all civil liability to EPA under section 107(a) 42 U.S.C. 9607(a), for reimbursement of response costs incurred at or in connection with the Site up through the date upon which EPA signs this Agreement.

Dated: October 7, 1994.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 94–27168 Filed 11–1–94; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Approved by Office of Management and Budget

October 26, 1994.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collection pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0621

Title: Implementation of Section 309(j) of the Communications Act, Competitive Bidding, Fifth Report and Order, PP Docket No. 93–253.

Expiration Date: 10/31/97.

Estimated Annual Burden: 56,922 total hours; .50–20 hours per response; 10–12,000 respondents.

Description: In the Fifth Report and Order in PP Docket No. 93–253, the Commission has amended 47 CFR Part 24 to add new Subparts H and I. Subpart H contains the general rules and requirements governing the competitive

bidding process for broadband PCS initial licenses. Subpart I contains the general rules and requirements for processing applications. Applicants are required to file certain information so that the Commission can determine whether the applicants are legally, technically and financially qualified to be licensed and to determine whether applicants claiming designated entity status are entitled to certain benefits. Affected public are any member of the public who wants to become or remain a licensee.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–27138 Filed 11–1–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Concerning Issuance of Powers of Attorney

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Public notice.

SUMMARY: In order to facilitate the discharge of its responsibilities as a conservator and liquidator of insured depository institutions, the Federal Deposit Insurance Corporation (FDIC) publishes the following notice. The publication of this notice is intended to comply with Title 16, Section 20 of the Oklahoma Statutes (16 O.S. 20) which, in part, declares Federal agencies that publish notices in the **Federal Register** concerning their promulgation of powers of attorney, to be exempt from the statutory requirement of having to record such powers of attorney in every county in which the agencies wish to effect the conveyance or release of interests in land.

Notice

Purusant to Section 11 of the Federal Deposit Insurance (FDI) Act (12 U.S.C. 1821), as amended by Section 212 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), the FDIC is empowered to act as conservator or receiver of any state or federally chartered depository institution which it insures. Furthermore, under Section 11A of the FDI Act (12 U.S.C. 1821a), as enacted under Section 215 of FIRREA, the FDIC is also appointed to manage the FSLIC Resolution Fund.

Upon appointment as a conservator or receiver, the FDIC by operation of law becomes successor in title to the assets of the depository institutions on behalf of which it is appointed. As a Manager of the FSLIC Resolution Fund, the FDIC became successor in title to both the corporate assets formerly owned by the now defunct Federal Savings and Loan Insurance Corporation (FSLIC), as well as to the assets of the depository institutions for which the FSLIC was appointed receiver prior to January 1, 1989. In addition, pursuant to Section 13(c) of the FDI Act (12 U.S.C. 1823(c)), the FDIC also acquires legal title in its corporate capacity to assets acquired in furtherance of providing monetary assistance to prevent the closing of insured depository institutions or to expedite the acquisition by assuming depository institutions of assets and liabilities from closed depository institutions of which the FDIC is receiver.

In order to facilitate the conservation and liquidation of assets held by the FDIC in its aforementioned capacities, the FDIC has provided powers of attorney to selected employees of its Southwest Service Center Office. These employees include: Jeffrey C. Conwell, Lawrence O. Greer, John Sears, Tommy K. Sears and John Vernon.

Each employee to whom a power of attorney has been issued is authorized and empowered to: Sign, seal and deliver as the act and deed of the FDIC any instrument in writing, and to do every other thing necessary and proper for the collection and recovery of any and all monies and properties of every kind and nature whatsoever for and on behalf of the FDIC and to give proper receipts and acquittances therefor in the name and on behalf of the FDIC; release, discharge or assign any and all judgments, mortgages on real estate or personal property (including the release and discharge of the same of record in the office of any Prothonotary or Register of Deeds wherever located where payments on account of the same in redemption or otherwise may have been made by the debtor(s)), and to endorse receipt of such payment upon the records in any appropriate public office; receipt, collect and give all proper acquittances for any other sums of money owing to the FDIC for any acquired asset which the attorney-in-fact may sell or dispose of; execute any and all transfers and assignments as may be necessary to assign any securities or other choses in action; sign, seal, acknowledge and deliver any and all agreements as shall be deemed necessary or proper by the attorney-in-fact in the care and management of acquired assets; sign, seal, acknowledge and delivery indemnity agreements and surety bonds in the name of and on behalf of the FDIC; sign receipts for the payment of all rents and profits due or to become due on acquired assets; execute, acknowledge and deliver deeds of real property in the name of the FDIC; extend, postpone, release and satisfy or take such other action regarding any mortgage lien held in the name of the FDIC; execute, acknowledge and deliver in the name of the FDIC a power or attorney wherever necessary or required by law to any attorney employed by the FDIC; foreclosed any mortgage or other lien on either real or personal property, wherever located; do and perform every act necessary for the use, liquidation or collection of acquired assets held in the name of the FDIC; and sign, seal, acknowledge and deliver any and all documents as may be necessary to settle any action(s) or claim(s) asserted against the FDIC, either in its Receivership or Corporate capacity, or as Manager of the FSLIC Resolution Fund.

Dated: October 28, 1994.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 94–27141 Filed 11–1–94; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1042–DR]

Georgia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia (FEMA–1042–DR), dated October 19, 1994, and related determinations.

EFFECTIVE DATE: October 25, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Georgia dated October 19, 1994, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 19, 1994:

Effingham County for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 94–27157 Filed 11–1–94; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, N.W., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–008900–053.

Title: The "8900" Lines Rate Agreement.

Parties: American President Lines, Ltd.; A.P. Moller-Maersk Line; Croatia Line; DSR Senator Joint Service; The National Shipping Company of Saudi Arabia; P&O Containers, Ltd.; Sea-Land Service, Inc.; United Arab Shipping Company (S.A.G.); and Waterman Steamship Corporation.

Synopsis: The proposed amendment modifies the authority of the Agreement, the Organization and Administration of the Agreement, the Meeting and Voting provisions, Independent Action, and Service Contract provisions. It also makes non-substantive changes to the alternate port service provisions of the Agreement.

By Order of the Federal Maritime Commission.

Dated: October 27, 1994.

Joseph C. Polking,

Secretary.

[FR Doc. 94–27101 Filed 11–1–94; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

[Docket No. R–0806]

Policy Statement on Payment System Risk

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) has approved a modification to its Policy Statement on Payment System Risk regarding net debit caps. Specifically, the Board has approved that the multiple associated with the de minimis net debit cap be doubled from 20 to 40 percent of risk-based capital. In addition, the Board approved administrative counseling flexibility for institutions that continue to exceed their net debit caps due to the posting of non-Fedwire transactions. Under this flexibility, the Reserve Banks will work with affected institutions on means of avoiding daylight overdrafts, but will not subject these institutions to routine counseling for daylight overdrafts.

EFFECTIVE DATE: October 13, 1994.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Marquardt, Assistant Director (202/452–2360), Paul Bettge, Manager (202/452–3174), Division of Reserve Bank Operations and Payment Systems, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION: The Board has established a Payment System Risk Policy Statement pursuant to its authority under the Federal Reserve Act. 12 U.S.C. 221 *et seq.* In October 1993, the Federal Reserve implemented a set of intraday posting rules for debits and credits affecting depository institution accounts with Reserve Banks. The posting rules provide for the posting of non-Fedwire transactions at specific times during the day, in addition to the posting of Fedwire funds and securities transfers as they occur throughout the day. In contrast, according to the posting rules that were in effect prior to last October, non-Fedwire payments for each depository institution were netted and, if a net credit resulted, the amount was posted to the institution's Federal Reserve account as of the opening of business and, if a net debit, as of the close of business.

Prior to implementation of the new posting rules, about 200 institutions, on average, exceeded their daylight overdraft caps during any given two-week reserve maintenance period. Immediately following implementation of the new posting rules, this number increased to between 1200 and 1500 institutions per period. In anticipation of this increase, the Board adopted a "transition period" for routine administrative counseling in order to provide institutions with a period of time to implement changes to their Federal Reserve account management procedures in order to reduce the incidence of daylight overdrafts in excess of daylight overdraft caps. Following nearly one year of "transition," about 750 to 800 institutions per period still typically exceed their caps.

The new posting rules were intended, in large part, to support the assessment of daylight overdraft fees, which began on April 14, 1994. The posting rules were developed by the Board over a three-year period and included two separate requests for public comment.

In developing the new posting rules, four general principles were established. First, the intraday posting rules were designed not to generate intraday float. The old posting rules typically created approximately $30 billion in intraday float. Second, the new posting rules were to permit depository institutions to anticipate precisely when transactions would be posted to their account. Under the old posting rules, an institution would not know until after the close of business whether the net of all non-Fedwire activity was a credit or a debit and, accordingly, whether the netted amount would be posted as of the opening or closing of business. Third, the posting rules were designed to be consistent with the legal rights and responsibilities of depository institutions. Under this principle, check debits would not be posted to an institution's account prior to presentment of the checks. Finally, the new posting rules were intended to be competitively neutral. That is, neither the Reserve Banks nor private sector providers of correspondent banking services should be artificially advantaged by the new posting rules.

Under these principles, the debit to an institution for any payment is posted at the same time as the credit is posted to the account of the counterparty to the transaction. The exception to this guideline is for check transactions where, by virtue of the nature of check processing, it is not possible to match debits and credits on a transaction-by-transaction basis throughout the day. In addition, because checks should not be debited prior to presentment, a single time for all check debits and credits would necessarily be later in the day than many depository institutions

believed appropriate. Therefore, debits for checks presented to depository institutions are posted on the next clock hour at least one hour following presentment, beginning at 11:00 a.m., Eastern Time. Credits for check deposits are either posted (1) at a single, float-weighted posting time or (2) at multiple times throughout the day, beginning at 11:00 a.m., Eastern Time, using a set of fractions that are based upon Reserve Bank check collection experience. For check credits, depository institutions are permitted to select either option, based upon which alternative best meets their needs. Currently, the earliest float-weighted posting time (Option 1), which enables an institution to have full use of check deposit credits, is 11:45 a.m. Eastern Time.

On average over a day, these check posting rules result in a minimal amount of intraday check float. At specific points in time during the day, however, the check posting rules appear to be giving rise to as much as $20 billion in "credit float," whereby the Reserve Banks have posted debits to depository institution accounts prior to providing corresponding credits on check transactions to other institutions. The impact of this float, and the measured daylight overdrafts it creates, appears to be falling primarily on smaller depository institutions.

Under the old posting rules, smaller institutions seldom incurred significant daylight overdrafts and, thus, were able to make use of the "exempt from filing" or "de minimis" daylight overdraft caps without incurring a significant number of cap breaches. Under the new posting rules, however, on average over four recent reserve maintenance periods, 600 of the 775 total institutions with daylight overdrafts in excess of their caps were institutions that had "exempt from filing" or "de minimis" daylight overdraft caps. An additional 159 institutions with a zero net debit cap had cap breaches.

The "exempt from filing" cap permits an institution to incur daylight overdrafts up to the lesser of $10 million or 20 percent of risk-based capital. The exempt cap does not require any action by the board of directors of the depository institution or the filing of any documentation with its Reserve Bank. As additional flexibility, an exempt-from-filing institution may incur up to two daylight overdrafts in two consecutive two-week reserve maintenance periods before it is in violation of the Board's payments system risk (PSR) policy.[1] In order to incur higher daylight overdrafts, an institution may file a resolution of its board of directors requesting a de minimis cap, which permits daylight overdrafts up to 20 percent of risk-based capital. To be permitted even larger amounts of intraday credit, up to 2.25 times risk-based capital on a single day, the institution must undertake a self-assessment of creditworthiness, intraday funds management and control, and customer credit policies and controls to support a higher daylight overdraft cap.

An institution that regularly exceeds its cap is subject to progressively higher levels of administrative counseling by its Reserve Bank. Under current guidelines, a depository institution that continues to exceed its daylight overdraft cap ultimately may be assigned a zero cap and be placed on the real-time monitor. In this situation, a depository institution will be prevented from originating Fedwire funds transfers that would cause, or increase, a daylight overdraft.

The Board's policy on daylight overdraft caps is intended to address intraday risk to the Federal Reserve arising from daylight overdrafts. However, most non-Fedwire activity poses primarily interday, rather than intraday, risk. Escalated counseling, including real-time monitoring, for non-Fedwire-caused daylight overdrafts may be of limited usefulness in reducing these overdrafts. In addition, most of the daylight overdrafts caused by implementation of the new posting rules would not result in the assessment of daylight overdraft charges, owing to the deductible permitted in computing such charges.

Current alternatives available to a depository institution to address the situation where it routinely exceeds its daylight overdraft cap include: (1) filing for a "self-assessment" cap, (2) shifting funding patterns or delaying the origination of funds transfers, (3) selecting the "fractional" check posting option in order to begin receiving some check credits earlier than the single, float-weighted posting time, (4) having check debits posted to the account of a correspondent bank, or (5) transferring payment processing business to a private correspondent bank. It should be noted that filing for a self-assessment cap is an alternative available only to financially healthy institutions and presents an increased administrative burden to these institutions. In addition, many of the small institutions adversely affected by the posting rules have a limited amount of Fedwire funds transfer activity. Thus adjustments to such Fedwire activity may have a minimal impact on such institutions' level of daylight overdrafts. Similarly, a correspondent bank may be unable to provide funding to respondents earlier in the day without adversely affecting its own daylight overdraft position.

Alternatives

The Board considered three alternatives to address cap breaches attributable to the changes in the intraday posting rules for non-Fedwire activity: (1) increasing the size of the multiples associated with daylight overdraft net debit caps, (2) adopting, on a permanent basis, counseling flexibility for daylight overdrafts caused by non-Fedwire activity, or (3) changing the posting rules. Each of these alternatives is discussed below.

Caps

The Board analyzed various scenarios to determine whether the level of exempt-from-filing or de minimis cap categories could be increased without materially increasing risk to Reserve Banks. An increase in the exempt-from-filing daylight overdraft cap category would require no action on the part of a depository institution, with a potentially substantial percentage increase in intraday credit to be granted to that depository institution by the Federal Reserve. The Board believes that any increase in the size of caps, without a self-assessment, should be made in the de minimis cap, which requires the filing of a board of directors' resolution. This approach will ensure that senior bank management and directors are aware of the potential amount of credit that may be obtained by the depository institution from the Federal Reserve during the day.

In studying increases in cap levels, the Board was mindful of the existing structure of cap categories that require a self-assessment. For example, an "average" cap permits daylight overdrafts, on average over a reserve maintenance period, up to 75 percent of an institution's risk-based capital. In order not to diminish the relevance of an "average" cap, which can be obtained by an institution only after conducting a full self-assessment, the Board believes the cap multiple for the de minimis cap should not approach 75 percent.

At a level of 40 percent of risk-based capital, however, between 85 and 90 percent of cap breaches by institutions that currently have exempt or de minimis caps would be eliminated, assuming certain exempt-from-filing institutions file a board of directors'

[1] For institutions with other net debit cap categories, any daylight overdraft that exceeds the net debit cap would be subject to administrative counseling by the Reserve Banks.

resolution adopting a de minimis cap. Diminishing reductions in cap breaches by institutions with exempt and de minimis caps are achieved with cap levels beyond 40 percent, with an associated lessening of the relative benefits of a self-assessed cap. Cap levels below 40 percent do not yield a sufficient reduction in cap breaches to warrant any increase at all in the level of the de minimis cap.

It should be noted that any increase in the size of net debit caps, in addition to providing capacity to cover current cap breaches caused by the posting rules, would also increase the intraday capacity for daylight overdrafts resulting from irrevocable Fedwire funds and book-entry securities transfers. The Board believes that, for the most part, institutions with a de minimis net debit cap have a relatively limited amount of Fedwire activity and an increase in daylight overdraft capacity will likely not increase significantly the risk exposure of the Reserve Banks. Moreover, Reserve Banks have special procedures in place for dealing with risks posed by depository institutions in poor or deteriorating financial condition. The Board has, therefore, approved an increase in the multiple associated with the de minimis net debit cap from 20 percent to 40 percent of risk-based capital.

Counseling

As noted above, the Reserve Banks administratively counsel depository institutions that exceed their caps. For cap categories other than the exempt-from-filing category, any daylight overdrafts in excess of a depository institution's cap are subject to counseling by the Reserve Banks. For institutions with an exempt cap, however, only when an institution incurs three or more daylight overdrafts in excess of its cap within a four-week period would it be subject to counseling. The Board reviewed this frequency measure to determine whether an increase may be feasible.

By increasing the number of permissible daylight overdrafts in excess of the exempt cap from two in two consecutive two-week reserve maintenance periods to four in two consecutive two-week reserve maintenance periods, 79 percent of the institutions with exempt-from-filing caps that had cap breaches would not be subject to counseling by their Reserve Banks. A significant concern with increasing the permissible occurrences of cap breaches, however, is that there is currently no size limitation on the size of those cap breaches. The Board also believes that increases in the number of non-counselable daylight overdrafts effectively increases the amount of intraday credit that may be used by an institution. Should the Federal Reserve decide to increase the amount of intraday credit to be extended to depository institutions, the Board believes it would be preferable to identify such an increase clearly through an increase in the size of a cap, rather than an increase in the number of permissible excess daylight overdrafts.

Another approach to minimize the administrative burden of counseling on both depository institutions and the Reserve Banks is to exempt daylight overdrafts caused either by check transactions or all non-Fedwire transactions from counseling. The Board believes, however, that separate treatment under the PSR policy of different types of payment transactions is not desirable. For example, daylight overdrafts caused by book-entry securities transfers and ACH transactions were initially excluded from counseling under the PSR policy. The Board decided in 1992 that all transactions should be treated alike for daylight overdraft measurement purposes. In addition, counseling institutions for some daylight overdrafts and not for others may lead to confusion, both within the Reserve Banks and at depository institutions.

Nonetheless, some degree of counseling flexibility may be appropriate. As noted above, the Reserve Banks have had in place since October 1993 a policy of administering daylight overdraft counseling on a flexible basis, depending upon whether cap breaches were attributable to the new posting rules. Continued counseling flexibility appears to be desirable largely in dealing with institutions that have a zero daylight overdraft net debit cap as well as relatively small institutions that, by the nature of their business, will continue to exceed a positive net debit cap even after appropriate adjustments have been made. These institutions may have few alternatives for eliminating non-Fedwire daylight overdrafts. The institutions that have zero caps for reasons related to their financial condition are typically already on the real-time monitor in reject or pend mode. In addition, in some cases, zero cap institutions are also required by the Reserve Banks to prefund certain payments or collateralize any daylight overdrafts. Routinely counseling such institutions for overdrafts caused by non-Fedwire transactions lessens the credibility of the daylight overdraft counseling program and appears to do little to lessen the actual risk to Reserve Banks. The Board has approved such administrative counseling flexibility on an on-going basis.

Posting Procedures

Modifications to the intraday posting procedures would be another way to address the frequency of cap breaches by small depository institutions. The Board believes any such modifications should be carefully weighed. The check posting rules were adopted by the Board following a lengthy process involving two requests for public comment and many discussions with the banking industry, as noted above. For example, the principle of the elimination of intraday float for checks was specifically addressed through public comment in 1989. The new posting rules have now been in place about one year and it is possible that institutions may still be adapting to those rules. In addition, changes to these rules after such a short period of time may impose unanticipated costs associated with changing computer programs on a large number of depository institutions.

Further changes to the check posting rules may also lead to the creation of intraday float. As an example, a scheme whereby check credits are posted at 11:00 a.m. Eastern Time and check debits continue to be posted on the clock hour at least one hour following presentment would generate as much as $23 billion in debit float at 11:00 a.m., and an average of $6 billion in float over the course of the day. However, even this radical a change to the posting rules would not eliminate a significant fraction of cap breaches caused by the implementation of the new posting rules. Many non-Fedwire-caused cap breaches would continue due to the posting of ACH debit transactions, at 11:00 a.m. Eastern Time, and net settlement entries from private clearing houses, as determined by the individual settlement arrangements. Many small depository institutions may continue to encounter difficulties in funding these transactions on a timely basis during the day.

Another possible change to the check posting rules would be to shift the first check debiting time from 11:00 a.m., Eastern Time to 11:00 a.m., Local Time. It was initially believed that such an approach might make the fractional check crediting option more feasible for many institutions in the Central, Mountain, and Pacific time zones. Upon further analysis, however, the Board determined that because of the later debiting times in western time zones, the corresponding crediting times would shift later in the day as well,

thereby lessening any positive benefit of the delayed check debits.

A final alternative is to establish a new set of posting rules for cap administration different from the posting rules for the assessment of daylight overdraft fees. The Board does not believe such an approach would be desirable, as it would likely lead to more, rather than less, of an administrative burden on small institutions and could create a significant amount of confusion in the banking industry about the focus of the PSR initiative.

The Board has, therefore, not elected to make any changes to the established intraday posting procedures at this time.

By order of the Board of Governors of the Federal Reserve System, October 27, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94-27122 Filed 11-1-94; 8:45am]

BILLING CODE 6210-01-P

Richard J. Irving; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than November 16, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Richard J. Irving, Eaton, Indiana; to acquire an additional .02 percent, for a total of 10.015 percent, of the voting shares of Community Bancshares, Inc., Noblesville, Indiana, and thereby indirectly acquire Community Bank, Noblesville, Indiana.

Board of Governors of the Federal Reserve System, October 27, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-27154; Filed 11-1-94; 8:45 am]

BILLING CODE 6210-01-F

Mid Am of Michigan, Inc., et al; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 25, 1994.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Mid Am of Michigan, Inc., Bowling Green, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of ASB Bankcorp, Inc., Adrian, Michigan, and its wholly-owned subsidiary, Adrian State Bank, Adrian, Michigan. Mid Am of Michigan, Inc., will be a subsidiary of Mid Am, Inc., Bowling Green, Ohio. Comments regarding this application must be received not later than November 21, 1994.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to acquire 100 percent of the voting shares of Babbscha Company, Fridley, Minnesota, and thereby indirectly acquire Fridley State Bank, Fridley, Minnesota.

Board of Governors of the Federal Reserve System, October 27, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-27155; Filed 11-1-94; 8:45 am]

BILLING CODE 6210-01-F

Summit Financial Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 16, 1994.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Summit Financial Corporation, Greenville, South Carolina; to acquire

Academy Finance, Inc., Kingstree, South Carolina, and thereby indirectly acquire E-Z Loans, Inc., Lake City, South Carolina, and engage in making and servicing consumer finance loans; acting as agent for insurance to borrowers that is directly related to the extension of credit by the finance company, including credit life and accident and health insurance; and acting as agent for insurance related to ensuring repayment of the outstanding balance on an extension of credit in the event of loss or damage to any property used as collateral for the extension of credit, pursuant to § 225.25(b)(1)(i); (8)(i), and (8)(ii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 27, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-27156; Filed 11-1-94; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION, BETWEEN: 100394 AND 101494

Name of acquiring person, Name of acquired person, Name of acquired entity	PMN No.	Date terminated
General Electric Company, Thomas R. Roos, Island Development Corporation, Inc	94-2247	10/03/94
Sterling Software, Inc., KnowledgeWare, Inc., KnowledgeWare, Inc	94-2143	10/04/94
ONEOK Inc., Nelson Bunker Hunt Trust Estate, Creston Partners, L.P	94-2195	10/04/94
TransCanada PipeLines Limited, Northridge Canada Inc., Northridge U.S. Inc	94-2160	10/05/94
Corning Incorporated, J. Richard Fennell, Bioran Medical Laboratory	94-2174	10/05/94
Harvest States Cooperatives, H.J. Heinz Company, Portion Pac, Inc	94-2204	10/05/94
Neil M. Chur, Beverly Enterprises, Inc., Beverly Enterprises-Texas, Inc./Beverly California Corp	94-2209	10/05/94
Klaus J. Jacobs, Brock Candy Company, Brock Candy Company	94-2220	10/05/94
Amoco Corporation, John M. Fox, MarkWest Energy Partners, Ltd	94-2226	10/05/94
Beverly Enterprises, Inc., Eckerd Corporation, Insta-Care Holdings, Inc	94-2229	10/05/94
Arrow Electronics, Inc., Anthem Electronics, Inc., Anthem Electronics, Inc	94-2235	10/05/94
Philip F. Anschutz, Trammell Crow Equity Partners, The Tabor Group Ltd./Tabor Acquisition #31, Inc	94-2244	10/05/94
Adam Young, Nationwide Mutual Insurance Company, WATE-TV, WBAY-TV, and WRIC-TV	94-2133	10/06/94
Donald H. Gales, Griffith Consumers Company Voting Trust, Griffith Consumer Company	94-2127	10/07/94
Dawson Holdings, PLC, The Faxon Company, Inc., The Faxon Company, Inc	94-2246	10/07/94
Motorola, Inc., John Moussouris, MicroUnity Systems Engineering, Inc	94-2155	10/09/94
RBX Investors Inc., Halstead Industries, Inc., Halstead Corporation	94-2163	10/09/94
Mr. Robert Alpert, Aviall, Inc., Aviall Services, Inc	94-2173	10/09/94
Mobil Corporation, Mr. Irwin B. Singer, The Atlas Oil Company	94-2159	10/12/94
The Clayton & Dubilier Private Equity Fund IV L.P., The Travelers Inc., American Capital Management & Research, Inc	94-2182	10/12/94
Liberty Brokerage Investment Corp., Liberty Brokerage Investment Corp., Patriot Securities, L.P	94-2196	10/12/94
ANTEC Corporation, Keptel, Inc., Keptel, Inc	94-2214	10/12/94
Airgas, Inc., Post Welding Supply Company, Post Welding Supply Company	94-2239	10/12/94
Jerry Zucker, W.R. Grace & Co., W.R. Grace & Co.-Conn	94-2240	10/12/94
David J. McGrath, Jr., c/o TAD Resources Int'l., Inc., Thomas L. Kirk, Kirk-Mayer, Inc. (KMI)	94-2248	10/12/94
Charles Schusterman, Oryx Energy Company, Sun Operating Limited Partnership	94-2249	10/12/94
David H. Jacobs Trust (The), Jacobs Properties, Inc., Jacobs Properties, Inc	94-2253	10/12/94
Jacobs Realty Limited Partnership, Jacobs Properties, Inc., Jacobs Properties, Inc	94-2254	10/12/94
Jacobs Realty Limited Partnership, Richard E. Jacobs, Mall A Limited Partnership	94-2255	10/12/94
CGW Southeast Partners I, L.P., The BOC Group plc, Ohmeda, Inc	94-2258	10/12/94
Lincolnshire Equity Fund, L.P., TRW Inc., TRW Inc	94-2259	10/12/94
Clear Channel Communications, Inc., Mario F. Iacobelli, Heritage Broadcasting Company of New York	94-2267	10/12/94
Creative Technology Ltd., Digicom Systems, Inc., Digicom Systems, Inc,	94-2270	10/12/94
The NWNL Companies, Inc., USLICO Corporation, USLICO Corporation	94-2281	10/12/94
AmeriQuest Technologies, Inc., Jonathan O. Lee, Ross White Enterprises, Inc	94-2282	10/12/94
Ford Motor Company, Amoco Corporation, Amoco Oil Company	94-2284	10/12/94
Citicorp, Ground Round Restaurants, Inc., Ground Round Restaurants, Inc,	94-2285	10/12/94
Foundation Health Corporation, Thomas-Davis Medical Centers, P.C., Thomas-Davis Medical Centers, P.C	94-2184	10/13/94
K-III Communications Corporation, Irvin J. Borowsky, North American Publishing Company	94-2286	10/13/94
The Methodist Hospital, St. Luke's Episcopal Hospital, St. Luke's Episcopal Hospital	94-2289	10/13/94
St. Luke's Episcopal Hospital, The Methodist Hospital, The Methodist Hospital	94-2290	10/13/94
IBP, inc., Lakeside Farm Industries Ltd., Lakeside Farm Industries Ltd	94-2210	10/14/94
Loral Corporation, K & F Industries, Inc., K & F Industries, Inc	94-2236	10/14/94
American Premier Underwriters, Inc., Principal Mutual Life Insurance Company, Principal Casualty Insurance Company	94-2273	10/14/94

TRANSACTIONS GRANTED EARLY TERMINATION, BETWEEN: 100394 AND 101494—Continued

Name of acquiring person, Name of acquired person, Name of acquired entity	PMN No.	Date terminated
Japan Nuclear Fuel Company, Ltd., NEWCO, NEWCO	94-2279	10/14/94
Central Life Assurance Company, American Mutual Life Insurance Company, American Mutual Life Insurance Company	94-2288	10/14/94

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, D.C. 20580, (202) 326-3100.

By Director of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 94-26930 Filed 11-1-94; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Meeting; International Scientific Conference on "Prevention: FAS and Alcohol-Related Birth Defects

An international scientific conference on alcohol abuse among pregnant women and women in childbearing years will be held on November 8 and 9, 1994 at the Hutzel Hospital Auditorium, Wayne State University-Detroit Medical Center, Detroit, Michigan, U.S.A. This conference is jointly sponsored by the National Institute on Alcohol Abuse and Alcoholism and the Fetal Alcohol Research Center (FARC), Wayne State University School of Medicine.

Leading scientists from the United States, Canada, Germany and England will present and discuss the latest research on prevention, surveillance, epidemiology, intervention, and risk factors as well as issues in diagnosis, barriers to treatment, and the effects of alcohol on birth weight, growth, and behavior.

Expert panels will discuss the implications for research on the prevention of fetal alcohol syndrome and alcohol-related birth defects. Federal, state and local public health officials as well as representatives from other countries and the private sector will participate.

Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Division of Continuing Medical Education, Wayne State University School of Medicine in Detroit, Michigan at (313) 577-1180 or fax (313) 577-7560.

Dated: October 28, 1994.

Enoch Gordis,

Director, National Institute on Alcohol Abuse and Alcoholism.

[FR Doc. 94-27234 Filed 11-1-94; 8:45 am]

BILLING CODE 4140-01-M

Substance Abuse and Mental Health Services Administration

Center for Mental Health Services; Notice of Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Center for Mental Health Services (CMHS) National Advisory Council in December 1994.

The meeting of the CMHS National Advisory Council will focus on minorities in supervisory positions; information on personnel with disabilities; children's mental health services sites; prevention; criminal justice and mental health. In addition there will be an overview of the Center's programs, and a discussion of administrative announcements and program developments.

A summary of the meeting and/or a roster of council members may be obtained from: Gloria Yockelson, Committee Management Officer, CMHS, Room 18C-07, Parklawn Building, Rockville, Maryland 20857, telephone number (301) 443-7919.

Substantive program information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: Center for Mental Health Services, National Advisory Council.

Meeting Dates: December 8-9, 1994.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

Open: December 8-9, 9:00 a.m.—5:00 p.m.

Contact: Anne Mathews-Younes, Ed.D., Room 11C-26, Parklawn Building, Telephone (301) 443-3606.

Dated: October 27, 1994.

Peggy W. Cockrill,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 94-27120 Filed 11-1-94; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT-795993

Applicant: David Roberts, Madison, Wisconsin.

The applicant requests a permit to purchase in interstate commerce 2 pair of captive-bred Cabot's tragopans (*Tragopan caboti*) from Jack Donaldson of Findlay, Ohio, for the purpose of enhancement of the survival of the species through breeding.

PRT-795533

Applicant: Robert Landis, Fountain City, Indiana.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by Mr. Gerhard Rabe, "Wydgelegen", Wakkerstroom, Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT-795769

Applicant: Clifford Senter, Plaistow, New Hampshire.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by the Ciskei government at Tsolwana Reserve, Queenstown, Ciskei, Republic of South Africa, for the purpose of enhancement of the survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: October 27, 1994.

Caroline Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 94–27081 Filed 11–1–94; 8:45 am]

BILLING CODE 4310–55–P

National Park Service

Maine Acadian Culture Preservation Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (PL 92–463) that the Maine Acadian Culture Preservation Commission will meet on Thursday, November 17, 1994. The meeting will convene at 7 p.m. at the Madawaska High School, Madawaska, Aroostook County, Maine. The school is located at 80 7th Avenue in Madawaska.

The eleven-member Maine Acadian Culture Preservation Commission was appointed by the Secretary of the Interior pursuant to the Maine Acadian Culture Preservation Act (PL 101–543). The purpose of the Commission is to advise the National Park Service with respect to:

- The development and implementation of an interpretive program of Acadian culture in the state of Maine; and
- The selection of sites for interpretation and preservation by means of cooperative agreements.

The Agenda for this meeting is as follows:

1. Review and approval of the summary report of the meeting held September 22, 1994.
2. Reports of Maine Acadian Culture Preservation Commission working groups.
3. Report of the National Park Service planning team.
4. Opportunity for public comment.
5. Proposed agenda, place, and date of the next Commission meeting.

The meeting is open to the public. Further information concerning Commission meetings may be obtained from the Superintendent, Acadia National Park. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made at least seven days prior to the meeting to: Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, ME 04609–0177; telephone (207) 288–5472.

Dated: October 26, 1994.

Chrysandra L. Walter,

Deputy Regional Director.

[FR Doc. 94–27088 Filed 11–1–94; 8:45 am]

BILLING CODE 4310–70–P

Notice of Intent To Repatriate Cultural Items in the Possession of the USDA Forest Service

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given under provisions of the Native American Graves Protection and Repatriation Act of the intent to repatriate cultural items in the possession of the Cibola National Forest, USDA Forest Service, that meet the definition of "sacred object" under Section 2 of the Act.

The items consist of 30 essentially complete prayer sticks of aspen and willow, 5 fragments of prayer sticks, one red flicker feather, one cornhusk, and a small amount of deteriorating organic matter. The items were reportedly gathered in 1977 or 1978 by an anonymous collector from a cairn/shrine on Mt. Taylor, NM. The items were returned to the possession of the USDA Forest Service in 1991 or 1992. The precise location of the cairn/shrine is not known.

The objects in this collection resemble the prayer sticks described and illustrated in Leslie A. White's *The Acoma Indians* (Smithsonian Institution, 1932: 126–129). Representatives of the Pueblo of Acoma have inspected the items and confirm their identification as prayer sticks. The representatives of the Pueblo of Acoma indicate that prayer sticks are left as offerings at a cairn/shrine located on Mt. Taylor as part of their traditional religious practice. Once left as an offering, the Acoma religion requires that such prayer sticks not be disturbed.

Reginald T. Pasqual, governor of the Pueblo of Acoma, has claimed the prayer sticks and associated materials as sacred objects and requested their repatriation to the Pueblo of Acoma. The Hopi Tribe and the Navajo Nation have been consulted and both support the claim of the Pueblo of Acoma to this particular collection of prayer sticks from Mt. Taylor.

Based on the above mentioned information, officials of the USDA Forest Service have determined, pursuant to 25 U.S.C. 3001 (3)(C), that these items are specific ceremonial objects needed by the traditional religious leaders of the Pueblo of Acoma for the practice of their traditional religion by its present day adherents. Officials of the USDA Forest Service have further determined, pursuant to 25 U.S.C. 3001 (2), that there is a relationship of shared group identity which can be reasonably traced between these items and the Pueblo of Acoma.

This notice has been sent to officials of the Pueblo of Acoma. Representatives of any other Indian tribe which believes itself to be culturally affiliated with these cultural items should contact Dr. Frank E. Wozniak, NAGPRA Coordinator, Southwestern Region, USDA Forest Service, 517 Gold Avenue, SW., Albuquerque, NM 87102, telephone: (505) 842–3238, before December 2, 1994. Repatriation of these sacred objects to the Pueblo of Acoma may begin after that date if no additional claimants come forward.

Dated: October 12, 1994.

Veletta Canouts,

Acting Departmental Consulting Archeologist,

Acting Chief, Archeological Assistance Division.

[FR Doc. 94–27078 Filed 11–1–94; 8:45 am]

BILLING CODE 4310–70–F

Notice of Inventory Completion for Native American Human Remains From Blossvale, NY, in the Possession of the Rome Historical Society, Rome, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003(d), of completion of the inventory of human remains from a site near Blossvale, NY, that are presently in the possession of the Rome Historical Society, Rome, NY.

A detailed inventory and assessment of these human remains has been made by Historical Society curatorial staff, a contracted specialist in physical anthropology, and representatives of the Oneida Indian Nation (of New York)

and the Oneida Tribe of Indians of Wisconsin.

In 1958, Mr. Willard Teelin discovered the human remains along with some associated funerary objects following a flash flood in Fish Creek near Blossvale, NY. The director of the Fort Stanwix Museum, operated by the Rome Historical Society, identified the human remains and associated funerary objects as belonging to the Owasco culture. Mr. Teelin donated the human remains to the Rome Historical Society and retained possession of the associated funerary objects. Mr. Teelin's descendants are not aware of the whereabouts of the associated funerary objects. Osteological examination by Dr. Richard G. Wilkinson, Department of Anthropology, State University of New York-Albany, revealed that two individuals are represented by the human remains. The first individual was approximately 35–40 years old at the time of death. The second individual was approximately 16–20 years old at the time of death. Both are Native American males from the prehistoric period.

Inventory of the human remains and review of the accompanying documentation indicates that no known individuals were identifiable. The Owasco culture is generally recognized in the archeological literature as being ancestral to the five historically known Indian tribes of the Iroquois Confederacy: Mohawk, Oneida, Onondaga, Cayuga, and Seneca. The Blossvale, NY, area in which the human remains were discovered is well within the historical boundaries of lands claimed as Oneida territory. The Oneida Indian Nation (of New York) considers itself to be the descendant of Native Americans who occupied central New York since time immemorial. Oneida Tribe of Indians of Wisconsin has declined to submit a claim for repatriation of these human remains.

Based on the above mentioned information, officials of the Rome Historical Society have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these human remains and associated funerary objects and the Oneida Indian Nation (of New York).

This notice has been sent to officials of the Oneida Indian Nation (of New York) and the Oneida Tribe of Indians of Wisconsin. Representatives of any other Indian tribe which believes itself to be culturally affiliated with these human remains should contact Jon Austin, Executive Director, Rome Historical Society, 200 Church Street, Rome, NY 13440, telephone: (315) 336–5870, before December 2, 1994. Repatriation of these human remains to the Oneida Indian Nation (of New York) may begin after that date if no additional claimants come forward.

Dated: October 11, 1994.

Francis P. MacManamon,

Departmental Consulting Archeologist, Chief, Archeological Assistance Division.

[FR Doc. 94–27079; Filed 11–1–94; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

John Thomas Morrison, D.P.M.; Revocation of Registration

On March 2, 1994, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order on Show Cause to John Thomas Morrison, D.P.M., of Port Orchard, Washington, proposing to revoke his DEA Certificate of Registration, AM2446006, and to deny any pending applications for registration as a practitioner. 21 U.S.C. 823(f) (1992). The basis for the Order to Show Cause was that Dr. Morrison lacked authority to handle controlled substances in the State of Washington. 21 U.S.C. 824(a)(3).

The Order to Show Cause was personally served on Dr. Morrison by DEA investigators on March 2, 1994. More than thirty days have passed since the Order to Show Cause was served on Dr. Morrison. The Drug Enforcement Administration has received no response from Dr. Morrison or anyone purporting to represent him. Therefore, pursuant to 21 CFR 1301.54(d), the Deputy Administrator finds that Dr. Morrison has waived his opportunity for a hearing on the issues raised by the Order to Show Cause. The Deputy Administrator has carefully considered the investigative file in this matter and enters his final order based on the provisions of 21 CFR 1301.54(e) and 1301.57.

The Deputy Administrator finds that on May 7, 1993, the State of Washington Department of Health Podiatric Medical Board (Podiatric Board) found that Dr. Morrison had engaged in unprofessional conduct. As a result the Podiatric Board revoked Dr. Morrison's privilege to practice podiatric medicine and surgery in the State of Washington and revoked his privilege to prescribe controlled substances. Accordingly, Dr. Morrison is not authorized to administer, dispense, prescribe, or otherwise handle controlled substances in the State of Washington wherein he is registered with the DEA.

The Deputy Administrator has consistently held that DEA cannot maintain the registration of a practitioner who is without State authority to handle controlled substances. *Nathaniel S. Lehrman, M.D.*, 59 FR 44780 (1994) and *Franz A. Arakaky, M.D.*, 59 FR 42074 (1994); *see also Elliot Monroe, M.D.*, 57 FR 23246 (1992) and *Bobby Watts, M.D.*, 53 FR 11920 (1987).

Based on the foregoing, the Deputy Administrator of the Drug Enforcement Administration concludes that Dr. Morrison's DEA registration must be revoked. 21 U.S.C. 824(a)(3). Accordingly, the Deputy Administrator, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104 (59 FR 23637), hereby orders that DEA Certificate of Registration, AM2446006, previously issued to John Thomas Morrison, D.P.M., be, and it hereby is, revoked, and that any pending applications for renewal of such registration, be, and they hereby are, denied.

This order is effective November 2, 1994.

Dated: October 26, 1994.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 94–27077 Filed 11–1–94; 8:45 am]

BILLING CODE 4410–09–M

Importation of Controlled Substances; Notice of Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on July 18, 1994, Radian Corporation, 8501 Mopac Blvd., P.O. Box 201088, Austin, Texas, 78720, made written request to the Drug Enforcement Administration to be registered as an importer of Heroin (9200) a basic class of controlled substance in Schedule I.

The firm plans to import a small quantity of this compound to make DEA exempt deuterated and non-deuterated drug reference standards which will be sold to analytical and forensic

laboratories for use in drug testing programs.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than December 2, 1994.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.402 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: October 26, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–27149 Filed 11–1–94; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Robert S. Cunningham or Peter Karasik, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On September 9, 1994, the National Science Foundation published a notice in the **Federal Register** of permit applications received. Permits were issued on October 24, 1994 for the following applications:

Ms. Anne Kershaw, Permit Number: 95WM2–ANI

Adventure Network International

Effective Date: October 24, 1994

Expiration Date: October 24, 1995

Michael K. Egan, Permit Number: 95WM3–POL

Captain, PolarFliteTM

James M. Conn

Pilot, PolarFliteTM

Effective Date: November 10, 1994

Expiration Date: December 15, 1994

Robert S. Cunningham,

Permit Office.

[FR Doc. 94–27105 Filed 11–1–94; 8:45 am]

BILLING CODE 7555–01–M

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On September 23, 1994, the National Science Foundation published a notice in the **Federal Register** of permit applications received. Permits were issued on October 21, 1994 for the following applicants:

William R. Fraser, Permit #95–019

William R. Fraser, Permit #95–020

William R. Fraser, Permit #95–021

Arthur L. DeVries, Permit #95–022

Nadene G. Kennedy,

Permit Office.

[FR Doc. 94–27104 Filed 11–1–94; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Proposed Generic Letter Reconsideration of Nuclear Power Plant Security Requirements for an Internal Threat

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity of public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to issue a generic letter to notify all holders of operating licenses or construction permits for nuclear power reactors that NRC is reconsidering its positions about certain security measures to protect against an internal threat at nuclear power plants. NRC expects recipients to review the information for applicability to their facilities and consider actions, as appropriate. However, suggestions contained in this draft generic letter are not NRC requirements; therefore, recipients are not required to take specific action or make a written response to the NRC. NRC is seeking comment from interested parties regarding both the technical and regulatory aspects of the proposed generic letter presented herein.

NRC will consider comments received from interested parties in the final evaluation of the proposed generic letter and will review the technical position and, when appropriate, analyze the value/impact on licensees. If NRC issues this generic letter, it will become available for public inspection in the Public Document Rooms.

The comment period expires December 2, 1994. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSES: Submit written comments to Chief, Rules Review and Directives Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Written comments may also be delivered to 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m., Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert F. Skelton, (301) 504–3208.

SUPPLEMENTARY INFORMATION:

NRC Generic Letter XXXX: Reconsideration of Nuclear Power Plant Requirements Associated With an Internal Threat.

Addressees

All holders of operating licenses or construction permits for nuclear power reactors.

Purpose

The U.S. Nuclear Regulatory Commission (NRC) is issuing this generic letter to notify you that it is reconsidering its positions concerning certain security measures to protect against an internal threat at nuclear power plants. It is expected that recipients will review the information for applicability to their facilities and consider actions, as appropriate. However, suggestions contained in this generic letter are not NRC requirements; therefore, no specific action or written response is required.

Background

The fitness-for-duty rule (10 CFR Part 26) published on June 7, 1989, required power reactor licensees to implement fitness-for-duty programs. The access authorization rule (10 CFR 73.56) published on April 25, 1991, required power reactor licensees to implement access authorization programs. One objective of these regulations was to ensure the reliability and trustworthiness of persons granted unescorted access to protected areas at power reactor facilities. In light of these regulations, the NRC evaluated security requirements for protection against the insider threat at nuclear power plants to verify that they remain appropriate. The staff discussed the initial results of this review in SECY 92–272, "Re-examination of Nuclear Power Plant Security Requirements Associated With the Internal Threat," of August 4, 1992. The staff then recommended reducing or eliminating certain security requirements that gave marginal protection against the insider threat.

The Commission reviewed SECY 92–292 and asked the staff to re-visit the subject and explore alternatives for allowing reductions in unnecessary or marginally effective security measures. The staff discussed the results of this re-evaluation in SECY 93–326, "Reconsideration of Nuclear Power Plant Security Requirements Associated with an Internal Threat," December 2, 1993.

Description of Circumstances

In a staff requirements memorandum of February 18, 1994, the Commission endorsed staff recommendations to (1) issue generic correspondence informing licensees of the opportunity to revise certain commitments in their security plan and (2) proceed with rulemaking regarding specific changes to reduce or eliminate certain security requirements. This generic letter discusses those areas in which licensees may choose to revise their plans.

Discussion

NRC may accept changes to a licensee security plan in the following four areas:

(I) Vital Area Access Control Measures

NRC may accept the changes to vital area (VA) access control measures in security plans discussed below upon confirmation that (1) certain other site-specific measures are in place or will be implemented to demonstrate (e.g., through contingency drills) a capability, including a protective strategy, to protect against an external adversary after making any of the changes and (2) measures are in place to examine hand-carried packages for explosives using equipment specifically designed for that purpose.

A. Compensatory Measures

1. Eliminate compensatory measures for failure of vital area mechanical lock hardware if the access control hardware and alarms are operable.

2. Extend the timeliness requirements for implementing compensatory measures for *any* malfunctioning element of the vital area access control system from 10 minutes to a period similar to that which technical specifications permit for safety equipment to be out of service while the plant is in Mode 1 until required to be in Mode 3.

The licensee could extend the time to implement compensatory measures only if either the VA door lock or alarms are operable. The most restrictive limiting condition for the timeliness of the compensatory measure(s) would be the most restrictive safety equipment in the vital areas accessed by the VA door needing compensatory measures.

B. Maintenance of Discrete Vital Area Access Lists

Eliminate separate access authorization lists for *each* vital area of the facility. As an alternative, maintain a single list of persons who have access to any vital area. This list would have to be revised as status of persons changes in order to maintain its accuracy, especially for removing vital area access authorization from individuals.

C. Alarm Response

Modify the response to vital area access control alarms (doors). Response would only be needed to vital area access control alarms that coincide with an unresolved alarm at the protected area perimeter, a known intrusion, or a constant alarm, such as that caused by an open door.

D. Locked Condition of Door

Although locking mechanisms and access control systems, including door alarms, would be retained, doors to vital areas could be left unlocked. A licensee choosing this option would be expected to have the capability to remotely lock the door(s) from both alarm stations, as necessary, in response to an external threat. Licensees choosing this option would be expected to demonstrate, as part of the demonstration of their capability to protect against an external adversary, the ability to remotely lock doors in time to delay the adversary where delay was essential in the protective strategy. Access control systems retained on vital area doors would continue to maintain a record of personnel access and generate alarms if the door was open without a proper access.

The process for licensees to revise their security plans to implement the changes to security measures in vital areas will depend on the content of their present security plans. Since these changes would reduce slightly the effectiveness of the security program, most changes would need to be processed in accordance with the provisions of 10 CFR 50.90. Some of the changes may be processed by an exemption request or in accordance with 10 CFR 50.54(p). If appropriate, changes in security plans should include commitments to the measures described in paragraph (I) above. To ensure unrestricted emergency access, the NRC staff notes the advantages of (1) having the ability to remotely unlock doors to vital areas from each alarm station, (2) ensuring that malfunctions result in doors failing unlocked rather than locked, and (3) allowing all operators and auxiliary operators to carry metal keys that can override keycard-operated lock mechanisms.

(II) Access Search of On-duty Armed Security Guards

NRC may accept changes to allow armed security officers who (1) are on duty and carry a weapon in accordance with assigned duties, (2) have already been searched during their current shift, and (3) have left the protected area on official business, to reenter the protected area without being subject to the metal detector searches (but still be subjected to explosive searches). If search equipment is a single unit containing both metal and explosive detection equipment, alarms from the metal detector may be disregarded. This

change could be made to security plans in accordance with 10 CFR 50.54(p).

(III) Containment Access Control Measures

NRC may accept changes to allow persons other than security personnel, provided they are appropriately trained in access control procedures in accordance with the security plan, to control access for personnel and materials entering the containment any time frequent access is permitted to the containment. This change could be made to security plans in accordance with 10 CFR 50.54(p).

(IV) Alternative Measures for Control of Security Badges

NRC may accept changes to allow for alternative approaches for accountability of picture badges used for unescorted access so that certain types of badges may be taken outside the protected area. Alternative approaches need to include the ability to ensure positive identification of individuals upon entry to the protected area and to ensure the badge is disabled of its access function when taken out of the protected area. For employees, such changes can be made under 10 CFR 50.54(p) because the regulations currently allow licensee employees to take badges off site. Changes to security plans to allow contractors to take security picture badges off site would require a request for exemption from the provisions of 10 CFR 73.55(d)(5). Coincident with receiving approval of the exemption request, the licensee would be able to implement the change in accordance with 10 CFR 50.54(p).

This generic letter requires no specific action or written response.

Dated at Rockville, Maryland, this 24th day of October, 1994.

For the Nuclear Regulatory Commission.

Brian K. Grimes,

Director, Division of Project Support, Office of Nuclear Reactor Regulations.

[FR Doc. 94–27127 Filed 11–1–94; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 69th meeting on November 10, 1994, in Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed to discuss information the release of which would constitute a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552b(c)(6).

The agenda for the subject meeting shall be as follows;

Thursday, November 10, 1994—8:30 A.M. until 6:00 P.M.

During this meeting the Committee plans to consider the following:

A. *Meet with the Commission*—The Committee will talk with the Commission about ACNW reports on:

• The Department of Energy's Proposed Program Approach in the Civilian Radioactive Waste Management Program.

• The NRC staff's Research Program in the Area of High-Level Radioactive Waste.

• The NRC staff's Capability in Nuclear Waste Disposal Facility Performance Assessment,

and will discuss other items raised by Commissioners during the meeting.

B. *Meet with the Director, Division of Waste Management, Office of Nuclear Materials Safety and Safeguards*—The Director will provide information to the Committee on current waste management issues.

• C. *Low-Level Waste Research*—Representatives of the NRC Office of Nuclear Regulatory Research (RES) will provide information on NRC staff user needs in the area of low-level radioactive waste (LLW) research. Topics may include the status of the LLW RES Program Plan (NUREG–1380) and the status of the current user need statement. Other LLW research issues may be considered.

D. *Preparation of ACNW Reports*—The Committee will consider preparation of ACNW reports on:

• The Uses and Limitations of Groundwater Dating Methods,

• NRC Research in the Low-Level Radioactive Waste Area,

• Substantially Complete Containment and the Feasibility for Trade Offs,

• LLW Disposal Site Ownership,

among other issues raised during this and previous meetings.

E. *Committee Activities/Future Agenda*—The Committee will consider topics proposed for future consideration by the full Committee and working groups. The Committee will also discuss organizational and personnel matters related to ACNW members and ACNW staff. A portion of this session may be closed to public attendance to discuss information the release of which would constitute a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552b(c)(6).

F. *Miscellaneous*—Discuss miscellaneous matters related to the conduct of Committee activities and organizational activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on October 7, 1994 (59 FR 51219). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the ACNW Executive Director, Dr. John T. Larkins, as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the ACNW Executive Director prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACNW Executive Director if such rescheduling would result in major inconvenience.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the ACNW Executive Director, Dr. John T. Larkins (telephone 301/415–7360), between 7:30 a.m. and 4:15 p.m. EST.

Dated: October 27, 1994.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 94–27130 Filed 11–1–94; 8:45 am]

BILLING CODE 7590–01–M

Probabilistic Risk Assessment (PRA) Implementation Plan Workshop

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public workshop.

SUMMARY: The Nuclear Regulatory Commission (NRC) will conduct a public workshop on December 2, 1994, to discuss the Commission's

Probabilistic Risk Assessment (PRA) Implementation Plan. The PRA Implementation Plan was developed to ensure that the increased use of PRA methods and technology in nuclear regulatory activities would be implemented in a consistent and predictable manner that promotes regulatory stability and efficiency. The purpose of the workshop is to inform the public of NRC activities related to increasing the use of PRA methods and techniques in regulatory applications and receive public comments on these activities. The principal focus of this workshop will be PRA applications for commercial power reactors and while the NRC presentations will be broad in nature, NRC staff representatives will be present to address specific areas of concern or specific line items in the PRA Implementation Plan.

DATES: November 28, 1994—Advance notification of intent to attend the workshop, desire to comment or make a presentation during the workshop, or both, is requested by the NRC. Participants are encouraged to submit written comments, presentation summaries, or both to the staff by this date.

December 2, 1994—The workshop will be held at the NRC Auditorium from 8:30 am to 4:30 pm.

January 20, 1995—All written comments on matters covered by the workshop received by this date will be considered by the staff. Written comments received after January 20, 1995, will be considered to the extent practical.

Written comments on the PRA Implementation Plan will be accepted before, during, and after the workshop. Advance comments, which could serve to enhance the effectiveness of the workshop are particularly solicited.

ADDRESSES: The workshop will be held in the NRC Auditorium. The NRC Auditorium is located on an underground level between the One White Flint North Building and the Two White Flint North Building at 11545 Rockville Pike, Rockville, Maryland 20852. The NRC buildings are located across from the entrance to the White Flint Metro Station.

Notification of intent to attend, desire to make a statement or presentation should be sent to Thomas G. Hiltz, Office of Nuclear Reactor Regulation, Mail Stop O–11–F–23, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. These notifications can also be transmitted via facsimile or telephone. The facsimile number is (301) 504–2279 and the telephone number is (301) 504–1105. The facsimile cover sheet should contain the address information listed above.[1]

Copies of documents cited in the supplementary Information section are available for inspection and/or for reproduction for a fee in the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC 20037. Copies of NUREGs cited in this document may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies are also available for purchase from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

In addition, copies of the following documents can be obtained electronically by accessing the NRC electronic bulletin board system (BBS) Tech Specs Plus:

(1) SECY–94–218, "Proposed Policy Statement on the Use of Probabilistic Risk Assessment Methods in Nuclear Regulatory Activities";

(2) SECY–94–219, "Proposed Agency-Wide Implementation Plan for Probabilistic Risk Assessment (PRA)";

(3) the Commission's Staff Requirements Memorandum (SRM) of September 13, 1994 concerning the August 30, 1994 Commission meeting; and

(4) the Commission's SRM of October 4, 1994 on SECY–94–218.

These four WordPerfect 5.1 documents are located in the BBS MISC library directory under the single filename "PRAPLAN.ZIP". The BBS operates 24 hours a day and can be accessed through a toll-free number, 1–800–679–5784, at modem speeds up to 9600 baud with communication parameters set at 8 data bits, no parity, 1 stop bit, full duplex, and using ANSI terminal emulation.

Written comments may be sent to the Chief, Rules Review and Directives Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Hand-deliver comments to Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm on Federal workdays.

Copies of comments received and relevant reference documents may be examined at the NRC Public Document Room at 2120 L Street NW. (Lower Level), Washington, DC, between the hours of 7:45 am and 4:15 pm on Federal workdays.

FOR FURTHER INFORMATION CONTACT: Thomas G. Hiltz, Office of Nuclear Reactor Regulation, Mail Stop OWFN 11–F–23, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 504–1105.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Tentative Agenda.
III. Workshop Content and Structure.

I. Background

The Proposed PRA Policy Statement

To establish top-level guidance on the use of PRA in nuclear regulatory activities and aid in development of a detailed PRA Implementation Plan, the NRC staff proposed a policy statement regarding the use of PRA in regulatory activities. The policy statement would articulate the Commission's position on the role of PRA in various regulatory programs and would communicate that position to the NRC staff, the public, licensees, and applicants for licenses.

The NRC staff discussed its recommendations for a PRA policy statement in SECY–94–218, "Proposed Policy Statement on the Use of Probabilistic Risk Assessment Methods in Nuclear Regulatory Activities." In SECY–94–218, the staff stated that an overall policy on the use of PRA in nuclear regulatory activities should be established so that the many potential applications of PRA can be implemented in a consistent and predictable manner that promotes regulatory stability and efficiency. In addition, the staff stated that the use of PRA technology in NRC regulatory activities should be increased. The increased use of PRA methods and technology is intended to complement and enhance deterministic-based regulations by using PRA technology in activities where methods and data are well understood. The staff believes the increased use of PRA technology would lead to improved risk-effective safety decisions and more focused and efficient use of NRC staff and industry resources.

The Commission concludes that increased use of PRA techniques as an integral part of the regulatory decision-making process is now justified. Consequently, the Commission has proposed a policy to encourage the use

[1] Letter or facsimile notifications should contain, and people giving notification via telephone should be prepared to provide, the following pre-registration information: full name of participants/attendees, name of organization or business, mailing address, daytime telephone, facsimile number, a statement concerning whether the person or organization will provide comments or a presentation during the workshop, a statement concerning whether the person or organization intents to provide written comments before or after the workshop, and any specific questions or comments that the participant or organization would like to be considered and/or addressed at the workshop.

of PRA and to expand the scope of PRA applications in nuclear regulatory matters to the extent supported by the state-of-the-art methods and data. An important aspect of the expanded use of PRA technology would be a strengthening of NRC's defense-in-depth philosophy by helping to identify and address weaknesses or overly conservative regulatory requirements for the physical and functional barriers. In its Staff Requirements Memorandum of October 4, 1994, the Commission directed the staff to revise the proposed policy statement and publish the proposed policy statement for public comment. The proposed PRA Policy Statement is scheduled to be published in the **Federal Register** in November 1994 for a 60-day public comment period.

The PRA Implementation Plan

The PRA Implementation Plan was developed in parallel with the Proposed PRA Policy Statement to ensure that the increased use of PRA methods and technology in nuclear regulatory activities would be implemented in a consistent and predictable manner that promotes regulatory stability and efficiency. This PRA Implementation Plan is a "living" document that provides the framework for NRC management oversight of the use of PRA methods and technology in regulatory activities.

As previously discussed, PRA methods have been applied successfully in numerous nuclear regulatory activities and have proven to be a valuable complement to deterministic engineering approaches. However, the increased use of PRA in nuclear regulatory activities has broad implications and could result in changes in many areas associated with our current regulatory framework. These areas, considered by the staff in developing the draft PRA Implementation Plan, may include: Changes to regulations, guidance documents and inspection programs, a substantial shift in staff resources including recruiting and training programs to provide the necessary PRA expertise, an increased emphasis on continued development of PRA methods and decision-making tools, and enhanced reliability data collection. As discussed in SECY-94-218, the expanded use of PRA in nuclear regulatory activities may raise additional policy, technical, and legal issues that will be considered in subsequent modifications to the PRA Implementation Plan.

Principal Issues Related to Increasing Use of Risk Assessment

Four principal issues associated with applying risk assessment methods and techniques to regulatory applications are highlighted in the PRA Implementation Plan. These issues included development of regulatory decision-making criteria, collection and analysis of equipment and human performance data, development and use of consistent PRA models and methods, and development of a systemic PRA training program.

To ensure consistent and appropriate decision-making that incorporates PRA methods and results, it is crucial that coherent and clear criteria are applied. As part of this plan, decision criteria will be established that address the interdependence of probabilistic risk and deterministic engineering principles. The process of developing these criteria will involve communications among the NRC, the nuclear industry, and the public to ensure an understanding by all parties of the role of PRA methods and results in NRC's risk management efforts.

The NRC staff uses equipment performance data in the conduct of PRAs, reliability analyses, component failure studies, plant aging studies, identification and resolution of generic issues, preparation for inspections, and reviews of technical specifications change requests. For these purposes, the staff uses generic data supplemented with a limited amount of plant-specific data. The use of the generic data can be problematic because the data have not been verified or updated and do not differentiate between plant-to-plant variations in performance or changes in performance as reactor plants age. The ad hoc collection of plant-specific data is costly and inefficient.

The availability of human performance data is even more problematic. One reason is the lack of established and accepted human performance analysis methods and models upon which to base the collection of human performance data. This is particularly important in the analysis of operator performance in response to events during which both acts of omission and commission may occur. Human reliability methods and data are currently the focus of research and limited evaluations of human performance issues raised by analysis of operating reactor events.

As the NRC and the nuclear reactor industry move toward greater use of PRA, the need for better data on human performance, plant-specific safety system availability data (at the system train level), and equipment reliability data will be required to continue to increase the role of PRA in the regulatory decision-making process. Increased availability of data on equipment and human performance is very important to implementing many risk-based regulation initiatives. For example, this information is essential for implementing the maintenance rule and in supporting the development of risk-based technical specifications.

The NRC staff recognizes the need to collect equipment and human performance data. This information, derived largely from operating experience, will continue to provide a source of credible performance data for NRC use in the regulatory process.

The NRC PRA Working Group identified the need for the development and use of consistent PRA models and methods. Several tasks that are now being undertaken include the development of more user-friendly computer interfaces; the development of low-power and shutdown models, external events models, and Level 2/3 PRA models compatible with the needs of NRC events assessment staff; and the development of methods for consistently identifying the appropriate detailed PRA model for use in the analysis of individual events or issues.

It is important to note that not all of the NRC's risk management activities lend themselves to a risk analysis approach that uses a probabilistic, fault free methodology. The NRC recognizes that a single approach to risk management is not appropriate. As part of the PRA Implementation Plan the NRC will develop and validate risk assessment models and methods.

Another issue is the training of the staff who will not be directly working with PRA methods. As the NRC shifts to grater use of, and reliance on, PRA methods and risk-based regulation, all technical staff members, including inspectors, will need to develop an understanding of the strengths and weaknesses of PRA methods and their use. The PRA Implementation Plan includes an extensive training program. This training program is based on the systems approach to training, which includes completing job task analyses, developing learning objectives, developing and delivering courses, evaluating trainee mastery of objectives, and modifying the PRA training program as necessary. Because the number of NRC staff members who will need training is large, a large resource commitment over the next several years will be required.

The PRA Implementation Plan will require users and developers of the new

methods to have significant experience in PRA methods and statistics. It will take time for these staff members to gain the necessary experience. Some of the knowledge and skills needed to do this work can be obtained though traditional training. However, on-the-job training, classroom instruction, and industrial experience will be needed in order to acquire some of the required knowledge and experience. Recruiting of outside experts and intensified development of current staff members will likely be necessary to gain this staff experience. This process will take several years to accomplish and will be a major factor in the success of the PRA Implementation Plan and in establishing the pace of its implementation.

II. Tentative Agenda

December 2, 1994

7:30 am Registration
8:30 am Introduction
8:45 am PRA Policy Statement Overview (NRC)
9:15 am Implementation Plan Overview (NRC)
10:00 am Break
10:15 am Industry Interactions (NRC/Industry)
11:45 am Lunch
1:00 pm Participant Presentations/Panel Discussion in Response to Participant Comments
2:45 pm Break
3:00 pm Participant Presentations/Panel Discussion in Response to Participant Comments (cont'd)
4:00 pm Summary and Conclusions
4:30 pm Adjourn

III. Workshop Content and Structure

The workshop is structured to include NRC staff presentations during the morning and to allow interested parties to make presentations during the afternoon. An opportunity for questions and comments following presentations is planned.

In the afternoon session, participants will be allowed to express their views and make presentations. Participants who will be making presentations will be scheduled in the order in which they notified the staff of their intention to make a presentation. Comments will be taken from parties in the order in which they notified the staff of their intent to comment. The order of comment will be:

(1) Parties who notified the staff by November 28, 1994;

(2) Parties registering to comment before 8:30 a.m. the day of the workshop; and

(3) Parties who have not given prior notice.

Organizations that notify the staff by November 28, 1994, of their intent to give a presentation will be limited to 20 minutes. Otherwise organization and individual presentations and comments will be limited to 5 minutes. These time limits may be adjusted depending on the number of presentations and comments. The workshop will be transcribed, and the transcript will be available in the NRC Public Document Room.

To foster meaningful discussions during this session and to aid participants in preparing their presentations and comments, participants should consider the following set of questions:

- What additional areas should be considered regarding the increased use of PRA in regulatory applications?
- What areas currently in the PRA Implementation Plan require additional emphasis? What areas are emphasized too much?
- Is the overall impact of the PRA Policy Statement on regulatory activities clearly evident by the activities in the PRA Implementation Plan?
- What impact will the PRA Policy Statement and the PRA Implementation Plan have on those organizations that the NRC regulates?

Dated in Rockville, Maryland, this 27th day of October 1994.

For the Nuclear Regulatory Commission.

Edward J. Butcher,

Chief, Probabilistic Safety Assessment Branch, Office of Nuclear Reactor Regulation.

[FR Doc. 94–27125 Filed 11–1–94; 8:45 am]

BILLING CODE 7590–01–M

Regulatory Guides; Issuance, Availability

The Nuclear Regulatory Commission has issued revisions to three guides in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Revision 30 of Regulatory Guide 1.84, "Design and Fabrication code Case Acceptability, ASME Section III," and Revision 30 of Regulatory Guide 1.85, "materials Code Case Acceptability, ASME Section III, Division 1," list those code cases that are generally acceptable to the NRC staff for implementation in the licensing of light-water-cooled nuclear power plants. Revision 11 of Regulatory Guide 1.147, "Inservice Inspection code Case Acceptability, ASME Section XI, Division 1," lists those code cases that are generally acceptable to the NRC staff for implementation in the inserve inspection of light-water-cooled nuclear power plants. These three guides are periodically revised to update the listings of acceptable code cases and to include the results of public comment and additional staff review.

Comments and suggestions with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC s0555.

Regulatory guides are available for inspection at the Commission's Public document Room, 2120 L Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contracting the Superintendent of Documents, U.S. Government Office, Post Office Box 37082, Washington, DC 20013–7082, telephone (202) 512–2249 or (202) 512–2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

(5 U.S.C. 552(a)).

Dated at Rockville, Maryland, this 11th day of October, 1994.

For the Nuclear Regulatory Commission.

Eric S. Beckjord,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 94–27182 Filed 11–1–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–250 and 50–251]

Florida Power and Light Company; Turkey Point Unit Nos. 3 and 4; Notice of Partial Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (NRC) has denied a portion of an amendment request by the Florida Power and Light Company (FPL or the licensee) for an amendment to Facility Operating License Nos. DPR–31 and DPR–41, issued to the licensee for operation of the Turkey Point Plant.

Units 3 and 4, located in Dade County, Florida. Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on March 30, 1994 (59 FR 14889).

The purpose of the licensee's amendment request was to revise the Technical Specification (TS) to delete the frequencies from the audits performed under the cognizance of the Company Nuclear Review Board (CNRB) and remove the audit of the emergency and security plans and implementing procedures from TS. The audits would be performed at the frequency specified in the FPL Topical Quality Assurance Report (TQAR). Some audits would be performed less frequently (biennial rather than annual in most cases).

The NRC staff has concluded that the portion of the licensee's request regarding audits of the Fire Protection Program cannot be granted for the reasons stated in letter dated October 26, 1994. The licensee was notified of the Commission's denial of the proposed change by letter dated October 26, 1994.

By December 2, 1994, the licensee may demand a hearing with respect to the denial described above. Any person affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. A copy of any petitions should also be sent to the office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Harold F. Reis, Esquire, Newman and Holtzinger, P.C., 1615 L Street, NW., Washington, DC 20036, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendments dated February 18, 1994, as supplemented by letter dated August 5, 1994, and (2) the Commission's letter to the licensee dated October 26, 1994. These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Florida International University, University Park, Miami, Florida 33199. A copy of Item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland this 26th day of October, 1994.

For the Nuclear Regulatory Commission.

Mohan C. Thadani,

Acting Director, Project Directorate II-2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94-27129 Filed 11-1-94; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

SES Performance Review Board

AGENCY: Office of personnel Management.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members of the OPM Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Mark D. Reinhold, Office of Personnel, Administration Group, Office of Personnel Management, 1900 E Street, NW, Washington, DC 20415, (202) 606-2420.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

Office of Personnel Management.

James B. King,

Director.

The following have been designated as regular members of the Performance Review Board of the Office of Personnel Management:

Lorraine A. Green, Deputy Director.
Michael C. Cushing, Chief of Staff.
William E. Flynn, III, Associate Director, Retirement and Insurance Group.
Mary Lou Lindholm, Associate Director, Administration Group.
Leonard R. Klein, Associate Director, Career Entry Group.
Steven R. Cohen, Regional Director, Chicago Region.
Barbara L. Fiss, Associate Director, Personnel Systems and Oversight Group.
Patricia W. Lattimore, Associate Director, Investigations Group.
Carol J. Okin, Director, Human Resources Development Group.

[FR Doc. 94-27106 Filed 11-1-94; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-34899; File No. SR-CBOE-94-30]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Storage of Customer Account Records

October 26, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] on September 7, 1994, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission") a proposal to amend paragraph (c) of CBOE Rule 9.8, "Supervision of Accounts," and Interpretation and Policy .03[3] to CBOE Rule 9.8 to enable members' supervisory offices to maintain certain customer account information at off-site locations as long as the records are readily accessible and promptly retrievable.[4]

The proposal was published for comment in Securities Exchange Act Release No. 34711 (September 23, 1994), 59 FR 50304 (October 3, 1994). No comments were received on the proposal.

Currently, CBOE Rule 9.8(c) provides that background and financial information of customers who have been approved for options transactions must be maintained at both the branch office servicing the customer's account and at the principal supervisory office with jurisdiction over the branch office. In addition, copies of options customer account statements over the most recent six months must be maintained at both the branch office supervising the

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1993).

[3] Interpretation and Policy .03 requires members to maintain, at the principal supervisory office with jurisdiction over the office servicing a customer's account, information to permit review of each customer's account to determine (1) the compatibility of options transactions with investment objectives and with the types of transactions for which the account was approved; (2) the size and frequency of options transactions; (3) commission activity in the account; (4) profit or loss in the account; (5) undue concentration in any options class or classes and (6) compliance with the provisions of Regulation T of the Federal Reserve Board.

[4] On October 25, 1994, the CBOE submitted a letter indicating that the Exchange generally expects to receive a hard copy of any document maintained at an off-site location on the business day following the request. *See* Letter from Lawrence J. Breshahan, Assistant Vice President, Department of Compliance, CBOE, to Yvonne Fraticelli, Attorney, Options Branch, Division of Market Regulation, Commission, dated October 24, 1994 ("October 24 Letter").

accounts and at the principal supervisory office with jurisdiction over that branch. The CBOE proposes to amend CBOE Rule 9.8(c) and Interpretation and Policy .03 to enable members' supervisory offices to maintain certain customer account information at off-site locations as long as the records are readily accessible and promptly retrievable.

The CBOE states that the substance of CBOE Rule 9.8(c) appears uniformly in the rules of the other options exchanges and in the options account rules of the National Association of Securities Dealers, Inc. ("NASD"). According to the CBOE, on-site storage in major financial centers is expensive, and, in today's market environment, automated and secure facilities for data storage and retrieval make it unnecessary to require on-site storage. The CBOE states that, given those realities, the Options Self-Regulatory Council ("OSRC")[5] has recommended that record retention requirements be relaxed and that the exchanges and the NASD amend their rules to permit supervisory offices to store customer records off-premises as a matter of routine practice.[6] The CBOE concurs with the OSRC's recommendation and believes that its proposal will provide the CBOE's members with the opportunity to discharge their supervisory responsibilities more efficiently and more cost-effectively.

The CBOE believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5), in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.

The Commission believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) in that it is designed to prevent fraudulent and manipulative acts and practices, to facilitate transactions in securities, and to protect investors and the public interest.[7]

Specifically, by allowing off-site storage of customer account information maintained at supervisory offices, the Commission believes that the proposal should provide the CBOE's members with a cost-effective means to utilize computers, facsimile machines, optical disks, and other technology to store the required customer account information off-site while ensuring that member firms will continue to have easy access to all of the customer account information necessary to discharge their supervisory responsibilities. In this regard, the proposal provides that options customer account information stored off-site must be "readily accessible and promptly retrievable,"[8] thereby preserving the Exchange's ability to access and investigate customer account records. The Commission notes that the designated options examining authorities, including the CBOE, have agreed to make periodic examinations of the document retention and supervisory practices of firms using off-site storage arrangements. Thus, the Commission believes that the proposal strikes a reasonable balance between the CBOE's interest in allowing member organizations to reduce the cost of storing customer account information and ensuring that the information continues to be available for supervisory purposes.

In addition, the Commission believes that it is reasonable for the CBOE to allow off-site storage of customer account information maintained at supervisory offices, but not of account information stored at branch offices, because branch offices are responsible for the day-to-day administration of customer accounts and require immediate access to account information. For example, by continuing to require branch offices to store customer account information on-site, the proposal facilitates broker compliance with the suitability requirements applicable to options customers.

It is therefore ordered, Pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (File No. SR-CBOE-94-30) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Jonathan G. Katz,

Secretary.

[FR Doc. 94-27166 Filed 11-1-94; 8:45 am]

BILLING CODE 8010-01-M

[5] The OSRC, which was created pursuant to a plan submitted by the options exchanges under Rule 17d-2 ("17d-2 plan") under the Act, includes representatives from each of the registered options exchanges and the NASD. The 17d-2 plan was developed by the exchanges and approved by the Commission to reduce regulatory duplication and to coordinate solutions to options-related sales practice issues common to firms which are members of two or more self-regulatory organizations.

[6] In connection with the OSRC's recommendation, the designated options examining authorities, including the CBOE, have committed to periodic examinations of the document retention and supervisory practices of firms using off-site storage arrangements.

[7] 15 U.S.C. 78f(b)(5) (1988).

[8] *See* October 24 Letter, *supra* note 4.

[9] 15 U.S.C. 78s(b)(2) (1982).

[10] 17 CFR 200.30-3(a)(12) (1993).

[Release No. 34-34895; File Nos. SR-MCC-94-10 and SR-MSTC-94-11]

Self-Regulatory Organizations; Midwest Clearing Corporation and Midwest Securities Trust Company; Notices of Filing and Immediate Effectiveness of Proposed Rule Changes That Modify Certain MST Communications System Fees

October 25, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on September 16, 1994, the Midwest Clearing Corporation ("MCC") and Midwest Securities Trust Company ("MSTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes (File Nos. SR-MCC-94-10 and SR-MSTC-94-11) as described in Items I, II, and III below, which Items have been prepared mainly by MCC and MSTC, self-regulatory organizations. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

[1] 15 U.S.C. § 78s(b)(1) (1988).

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

MCC and MSTC propose to amend the portions of their services and schedules of charges relating to the MST Communications System [2] by: (1) changing the name of the system from the "MST Communications System" to the "MST Link"; (2) merging and repricing the services previously available and priced under the MSTC Link Service into the general list of services and fees under the MST Link Service; [3] and (3) imposing a charge for terminal IDs of $25 per terminal ID for all terminal IDs after the initial ID.[4] Refer to Exhibit A for the text of the proposed fee changes.

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, MCC and MSTC included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. MCC and MSTC have prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

MCC and MSTC state that the purpose of the proposed changes is to change the pricing structure of portions of the MST Communications System Service. MCC and MSTC further state that the proposed rule changes are consistent with Section 17A(b)(3)(D) of the Act because they provide for the equitable allocation of reasonable fees and other charges among participants using their facilities.[5]

(B) Self-Regulatory Organizations' Statement on Burden on Competition

MCC and MSTC believe that the proposed rule changes will not have any impact on competition and that they will not impose any burden on competition.

(C) Self-Regulatory Organizations' Statment on Comments on the Proposed Rule Change From Members, Participants or Others

MCC and MSTC have not solicited or received any comments on the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

The foregoing rule changes have become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [6] and Rule 19b-4(e)(2) thereunder [7] because the proposals establish or change dues, fees, or other changes imposed by the self-regulatory organizations. At any time within sixty days of the filing of such rule changes, the Commission may summarily abrogate such rule changes if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commisison, 450 Fifth Street, N.W., Washington D.C. 120549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the principal offices of MCC and MSTC. All submissions should refer to File Nos. SR-MCC-94-10 and SR-MSTC-94-11 and should be submitted by November 23, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

Exhibit A

The text of the proposed rule changes are as follows:

(Additions *italicized;* deletions [bracketed])

MST [COMMUNICATIONS SYSTEM] *LINK*

Participants may use the MST [Communications System] *Link* to obtain information regarding current MCC/MSTC positions (Inquiry); retrieve MST System reports in house (Report Retrieval); and input instructions to MCC/MSTC. Participants may use the MST [Communications System] *Link* either via a Leased Line or a Dial Up interface.

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[2] The MST Communications System is a combined computer system used by MCC and MSTC and is their primary computer system. Telephone conversation between David T. Rusoff, Attorney, Foley & Lardner, and Thomas C. Etter, Jr., Senior Counsel, Division of Market Regulation, Commission (September 19, 1994).

[3] The MSTC Link Service, part of an existing telecommunications system, will be consolidated into the new MST Link. *Id.*

[4] The abbreviation "ID" in this context refers to computer identification numbers. *Id.*

[5] 15 U.S.C. § 78q-1(b)(3)(D) (1988).

[6] 15 U.S.C. § 78s(b)(3)(A)(ii) (1988).

[7] 17 CFR 240.19b-4(e)(4) (1994).

[8] 17 CFR 200.30-3(a)(12) (1994).

Services:		
[Full Access Service:]	Leased Line	Dial Up
* * * *	* *	*
Dedicated Line Charge	$440.00/month	[$86.00/mo.]
* * * *	* *	*
Dial Up [Additional Port Charge[s]		$86.00/mo.
Dial Up [Back Up] Connect Time [Charge]		$5.25/hr.
* * * *	* *	*
Terminal ID (first ID free—included with access)	*$25.00/term ID*	*$25.00/term ID*
[MSTC Link		
Access Fee (Dial Back Up incl.)		$494.00
Line Charge		$440.00
Long Distance Line Charge		$0.43/road mile
Terminal Charge		$200.00/terminal]
* * * *	* *	*

All Printer IDs are included in the price of the access fee. Multiple User IDs may be associated with Terminal ID. However, simultaneous access is restricted to the number of Terminal IDs.

[FR Doc. 94–27167 Filed 11–1–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34900; File Nos. SR–Amex–94–40, SR–NYSE–94–33, and SR–Phlx–94–44]

Self-Regulatory Organizations; Order Granting Accelerated Approval of Proposed Rule Changes by the New York Stock Exchange and the Philadelphia Stock Exchange and Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the American Stock Exchange Relating to an Extension of Certain Market-Wide Circuit Breaker Provisions

October 26, 1994.

I. Introduction

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act),[1] and Rule 19b–4 thereunder,[2] on October 5, 1994, the American Stock Exchange, Inc., on September 22, 1994, the New York Stock Exchange, Inc. ("NYSE"), and on September 12, 1994, the Philadelphia Stock Exchange, Inc. ("Phlx"), respectively (each individually referred to herein as an "Exchange" and two or more collectively referred to as "Exchanges"), submitted to the Securities and Exchange Commission ("Commission") proposed rule changes relating to extending certain market-wide circuit breaker provisions. On September 30, 1994, the NYSE and the Phlx each filed an Amendment No. 1 to their respective proposals.[3] The NYSE proposal was published for comment in the **Federal Register** on October 14, 1994,[4] and the Phlx proposal was published for comment in the **Federal Register** on October 14, 1994.[5] No comments were received on either of these proposed rule changes. This order approves the Exchanges' proposals and the Exchanges' Amendments.

II. Description of Proposals

In 1988, the Commission approved circuit breaker proposals by the Exchanges.[6] In general, the Exchanges' circuit breaker rules provide that trading would halt for one hour if the Dow Jones Industrial Average (DJIA") were to decline 250 points from its previous day's closing level and, thereafter, trading would halt for an additional two hours if the DJIA were to decline 400 points from its previous day's close.[7] These circuit breaker mechanisms are an important part of the measures adopted by the Exchanges to address market volatility concerns in the wake of the October 1987 Market Break.

The Commission approved the Amex, Boston Stock Exchange, Inc. ("BSE"), Midwest Stock Exchange, Inc. ("MSE"), NYSE, Phlx and National Association of Securities Dealers' ("NASD")[8] circuit breaker proposals on a pilot program basis. Circuit breaker proposals by the Chicago Board Options Exchange, Inc. ("CBOE"),[9] the Pacific Stock Exchange, Inc. ("PSE")[10] and the Cincinnati Stock Exchange, Inc. ("CSE")[11] were approved by the Commission on a permanent basis rather than as a pilot program. In 1989, the Exchanges and the NASD filed, and the Commission approved, proposals to extend their respective pilot programs.[12] Subsequently, in 1990, 1991, 1992, and 1993, the Amex, NYSE, and Phlx filed,

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

[3] NYSE Amndment No. 1 requests that the Commission approve the NYSE's proposal on an accelerated basis pursuant to section 19(b)(2) of the Act to allow its circuit breaker provision to continue uninterrupted. In addition, NYSE Amendment No. 1 corrects a typographical error appearing in Section I of Exhibit 1 to its filing by replacing 1994 with 1995. *See* letter from Brian M. McNamara, Vice President, Market Surveillance, NYSE, to Sharon Lawson, Assistant Director, Division of Market Regulation ("Division"), Commission, dated September 29, 1994 ("NYSE Amendment No. 1"). In Phlx Amendment No. 1, the Phlx also requests accelerated approval of its proposal pursuant to Section 19(b)(2) of the Act. *See* letter from Gerald D. O'Connell, First Vice President, Regulation and Trading Operations, Phlx, to Michael Walinskas, Branch Chief, Division, Commission, dated September 30, 1994 ("Phlx Amendment No. 1").

[4] *See* Securities Exchange Act Release No. 34799 (October 6, 1994), 59 FR 52204.

[5] *See* Securities Exchange Act Release No. 34800 (October 6, 1994), 59 FR 52205.

[6] *See e.g.*, Securities Exchange Act Release Nos. 26386 (December 22, 1988), 53 FR 52904 (Phlx); and 26198 (October 19, 1988), 53 FR 41637 (Amex and NYSE).

[7] If the 250-point trigger were reached within one hour of the scheduled close of trading for a day, or if the 400-point trigger were reached within two hours of the scheduled close of the trading day, trading would halt for the remainder of the day. If, however, the 250-point trigger were reached between one hour and one-half hour before the scheduled closing, or if the 400-point trigger were reached between two hours and one hour before the scheduled closing, the Exchanges would have the authority to use abbreviated reopening procedures either to permit trading to reopen before the scheduled closing or to establish closing prices.

[8] *See* Securities Exchange Act Release No. 26198 (October 19, 1988), 53 FR 41673 (order granting temporary approval to Amex, NASD, and NYSE circuit breaker rules); 26357 (December 14, 1988), 53 FR 51182 (order granting temporary approval to BSE circuit breaker rule); 26218 (October 26, 1988), 53 FR 44137 (order granting temporary approval to MSE circuit breaker rule); and 26386 (December 22, 1988), 53 FR 52904 (order granting temporary approval to Phlx circuit breaker rule).

[9] *See* Securities Exchange Act Release No. 26198, *supra* note 7.

[10] *See* Securities Exchange Act Release No. 26368 (December 16, 1988), 53 FR 51942.

[11] *See* Securities Exchange Act Release No. 26440 (January 10, 1989), 54 FR 1830.

[12] *See* Securities Exchange Act Release No. 27370 (October 23, 1989), 54 FR 43881 (order approving extension of Amex, BSE, MSE, NASD, NYSE and Phlx circuit breaker rules).

and the Commission approved, proposals to extend their respective pilot programs.[13] In 1993, the BSE and Chicago Stock Exchange, Inc. ("CHX") (formerly MSE) filed, and the Commission approved, proposals to extend their respective pilot programs.[14] In 1990, 1992, and 1993, the NASD filed, and the Commission approved, proposals to extend its pilot program.[15] The proposals for the Exchanges are nearing their expiration dates and the Amex, NYSE, and Phlx have filed with the Commission proposals to extend further their respective pilot program until October 31, 1995.

The circuit breaker mechanisms were enacted in the wake of the October 1987 Market Break. Both the Report of the Presidential Task Force on Market Mechanisms ("Brady Report") and the Working Group's Interim Report[16] recommended that coordinated trading halts and reopening procedures be developed that would be implemented in all U.S. markets for equity and equity related products during large, rapid market declines.[17] In response, the SROs submitted proposals to implement circuit breaker procedures that are designed to substitute planned trading halts for unplanned and destabilizing market closings. In addition, the stock index futures exchanges have implemented parallel circuit breakersthat were approved by the CFTC on a permanent basis.

[13] *See* Securities Exchange Act Release Nos. 25580 (October 25, 1990), 55 FR 45895; 29868 (October 28, 1991), 56 FR 56535; 31387 (October 30, 1992), 57 FR 53157; and 33120 (October 29, 1993), 58 FR 59503 (orders approving extensions of Amex, NYSE, and Phlx circuit breaker rules).

[14] *See* Securities Exchange Act Release No. 33120 *supra* note 13 (extending the BSE's and CHX's respective circuit breaker pilot programs until October 31, 1995).

[15] *See* Securities Exchange Act Release No. 28694 (December 12, 1990), 55 FR 52119; 30304 (January 29, 1992), 57 FR 4658; and 33292 (December 6, 1993), 58 FR 65214 (orders approving extension of NASD circuit breaker rules, the most recent order approving the pilot through December 31, 1994).

[16] The Working Group in Financial Markets was established by the President in March 1988 to provide a coordinating framework for consideration, resolution, recommendation, and action on the complex issues raised by the market break in October 1987. The Working Group consists of the Chairmen of the Commission, Board of Governors of the Federal Reserve System and the Commodity Futures Trading Commission ("CFTC"), and the Under Secretary for Finance of the Department of the Treasury.

[17] In particular, the Working Group recommended a one-hour trading halt if the DJIA declined 250 points from its previous day's closing level, and a subsequent two-hour trading halt if the DJIA declined 400 points below its previous day's closing level. The Working Group also recommended that the NYSE use reopening procedures, similar to those used on Expiration Fridays, that are designed to enhance the information made public about market conditions.

III. Discussion

The Commission believes that the Exchanges' proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges. Specifically, the Commission believes the Exchanges' proposals are consistent with the requirements of section 6(b)(5) of the Act[18] in that they are designed to remove impediments to, and perfect the mechanism of, a free and open market, and to protect investors and the public interest.

Since the Commission approved these proposals in October 1988, the DJIA has not experienced a one day, 250-point decline that would trigger a market halt. Nevertheless, the Commission continues to believe that circuit breaker procedures are desirable to deal with potential strains that may develop during periods of extreme market volatility, and, accordingly, the Commission believes that the pilot programs should be extended. The Commission also believes that circuit breakers represent a reasonable means to retard a rapid, one day market decline that can have a destabilizing effect on the nation's financial markets and participants in these markets.

Accordingly, the Commission finds that the proposed rule change filed by the Exchanges, including NYSE Amendment No. 1 and Phlx Amendment No. 1, are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** because there are no changes being made to the current provisions, which originally were subject to the full notice and comment procedures, and accelerated approval would enable the pilots to continue on an uninterrupted basis. Due to the importance of these circuit breakers for market confidence, soundness, and integrity, it is necessary and appropriate that these procedures continue on an uninterrupted basis. Therefore, the Commission believes that granting accelerated approval of the proposed rule changes is appropriate and consistent with sections 6 and 19(b)(2) of the Act.

[18] 15 U.S.C. 78f(b)(5) (1988).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rules changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings also will be available for inspection and copying at the principal offices of the above-mentioned exchanges. All submissions should refer to File Nos. SR–AMEX–94–40, SR–NYSE–94–33, or SR–Phlx–94–44, and should be submitted by November 23, 1994.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[19] that the Amex, NYSE, and Phlx proposed rule changes (SR–Amex–94–40, SR–NYSE–94–33 and SR–Phlx–94–44), including NYSE Amendment No. 1 and Phlx Amendment No. 1, are approved until October 31, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Jonathan G. Katz,

Secretary.

[FR Doc. 94–27160 Filed 11–1–94; 8:45 am]

BILLING CODE 8010–01–M

[19] 15 U.S.C. 78s(b)(2) (1982).

[20] 17 CFR 200.30–3(a)(12) (1993).

[Rel. No. IC–20663; International Series Release No. 737; File No. 812–9080]

Banque Paribas and Ottoman Bank, A.S.; Notice of Application October 27, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Banque Paribas and Ottoman Bank, A.S.

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act that would

exempt applicants from section 17(f) of the Act.

SUMMARY OF APPLICATION: Applicants request an order permitting Ottoman Bank to act as custodian in the Republic of Turkey for registered investment companies.

FILING DATE: The application was filed on June 30, 1994, and amended on September 16, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 21, 1994, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, Ottoman Bank, A.S., Bankalar Cad. No.: 35–37, 80000 Karakoy—Istanbul/Turkey; Banque Paribas, 3, rue d'Antin, 75002 Paris, France; c/o Anthony F. Essaye, Rogers & Wells, 607 14th Street NW., Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Bradley W. Paulson, Staff Attorney, at (202) 942–0147 or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Banque Paribas is a French banking institution that provides a complete range of banking services. It is regulated by the *Comité de la Réglementation Bancaire* (the Bank Regulation Committee), the *Comité des Etablissments de Crédit* (the Credit Establishment Committee), and the *Commission Bancaire* (the Banking Commission), all of which are agencies of the French Government. As of December 31, 1993, Banque Paribas had consolidated shareholders' equity of U.S. $2.7 billion (excluding minority interests).

2. Ottoman Bank is a Turkish banking organization. It is regulated by the Turkish Treasury and Turkish Central Bank, both of which are agencies of the Turkish Government.[1] As of December 31, 1993, Ottoman Bank had shareholders' equity of approximately U.S. $45 million. Banque Paribas owns a 49.9% interest in Compagnie Financiere Ottomane, S.A., a Luxembourg holding company, which, in turn, owns a 99.9% interest in Ottoman Bank.

3. Applicants request on order to permit Ottoman Bank to maintain custody of assets ("Assets") of investment companies registered under the Act other than those registered under section 7(b) of the Act ("Investment Companies"). As used herein, the term "Assets" does not include securities issued by the United States Government, any state or political subdivision thereof, or any agency thereof, and does not include securities issued by any entity organized under the laws of the United States or any state thereof (other than certificates of deposit, evidence of indebtedness, or other securities issued or guaranteed by such an entity that have been issued and sold outside the United States).

4. Ottoman Bank would accept deposits of Assets in Turkey pursuant to a written, three-party agreement (the "Agreement"). The Agreement would be entered into by (a) Ottoman Bank, (b) Banque Paribas, and (c) an Investment Company or its custodian. The Agreement would provide that Ottoman Bank would act as custodian or subcustodian, and Banque Paribas would be liable for any loss to the same extent as if Banque Paribas had been required to provide custody services under such agreement. Banque Paribas would not be liable for losses resulting from political risk (*e.g.*, exchange control restrictions, confiscation, expropriation, nationalization, insurrection, civil strife, or armed hostilities) and other risks of loss (excluding bankruptcy or insolvency of Ottoman Bank) for which neither Banque Paribas nor Ottoman Bank would be liable (*e.g.*, loss despite the exercise of reasonable care, due to an act of God, or resulting from a nuclear incident).

[1] Under a prior SEC order, Ottoman Bank has been acting as a subcustodian of investment company assets for which Bankers Trust Company, N.A. acts as custodian. *In the Matter of Bankers Trust Company, N.A.*, Investment Company Act Release Nos. 18046 (April 9, 1991) (notice) and 18085 (April 9, 1991) (order).

Applicants' Legal Analysis

1. Section 17(f) of the Act provides that a registered investment company may maintain securities and similar assets in the custody of a bank meeting the requirements of section 26(a) of the Act, a member firm of a national securities exchange, the investment company itself, or a system for the central handling of securities established by a national securities exchange. Section 2(a)(5) of the Act defines "bank" to include banking institutions organized under the laws of the United States, member banks of the Federal Reserve System, and certain banking institutions or trust companies doing business under the laws of any state or of the United States. Ottoman Bank does not fall within the definition of "bank" as defined in the Act and, under section 17(f), may not act as custodian for registered investment companies.

2. Rule 17f–5 under the Act permits certain entities located outside the United States to serve as custodian for investment company assets. One such entity is a banking institution or trust company that is incoroprated or organized under the laws of a country other than the United States, that is regulated as such by the country's government or an agency thereof, and that has shareholders' equity in excess of U.S.$200 million. Banque Paribas qualifies as an eligible foreign custodian under rule 17f–5. Ottoman Bank, however, does not qualify as an eligible foreign custodian because it does not meet the minimum shareholders' equity requirement.

3. Applicants request an order under section 6(c) of the Act that would exempt them from the provisions of section 17(f) to the extent necessary for Ottoman Bank to maintain custody of Investment Company Assets. Applicants believe that the exemption should be granted because it is necessary and appropriate in the public interest and is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the Agreement provides Investment Companies with the safety and security of an eligible foreign custodian under section 17(f) and rule 17f–5.

Applicants' Conditions

1. The foreign custody arrangements with Ottoman Bank will comply with the provisions of rule 17f–5 in all respects, except those provisions relating to the minimum shareholders' equity requirement for eligible foreign custodians.

2. Banque Paribas currently satisfies and will continue to satisfy the minimum shareholders' equity requirement set forth in rule 17f–5(c)(2)(i).

3. An Investment Company or a custodian for an Investment Company will deposit Securities with Ottoman Bank only in accordance with a three-party contractual agreement that will remain in effect at all times during which Ottoman Bank fails to meet the requirement of rule 17f–5 relating to minimum shareholders' equity. Each agreement will be a three-party agreement among (a) Banque Paribas, (b) Ottoman Bank, and (c) the Investment Company or custodian of the Securities of the Investment Company. Under the agreement, Ottoman Bank will undertake to provide specified custodial or sub-custodial services. The agreement will further provide that Banque Paribas will be liable for any loss, damage, cost, expense, liability, or claim arising out of or in connection with the performance by Ottoman Bank of its responsibilities under the agreement to the same extent as if Banque Paribas had been required to provide custody services under such agreement.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–27162 Filed 11–1–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20665; File No. 812–9128]

Dean Witter Variable Investment Series, et al.

October 27, 1994.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act" or "Applicants").

APPLICANTS: Dean Witter Variable Investment Series (the "Fund") and Dean Witter Intercapital Inc. (together, "Applicants").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) for exemptions from Sections 9(a), 13(a), 15(a), and 15(b) and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order of exemption to the extent necessary to permit shares of the Fund to be sold to and held by variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies.

FILING DATE: The application was filed on July 28, 1994 and amended on October 18, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on November 21, 1994, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state, the nature of writer's interest, the reason for the request, and the issues contested. Persons may request notification of the date of the hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, D.C. 20549. Applicants, c/o Sheldon Curtis, Esq., Dean Witter Variable Investment Series, Two World Trade Center, New York, New York 10048.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Senior Counsel, on (202) 942–0683 or C. Gladwyn Goins, Associate Director on (202) 942–0665, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC.

Applicants' Representations

1. The Fund is a Massachusetts business trust registered under the Act as an open-end diversified management investment company. The Fund is composed of eleven separate portfolios. Currently, shares of the Fund are sold only to Northbrook Life Insurance Company and Allstate Life Insurance Company of New York (the "Companies") to fund flexible premium variable annuity contracts issued through certain of their separate accounts. Dean Witter InterCapital Inc. ("InterCapital"), a wholly owned subsidiary of Dean Witter, Discover & Co., is the investment manager for the Fund. InterCapital and the Companies were previously under common control (ultimately owned by Sears, Roebuck and Co.).

2. The Fund intends to offer its shares to separate accounts of various insurance companies to fund variable annuity contracts and variable life insurance contracts (collectively, "variable contracts"). Insurance companies whose separate accounts do or will own shares of the Fund are referred to herein as "participating insurance companies." It is anticipated that participating insurance companies will rely on rules 6e–2 or 6e–3(T) under the Act, although some may rely on individual exemptive orders as well, in connection with variable life insurance contracts.

3. The use of a common management investment company as the underlying investment medium for variable annuity and variable life insurance separate accounts is referred to as "mixed funding." The use of a common management investment company as the underlying investment medium for separate accounts of unaffiliated insurance companies is referred to as "shared funding." "Mixed and shared funding" denotes the use of a common management company to fund a variable annuity separate account of one insurance company and the variable annuity separate accounts of other affiliated and unaffiliated insurance companies. Rule 6e–2(b)(15) precludes mixed and shared funding while Rule 6e–3(T)(b)(15) permits mixed funding but precludes shared funding. Applicants request an order of the Commission exempting variable life insurance separate accounts (and, to the extent necessary, any principal underwriter and depositor of such an account) from sections 9(a), 13(a), 15(a) and 15(b) of the Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, to the extent necessary to permit mixed and shared funding.

Applicants' Legal Analysis

1. In connection with scheduled premium variable life insurance contracts issued through a separate account registered under the Act as a unit investment trust, Rule 6e–2(b)(15) provides partial exemption from sections 9(a), 13(a), 15(a) and 15(b) of the Act. The exemptions granted to a separate account (and any investment adviser, principal underwriter and depositor thereof) by Rule 6e–2(b)(15), however, are not available with respect to a scheduled premium variable life insurance separate account that owns shares of an investment company that also offers its shares to a variable annuity separate account of the same or of any affiliated or unaffiliated insurance company ("mixed funding"). In addition, the relief granted by Rule 6e–2(b)(15) is not available if shares of the underlying investment company are offered to variable annuity or variable life insurance separate accounts of unaffiliated insurance companies ("shared funding"). Accordingly, Applicants seek an order exempting scheduled premium variable life

insurance separate accounts (and, to the extent necessary, any investment adviser, principal underwriter and depositor of such an account) from sections 9(a), 13(a), 15(a) and 15(b) of the Act, and Rule 6e–2(b)(15) thereunder, to the extent necessary to permit shares of the Fund to be offered and sold in connection with both mixed funding and shared funding.

2. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the Act as a unit investment trust, Rule 6e–3(T)(6)(15) provides partial exemptions from sections 9(a), 13(a), 15(a) and 15(b) of the Act. The exemptions granted to a separate account (and to any investment adviser, principal underwriter and depositor thereof) by Rule 6e–3(T)(b)(15) permit mixed funding of flexible premium variable life insurance but preclude shared funding. Accordingly, Applicants seek an order exempting flexible premium variable life insurance separate accounts (and, to the extent necessary, any investment adviser, principal underwriter and depositor of such an account from sections 9(a), 13(a), 15(a) and 15(b) of the Act, and Rule 6e–3(T)(b)(15) thereunder, to the extent necessary to permit shares of the Fund to be offered and sold to separate accounts in connection with shared funding.

3. Section 9(a) provides that it is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in sections 9(a) (1) or (2). Rules 6e–2(b)(15) (i) and (ii), and 6e–3(T)(b)(15) (i) and (ii), provide exemptions from section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management or administration of the underlying management company.

4. The application states that the partial relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) from the requirements of section 9 of the Act limits the amount of monitoring necessary to ensure compliance with section 9 of that which is appropriate in light of the policy and purposes of section 9. The Applicants state that those Rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the Act to apply the provisions of section 9(a) to individuals in a large insurance company complex, most of whom will have no involvement in matters pertaining to investment companies in (or invested in by) that organization. Applicants state that it is also unnecessary to apply section 9(a) to individuals in various unaffiliated insurance companies (or affiliated companies of participating insurance companies) that may utilize the Fund as the funding medium for variable contracts. Applicants argue that applying the requirements of section 9(a) because of investment by other insurers' separate accounts would be unjustified and would not serve any regulatory purpose. The application states that the participating insurers are not expected to play any role in the management or administration of the Fund and that those individuals who participate in the management or administration of the Fund will remain the same regardless of which separate accounts or insurance companies use the Fund. Furthermore, the increased monitoring costs would reduce the net rates of return realized by contract owners.

5. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(iii) assume the existence of a pass-through voting requirement with respect to management investment company shares held by a separate account. Applicants state that pass-through privileges will be provided with respect to all variable contract owners so long as the Commission interprets the Act to require pass-through voting privileges for variable contract owners. However, Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming the limitations on mixed and shared funding are observed.

6. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) provide that the insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying fund or any contract between a fund and its investment adviser, when required to do so by an insurance regulatory authority. Voting instructions may also be disregarded by the insurance company if the contract owners initiate any change in the investment company's investment policies, principal underwriter or any investment adviser provided that disregarding such voting instructions is reasonable and based on a specific good faith determination as required under the Rules. Applicants assert that the rights of an insurance company or of a state insurance regulator to disregard contract owners' voting instructions are not inconsistent with mixed or shared funding. According to the Applicants, there is no reason why the investment policies of any portfolio of the Fund would or should be materially different from what it would or should be if it funded only annuity contracts or only scheduled or flexible premium life contracts and that there is no reason to believe that different features of various types of contracts will lead to different investment policies for different types of variable contracts. Applicants represent that the Fund will not be managed to favor or disfavor any particular insurer or type of insurance product.

7. The Application states that mixed and shared funding should provide several benefits to variable contract holders. It would permit a greater amount of assets available for investment, thereby promoting economies of scale, permitting a greater diversification, and making the addition of new portfolios more feasible. The Applicants believe that making the Fund available for mixed and shared funding will encourage more insurance companies to offer variable contracts, and this should result in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation and lower charges.

8. The Applicants see no significant legal impediment to permitting mixed and shared funding. Separate accounts organized as unit investment trusts have historically been employed to accumulate shares of mutual funds which have not been affiliated with the depositor or sponsor of the separate account. The Fund does not believe that mixed and shared funding will have any adverse federal income tax consequences.

Applicants' Conditions

If the requested order is granted, Applicants consent to the following conditions:

1. A majority of the board of trustees of the Fund (the "Board") shall consist of persons who are not "interested persons" of the Fund, as defined by section 2(a)(19) of the 1940 Act, and the rules thereunder, and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona-fide resignation of any trustee or trustees, then the operation of this condition shall be suspended: (a) for a period of 45 days if the vacancy or vacancies may be filled by the Board; (b) for a period of 60 days if a vote of shareholders is required to fill a vacancy or vacancies; or (c) for such longer period as the

Commission may prescribe by order upon Application.

2. The Board will monitor the Fund for the existence of any material irreconcilable conflict between the interests of the life owners and annuity owners and any future owners in the Fund. An irreconcilable material conflict may arise for a variety of reasons, including: (1) An action by any state insurance regulatory authority; (2) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (3) an administrative or judicial decision in any relevant proceeding; (4) the manner in which the investments of any portfolio are being managed; (5) a difference in voting instructions given by variable annuity contract owners and variable life insurance contract owners.

3. Participating insurance companies and InterCapital will report any potential or existing conflicts to the Board. Participating insurance companies and InterCapital will be responsible for assisting the Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This includes, but is not limited to, an obligation by each participating insurance company to inform the Board whenever contract owner voting instructions are disregarded. The responsibility to report such information and conflicts and to assist the Board will be a contractual obligation of all insurers investing in the Fund under their agreements governing participation in the Fund and these responsibilities will be carried out with the view only to interests of the contract owners.

4. If it is determined by a majority of the Board, or a majority of its disinterested Trustee, that a material irreconcilable conflict exists, the relevant insurance companies shall, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested trustees), take whatever steps are necessary to remedy or eliminate the irreconcilable material conflict, up to and including: (1) Withdrawing the assets allocable to some or all of the separate accounts from the Fund or any portfolio and reinvesting such assets in a different investment medium, including another portfolio of the Fund, or submitting the question whether such segregation should be implemented to a vote of all affected contract owners and as appropriate, segregating the assets of any appropriate group (i.e., annuity contract owners, life insurance contract owners, or variable contract owners of one or more participating insurance companies) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; and (2) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of an insurer's decision to disregard contract owner voting instructions and that decision represents a minority position or would preclude a majority vote, the insurer may be required, at the Fund's election, to withdraw its separate account's investment in the fund and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of an irreconcilable material conflict and to bear the cost of such remedial action shall be a contractual obligation of all participating insurance companies under their agreements governing participation in the Fund.

For purposes of this condition 4, a majority of the disinterested members of the Board shall determine whether or not any proposed action adequately remedies any irreconcilable material conflicts, but in no event will the Fund or InterCapital be required to establish a new funding medium for any variable contract. No participating insurance company shall be required by this condition 4 to establish a new funding medium for any variable contract if an offer to do so has been declined by vote of a majority of contract owners materially adversely affected by the irreconcilable material conflict.

5. The Board's determination of the existence of an irreconcilable material conflict and its implications shall be made known promptly to all participating insurance companies.

6. Participating insurance companies will pass through voting privileges to all variable contract owners so long as the Commission continues to interpret the Act as requiring pass-through voting privileges for variable contract owners. Accordingly, participating insurance companies will vote shares of the Fund held in their separate accounts in a manner consistent with timely voting instructions received from contract owners. Each participating insurance company will vote shares of the Fund held in its separate accounts for which no timely voting instructions from contract holders are received, as well as shares it owns, in the same proportion as those shares for which voting instructions are received. Participating insurance companies shall be responsible for assuring that each of their separate accounts participating in the Fund calculates voting privileges in a manner consistent with other participating insurance companies. The obligation to calculate voting privileges in a manner consistent with all other separate accounts investing in the Fund shall be a contractual obligation of all participating insurance companies under their agreements governing participation in the Fund.

7. The Fund will comply with all provisions of the Act requiring voting by Shareholders, and in particular the Fund will either provide for annual meetings (except insofar as the Commission may interpret Section 16 not to require such meetings), or comply with section 16(c) of the Act (although the Fund is not one of the trusts described in the section 16(c) of the Act) as well as with section 16(a) and, if and when applicable, 16(b). Further, the Fund will act in accordance with the Commission's interpretation of the requirements of section 16(a) with respect to periodic elections of trustees and with whatever rules the Commission may promulgate with respect thereto.

8. The Fund shall disclose in its prospectus that (1) the Fund is intended to be a funding vehicle for all types of variable annuity and variable life insurance contracts offered by various insurance companies, (2) material irreconcilable conflicts may possibly arise, and (3) the Board will monitor events in order to identify the existence of any material irreconcilable conflicts and determine what action, if any, should be taken in response to such conflict. The Fund will notify all participating insurance companies that separate account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate.

9. If and to the extent that Rule 6e–2 and Rule 6e–3(T) are amended, or Rule 6e–3 is adopted, to provide exemptive relief from any provision of the Act or the rules promulgated thereunder with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the order requested in this application, then the Fund and/or participating insurance companies, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), or Rule 6e–3, as such rules are applicable.

10. The participating insurance companies shall at least annually submit to the Board such reports, materials or data as the Board may

reasonably request so that the Board or the Fund may fully carry out the obligations imposed upon them by the conditions contained in the application and said reports, materials and data shall be submitted more frequently if deemed appropriate by the Board. The obligation of the participating insurance companies to provide these reports, materials and data to the Board when it so reasonably requests, shall be a contractual obligation of all participating insurance companies under their agreements governing participation in the Fund.

11. All reports received by the Board of potential or existing conflicts, and all Board action with regard to determining the existence of a conflict, notifying participating insurance companies of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

Applicants' Conclusion

For the reasons stated above, Applicants believe that the requested exemptions, in accordance with the standards of section 6(c) of the 1940 Act, are appropriate in the pubic interest and are consistent with the protection of investors and the purposes fairly intended by the policy and the provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–27163 Filed 11–1–94; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Rel. No. IC–20664; 812–8166]

Equity Securities Trust (Series 1, Signature Series, Gabelli Communications Income Trust and Subsequent Series), et al.; Notice of Application

October 27, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("ACT").

APPLICANTS: Equity Securities Trust (Series 1, Signature Series, Gabelli Communications Income Trust and Subsequent Series), Mortgage Securities Trust (CMO Series 1 and Subsequent Series), Municipal Securities Trust (Series 1 and Subsequent Series) (including Insured Municipal Securities Trust, Series 1 and Subsequent Series, and 5th Discount Series and Subsequent Series), New York Municipal Trust (Series 1 and Subsequent Series), A Corporate Trust (Series 1 and Subsequent Series) (collectively, the "Trusts"); Bear, Stearns & Co. Inc. ("Bear Stearns"); and Gruntal & Co., Incorporated ("Gruntal").

RELEVANT ACT SECTIONS: Sections 11(a) and 11(c).

SUMMARY OF APPLICATION: Applicants request an order to permit unitholders of the Trusts of exchange their units for units in other Trusts at a reduced sales charge. The order would supersede a prior order and include the Equity Securities Trust in the exchange program.

FILING DATES: The application was filed on November 12, 1992, and amended on January 26, 1994 and October 19, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 21, 1994, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reasons for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, D.C. 20549; Bear, Sterns & Co. Inc. and the Trusts, 245 Park Avenue, New York, New York 10167; Gruntal & Co. Incorporated, 14 Wall Street, New York, New York 10005.

FOR FURTHER INFORMATION CONTACT: Mary Kay Frech, Senior Attorney, at (202) 942–0579, or Robert A. Robertson, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. The Trusts are registered under the Act as unit investment trust, and their units of interest are registered under the Securities Act of 1933. Bear Stearns, one of the cosponsors of the Equity Securities Trust, sponsors the Trusts and numerous other unit investment trusts. Gruntal, also a cosponsor of the Equity Securities Trust, sponsors various other unit investment trusts with Bear Stearns (Bear Stearns and Gruntal are collectively referred to as the "Sponsors"). Each Trust is organized under a Trust Indenture and Agreement between the Trust, the Sponsors, and United States Trust Company of New York or Bank of New York, as trustee, which varies from Trust to Trust.

2. On August 28, 1991, the SEC issued an order (the "Prior Order") [1] permitting unitholders of the Trusts, except the Equity Securities Trust, to exchange their units for units in another available Trust or Trusts, except the Equity Securities Trust, upon payment of a reduced sales charge. The Prior order also permits a conversion offer in which the unitholders of any registered unit investment trust for which there is no active secondary market may redeem their units with their respective trustees and apply the proceeds to the purchase of units of one or more of the Trusts, except the Equity Securities Trust, upon payment of the same reduced sales charge.

3. The Equity Securities Trust is a newly formed unit investment trust consisting of a portfolio of common stock, convertible securities, American Depository Receipts, and contracts and funds for the purchase of such securities. The Equity Securities Trust deposits its securities with the trustee, in exchange for certificates representing undivided interests or units in the principal and net income of the Equity Securities Trust in the ratio of one hundred units for the indicated initial aggregate value of securities of the Equity Securities Trust.

4. During the initial public offering period, units of the Trust are sold at a sales charge ranging from 3.5% to 5.5%, depending on the Trust, subject to certain specified volume discounts for purchases exceeding a certain number of units.

5. The Sponsors, although not obligated to do so, maintain a secondary market for the units of all the existing Trusts after the initial public offering has been completed. The Sponsors also

[1] Investment Company Act Release Nos. 18254 (Aug. 1, 1991) (notice) and 18290 (Aug. 28, 1991) (order). The Prior Order amended two previous orders: Investment Company Act Release Nos. 11143 (Apr. 29, 1980) (notice) and 11184 (May 23, 1980) (order); and Investment Company Act Release Nos. 11715 (Apr. 1, 1981) (notice) and 11754 (Apr. 29, 1981) (order).

intend to maintain a secondary market for any new Trusts after the initial public offering has been completed. The secondary market repurchase and reoffer price, both during and after the initial public offering period, will be based on the bid prices of the Trust's portfolio securities. Any units repurchased by the Sponsors in the secondary market may be redeemed by the Sponsors if the Sponsors deem such redemption to be in their best interest. If a market for the units is not maintained, unitholders will be able to redeem their units with the trustee at a price based on the aggregate bid side evaluation of the Trust's portfolio securities.

6. Applicants propose to offer unitholders of the Trusts the ability to exchange any or all of their units for units in one or more available series of the Trusts at a reduced sales charge (the "Exchange Privilege"). Pursuant to the Exchange Privilege, the Sponsors' repurchase price during the initial offering period of the units being surrendered will be based on the aggregate offer price of the Trust's portfolio securities, and, if the initial offering period has been completed, will be based on the aggregate bid price of the Trust's portfolio securities. Units in a Trust then will be sold to the unitholder at a price based on the aggregate offer price of the securities in the Trust portfolio during the initial public offering period of the Trust (or based on the aggregate bid price of the securities in the Trust portfolio if the initial public offering period has been completed) plus accrued interest and a reduced sales charge.

7. The Sponsors reserve the right to suspend, modify, or terminate the Exchange Privilege. The Sponsors will provide unitholders with 60 days prior written notice of any termination or material amended to the Exchange Privilege, except as provided in condition 3 below.

8. Applicants also propose to offer a conversion offer (the "Conversion Offer") to all unitholders of any registered unit investment trust in which there is no active secondary market (a "Redemption Trust"). Pursuant to the Conversion Offer, unitholders may elect to redeem units of a Redemption Trust at the redemption drive determined as set forth in the relevant Redemption Trust's prospectus and apply the proceeds of the redemption to the purchase of available units of one or more series of the Trust. The purchase price for units of a series of a Trust will be based on the aggregate offer of the Trust's portfolio securities during its initial offering period, or at a price based on the aggregate bid price of the Trust's portfolio securities if the initial public offering period of the Trust has been completed, and will include accrued interest and a reduced sales charge.

9. The Sponsors reserve the right to modify, suspend, or terminate the Conversion Offer at any time without prior notice to unitholders of a Redemption Trust.

10. The Exchange Privilege and Conversion Offer are substantially similar in all respects to the exchange privilege and conversion offer already approved by the SEC in the Prior Order, except the Equity Securities Trust, as a newly formed Trust, was not in existence at the time that order was issued. The requested relief is necessary to enable the Equity Securities Trust to offer the same exchange privilege to its unitholders as is already permitted to unitholders of the other Trusts pursuant to the Prior Order, and to revise the reduced sales charge under the Exchange Privilege and Conversion Offer to be an amount equal to a percentage of the public offering price for each unit (or per 1,000 units for Mortgage Securities Trust or per 100 units for Equity Securities Trust). The requested relief will supersede the Prior Order in its entirety.

Applicants' Legal Analysis

1. Section 11(a) of the Act requires SEC approval of an offer to exchange securities between open-end investment companies of the exchange occurs on any basis other than the relative net asset values of the Securities to be exchanged. Section 11(c) of the Act makes section 11(a) applicable to any type of exchange offer of securities of registered unit investment trusts for the securities of any other investment company, irrespective of the basis of exchange.

2. Applicants believe that the Exchange Privilege provides investors with a convenient means of transferring their interests at a reduced sales charge, as their individual investment objectives change, into series of the Trust that are better suited to meet these changing investment objectives. Applicants also state that the Conversion Offer provides investors with a means by which unitholders of a unit investment trust in which there is no active secondary market can redeem those units and invest the proceeds therefrom, at a reduced sales charge, into units of the trusts.

Applicants' Conditions

The Applicants agree to the following conditions in any order granting the requested relief.

1. Participants in the Exchange Privilege and Conversion Offer for the Trusts will, in the purchase and sale of units of the Trusts, be subject to the same portfolio pricing terms as are set forth in the prospectus for each Trust and will purchase and sell units of the Trusts based on the same portfolio pricing terms as all other investors who purchase and sell units of the Trusts through the Sponsors or the underwriters in regular transactions.

2. The prospectus for each Trust and any sales literature or advertisement that mentions the existence of the Exchange Privilege will disclose that the Exchange Privilege is subject to termination and that its terms are subject to change.

3. Whenever the Exchange Privilege is to be terminated or its terms are to be amended materially, any holder of a security subject to that privilege will be given prominent notice of the impending termination or amendment at last 60 days prior to the date of termination or the effective date of the amendment, *provided that:*

(a) No such notice need be given if the only material effect of an amendment is to reduce or eliminate the sales charge payable at the time of an exchange, to add one or more new series eligible for the Exchange Privilege, or to delete a series which has terminated, and

(b) No notice need be given if, under extraordinary circumstances, either—

(i) There is a suspension of the redemption of units of a Trust under section 22(e) of the Act and the rules and regulations thereunder, or

(ii) A Trust temporarily delays or ceases the sale of its units because it is unable to invest amounts effectively in accordance with applicable investment objectives, policies and restrictions.

4. During the 60 day period described in condition 3 above, the Sponsors will maintain a secondary market in units that could be acquired by affected unitholders.

5. The applicable sales charge for the purchase of units of a Trust for Trust unitholders who wish to exercise the Exchange Privilege within the first five months from the date of their purchase of units of a Trust, where the applicable public offering price for the Trust units being purchased includes higher sales charges than the sales charges applicable to the units being exchanged, will be the greater of the reduced sales charge (up to 1.5% of the public offering price of each unit (or per 1,000 units for

Mortgage Securities Trust or per 100 units for the Equity Securities Trust)), or an amount which, when coupled with the sales charge actually paid on purchase of the units being exchanged, would equal the sales charge applicable to direct purchases of the quantity of Trust units being acquired, determined as of the date of the exchange.

6. The applicable sales charge for the purchase of units of a Trust for Redemption Trust unitholders who wish to exercise the Conversion Offer within the first five months from the date of their purchase of units of a Redemption Trust, where the applicable public offering price for the Trust units being purchased includes higher sales charges than the sales charges applicable to the units being converted, will be the greater of the reduced sales charge (up to 1.5% of the price of each unit (or per 1,000 units for Mortgage Securities Trust or per 100 units for the Equity Securities Trust)), or an amount which, when coupled with the sales charge actually paid on purchase of the units being converted, would equal the sales charge applicable to direct purchases of the quantity of Trusts units being acquired, determined as of the date of the conversion.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–27164 Filed 11–1–94; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 20661; 811–5592]

Fund Alabama, Inc.; Notice of Application

October 26, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 ("the Act").

APPLICANT: Fund Alabama, Inc.

RELEVANT ACT SECTION: Order requested under section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring it has ceased to be an investment company under the Act.

FILING DATES: The application for deregistration was filed on December 18, 1991, amended on March 31, 1992 and October 7, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 21, 1994 and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, Fund Alabama, Inc., 1901 Sixth Avenue North, Suite 2100, Birmingham, Alabama 35203.

FOR FURTHER INFORMATION CONTACT: Fran Pollack-Matz, Senior Attorney at (202) 942–0570, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is registered as a closed-end management investment company that was incorporated under the laws of the State of Delaware. On May 27, 1988, applicant filed a Notification of Registration on Form N–8A, pursuant to section 8(a) of the Act. On June 8, 1988, applicant filed a registration statement on Form N–2 pursuant to both the Securities Act of 1933 and section 8(b) of the Act. On August 11, 1988, this registration statement became effective registering 700,000 shares of common stock, $.01 par value per share, and applicant commenced the initial public offering of the stock as soon as practicable thereafter.

2. On March 29, 1991, the applicant's board of directors adopted a resolution recommending liquidation and dissolution of applicant. On or about April 26, 1991, a proxy statement describing the proposed Plan of Complete Liquidation and Dissolution ("the Plan") and relating to the annual meeting of shareholders to be held on May 20, 1991, was mailed to all shareholders of record. Applicant's shareholders approved the Plan at the annual meeting of shareholders.

3. On May 21, 1991, applicant commenced the sale of its portfolio securities, and sold all of its securities by June 30, 1991. Applicant's common stock ceased trading on the NASDAQ National Market System as of the close of business on May 20, 1991, the date its shareholders approved the Plan.

4. As of May 20, 1991, applicant's 700,100 shares of common stock outstanding were held by 405 record shareholders. As of May 17, 1991, applicant's common stock had a net asset value per share of $10.0365 ($7,026,553.65 in the aggregate).

5. On July 23, 1991, in accordance with the Plan, applicant's board of directors authorized, and applicant deposited with AmSouth Bank N.A., of Birmingham, Alabama ("the Liquidating Agent"), the amount of $6,825,975.00 for payment, at $9.75 per share, of the first liquidating distribution to all shareholders of record as of May 20, 1991. The Liquidating Agent paid this first liquidating distribution to applicant's shareholders upon receipt of their respective stock certificates or satisfactory lost share affidavits and indemnity agreements.

6. On November 4, 1991, applicant's board of directors authorized a final liquidating distribution in the amount of $88,842.69, representing $.1269 per share, for payment to those shareholders entitled to receive the first distribution. On November 8, 1991, the Liquidating Agent made this final distribution. Six shareholders, owning a total of 440.4062 shares delivered their stock certificates and properly executed letters of transmittal after November 8, 1991 and received their distributions ($4,349.85 in the aggregate, $9.8769 per share) at various times after November 8, 1991.

7. Pursuant to a resolution of the board of directors, the Fund created a liquidating trust to pay off its creditors. $67,340.55 was transferred to the trust shortly after its creation. All expenses of liquidation have been paid, however, and no funds remain in the liquidating trust.

8. Applicant's expenses for liquidating were approximately $24,549 in legal fees and costs, $11,608 in accounting fees and costs, $4,125 in printing fees and costs, and $4,000 in directors' fees, all of which expenses were allocated to applicant.

9. Applicant paid $12,143.92 in brokerage commissions following approval of the Plan. Of that amount, $11,743.92 was paid to Sterne, Agee & Leach, Inc. of Birmingham, Alabama. Sterne, Agee & Leach, Inc. is an "affiliated person" as that term is defined in section 2(a)(3) of the Act, of applicant and of Sterne, Agee & Leach Investment Advisors, Inc., applicant's investment adviser. $400.00 in brokerage commissions was paid to

Porter, White & Yardley, Inc. which is not an "affiliated person" of applicant or Sterne, Agee & Leach Investment Advisors, Inc. Applicant represents that the commissions charged by Sterne, Agee & Leach Investment Advisors, Inc. and by Porter, White and Yardley, Inc. were competitive with the brokerage commissions and fees charged by other brokers for similar transactions and were consistent with section 17(e) of the Act.

10. Applicant has no shareholders, assets or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged, nor does it propose to engage, in any business activities other than those necessary to wind up its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–27107 Filed 11–1–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Privacy Act of 1974 DOT/ALL 10 Debt Collection File

The Department of Transportation (DOT) proposes to add a new record system to its inventory of systems of records notices.

Any person or agency may submit written comments on the proposed system to the Department of Transportation, Office of the Secretary, B–30, Attn: Steve Swanson, 400 Seventh Street SW, Washington, DC 20590. Comments to be considered must be received by December 6, 1994.

If no comments are received, the proposed system will become effective on the above mentioned date. If comments are received, the comments will be considered and where adopted, the document will be republished with the change.

Issued in Washington, DC, October 24, 1994.

Jon H. Seymour,

Assistant Secretary for Administration.

Narrative Statement for the Department of Transportation

Office of the Secretary

The Office of the Secretary of Transportation proposes to add the record system, DOT/ALL–10, Debt Collection File. The purpose of the system is the administrative management and collection of delinquent debts. The debts include past due loan payments, overpayments, fines, penalties, fees, damages, interest, leases, sales of real or personal property, etc., due to the Department of Transportation and debts due to other Federal departments and agencies that may be referred to the Department of Transportation for collection to the extent the Department of Transportation controls funds due the debtor.

The authority for the maintenance of this system is the Federal Claims Collection Act of 1966, Pub. L. 89–508; Debt Collection Act of 1982, Pub. L. 97–365; and Executive Orders 9397 and 11222.

Individuals receiving benefits in the form of salary and/or other forms of compensation already have disclosed the subject information to a federal agency; therefore this system presents no undue threat to privacy rights of individuals.

A description of the steps taken to safeguard these records is given under the appropriate heading of the **Federal Register** system of records notice.

No changes to existing procedural or exemption rules are required for this proposed new system.

The purpose of this report is to comply with the Office of Management and Budget Circular, A–130, Appendix I, dated June 25, 1993.

DOT/ALL–10

SYSTEM NAME:

Debt Collection File

SYSTEM LOCATION:

Federal Aviation Administration, General Ledger Branch, Mike Monroney Aeronautical Center, 6500 S. MacArthur Blvd., Oklahoma City, OK 73125.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons currently or formerly associated with the Department of Transportation (DOT) who are financially indebted to the U.S. Government under some particular service or program of the DOT other than under a contract. Individuals may include current, retired, or formerly employed DOT personnel or personnel from other Federal agencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information varies depending on the individual debtor, and includes the history of debt collection activity on the individual. Normally, the name, Social Security Number (SSN), address, amount of debt or delinquent amount, basis of the debt, date debt arose, office referring debt, collection efforts, credit reports, debt collection letters and correspondence to or from the debtor relating to the debt. Correspondence with employing agencies of debtors or Office of Personnel Management or Department of Defense, as appropriate, requesting that action begin to collect the delinquent debt through voluntary or involuntary offset procedures against the employee's salary or compensation due a retiree.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Claims Collection Act of 1966 (Pub.L. 89–508), 31 U.S.C. Chapter 37, Subchapter I (General), and Subchapter II (Claims of the United States Government); Debt Collection Act of 1982 (Pub.L. 97–365); 5 U.S.C. 5514, Installment Deduction for Indebtedness (salary offset); section 206 of Executive Order 11222; Executive Order 9397; and 49 CFR part 92, Salary Offset (DOT).

PURPOSES:

For the administrative management and collection of all delinquent debts, including past due loan payments, overpayments, fines, penalties, fees, damages, interest, leases, sales of real or personal property, etc., due to the DOT and debts due to other Federal departments and agencies that may be referred to the DOT for collection to the extent DOT controls funds due the debtor.

This system provides for the implementation of the salary offset provisions of 5 U.S.C. 5514, the administrative offset provisions of 31 U.S.C. 3716 and the provisions of the Federal Claims Collection Standards (FCCS). It applies to personal rather than contract debts. Guidance regarding contract debts is contained in the Federal Acquisition Regulation. Records in this record system are subject to use in authorized and approved computer matching programs regulated under the Privacy Act of 1974 (5 U.S.C. 552a), as amended, for debt collection purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. To the U.S. General Accounting Office (GAO), Department of Justice, United States Attorney, or other Federal agencies for further collection action on any delinquent account when circumstances warrant.

b. To a debt collection agency for the purpose of collection services to recover monies owed to the U.S. Government under certain programs or services administered by the DOT.

c. Debtor's name, Social Security Number, the amount of debt, and the history of the debt may be disclosed to any Federal agency where the individual debtor is employed or

receiving some form of remuneration for the purpose of enabling that agency to collect a debt owed the U.S. Government on DOT's behalf by counseling the debtor for voluntary repayment or by initiating administrative or salary offset procedures under the provisions of the Debt Collection Act of 1982 (Pub.L. 97–365).

d. To the Internal Revenue Service (IRS) by computer matching to obtain the mailing address of a taxpayer for the purpose of locating such taxpayer to collect or to compromise a Federal claim by DOT against the taxpayer pursuant to 26 U.S.C. 6103(m)(2) and in accordance with 31 U.S.C. 3711, 3217, and 3718.

Note: Redisclosure of a mailing address from the IRS may be made only for the purpose of debt collection, including to a debt collection agency in order to facilitate the collection or compromise of a Federal claim under the Debt Collection Act of 1982, except that a mailing address to a consumer reporting agency is for the limited purpose of obtaining a commercial credit report on the particular taxpayer. Any such address information obtained from the IRS will not be used or shared for any other DOT purpose or disclosed to another Federal, state, or local agency which seeks to locate the same individual for its own debt collection purpose.

e. Data base information consisting of debtor's name, Social Security Number, and amount owed may be disclosed to the Defense Manpower Data Center (DMDC), Department of Defense, the U.S. Postal Service or to any other Federal, state, or local agency for the purpose of conducting an authorized computer matching program in compliance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended, so as to identify and locate delinquent debtors in order to start a recoupment process on an individual basis of any debt owed DOT by the debtor arising out of any administrative or program activities or services administered by DOT.

f. Disclosure of personal and financial information from this system on current, retired, or former employees of DOT or U.S. Coast Guard members may be made to any creditor Federal agency seeking assistance for the purpose of that agency requesting voluntary repayment or implementing administrative or salary offset procedures in the collection of unpaid financial obligations owed the U.S. Government from an individual affiliated with the DOT. An exception to this routine use is an individual's mailing address obtained from the IRS pursuant to 26 U.S.C. 6103(m)(2).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12) may be made from this record system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The disclosure, once determined to be valid and overdue, is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (Social Security Number); the amount, status, and history of the claim; and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a commercial credit report.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The storage for records on personal computers is kept on floppy disks. Storage on microcomputers is first downloaded onto a floppy disk and then locked in a file cabinet. Data kept in paper file folders are locked in file cabinets.

RETRIEVABILITY:

Records are retrieved by name or Social Security Number.

SAFEGUARDS:

Computers provide privacy and access limitation by requiring a user name and password match. These records are available only to those persons whose official duties require such access. Records are kept in limited access areas during duty hours and in locked cabinets at all other times.

RETENTION AND DISPOSAL:

Records are disposed of when ten years old except documents needed for an ongoing investigation in which case the record will be retained until no longer needed for the investigation. Data tracks on floppy disks are overwritten a minimum of three times.

SYSTEM MANAGER(S) AND ADDRESS:

Department of Transportation, Director, Office of Financial Management (B–30), 400 Seventh Street, SW., Washington, DC 20590.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the particular DOT operating administration or component in care of the "system location" above. Individual should furnish full name, Social Security Number, current address and telephone number.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from the individual, creditor agencies, Federal employing agency of debtor, collection agencies, Federal, state or local agencies furnishing identifying information and/or address of debtor, as well as other internal DOT records such as payroll information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 94–27123 Filed 11–1–94; 8:45 am]

BILLING CODE 4910–62–P

National Highway Traffic Safety Administration

[Docket No. 94–85; Notice 1]

Receipt of Petition for Decision That Nonconforming 1993 BMW 840Ci Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1993 BMW 840Ci passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1993 BMW 840Ci that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is December 2, 1994.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm].

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania (Registered Importer No. R–90–009) has petitioned NHTSA to decide whether 1993 BMW 840Ci passenger cars are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1993 BMW 850Ci. Champagne has submitted information indicating that Bayerische-Motoren Werke A.G., the company that manufactured the 1993 BMW 850Ci, certified that vehicle as conforming to all applicable Federal motor vehicle safety standards and offered it for sale in the United States.

The petitioner contends that it carefully compared the 840Ci to the 850Ci, and found the two models to be substantially similar with respect to compliance with most applicable Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the 1993 model 840Ci, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as the 1993 model 850Ci that was offered for sale in the United States, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the 1993 model 840Ci is identical to the certified 1993 model 850Ci with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence* * * *, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 112 *Headlamp Concealment Devices*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windsheld Retention*, 214 *Side Door Strength*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that the 1993 BMW 840Ci complies with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamp assemblies which incorporate sealed beam headlamps; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies; (d) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirrors:* Replacement of the passenger side rear view mirror, which is convex, but lacks the required warning statement.

Standard No. 114 *Theft Protection:* Installation of a buzzer microswitch in the steering lock assembly, and a warning buzzer.

Standard No. 115 *Vehicle Identification Number:* Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power Window Systems:* Rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of a U.S.-model seat belt in the driver's position, or a belt webbing-actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer; (c) installation of factory-supplied driver's and passenger's side knee bolsters to augment the vehicle's passive restraint system. The petitioner states that the remaining components of the vehicle's passive restraint system, consisting of driver's and passenger's side air bags, control unit, and impact sensor, have part numbers identical to those found on the U.S. certified 1993 model 850Ci.

Standard No. 301 *Fuel System Integrity:* Installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: October 24, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–27147 Filed 11–1–94; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 94–84; Notice 1]

Receipt of Petition for Decision That Nonconforming 1993 Mercedes-Benz 300CE Convertible Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1993 Mercedes-Benz 300CE convertible passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1993 Mercedes-Benz 300CE convertible that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is December 2, 1994.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St. SW., Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm]

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register.**

Champagne Imports, Inc. of Lansdale, Pennsylvania ("Champagne") (Registered Importer 90–009) has petitioned NHTSA to decide whether 1993 Mercedes-Benz 300CE convertible passenger cars (Model ID 124.061) are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1993 Mercedes-Benz 300CE convertible that was manufactured for importation into, and sale in, the United States and certified by its manufacturer, Daimler Benz A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1993 Mercedes-Benz 300CE convertible to its U.S. certified counterpart, and found the two vehicle to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the non-U.S. certified 1993 Mercedes-Benz 300CE convertible, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1993 Mercedes-Benz 300CE convertible is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence* * * *., 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that the non-U.S. certified 1993 Mercedes-Benz 300CE convertible complies with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the seat belt warning symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamp assemblies which incorporate sealed beam headlamps; (b) installation of U.S.-model front and rear sidemarkers; (c) installation of U.S.-model taillamp assemblies; (d) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* Replacement of the passenger side rearview mirror, which is convex but lacks the required warning statement.

Standard No. 114 *Theft Protection:* Installation of a warning buzzer microswitch and a warning buzzer in the steering lock assembly.

Standard No. 115 *Vehicle Identification Number:* Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power Window Systems:* Rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of a U.S.-model seat belt in the driver's position, or a belt webbing actuated microswitch inside the driver's seat belt retractor; (b) Installation of an ignition switch actuated seat belt warning lamp and buzzer; (c) replacement of the driver's side air bag with a U.S.-model component; (d) installation of a U.S.-model driver's side knee bolster, passenger side air bag, passenger side knee pad, dual air bag control/sensor unit, and dual air bag wiring harness.

The petitioner stated that each of the passive restraint system components that are to be added to the vehicle will have part numbers that are identical to those found on the U.S. certified 1993 Mercedes-Benz 300CE convertible.

Standard No. 214 *Side Door Strength:* Installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* Installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: October 24, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–27146 Filed 11–1–94; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 94–87; Notice 1]

Receipt of Petition for Decision That Nonconforming 1972 MG–B GT Coupe Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1972 MG–B GT Coupe passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1972 MG–B GT Coupe that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is December 2, 1994.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9:30 a.m. to 4 p.m.]

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania ("Champagne") (Registered Importer 90–009) has petitioned NHTSA to decide whether 1972 MG–B GT Coupe passenger cars are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1972 MG–B GT Coupe that was manufactured for importation into, and sale in, the United States and certified by its manufacturer, British Leyland Motor Corp., Ltd., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1972 MG–B GT Coupe to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the non-U.S. certified 1972 MG–B GT Coupe, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1972 MG–B GT Coupe is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence * * *.*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials*.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamp assemblies which incorporate sealed beam headlamps; (b) installation of U.S.-model front and rear sidemarkers; (c) installation of U.S.-model taillamp assemblies.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirrors:* Replacement of the convex passenger side rearview mirror.

Standard No. 114 *Theft Protection:* Installation of a buzzer microswitch and warning buzzer in the steering lock assembly.

Standard No. 115 *Vehicle Identification Number:* Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power-Operated Window Systems:* Rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of a U.S.-model seat belt in the driver's position, or a belt webbing actuated microswitch in the driver's seat belt retractor; (b) installation of an ignition switch actuated seat belt warning lamp and buzzer.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: October 24, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–27145 Filed 11–1–94; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 94–88; Notice 1]

Receipt of Petition for Decision That Nonconforming 1991 BMW 325i 4-Door Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1991 BMW 325i 4-Door passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1991 BMW 325i 4-Door passenger car that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is December 2, 1994.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590 [Docket hours are from 9:30 am to 4 pm]

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

G&K Automotive Conversion, Inc. of Santa Ana, California ("G&K") (Registered Importer 90–007) has petitioned NHTSA to decide whether 1991 BMW 325i 4-Door passenger cars are eligible for importation into the United States. The vehicle which G&K believes is substantially similar is the 1991 BMW 325i 4-Door passenger car that was manufactured for importation into, and sale in, the United States and certified by its manufacturer, Bayerische Motoren-Werke A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1991 BMW 325i 4-Door passenger car to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

G&K submitted information with its petition intended to demonstrate that the non-U.S. certified 1991 BMW 325i 4-Door passenger car, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1991 BMW 325i 4-Door passenger car is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence * * *.*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens

marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) placement of a seat belt symbol on the seat belt warning lamp lens; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamp assemblies and front sidemarkers; (b) installation of U.S.-model taillamp lenses which incorporate rear sidemarkers; (c) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* Replacement of the convex passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* Installation of a warning buzzer microswitch and a warning buzzer in the steering lock assembly.

Standard No. 115 *Vehicle Identification Number:* Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power Window Systems:* Rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection*: (a) Installation of a seat belt warning buzzer; (b) installation of a Type 1 seat belt in the rear center designated seating position; (c) installation of a passive restraint system consisting of a driver's side air bag and knee bolster, as used in the U.S. certified 1991 BMW 325i 4-Door passenger car.

Standard No. 214 *Side Door Strength:* Installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity*: Installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Additionally, the petitioner states that the bumpers on the non-U.S. certified 1991 BMW 325i must be reinforced to comply with the Bumper Standard found in 49 CFR Part 581. The petitioner also states that because the 1991 BMW 325i is part of a line that is subject to the Federal Motor Vehicle Theft Prevention Standards found in 49 CFR Part 541, a theft prevention certification label must be installed on the vehicle, and its VIN must be inscribed on fourteen major car parts.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: October 24, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–27144 Filed 11–1–94; 8:45 am]

BILLING CODE 4910–59–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 211
Wednesday, November 2, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

AFRICAN DEVELOPMENT FOUNDATION

Board of Directors Meeting

TIME: 11:00 A.M.–1:00 P.M.

PLACE: ADF Headquarters.

DATE: Friday, November 4, 1994.

STATUS: Open.

Agenda

11:00 Chairman's Report
11:10 President's Report
11:30 New Business/Action Items:
- Rwanda
- Burundi
- National Performance Review (NPR)
- Advisory Council Nominees
- Board Meeting Dates

12:00 Special Reports:
- Report of ADF's 10th Anniversary Celebration
- Preliminary Report on the Ten-Year Assessment
- Report on the CLO Meeting in Nairobi
- Report on the Persons with Disabilities Workshop in Entebbe

12:40 Executive Session (Closed)
1:00 Adjournment

If you have any questions or comments, please direct them to Ms. Janis McCollim, Executive Assistant to the President, who can be reached at (202) 673–3916.

Gregory Robeson Smith,
President.

[FR Doc. 94–27226 Filed 10–28–94; 4:47 pm]

BILLING CODE 6116–01–P–M

DEPARTMENT OF JUSTICE

UNITED STATES PAROLE COMMISSION

Public Announcement

Pursuant To The Government In the Sunshine Act

(Public Law 94–409) [5 U.S.C. Section 552b]

DATE AND TIME: Friday, October 14, 1994, 10:00 a.m., by telephone conference call.

PLACE: 5550 Friendship Boulevard, Chevy Chase, Maryland, 20815.

STATUS: Closed—Meeting.

MATTERS CONSIDERED: The following matter will be considered during the closed meeting:

One appeal to the Commission from a decision by the National Commissioners pursuant to a reference under 28 C.F.R. 2.27. This case was originally heard by an examiner panel wherein the individual applied for parole consideration.

AGENCY CONTACT: Tom Kowalski, Case Operations, United States Parole Commission, (301) 492–5962.

Dated: October 5, 1994.

Michael A. Stover,
General Counsel, U.S. Parole Commission.

[FR Doc. 94–27333 Filed 10–31–94; 3:09 pm]

BILLING CODE 4410–01–M

LEGAL SERVICES CORPORATION

Operations and Regulations Committee Meeting; Changes

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 59 FR 53702.

PREVIOUSLY ANNOUNCED TIME AND DATE: A meeting of the Legal Services Corporation Board of Directors Operations and Regulations Committee will be held on November 4, 1994. The meeting will commence at 8:30 a.m.

PREVIOUSLY ANNOUNCED LOCATION OF MEETING: The Hilton Back Bay Hotel, 40 Dalton Street, The Washington Room, Boston, MA 02115, (617) 236–1100.

CHANGES IN THE MEETING:

TIME: The meeting has been canceled.

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Executive Office, (202) 336–8800.

Upon request, meeting notices will be made in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: October 31, 1994.

Patricia D. Batie,
Corporate Secretary.

[FR Doc. 94–27332 Filed 10–31–94; 2:49 pm]

BILLING CODE 7050–01–M

NATIONAL LABOR RELATIONS BOARD

Notice of Meeting

TIME AND DATE: 3:00 p.m., Monday, October 17, 1994.

PLACE: Board Conference, Room, Eleventh Floor, 1099 Fourteenth St., NW., Washington, DC 20570.

STATUS: Closed to public observation pursuant to 5 U.S.C. Section 552b(c)(9)(B) disclosure would significantly frustrate implementation of proposed agency action.

MATTERS TO BE CONSIDERED: FOIA request.

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary, Washington, DC 20570, Telephone: (202) 273–1940.

Dated, Washington, DC., October 28, 1994.

By direction of the Board:

John C. Truesdale,
Executive Secretary, National Labor Relations Board.

[FR Doc. 94–27279 Filed 10–31–94; 12:01 pm]

BILLING CODE 7545–01–M

Corrections

Federal Register
Vol. 59, No. 211
Wednesday, November 2, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP94-397-000]

K N Interstate Gas Transmission Co., Notice of Proposed Changes in FERC Gas Tariff

Correction

In notice document 94-23436 appearing on page 48624 in the issue of Thursday, September 22, 1994, the docket number is corrected as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-055-04-4210-03; AZA 25991]

Arizona; La Paz County, Notice of Realty Action Lease/Conveyance, Yuma District, AZ

Correction

In notice document 94-23935 beginning on page 49417 in the issue of Wednesday, September 28, 1994, make the following corrections:

On the same page, in the second column, under the heading "**Gila and Salt River Meridian, Arizona**" in the fourth line, "Sec. 19" should read "Sec. 15"and in the third column, in the fifth line, the description "S½S½SW¼" should read "S½S½NW¼".

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1309 and 1313

Implementation of the Domestic Chemical Diversion Control Act of 1993 (Pub. L. 103-200)

Correction

In proposed rule document 94-25071 beginning on page 51887in the issue of Thursday, October 13, 1994, make the following corrections:

1. On page 51892, in footnote 3, after "trafficking patterns." insert a missing paragraph, "2 hours for travel to and from the applicant's location."

2. On page 51894, under "**Regulatory Flexibility and Small Business Impact**," in the second paragraph, in the tenth line, word "not" should read "now".

3. On page 51898, in the second column, in the undesignated center heading, "Action of" should read "Action on".

§ 1309.51 [Corrected]

4. On page 51899, in the second column, in § 1309.51(a), in the tenth line, "§ § 1309.51–1309.57" should read § § 1309.52–1309.57".

§ 1309.54 [Corrected]

5. On the same page, in the second column, in 1309.54(b), in the second line, after "1309.43, delete the comma and insert "may,".

§ 1309.55 [Corrected]

6. On the same page, in the third column, in 1309.55(a), in the second line, the word "Administrator" should read "Administration".

§ 1313.15 [Corrected]

7. On page 51907, in the first column, in 1313.15(c), in the sixth line, "the chemical" should read "a controlled".

BILLING CODE 1505-01-D

THE PRESIDENT

3 CFR

Executive Order 12933 of October 20, 1994

Nondisplacement of Qualified Workers Under Certain Contracts

Correction

In Presidential document 94-26516 beginning on page 53559 in the issue of Monday, October 24, 1994, the file line at the end of the document on page 53561 should read: "Filed 10-21-94; 12:13 pm".

BILLING CODE 1505-01-D

SMALL BUSINESS ADMINISTRATION

[Delegation of Authority No. 23-C, Revision 3]

Inspector General; Delegation of Authority and Line of Succession

Correction

In notice document 94-23524 appearing on page 48928 in the issue of Friday, September 23, 1994, make the following correction:

On page 48928, in the second column, in the date immediately preceding the signature line, "April" should read "September".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

[Treasury Directive Number 12-04]

Delegation of Authority for Budget Execution in the Departmental Offices; Authority Delegation

Correction

In notice document 94-26221 appearing on page 53511 in the issue of Monday, October 24, 1994, make the following correction:

On page 53511, in the second column, in the third line, "three" should read "there".

BILLING CODE 1505-01-D

federal register

Wednesday
November 2, 1994

Part II

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1030 et al.

Milk in the Chicago Regional and Other Marketing Areas; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1030, 1065, 1068, 1076 and 1079

[Docket Nos. AO-361-A31, etc.; DA-92-27]

Milk in the Chicago Regional and Other Marketing Areas; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders

7 CFR part	Marketing area	AO Nos.
1030	Chicago Regional	AO-361-A31
1065	Nebraska-Western Iowa	AO-86-A50
1068	Upper Midwest	AO-178-A48
1076	Eastern South Dakota	AO-260-A32
1079	Iowa	AO-295-A44

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document recommends changes in the Federal milk marketing orders for five north-central marketing areas based on industry proposals considered at a public hearing. The decision recommends adopting a plan for pricing milk on the basis of its protein and other nonfat solids, as well as butterfat, components. The proposed plan includes adjustments per hundredweight of all producer milk based on the somatic cell count of the milk. The intended effect of this rule is to better reflect the value of the nonfat solids components in the skim portion of milk.

DATES: Comments are due on or before December 2, 1994.

ADDRESSES: Comments (six copies) should be filed with the Hearing Clerk, Room 1083, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-2357.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. The amendments would promote orderly marketing of milk by producers and regulated handlers.

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

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Prior documents in this proceeding:

Notice of Hearing: Issued December 22, 1993; published January 4, 1994 (59 FR 260).

Extension of Time for Filing Briefs: Issued April 22, 1994; published April 24, 1994 (59 FR 22138).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreements and the orders regulating the handling of milk in the Chicago Regional and certain other marketing areas. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, DC 20250, by the 30th day after publication of this decision in the **Federal Register**. Six copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendments set forth below are based on the record of a public hearing held at Bloomington, Minnesota, on January 25-27, 1994, pursuant to a notice of hearing issued December 22, 1993; (59 FR 260).

The material issues on the record of hearing relate to:

1. Adoption of multiple component pricing.
2. Orders to be included.
3. Components and component prices.
   a. Protein.
   b. Other nonfat solids.
   c. Butterfat.
   d. Miscellaneous issues.
4. Somatic cell adjustment.
5. Conforming changes.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. Adoption of Multiple Component Pricing

Proposals to incorporate multiple component pricing in the Chicago Regional (Order 30), Nebraska-Western Iowa (Order 65), Upper Midwest (Order 68), Eastern South Dakota (Order 76) and Iowa (Order 79) Federal milk marketing orders (the five orders) should be adopted, with some modifications. The pricing plan generally would be patterned after the multiple component pricing plan proposed by National All-Jersey, Inc. and other dairy organizations. Producers would be paid on the basis of the pounds of butterfat, protein and other nonfat solids (solids-not-fat other than protein) in their milk, and would share in the value of the pool's Class I and Class II uses on a per hundredweight basis. Regulated handlers would pay for the milk they receive on the basis of total butterfat, the protein and other nonfat solids used in Classes II and III, skim milk used in Class I, and the hundredweight of total product used in Classes I and II. A somatic cell adjustment, per hundredweight, would also apply to payments for all producer milk.

At the present time, milk received by handlers under the five orders is priced

according to the pounds of producer milk allocated to each class of use multiplied by the prices per hundredweight of milk testing 3.5 percent butterfat, as determined under the orders for each class of use. Adjustments for such items as overage, reclassified inventory, location and other source milk allocated to Class I are added to or subtracted from the classified use value of the milk. The resulting amount is divided by the total producer milk in the pool to calculate a price per hundredweight of milk testing 3.5 percent butterfat to be paid to producers for the milk they have delivered to handlers. The price paid to each producer is then adjusted according to the specific butterfat test of the producer's milk by means of a butterfat differential. The butterfat differential is computed by multiplying the wholesale selling price of Grade A (92-score) bulk butter per pound on the Chicago Mercantile Exchange, as reported for the month by the U.S. Department of Agriculture, by 0.138 and subtracting the Minnesota-Wisconsin price at test, also as reported by the U.S. Department of Agriculture, multiplied by .0028.

The multiple component pricing (MCP) plan was originally proposed for Orders 30, 68 and 79 by National All-Jersey, Inc. (NAJ) and other dairy organizations. In addition, Land O'Lakes, Inc., proposed that the multiple component plan be considered for Orders 65 and 76. Most other proposals considered at the hearing were modifications of the NAJ proposal and are discussed below.

The first NAJ witness stated that the current milk pricing system used in the five orders does not meet current marketing needs and should be replaced with a multiple component pricing system. Much of the general NAJ testimony in favor of multiple component pricing was later reiterated by witnesses expert in the field of economics and dairy chemistry testifying for NAJ, and a representative for Land O'Lakes. Also testifying in favor of the NAJ proposal were two dairy farmer members of the cooperative association Swiss Valley Farms Company, a representative of the Brown Swiss Cattle Breeders Association of U.S.A., Inc., and a representative of Tri-State Milk Cooperative. It was indicated in testimony that Alto Dairy Cooperative also supported the NAJ proposal.

The representative for the proponents said the intent of their proposal was to:

1. Use the M-W price as the base;
2. Pay all producers on four factors—pounds of butterfat, pounds of protein, pounds of other solids, and each producer's share of the fluid differential on a per hundredweight basis;
3. Leave Class I handler obligations on a skim-butterfat basis;
4. Determine Class II and III handlers' obligations on the basis of pounds of butterfat, protein, and other solids; and
5. Change only the order provisions needed to implement the NAJ proposal.

The NAJ witness said that there were five reasons for replacing the current milk pricing system with a multiple component pricing system. The first reason, according to the NAJ witness, is that the current skim-butterfat pricing system does not give dairy farmers economic incentives to produce milk high in nonfat solids, especially protein. He stated that under the current pricing system a pound of water receives the same price as a pound of protein or other solids, yet it is these solids that give milk its functional and nutritional value.

The second reason given by the NAJ witness for adopting MCP was that over a period of years much of the value of milk has shifted from butterfat to the skim portion of milk. The proponent's witness said that in 1960, butterfat represented 77% of the value of the M-W price, and skim represented 23%. By 1993, he testified, these values were reversed, with butterfat representing only 23% of the value of the M-W, while the skim portion of the milk represented 77%.

According to the NAJ witness, the shift in value from butterfat to skim was partially caused by the USDA decision to decrease the support price for butter and increase the support price for nonfat dry milk. The support price for butter declined from $1.53 per pound in 1981 to 65¢ per pound in 1993, with most of the decrease occurring since 1989. Nonfat dry milk purchase prices under the support program increased from 72.75¢ per pound in 1988 to $1.034 per pound in 1993. In addition, the witness said, the butterfat differential under Federal orders has been dropping since the mid-1980s because of a decline in the market price for butter. This drop was accelerated by a change in the method of computing the butterfat differential, implemented in 1990, that had the impact of reducing the butterfat differential even more.

The third reason the witness gave for implementing multiple component pricing was the shift in types of dairy products consumers are purchasing. According to the witness, some of the decline in butterfat value relative to skim value has been caused by a shift in consumption from whole milk to lowfat and skim fluid milk products. The witness presented data to show that from 1970 to 1991, national fluid milk sales of lowfat and skim milk increased 232%, while sales of whole milk declined 50%. In addition, he stated, consumption of lowfat manufactured products is growing faster than consumption of relatively high-fat manufactured products.

The NAJ witness discussed equity in Federal orders as the fourth reason for implementing multiple component pricing. He said that the current skim-butterfat pricing system is equitable for neither producers nor handlers since it does not properly recognize the value of protein, especially in manufactured products such as cheese. The witness provided examples to show how a producer with high protein milk may currently receive the same Federal order minimum price as a producer with low protein milk. Similarly, a cheese maker who purchases high protein milk could have a cost advantage at minimum order prices over a cheese maker who purchases low protein milk.

The fifth reason presented by the NAJ witness was the existence of a number of voluntary multiple component pricing plans in the areas covered by the five orders. Data were presented to show that nearly all producers in the five orders currently are eligible to be paid under one of these voluntary multiple component pricing plans. The witness stated that many of the plans have inadequacies which contribute to disorderly marketing. According to the witness, these inadequacies would be addressed by adopting the NAJ proposal.

A witness from Land O'Lakes, Inc. (LOL), testified in support of the adoption of MCP in the five orders in general, and the NAJ proposal specifically. He discussed how the NAJ multiple component pricing proposal would better reflect the market value of nutrients in the milk to the farmer. He stated that the proposed system, compared with the current system, would essentially eliminate the value of milk used in manufacturing that is currently associated with water which, he said, has very little market value in dairy products. The witness said that MCP would affect the cost of milk to LOL as a handler in that it will come closer to equalizing the cost of milk relative to the value of the products derived from the milk.

The LOL witness also described four major weaknesses in the existing voluntary MCP plans. The first weakness, he said, was that the current plans emphasize component test instead of component yield. He said that the price paid to each producer should be tied more directly to the value of the

products that can be produced from the producer's milk.

The second weakness described by the LOL witness is that many existing plans do not provide for deductions for milk with low component levels. This, he said, indicates that the plans recognize the higher value of milk with more pounds of components, but do not recognize that milk with fewer pounds of components is worth less. He said that competitive, rather than economic, factors are the reason deductions for low component levels generally do not exist, as many producers do not like to see deductions on their milk checks.

According to the LOL witness, an inequitable feature of the voluntary MCP plans is that they generally pay no component premiums when the somatic cell count of the milk is above a fixed level, resulting in high test producers losing their component premium because of high somatic cells, while low test producers with high somatic cell counts lose nothing.

The fourth weakness described by the witness is that some existing MCP plans pay premiums for protein, while others pay premiums for solids-not-fat. He said that most producers in Wisconsin receive premiums based on protein, while most producers in Minnesota, Iowa, Nebraska and South Dakota receive premiums based on solids-not-fat. The witness claimed that the variety of payment plans currently in existence do a poor job of transmitting market signals to the producers, are not economically consistent, and lead to confusion among farmers. He said that the NAJ proposal would address the deficiencies in the current situation.

Most participants at the hearing advocated the introduction of MCP for payments to producers and for milk delivered to handlers for Class II and Class III use in the five orders. There was no support for pricing Class I milk on other than the current butterfat and skim basis.

In addition to NAJ and LOL, adoption of some form of multiple component pricing in the five orders was supported by Central Milk Producers Cooperative (CMPC), the Trade Association of Proprietary Plants (TAPP), Farmers Union Milk Marketing Cooperative (FUMMC), National Farmers Organization (NFO), Kraft General Foods (Kraft), Associated Milk Producers, Inc., North Central Region (AMPI North Central), Wisconsin Cheese Makers Association (WCMA), Dean Foods, and National Cheese Institute (NCI).

The CMPC witnesses strongly supported the need for implementing multiple component pricing in the five orders and proposed a plan very similar to that of NAJ. The fundamental difference between the two plans is that the CMPC proposal would result in lower protein prices than the NAJ proposal. The appropriate level of the protein price is discussed under Issue 3a below.

The CMPC proposal was supported in testimony and in a post-hearing brief by NFO. A witness for WCMA testified in support of the CMPC proposal for multiple component pricing. A witness for Dean Foods testified in support of the concept of MCP, and in response to a question about which proposal he favored, he expressed support for the CMPC proposal. AMPI North Central Region submitted a brief in support of the CMPC proposal for multiple component pricing.

A witness for NCI testified in support of the CMPC multiple component pricing proposal with one primary modification. The NCI proposal would calculate a "residual fluid price", instead of an other solids price. This proposal is discussed further under Issue 3b below in this decision. Kraft testified and submitted a brief in support of the NCI proposal for multiple component pricing.

A witness for the Trade Association of Proprietary Plants (TAPP) and Farmers Union Milk Marketing Cooperative (FUMMC) testified in support of the TAPP proposal, a variation of the CMPC proposal that would price both butterfat and protein on a differential basis, rather than on a per pound basis.

The five north central Federal milk orders included in this proceeding should be amended to include multiple component pricing. On the basis of the record of this proceeding, multiple component pricing would entail pricing milk on the basis of the pounds of butterfat, protein and other nonfat solids contained in the milk, with a somatic cell adjustment to the hundredweight price paid to producers. The record indicates that a large percentage of the producers pooled under these orders are already eligible for or receive some form of multiple component pricing and that many of these component pricing plans use protein as a pricing component.

The record also shows that the diverse component pricing programs that currently exist promote disorderly and inefficient marketing conditions in the procurement of milk supplies by competing handlers. The different programs establish non-uniform bases of payments to producers. The adoption of multiple component pricing will allow the Orders to recognize the additional value of milk with a higher-than-average solids content.

In the five orders included in this proceeding, the vast majority of the milk pooled is utilized in manufactured products. The total solids in the milk used for manufacturing are the primary determinants of product yield. In addition, it is the solids in fluid milk that give it its nutritional value and taste. In both types of products, the current pricing system used in the five orders does not properly recognize the value of nonfat milk solids, nor encourage producers to increase the quantity of nonfat milk solids in the milk they produce.

As a result of the shift in value in recent years from the butterfat portion of milk to the skim portion, most of the value of milk is determined on a volume basis without any consideration of the value of the skim components. Adoption of the multiple component pricing plan recommended in this decision will enable the market to reflect the value of the skim components in milk to producers.

In addition to butterfat, protein is clearly the most appropriate component of milk on which payment should be based. Most of the milk pooled under these five orders is used for manufacturing, and 86% of the milk used in manufacturing is used to produce cheese. Because protein is a main determinant of cheese yield, and it is cheese that determines the profitability for most of the dairy industry in the 5-market area, the milk pricing system should recognize the value of the protein component of milk as it is used in the manufacture of cheese.

Record evidence clearly shows that protein has a higher demand than other components of milk because of its functional, nutritional and economic value in the marketplace. The functional characteristics of protein allow it to form the matrix in the production of cheese and yogurt. Protein is also important to the air formation in the manufacture of certain products and provides some required nutrients in the human diet. Milk containing a higher percentage of protein will result in greater yields of most manufactured products than milk with a lower protein test. Additionally, handlers receiving milk that results in greater volumes of finished products such as cheese and cottage cheese than an equivalent volume of milk testing lower in protein should be required to pay more for the higher-testing milk. At the same time, the dairy farmer producing milk that yields greater amounts of finished products deserves to be paid more for it than a dairy farmer producing the same volume of milk that results in less

product yield. Thus, sending an economic signal to dairy farmers will encourage them to maximize the production of those components which have the greatest demand in the marketplace.

According to analysis of the record, proponents are correct that attribution of all of the skim value of the M-W price to protein would result in an overstatement of the value of protein used in cheese and most other uses. In order to maintain fairly uniform prices between orders for milk used in manufactured products, it is necessary to assign the residual value of the M-W price minus the butterfat and protein values to either other nonfat solids or a fluid carrier price. The discussion of this residual component may be found in Issue 3b below.

A witness for the Galloway Company testified in support of TAPP and Galloway's own proposals to exclude sweetened condensed milk, ice cream and ice cream mix from pricing under a multiple component pricing system. The witness stated that such products should continue to be priced under the current pricing system.

The Galloway witness said that some Class II manufactured products, together with other products such as sour cream, whipping cream, half and half, eggnog, yogurt, nonfat dry milk and butter, are not affected in yield by the protein content of the milk from which the products are manufactured. Instead, according to the witness, it is total skim solids that affect the yield of these products. Accordingly, the witness stated, it would not be equitable to price such products under a multiple component pricing system which prices protein at a level higher than the remaining skim solids in the milk. The witness argued that these products should be left out of any MCP plan adopted.

The Galloway witness testified, and post-hearing briefs filed on behalf of Anderson-Erickson (A–E) and Galloway asserted, that yields are affected by the level of total skim solids rather than protein, making the pricing of protein irrelevant for Class II pricing. The Galloway witness testified that there have been months in which the monthly average protein level and other nonfat solids level of milk moved in opposite directions. In addition, the A–E and Galloway briefs asserted that MCP would significantly increase the cost of Class II milk, which would put them at an even greater disadvantage than currently with respect to products made from nonfat dry milk priced at the Class III-A price.

The Galloway witness stated that the primary product manufactured by the Galloway Company is sweetened condensed milk. According to the witness, this product competes on a national basis with other manufacturers who do not have to procure their milk under Federal orders with MCP provisions. The witness stated that it would be unfair to force his organization to procure milk under a set of regulations that differ from those regulating his competitors.

A portion of the TAPP proposal would require a classification change for sweetened condensed milk from Class II to Class III. Although the Galloway witness expressed strong concern over the impact of multiple component pricing on his company, the effect of the classification of sweetened condensed milk on the Galloway company is not part of the MCP issue. Reclassification of this product is a separate issue that was discussed thoroughly at a previous hearing, and in the decision issued as a result of that hearing (58 FR 27774). No new evidence was presented at this hearing that would justify reclassifying sweetened condensed milk.

Milk used to produce sweetened condensed milk, or any other Class II product, should not be exempted from multiple component pricing. The MCP plan recommended for adoption will cover all Class II and Class III products.

Testimony at the hearing indicated that there are essentially two groups of Class II products that differ with respect to the impact of multiple component pricing on the handlers that make these products. The first group of Class II products are those in which there generally seemed to be agreement in the hearing record that yields are greatly affected by the level of protein in the milk. These products include the various cottage cheeses and other similar soft, high-moisture cheeses. The handlers that make these products benefit directly from higher levels of protein in milk and should be accountable to the pool for this added benefit.

The second group of Class II products are those where there was some disagreement in the record about the affect of protein on the yield. These products include ice cream and frozen desserts and mixes, fluid creams, sour creams, yogurt, sweetened condensed milk and others. Considerable debate took place on whether it was appropriate to include these products in a multiple component pricing system.

Occurrences of average protein level and other nonfat solids level of milk moving in opposite directions appears to be an exception rather than the rule. Evidence presented in "Analysis of Component Levels and Somatic Cell Counts in Individual Herd Milk at the Farm Level, 1992, Upper Midwest Marketing Area", indicates that about 60% of the variation in solids-not-fat is caused by variation in protein, and that higher protein levels are positively correlated with higher solids-not-fat levels. Data presented in this and other documents show that the level of other solids in milk tends to be relatively constant with, generally, small month-to-month variation. Thus, when a handler purchases milk with higher than average protein levels, he will also, generally, be purchasing milk with higher than average levels of solids-not-fat.

In addition, the sum of the value of the protein and other solids under this recommended pricing plan equals the value of the total nonfat solids. The value of total nonfat solids, therefore, is a weighted average of the quantity and price of the protein and the quantity and price of the other nonfat solids contained in the milk. Analysis based on the average tests of the five markets shows that under the recommended pricing plan, the value of total nonfat solids would range from approximately $.002 per pound below the current value to approximately $.008 per pound above the current value.

This estimated price difference is certainly not the significant increase that is claimed in the briefs. In hearing testimony, the Galloway witness stated that an analysis of the effect of the CMPC proposal on the Galloway Company showed a nine-cent increase per hundredweight in the cost of Galloway's milk only when the CMPC somatic cell adjustment was included. Without the somatic cell adjustment, the analysis showed that the cost of milk to Galloway would be reduced under the CMPC multiple component pricing plan.

It is appropriate to include all Class II products in the multiple component pricing system being proposed here. All Class II products derive benefit from butterfat, protein and/or other solids in the milk. The benefit may be in enhanced yield, such as protein for cottage cheese, or a combination of protein and other solids (i.e. the solids-not-fat in the milk) in many of the other Class II products. Or, the benefit may be in some other area. For example, the NAJ dairy chemist witness testified about the importance of protein in the functionality of many of these products, such as in ice cream, whipping cream, and yogurt. Some testimony even went so far as to discuss the importance of protein in fluid milk, in terms of the

nutrient content and the mineral carrying content of the milk. However, since there was no substantial support for including Class I milk in the multiple component pricing system being proposed here, only Class II and Class III products will be priced on multiple components.

2. Orders To Be Included

A proposal to incorporate the multiple component pricing plan adopted in this proceeding in the Nebraska-Western Iowa and Eastern South Dakota Federal milk orders as well as in the Chicago Regional, Iowa, and Upper Midwest orders should be adopted.

The witness for Land O'Lakes (LOL), proponent of the proposal, listed a number of reasons for including the multiple component pricing plan in the Nebraska-Western Iowa and Eastern South Dakota orders as well as in the orders proposed by NAJ. The witness explained that all five orders are similar in that their predominant use of milk is for manufacturing Class III products. He testified that the primary organizations that supply the Nebraska-Western Iowa and Eastern South Dakota markets also are major participants in one or more of the Chicago Regional, Iowa, and Upper Midwest order marketing areas. The witness stated that inclusion of the Nebraska-Western Iowa and Eastern South Dakota orders in the multiple component pricing plan would allow those organizations that have producers and market milk in multiple orders to standardize their payrolls and billings, thus maintaining uniformity and reducing confusion among producers and handlers.

The decision to include additional orders in this decision should not be made entirely on the basis of convenience to the parties marketing milk on the various orders. The decision is based on whether inclusion of the two orders would tend to effectuate the policy of the Agricultural Marketing Agreement Act. Certainly, including the Nebraska-Western Iowa and Eastern South Dakota orders in this decision will contribute to orderly marketing.

The data supplied by the market administrators' offices describing the milksheds of the various orders shows a considerable overlap of milksheds. For example, many South Dakota counties have milk pooled on three of the five orders during the same month. In the absence of uniform pricing provisions between the five orders, disorderly marketing could occur, particularly when orders have overlapping milksheds, if one order were pricing milk on a skim and butterfat basis while another order was pricing milk on the basis of its components. If a producer's milk tests high for nonfat components but is pooled under an order that prices milk on a skim-butterfat basis, the producer would attempt to maximize returns by changing the market under which his milk is pooled to benefit from his high component levels. The opposite situation would occur if the milk of a producer testing below average for nonfat components is pooled under an order with MCP provisions. Such a producer would maximize returns by changing the order under which his milk is pooled to one with skim-butterfat pricing. This shuffling of producers in the same geographic area because of nonuniform pricing provisions would not constitute orderly marketing.

Since the inclusion of the Nebraska-Western Iowa and Eastern South Dakota orders in the multiple component pricing decision would tend to reduce disorderly marketing in the region, benefit handlers by allowing a standardized payroll, and there was no opposition to their inclusion, multiple component pricing should be adopted for these two orders as well as the other three.

3. Components and Component Prices

Unlike the multiple component pricing plans adopted previously in other Federal milk marketing orders, this decision recommends the adoption of a pricing plan for milk based on three components rather than two. Under the five orders involved in this decision, milk should be priced on the basis of its protein, other nonfat solids, and butterfat components.

The protein price contained in this decision is based on the value of protein in the manufacture of cheese, as determined by cheese market prices, and is not a residual of the Minnesota-Wisconsin (M-W) price minus butterfat value as is the case in other MCP plans. The butterfat price would be based on the butter market, as it is in other multiple component pricing systems. "Other nonfat solids" will be priced as a residual of the M-W price minus protein value and butterfat value. The butterfat, protein, and other nonfat solids prices shall be expressed in dollars per pound carried to the fourth decimal place. In addition, payments to each producer should reflect the value of participation in the marketwide pools on a hundredweight basis.

As in other orders for which multiple component pricing has been adopted, this decision maintains the relationship of the value of producer milk to the M-W price. If the sum of the butterfat value and the protein value is greater than the M-W price, a situation which would result in a negative other nonfat solids price, the protein price will be adjusted such that the other nonfat solids price will be zero.

In testimony and brief a witness for the Trade Association of Proprietary Plants (TAPP) and Farmers Union Milk Marketing Cooperative (FUMMC) presented a plan that would pay producers for protein above a neutral zone of 3.00% to 3.29%, and provide deductions for protein levels below the neutral zone. The level of adjustment would be tied to the price of barrel cheddar cheese on the National Cheese Exchange, and would be used to adjust pay prices to producers in a manner similar to the current butterfat differential.

The witness said that milk traditionally has been purchased on a per hundredweight basis, with differential adjustments for levels of components. According to the witness, not only are producers usually paid on a per hundredweight basis, but milk is measured on a per hundredweight basis for purposes of plant accounting, payments between plants and to haulers, and by breed associations and DHIA with adjustments for percentages of components where necessary. The witness also claimed that using differential pricing would be revenue neutral.

The TAPP/FUMMC witness is correct that switching payments to producers from a per hundredweight system to one of pounds of components, as adopted in this decision, is not a minor change. Some expense will be incurred by handlers and producers in adapting to the new system. However, the benefits to the industry in the affected areas of adopting a uniform multiple component pricing system outweigh the one-time costs of its adoption. The implication that everyone connected with the dairy industry must adopt this system is not correct. Pounds of milk must still be accounted for under the multiple component pricing system. For example, nothing in this decision would prevent a handler from continuing to pay haulers on a hundredweight basis. No testimony at the hearing from witnesses that have producers pooled under Federal orders that have already adopted multiple component pricing indicated that moving to a pricing system that prices milk component by the pound was an onerous burden. The transcript does reveal disagreement with the level of the protein price under some Federal orders with multiple component pricing, but little

dissatisfaction with the system itself, nor complaints about the difficulty of switching to a component pricing system.

As to the argument that pricing protein and butterfat on the basis of price differentials would be revenue neutral, the multiple component pricing system recommended for adoption is designed neither to enhance nor reduce total producer returns. The only changes in the total pool value that may occur because of the recommended changes would result from differences in the protein and other nonfat solids content between milk pooled under the orders included in this proceeding and the milk included in the Minnesota-Wisconsin survey. In addition, some redistribution of the dollars involved in each pool can be expected between producers, and between handlers.

The proposal by TAPP and FUMMC to leave butterfat on a differential pricing basis and to price protein on a differential basis with a neutral range is not included in this decision. To continue to pay producers for butterfat and to add payment for protein on the "traditional" differential system would confuse and frustrate producers in the understanding of their milk checks. Continued use of differentials would perpetuate the volume-based pricing system with a high value on water, and would fail to give producers a true price signal of what the marketplace wants.

The use of differentials in pricing milk components is not widely understood. There is no valid reason to continue an outmoded and confusing pricing system in valuing milk components. Pricing components on a per-pound basis will allow producers to see clearly what components have the most value, a result which plainly fits the goal of encouraging producers to produce those components which have the highest value in the market place. Per-pound pricing also makes clear to producers that it is the pounds of components that result in payment, rather than the percentages of those components in milk. Producers would be better able to look at the cost of producing pounds of components, and compare those costs with possible returns. Application of a neutral zone would discourage producers from increasing protein production marginally unless such an increase would raise the protein level above the neutral range.

A. Protein

The protein price for milk pooled under the five north central Federal milk orders should be calculated by multiplying the monthly average of 40-pound block cheese prices on the Green Bay Cheese Exchange by 1.32, without including a value for whey protein.

No opposition was expressed at the hearing to pricing protein on the basis of its value in the manufacture of cheese. The differences between participants came in determining the appropriate level of the protein price.

A proposal submitted and supported by National All-Jersey, Inc. (NAJ), and supported by a number of cooperative associations and other dairy organizations, would calculate the protein price in two parts: (1) Multiply the National Cheese Exchange monthly average 40-pound block cheese price by 1.32, and (2) add the monthly average whey protein concentrate price multiplied by .735. The sum of these two values would equal the protein price.

The NAJ proponent witness explained that one of the objectives of the NAJ proposal was to establish a protein price that was high enough to give producers an incentive to produce protein. He added that a second objective was to determine the protein price from market forces rather than as a residual value, as is used in other Federal orders. The witness explained that the 1.32 factor used in the NAJ proposal comes from the modified Van Slyke cheese yield formula that is commonly used by the industry. The 1.32 factor represents the pounds of 38-percent moisture Cheddar cheese obtained from one pound of protein with 75 percent of the protein going into the cheese.

The witness gave four reasons for using the National Cheese Exchange 40-pound Cheddar block price (block price): (1) The majority of the cheese in the five Federal orders is priced using the block price as the base price, (2) the block price is used in determining the somatic cell adjustment in the Eastern Ohio-Western Pennsylvania, Indiana, and Ohio Valley orders, as well as being used in the computation of the Class II price in all Federal orders, and in the determination of the Class 4a price in California, (3) since there is over twice as much American cheese manufactured in blocks as is made in barrels, and the Wisconsin assembly point barrel cheese price is within one cent of the block price, the block price represents a minimum cheese price, and (4) the protein price determined pursuant to this proposal gives a greater incentive to producers to produce protein and is more equitable to handlers and producers than the (lower) protein price contained in the other proposals.

The NAJ witness continued by explaining that the proposal includes the value of whey protein in the protein price so that all of the protein in the milk would be accounted for. As explained by the proponent witness, the .735 factor was determined by dividing 25 percent, which is the protein left in whey after making cheese, by 34 percent, which is the percent of protein in whey protein concentrate. The resulting value, .735, is multiplied by the monthly average 34 percent whey protein concentrate price to yield the whey contribution to the protein price. The witness stated that the whey protein concentrate price was selected because it is a better indicator of the value of the protein contained in whey than is dry whey or animal feed whey.

An economist supporting the NAJ proposal testified that even though the butterfat price is determined at its marginal value, that is, the value of butterfat in butter, the protein price should be determined by the value of protein in the most common use of protein in the five markets included in this proceeding. The witness pointed out that the most common use of protein is in the manufacture of cheese, with 85.9 percent of the milk marketed in 1992 in Wisconsin being used in the manufacture of cheese. The witness testified that the appropriate cheese price to be used in computing the protein price was the block price because it is a "conservative estimate of the price actually received for block cheddar cheese". The witness went on to explain that the reported block price is closer to what manufacturing plants receive for barrel cheese than is the reported barrel price because when the customary premiums are added to the reported barrel cheese price the result is approximately equal to the block price.

The academic NAJ witness reiterated the NAJ position that the value of whey protein should be included in the protein price because the total value of the protein in producer milk would thus be reflected in the protein price, giving producers an incentive to produce more protein.

A witness for Central Milk Producers Cooperative (CMPC) explained that the CMPC proposal would use the monthly average Green Bay Cheese Exchange barrel price (barrel price) instead of the block price, and would not include the value of whey protein. The witness for CMPC testified that the barrel price better represents the value of cheese than the block price because there is a greater volume of trading in barrel cheese than in block cheese. The resulting protein price would be lower than the protein price computed under the NAJ proposal. A witness for CMPC explained that their proposed protein price was based on the understanding

that Federal order prices are minimum prices, and that the CMPC proposal, using the barrel cheese price and not including a value for whey protein, would result in a minimum price for protein.

The CMPC protein price proposal was supported at the hearing by other hearing participants, including National Farmers Organization (NFO), Kraft, Inc., Galloway Co., Wisconsin Cheese Makers Association (WCMA), National Cheese Institute (NCI), Farmers Union Milk Marketing Cooperative (FUMMC), and the Trade Association of Proprietary Plants (TAPP). A witness for NCI explained that if the protein price is set at too high a level, cheese manufacturers would experience a declining gross margin as the price for protein increases above the return the plant can obtain from additional protein. He explained that this would be the case with the protein price as proposed by NAJ, but not with the NCI and CMPC proposed protein price.

Other witnesses supporting a lower protein price than that proposed by NAJ explained that protein should not be priced at a high level because the higher price may disadvantage handlers who do not manufacture cheese. They testified that the higher protein price would not be recoverable in certain products such as nonfat dry milk, condensed milk, or certain Class II products, and that even though the lower protein price still may not be recoverable, it offers the best alternative.

The Galloway witness stated that if a multiple component pricing plan that derives a protein price from a cheese market value were adopted, the protein price should represent a minimum value, should be based on the barrel cheese market, and should not include a value for whey protein concentrate. He argued that such a price would have the impact of minimizing the difference between the protein and other solids prices.

The TAPP/FUMMC witness testified that protein should be priced at a level somewhat below its full value in cheddar cheese and whey for several reasons. He said that too high a protein price could invite the use of non-dairy protein, whey solids, and casein, and thereby cause an increase in the production of imitation cheese. He also said that since some Class II and III products do not recoup as much value from high protein milk as cheese and cottage cheese, the protein price should be set at a level less than its full value for cheese. The witness expressed concern that too high a protein price could result in a zero value for the residual component, or other solids. According to the witness, a zero value for the residual would fail to reflect a realistic value, and would not cover a make allowance.

In the post-hearing brief filed by NAJ, the position of using a "justifiably high" protein price to send a signal to producers that protein is the most valuable component in milk was reiterated. In post hearing briefs filed by CMPC, NFO, Kraft, NCI, TAPP and FUMMC, Anderson-Erickson (A-E), and AMPI North Central Region, the computation of the protein price as proposed by CMPC was supported. The reasons given in testimony for using a lower protein price than that proposed by NAJ were reiterated in briefs. In addition, A-E, Kraft and AMPI North Central Region argued that the difference between the barrel cheese price and the block cheese price is due to the cost of packaging and other nonmilk factors, and therefore the barrel cheese price should be used for determining the protein price.

In pure economic terms the price of a product represents the supply and demand for that product as affected by place, form, and time. The problem with determining a price for protein contained in milk is that the protein is not marketed as a separate unique product, but is marketed as an integral part of both fluid and manufactured dairy products. Therefore, in determining an appropriate protein price, the value of protein in dairy products is determined by using the value of a product whose yield is a function of the protein content of the milk. At this point in time no attempt is made to reflect the protein content of milk in the value of milk used for fluid use. For this reason, the component pricing plan recommended in this decision does not apply to milk used for Class I purposes.

The level of protein in milk does have a measurable affect on the value of milk used for manufacturing. This value varies among the diverse manufactured products because of differences in the market values of manufactured dairy products and in the contribution made by protein to various finished products. For instance, testimony at the hearing showed that for a one-pound change in protein in the manufacture of cheddar cheese there is a 1.32 pound change in the quantity of cheese produced, whereas in the production of milk powder a one-pound change in the level of protein would change the amount of powder produced by approximately one pound. Since the vast majority of milk in the five orders included in this hearing is used to manufacture cheese, the protein price will be based on the contribution made by protein in the manufacture of cheese.

The 1.32 factor used in both methods proposed for the computation of the protein price for these five orders is derived from a modified Van Slyke cheese yield formula, where the casein is assumed to be 75 percent of the protein and the moisture content of the cheese is 38 percent. Assuming the butterfat is constant, a change of protein by one pound in this formula will change cheese yield by 1.32 pounds. Therefore, the 1.32 factor is appropriate for determining the order protein price.

In determining the level of the protein price, the question of whether to use the average block price versus the average barrel price is a lesser issue than the question of whether or not whey protein should be included in the computation of the protein price, as proposed by NAJ. The average difference between the Green Bay Cheese Exchange average block price and average barrel price during 1992 and 1993 was $.0388 per pound. Multiplying this difference by the 1.32 factor results in an average difference of $.05 per pound of protein between the protein prices derived from the barrel and the block cheese prices. Over the same 2 years the inclusion of whey protein in the computation of the protein price would have increased the protein price by an average of $.4265.

The principal issues that must be addressed in determining the computation of the protein price are the factors that must be included to arrive at a price that most accurately reflects the value of protein in milk. In addition, the effect of the level of the protein price on the other nonfat solids price must be considered. Since the other nonfat solids price is computed as a residual of the Minnesota-Wisconsin price, the other nonfat solids price is inversely related to the protein price. In determining an appropriate protein price and other nonfat solids price, the effects of both prices on payments to producers and margins to handlers buying milk must be determined.

Inclusion of a protein price and an other solids price in determining payments to producers gives producers an incentive to increase their production of nonfat solids, especially protein. There was no evidence in the hearing record to indicate the cost to producers of increasing the protein content of milk. It is therefore difficult to determine what the absolute level of the protein price, or its relative level to the butterfat and other solids prices, must be to encourage producers to increase the protein content of milk.

On average for the 21 months of data available in the record the protein price

recommended for adoption in this decision, at $1.6851 per pound of protein, is twice both the $.6379 per pound average other solids price and the $.8374 per pound average butterfat price. Certainly, pricing protein at double the price of the other components in milk gives producers a clear message that protein is the component most desired in the marketplace without over-valuing that component. The significant difference in prices between protein and the other nonfat solids and butterfat components should give producers an incentive to increase protein output.

Testimony by several proponents of component pricing explained that component pricing would be more equitable to handlers than the current skim-butterfat pricing system. The proponents explained that the increased equity would be due to handlers paying for milk based more closely on its economic value to them. This increased equity is reflected in a narrower spread in margins between handlers making cheese from low protein-low solids milk versus handlers making cheese from high protein-high solids milk. Several exhibits showed that handlers using "average" milk would experience little if any change in their net margins. However, handlers using low-testing milk would experience a higher net margin than under the present pricing plan, while handlers using high-testing milk would experience a lower net margin. This result, the narrowing of handlers' net margins when compared to the skim-butterfat pricing system, would occur no matter which of the proposed pricing plans is used to price the components.

Analysis of data presented at the hearing, using price computations based on each of the proposals and averaged over the 21 months of data included in exhibits, shows a range of net manufacturing margins for cheese using the recommended pricing system of $1.57 per hundredweight compared with the $3.34 range in cheese manufacturing margins per hundredweight of milk purchased attributable to the current skim-butterfat pricing system. The three component pricing plans discussed at the hearing would result in ranges in net cheese manufacturing margins of $1.16 per hundredweight for the NAJ proposal, $1.62 per hundredweight for the CMPC proposal, and $1.70 per hundredweight for the NCI proposal.

Even though the NAJ proposal yielded the smallest spread in net margins, further analysis of the NAJ results shows that the net margins increase and then start to decline. The decline in margins occurs when there is not enough butterfat in the milk to fully utilize the protein available, thus reducing the increase in cheese yield as protein content continues to increase. Accordingly, if the price of protein is greater than the increased return from cheese, the net return will start to decline.

The decline in net returns under the NAJ proposal indicates that the NAJ proposal would overprice protein, at least when there is not enough butterfat to fully utilize the protein. The result is that the marginal return using the NAJ proposal peaks within the protein and butterfat range of average milk while the marginal return using the protein and other solids price as recommended in this decision continues to increase, although at a decreasing rate. A mandated pricing system should not set prices at levels that result in a declining marginal return, particularly when the decline occurs at or near average market component levels. Therefore, the whey protein factor should not be included in the computation of the protein price.

The monthly average price for 40-pound block cheddar cheese on the National Cheese Exchange in Green Bay, Wisconsin, is the appropriate price to use for determining the protein price. Use of the block price results in producers receiving a higher price for protein than if the barrel price were used without handlers incurring any significantly higher cost for milk. In addition, although the record showed that more cars of barrel cheese were sold on the Exchange than block cheese, the predominant cheese form in which American cheese is manufactured in the five-market region is in 40-pound or 640-pound blocks.

The price difference between block and barrel cheese may be due to packaging and other nonmilk factors. However, the protein price must be established at a level that best meets the needs of all concerned. The block cheese price should be more effective than the barrel price in establishing a sufficiently high protein price to accomplish the goal of encouraging producers to produce protein without having a detrimental impact on handlers, and does result in a narrower range of manufacturing margins for cheese.

Over the period January 1992 through September 1993, a protein price computed by multiplying the block price by 1.32 would have resulted in an average protein price of $1.6851 per pound. The CMPC and NCI proposals, using the barrel cheese price, would have resulted in an average protein price of $1.6337 per pound of protein over the same time period. A comparison of the net margins resulting from the recommended protein price versus the CMPC and NCI proposals shows that the slightly higher protein price and correspondingly lower other solids price recommended herein have a negligible affect on net margins. In fact, the spread between the highest and lowest cheese manufacturing margin declines slightly while the margin per pound of cheese remains virtually unchanged. At the same time, the producer is paid a higher protein price and thereby has a greater incentive to increase protein production.

B. Other Nonfat Solids

The balance of the M-W price, after the values of protein and butterfat are removed, should be priced on the basis of "other nonfat solids." The other nonfat solids price per pound will be computed by subtracting from the Class III price the sum of the butterfat price times 3.5 and the protein price times the test of the Minnesota-Wisconsin price survey milk. The result will be divided by the other nonfat solids test of the Minnesota-Wisconsin price survey milk. Because the computation of the other solids price is based on a residual value, the other solids price could be negative without further adjustments. Therefore, if computation of the other solids price results in a negative price, the protein price will be adjusted (downward) to result in a zero value for the other solids price.

As a residual, a NAJ witness stated, the other nonfat solids price would represent the value of lactose and ash, which are the primary constituents of the other nonfat solids, and the difference in value between a competitively set price for milk, the Minnesota-Wisconsin price, and the value of that milk based strictly on product prices.

An expert witness for NAJ testified that a higher price for other solids than would be computed by using a protein price lower than that proposed by NAJ was not justified because a higher other nonfat solids price would defeat the purpose of multiple component pricing: To give producers an economic incentive to increase the protein content of their milk. The witness also explained that since the "other nonfat solids" consist primarily of lactose, for which there is a limited market and cheaper substitutes, there is no reason to have a high other nonfat solids price.

A witness for CMPC explained that the CMPC proposal would result in a higher price for other nonfat solids than the NAJ proposal. The witness testified that reduced emphasis on the protein

price and increased emphasis on the other solids price would reduce the impact of multiple component pricing on handlers and producers. The witness observed that the average difference in handlers' cost of milk between the current skim-butterfat pricing system and the CMPC proposal was less than one cent per hundredweight, while the NAJ proposal would result in a difference of slightly over three cents per hundredweight.

The CMPC witness pointed out that the same relationship was applicable to returns to producers. In fact, the witness stated, when comparing the effect of the current skim-butterfat pricing system on handlers' obligations with both the NAJ proposal and the CMPC proposal, there is a narrower spread from the highest difference to the lowest difference and a smaller standard deviation with the CMPC proposal than the equivalent comparisons with the NAJ proposal.

An alternative residual price was proposed by NCI and supported by Kraft. A witness for NCI testified that instead of placing the residual value on the other nonfat solids, the residual value should be placed on the remaining pounds of fluid milk. The witness explained that this residual fluid price would be calculated by subtracting the value of 3.5 pounds of butterfat and the value of the protein based on the protein test of the milk in the Minnesota-Wisconsin price survey from the Minnesota-Wisconsin price. The resulting value would be divided by 100 minus 3.5 minus the protein test of the milk in the Minnesota-Wisconsin price survey.

The NCI witness testified that placing the residual value on other nonfat solids would yield an "other nonfat solids" price that could not be recovered in the marketplace. In addition, he stated, although the butterfat price is based on the butter market and the protein price would be based on the return to cheese manufacture, the other nonfat solids price would have no relationship to any particular established market or component. The witness also testified that since an other nonfat solids test would not be needed for the NCI proposal, administration of the pricing plan would be easier and less expensive than the other pricing proposals.

The proposal by NCI to place the residual value on a "fluid carrier" component has some merit in that it does not try to apply the residual value to a component such as other solids, on which the market may not place a value. The major drawback to the NCI proposal is that it ignores one of the components of milk, other nonfat solids, which is composed of lactose and ash.

Although the other nonfat solids do not have as much market value as either butterfat or protein, they are an important component of milk. If a multiple component pricing system is to be effective it should price as many of the components in milk as possible, preferably based on the value of those components in the marketplace. There is, however, no readily available measure of the market value of the other nonfat solids. Since there was no testimony or any justification in the record for departing from the Minnesota-Wisconsin price as a basic price for milk, at least one of the components in the payment plan must represent the difference between a competitively-set pay price (the M-W) and the product-derived component prices. This residual value therefore represents not only the value of the lactose and ash, but also equates the component values, some of which are determined by their market value, with a competitively set producer pay price.

The prospect of lactose being added to milk by producers for the purpose of benefitting from the other solids price was discussed by several hearing participants. The incentive to adulterate milk with added lactose should be no more of a problem than the current incentive to adulterate milk with water. Testing to determine whether lactose has been added should, in fact, be easier than testing for water since it would be part of the testing necessary to determine producers' payments. In addition, added lactose can be detected during normal testing procedures currently conducted on milk.

NCI's concern that testing for total solids would increase handlers' costs and difficulty of testing was not established in the hearing record. In fact, testimony indicated that many handlers are already testing for total solids. Hearing testimony also showed that the testing for total solids is as accurate or more accurate than testing for butterfat or protein. In addition, the infrared machines that are used by most laboratories will test for total solids at the same time the butterfat and protein tests are done. Therefore, there should be no significant increase in testing cost or testing difficulty with the implementation of the component pricing plan incorporated in this decision.

C. Butterfat

The value of butterfat in the amended orders will be the same as under the current orders. There was no proposal or testimony to change the way butterfat currently is valued. One expert witness testified that the current system of basing the value of butterfat on the value of butter is proper.

This decision continues the historical relationship of the values of butterfat and butter. The difference between the pricing of butterfat in the amended order and the current order is due to the way that value is expressed. Currently the value of butterfat is expressed as a differential; that is, the difference in value between 0.1 pound of butterfat and 0.1 pound of skim milk. The amended order will express the value of butterfat on the basis of a price per pound. Whichever method is used, the total value of butterfat in milk is the same. However, by expressing the value on a per pound basis instead of a differential, the objective of demonstrating clearly to producers where the value is in milk is easily achieved.

As proposed, the butterfat price per pound in the amended order will be determined by multiplying the butterfat differential by 965 and adding the Class III price. The resulting price per hundredweight would then be divided by 100 to give a price per pound of butterfat.

D. Miscellaneous

The three component prices: butterfat, protein, and the other solids, will be expressed on a per pound basis with four places to the right of the decimal. Analysis has shown that by expressing these prices to the nearest one-hundredth of a cent, the accuracy of the prices is significantly enhanced over expressing the prices to the nearest cent. Additionally, the difference between what is paid into the producer settlement fund and what is drawn from the producer settlement fund is much closer to zero than when prices are rounded to the nearest full cent.

In contrast to other orders that have multiple component pricing provisions, this decision incorporates only one protein price as well as one other nonfat solids price. The pooling of the components to include the Class I skim portion is incorporated within the computation of the producer price differential. This feature of the pricing plan allows for the elimination of separate handler and producer protein prices and separate handler and producer other solids prices, and resulting confusion over which price, handler or producer, should be used when. In addition, a handler's per pound price for protein or other solids is the same whether the handler is buying milk from producers or from other handlers.

The producer price differential, which represents the additional value of Class

I and Class II milk in the pool and any positive or negative effect of Class III–A, will be determined by computing for each handler, and then accumulating for all handlers, the differential value (from Class III) of the Class I, Class II, and Class III–A product pounds. The differential value is adjusted, when appropriate, for shrinkage and overage, inventory reclassification, receipts of other source milk allocated as Class I, receipts from unregulated supply plants, location adjustments, and, in the Chicago Regional order, transportation and assembly credits.

For the purpose of eliminating differences between handler and producer component values, the value of the Class I skim milk and the values of the protein and other solids contained in the skim milk allocated to Class II and Class III will be added to, and the values of the protein and other solids contained in all producer milk subtracted from, the differential pool. The accumulated total for all handlers is then adjusted by total producer location adjustments and one-half the unobligated balance in the producer settlement fund. The resulting value is then divided by the total pounds of producer milk in the pool, and an amount not less than four cents nor more than five cents is deducted. The result is the producer price differential to be paid to producers on a per hundredweight basis.

It is possible for the producer price differential to be negative. A negative producer price differential can result for two reasons. Any of the Class I, II, or III–A differential prices may be negative and/or the minus adjustments may be large enough to offset any positive contribution from the differential price. A negative producer price differential would be equivalent to a uniform price less than the Class III price.

An issue that was not directly addressed in this proceeding concerned testing for protein. The five orders included in this hearing currently base protein testing on the standard Kjeldahl method, which tests for nitrogen and then converts the nitrogen result to protein. Since there is a certain amount of free nitrogen in milk this test somewhat overstates the protein content of milk. Recent developments in testing allow for testing for true protein which is a more accurate reflection of protein content. In no way does this decision mandate a specific testing procedure. However, when (or if) the industry does move to testing for true protein, this decision should not be viewed as a hindrance to that conversion. At the time a change to testing for true protein may occur, a change in the 1.32 factor may be necessary.

4. Somatic Cell Adjustment

The producer price differential paid to each producer should be adjusted on the basis of the somatic cell content of the producer's milk no matter how the milk is used by a handler. The value adjustment per hundredweight for each 1,000 somatic cells would be determined by multiplying .0005 times the monthly average National Cheese Exchange 40-pound block cheese price. Each producer's monthly average somatic cell count (SCC), in thousands, would be subtracted from 350 and multiplied by the value adjustment per 1,000 SCCs. Somatic cell adjustments will not be included in the computation of the producer price differential.

A wide range of somatic cell or quality plans were included in the notice of hearing and at the hearing itself. In general, all parties agreed that high-quality milk is important to all segments of the dairy industry. The major differences between the parties arose over the questions of how and whether quality and/or somatic cell adjustments should be included in the Federal order program.

A witness expert in the field of milk testing and quality testified about the influence somatic cells have on milk and the resulting affect on products made from milk. The witness explained that in normal healthy cows the somatic cell count is around 50,000. When an infection occurs in the udder of the cow white blood cells enter to fight the bacterial infection. The SCC thus increases with the increasing number of white blood cells. In fact, white blood cells and somatic cells are synonymous in this context. The witness continued by explaining that white blood cells contain enzymes that are designed to break down the cell walls of the bacteria that are infecting the udder, but do not distinguish between milk protein and bacteria. As a result, milk protein is also degraded. The witness also stated that the enzyme causes some deterioration in milkfat. The witness continued by explaining that these white blood cells also cause to be activated a proteolytic enzyme that is present in all milk.

The expert witness went on to explain that casein, which is the functionally important protein in milk, is broken down into smaller protein chains that cannot perform the same functions as the casein. In fact, the witness explained, the destruction of the casein affects all dairy products that rely on casein for structure or function. These products include cheeses, whipped cream, yogurt, ice cream, and condensed and dry products used in the manufacture of other products in which casein is a functional necessity. The witness also explained that higher SCC milks have a tendency to have a faster increase in "acid degree value", which is a measure of rancidity and off flavors, than milks with low SCCs. The witness testified that most of the damage occurs in the udder of the cow, where conditions are ideal for the various enzymes to work. Once the milk is removed from the udder and cooled and stored properly, further deterioration does not stop but is slowed down significantly, and further damage is minimized.

The expert witness discussed the effect that somatic cell counts have on the manufacture of various dairy products, specifically cheese. He explained that high SCC milk results in lower cheese yields as well as problems with moisture control and the activity of the starter culture. The increased somatic cells result in less casein in relationship to the total protein so that less cheese is produced than would be indicated by the amount of protein present. The degraded protein ends up in the whey with the rest of the whey proteins. The witness explained that in studies using individual cow's milk cheese yield would drop dramatically as the somatic cell count went above 100,000, with the yield staying fairly constant as the somatic cell count climbed to 1,000,000.

The witness pointed out that the cheese yield effect of somatic cells differs when bulk tank milk is used instead of an individual cow's milk. He explained that in the case of bulk tank milk the relationship between cheese yield and somatic cell counts would be linear, with cheese yields declining as SCCs increase. The witness stated that the linear relationship is caused by the weighting of the SCCs in the bulk tank. Bulk tank tests are weighted averages rather than simple averages. For example, if 100 pounds of milk with a somatic cell count of 50,000 and 400 pounds of milk with a somatic cell count of 250,000 are added to the bulk tank the somatic cell count would be a weighted average of 210,000 and not the simple average of 150,000.

The witness also testified that the effect of somatic cell levels on fluid milk products is reflected in higher acid degree values that indicate rancidity and off flavors, resulting in shorter shelf life.

The expert witness testified that routine testing for somatic cells is conducted using a Foss-O-Matic infrared analyzer. The reference method for testing is the direct microscope

somatic cell count in which the sample is stained and the somatic cells are counted using a microscope. The witness explained that if the electronic instruments are calibrated to the same reference samples the resulting test values and standard deviations should be in close agreement. The witness concluded that on a relative basis the results should be close to what would be obtained using other analytical tests.

The notice of hearing contained a proposal by CMPC to include an adjustment for somatic cells. However at the hearing, a witness for CMPC explained that CMPC had decided neither to support nor oppose the inclusion of a somatic cell adjuster in the amended orders. The CMPC witness testified that the individual members of CMPC were free to support or oppose any of the somatic cell proposals as they saw fit.

As originally proposed by CMPC, the somatic cell adjustment would be computed by multiplying the National Cheese Exchange barrel price times .0005. The resulting quantity would be multiplied by 500 minus the somatic cell count of the milk, in thousands. The resulting value would be applied on a per hundredweight basis. As explained by a witness for CMPC, the proposed somatic cell adjuster would apply to all producer milk, including that purchased by Class I handlers. The witness went on to explain that the effect of somatic cells on the value of producer milk and milk used in Class II and Class III would be included in the computation of the producer price differential. A somatic cell adjustment on Class I milk would not be included in the pool, and therefore would not affect Class I handlers' cost of milk.

A witness for WCMA quoted extensively from the MCP recommended decisions for the Indiana, Ohio Valley, and Eastern Ohio-Western Pennsylvania milk marketing orders, and for the Michigan milk order, supporting the inclusion of an adjustment for somatic cells in Federal orders. The witness supported the CMPC proposal, but suggested that the somatic cell adjustment be applied to all milk; that is, Class I milk would not be exempted from a somatic cell adjustment. In addition, he proposed that the somatic cell adjustment be applied to the protein price rather than on a hundredweight basis.

A witness for TAPP and FUMMC expressed support for including a somatic cell adjustment in the amended orders. The TAPP–FUMMC brief also supported such a provision. The witness stated that a somatic cell adjustment would benefit producers, handlers, and consumers by increasing the volume of milk marketed, improving yield, and supplying consumers with more nutritious, better quality dairy products. The TAPP/FUMMC witness explained that their proposal would have a neutral range of 301,000 to 400,000 somatic cells with a one-cent positive adjustment for each 50,000 somatic cell count below the neutral range up to a maximum of a six cents as the somatic cell count declined, and a one cent negative adjustment for each 50,000 somatic cell count above the neutral range up to a maximum of ten cents as the somatic cell count increased. The TAPP/FUMMC witness testified that under their proposal the somatic cell adjustment would apply to all producer milk, milk used in Class III, and, if the plan is to be revenue neutral, also to milk used in Class II.

A witness for Swiss Valley Farms Company (Swiss Valley) testified in support of including additions and subtractions for somatic cells in the amended order. The Swiss Valley witness explained that somatic cells add proteolytic and lipolytic enzymes to the milk, as well as a plasmin enzyme that is extremely heat stable, such that it is not deactivated during pasteurization. Therefore, the enzyme continues to degrade the milk during storage. The witness added that low SCC milk is important to the Swiss Valley bottling operations because it results in fluid milk products of improved flavor, and to their cheese-making operations because of the resulting higher casein and lower whey protein content of the milk, which increases manufacturing returns.

The Swiss Valley witness proposed that the somatic cell adjustment begin at 400,000, with a positive adjustment as the SCC declines, and a negative adjustment as the SCC increases, from that level. The adjustment would be five percent of the National Cheese Exchange block price per 100,000 somatic cells. The Swiss Valley witness explained that the adjustment for somatic cells should apply to all producer milk and that Swiss Valley would support a somatic cell adjustment on Class II and Class III milk for the handler.

In its post-hearing brief, Swiss Valley reiterated the testimony of its witness in favor of including an adjustment for somatic cells in the amended order. Besides supporting the position of the Swiss Valley witness, Swiss Valley expressed general support for a somatic cell adjustment.

Testimony by a fluid processor witness indicated that the handler pays a quality premium when buying milk from producers and specifies minimum quality standards on purchased tanker milk.

A witness for Mid-America Dairymen, Inc. (Mid-Am), testified that Mid-Am favored the inclusion of an adjustment for somatic cells in the amended order. The witness quoted from the Final Decision of the Indiana, Ohio Valley, and Eastern Ohio-Western Pennsylvania proceeding to support the position of Mid-Am that an adjustment for somatic cells should be included based on the effect somatic cells have on all milk. The witness explained that quantifying the adjustment on an incremental basis was difficult, and since not all milk is used in the manufacture of cheese a moderate adjustment rate should be used. The witness explained that the Mid-Am proposal would apply the somatic cell adjustment to all producer milk, on a hundredweight basis, with a positive adjustment for a somatic cell count below 400,000 and a negative adjustment for SCCs above 400,000.

The witness explained that under the Mid-Am proposal, the somatic cell adjustment would be computed by subtracting the monthly average somatic cell count (in thousands) of the producer from 400 and then multiplying the result by the National Cheese Exchange monthly average barrel cheese price multiplied by .0005. He stated that since the somatic cell adjustment would be included in the computation of the producer price differential, on the producer side only, the total size of the pool would not change but individual producers would receive more or less, depending on whether their milk had a somatic cell count above or below the average SCC of the market. The Mid-Am witness continued by explaining that the Mid-Am proposal would be a redistribution of money from high somatic cell testing producer milk to the lower somatic cell testing milk, since there would be no additional money in the pool from the somatic cell adjustments.

Instead of supporting the inclusion of somatic cell adjustment provisions in the five Federal orders, witnesses testifying on behalf of Land of Lakes, Inc., and NCI supported those organizations' proposals to allow each handler to submit a somatic cell or quality adjustment plan for payments to its own producers to the market administrator.

A witness for LOL testified that with the LOL proposal a handler could reduce a producer's payment by up to ten percent from that required by the order if other producers of the handler received positive adjustments to their payments, as long as the total payments

were equal to at least the minimum total order payment requirements. The witness explained that LOL's proposal does not contain specific criteria for quality and/or volume adjustments. Each handler would submit an individual quality and/or volume adjustment plan to the market administrator which the handler would be required to adhere to until a new plan would be submitted. The witness testified that there is general agreement among handlers for the need to adjust payments for milk based on quality and volume. The witness continued by arguing that since the industry has not yet reached a consensus on how to adjust for quality and volume, it would be appropriate to allow each handler to develop its own quality and volume plan with the approval of the market administrator.

A witness for NCI testified that even though somatic cells affect the quality of milk, particularly in the manufacture of cheese, it is difficult to place a value on their effect. The witness explained that the variability in somatic cell levels from day to day and producer to producer makes determining an appropriate payment adjustment imprecise. In addition, the witness pointed out that other factors affect milk quality, and that placing a precise value on their effect is even more difficult than in the case of somatic cells. The NCI witness explained that the NCI proposal would allow each handler to establish and apply its own somatic cell adjustment schedule, with the approval of the market administrator, as long as the total payments to producers met or exceeded the Federal order minimum value. The witness explained that each handler could change its payment plan as conditions warranted.

A witness for Kraft emphasized the earlier testimony on the effect of somatic cells on milk quality and cheese yields. The witness listed several studies supporting the results testified to by the NAJ expert witness. The Kraft witness testified that Kraft has, since the early 1980's, employed a quality payment program as part of its producer payroll. The witness went on to state that the plethora of somatic cell payment programs in use in the industry is strong evidence of the industry's recognition that somatic cells play a major role in milk quality. The Kraft witness explained that, in order of preference, Kraft supports the proposal submitted by NCI, followed by LOL's proposal and the TAPP/FUMMC proposal.

Kraft, in its post-hearing brief, reiterated its support for a somatic cell adjustment to be included in the amended order. Kraft's brief did not support a particular adjustment plan but preferred the LOL–NCI concept. If that plan were not adopted, Kraft expressed support for the proposal by Mid-Am or the original CMPC proposal. A brief filed largely reiterative of NCI testimony was filed on behalf of NCI with the Dairy Division rather than the Hearing Clerk, and was received more than 3 weeks after the extended due date for filing briefs. The brief is not considered in this decision.

In the Anderson-Erickson Dairy Company (A–E) post-hearing brief, A-E opposed the application of an adjustment for somatic cells to Class I milk. They contended that the Class I handler is unable to recover the added cost of lower somatic cell count milk from the retail market. This position was supported in the post-hearing brief filed by Lamers Dairy and Hansen Dairy (Lamers). Lamers pointed to testimony that indicated that the monetary effect of somatic cells on Class I milk could not be quantified as it could be with the manufacture of cheese.

NFO, in its post-hearing brief, opposed the inclusion of any somatic cell adjuster in the recommended order. NFO expressed the opinion that support for a somatic cell adjuster was rather weak, with none of the positions presented having strong support. As an example, the NFO brief pointed to the neutral position taken by CMPC at the hearing after including a somatic cell adjuster in the original CMPC proposal. The NFO brief continued by explaining that testimony at the hearing indicated that the relationship between somatic cell levels and economic return is not a clear and definite relationship. The NFO brief went on to point out that there was no consensus at the hearing on how to apply a somatic cell adjuster.

There is ample testimony and evidence to support the inclusion of a somatic cell adjuster in these amended orders. The somatic cell adjuster per hundredweight per 1,000 somatic cells will be calculated by multiplying .0005 times the monthly average National Cheese Exchange 40-pound block cheese price. To determine the value for an individual producer, the producers monthly average somatic cell count (in thousands) will be subtracted from 350 and multiplied by the somatic cell adjuster. The value of the somatic cell adjustment will be applied on a per hundredweight basis in the handlers' payment to producers. Somatic cells will not be included in the computation of the producer price differential.

The application of the somatic cell adjustment contained herein will promote orderly marketing. As pointed out by several witnesses testifying at the hearing, producers in these markets are faced with a wide array of quality premium programs. These programs have no standard basis or standard value that is applied between handlers. Therefore a producer is faced with trying to decide which premium program will give the producer the greatest return without a standard with which to compare. Inconsistent premium programs also result in producers with identical milk receiving different prices for that milk depending on which handler is procuring the milk. The inclusion of this recommended somatic cell adjustment will tend to effectuate the declared policy of the Act by encouraging orderly marketing through the standardization of the basis for payment on the level of somatic cells in the milk and the standardization and checking of the testing and test procedures used for determining the somatic cell counts.

As was stated earlier, all parties agreed that high quality milk is important to all segments of the dairy industry. In fact, there was little opposition to the inclusion of an adjustment for quality in the amended orders. Even though testimony indicated that there are other quality factors that are important in overall milk quality, there was no determination of their effect on milk quality or any attempt to compute a relevant associated value. Therefore, somatic cell count will be used as the quality adjustment factor in this decision.

There are two basic reasons to apply the somatic cell adjustment rate on a hundredweight basis rather than to adjust the protein price. First, the somatic cell adjustment reflects the quality of milk in all uses rather than just cheese, and second, application of the somatic cell adjustment on a hundredweight basis makes it very clear to producers and to handlers that quality affects milk used in all products. Although testimony clearly showed that somatic cells affect the quality of milk in all uses, a value determined on the basis of the effect of somatic cells on cheese reflects the most prevalent use of milk in these markets and is the easiest way to determine a value for payment to producers.

A lack of agreement among hearing participants occurred in trying to determine the application of a somatic cell adjustment. There was a general consensus that an adjustment should be made in the producer pay price for quality and/or somatic cells. The rate at which such adjustment should be made varied by proposal, but was tied to the reduction in cheese yield that occurs as

somatic cell counts increase. Several witnesses testified that the somatic cell adjustment rate should be set at a moderate level. Testimony indicated that most of the decline in cheese yield occurs as the SCC increases from below 100,000 to above 100,000, with a much slower decline in yield as the somatic cell count increases to one million. However, testimony also showed that declines in yield are much more linear when somatic cell tests and cheese yield studies are done with bulk tank milk than with the milk of individual cows. Several proposals suggested using a factor of .0005 times the cheese price in determining the value of the somatic cell adjustment per 1,000 somatic cells. This factor is derived from the approximately four percent decline in cheese yield as the somatic cell count increases from 100,000 to one million. This is the same adjustment that is used in other Federal orders in which a somatic cell adjuster is included.

The formula used to determine the somatic cell adjuster reflects the changes in the yield of cheese as the levels of somatic cells change. The formula also ties the adjustment to the value of the milk by using the block cheese price to determine the value per 1,000 somatic cells. However, since record evidence clearly shows that the affect of somatic cells on Class I and Class II products is related more to the quality of the finished product than to the yield of the product, the formula should reflect less than the full value of the affect of somatic cells on cheese yield. Using the recommended formula, the somatic cell adjustment for the average producer under the Chicago Regional order would be three cents per hundredweight, far below the 25 cents per hundredweight average quality premium that is shown in hearing exhibits as being paid currently.

The corresponding somatic cell adjustments for average producers under the four orders in addition to Chicago are: Upper Midwest, zero cents; Iowa, minus one cent; Nebraska-Western Iowa, minus six cents; and Eastern South Dakota, minus three cents. The formula results in an estimated range of forty-eight cents per hundredweight from a somatic cell count of 1,000 to a somatic cell count of 750,000, or a positive twenty-two cents to a minus twenty-six cents, although there is no limit on the deduction that may be made since there is no limit on the maximum SCC in this decision.

The use of a neutral point was supported by various proponents of a somatic cell adjuster. Several others suggested a neutral range. The record contains numerous references to a neutral range or point around a somatic cell count of 400,000. One witness expressed the opinion that the base level for the somatic cell adjustment should be near the average for the five markets. Another witness explained that their proposal used 400,000 SCC because that is where their present quality program begins. Based on data included in the hearing record, the average SCC for producers whose milk is pooled under the five orders is 367,000. Therefore, a neutral point of 350,000 is appropriate. It is close to the average for the markets, and not substantially different from the values that witnesses found appropriate. Also, by using the formula included herein, proponents of both a neutral point or a neutral range are accommodated because the formula yields no value adjustment for approximately plus or minus 7,000 SCC around 350,000.

The formula will give producers an incentive to reduce their SCCs while minimizing the effect of the somatic cell adjuster on those products in which somatic cells have a quality effect rather than a yield effect. The argument that a somatic cell adjuster will negate the forward pricing of Class I and Class II milk is also minimized by the proposed formula. Analysis shows that the month-to-month variation in the somatic cell adjustment at a particular somatic cell level is no more than one cent per hundredweight, with an approximate change of 1 cent for every increment of 15,000 somatic cells. This small variation from month to month should allow handlers to determine accurately the cost of milk for forward pricing. In fact, the variation in the somatic cell adjustment is significantly less than the month-to-month variation in the current butterfat differential, which is not known until after the end of the month.

Since this decision applies an adjustment for somatic cells to all milk, there is no need to include the somatic cell adjustment in the computation of the producer price differential. There are only two reasons to include somatic cells in the producer price differential computation: (1) To exclude a particular class or classes of milk from being affected by a somatic cell adjustment, or (2) to redistribute the somatic cell adjustment money among all of the producers in the market. Since this decision applies the somatic cell adjustment to all milk the first reason is not relevant.

There may be some merit for redistributing money from high somatic cell producers to low somatic cell producers marketwide. However, if such a provision were adopted, the producer price differential would also be affected with changes in the market average SCC. In fact, as the market average SCC decreased, the producer price differential would decline below the level of the producer price differential in the absence of a somatic cell count adjustment, decreasing the incentive for producers to reduce the somatic cell counts of their milk and defeating the objective of a somatic cell count adjustment. Therefore the somatic cell adjustment will be applied to all producer milk without being included in the pool or producer price differential computation.

Neither the quality proposal by LOL nor the somatic cell proposal by NCI, in which each handler would be allowed to submit an individual quality or somatic cell payment plan to the market administrator, is included in this decision. Although the Agricultural Marketing Agreement Act in 7 U.S.C. 608c(5) does allow for adjustments to minimum pay prices on the basis of quality, such adjustments should be at a uniform rate for all producers in the market. Allowing each handler to have its own payment schedule would defeat the concept of uniform pricing to producers, eliminate the purpose of allowing quality adjustments under the order, and lead to disorderly marketing. Producers with identical milk shipping to different handlers within the same market could, and probably would, have different minimum order pay prices if each handler had its own quality or somatic cell payment plan.

A number of witnesses testified that the profusion of payment plans currently in effect in the market today are causing disorderly marketing, and that one of the benefits of incorporating multiple component pricing with a somatic cell adjustment in the five orders would be to reduce or at least standardize the vast array of producer payment plans currently in effect in the region. In view of such testimony, adoption of the LOL or NCI quality adjustment proposals would serve no purpose.

5. Conforming Changes

To accommodate multiple component pricing a number of changes need to be made in the current order provisions of the five orders in this decision. To compute a handler's obligation and the producer price differential, several prices need to be defined. The Class I differential price should be defined as the difference between the current month's Class I price and the current month's Class III price. The Class II differential price should be defined as

the difference between the current month's Class II price and the current month's Class III price. These differential prices should not be confused with the fixed value that is added to the Minnesota-Wisconsin price for the second preceding month to arrive at the Class I price for the current month, or the computed value that is used in the computation of the Class II price. It should also be pointed out that these differential prices may be negative, which currently happens when the Minnesota-Wisconsin price is greater than the Class I or Class II price. The skim milk price will be calculated by subtracting from the Class III price the value determined by multiplying the butterfat differential by 35. The skim milk price will be expressed on a per hundredweight basis with four places to the right of the decimal.

Since producer location adjustments are not changed in this decision, the application of such adjustments to the producer price differential remains unchanged. In some of the orders the uniform price is "snubbed" at the Class III price when producer location adjustments are applied. In these orders, the producer price differential will be adjusted for location until the producer price differential is zero if the producer price differential at the zero zone is zero or greater. However, if the producer price differential is negative, no minus producer location adjustment will be applied. Plus adjustments to a negative producer price differential would be made. In those orders in which the uniform price is not "snubbed" to the Class III price, producer location adjustments will be applied as they are currently.

For the Market Administrator to compute the producer price differential handlers will need to supply additional information on their monthly reports of receipts and utilization. In addition to the product pounds and butterfat currently reported, handlers will be required to report pounds of protein and pounds of other solids. This information will be required from each handler for all producer receipts, including milk diverted by the handler, receipts from cooperatives as 9(c) handlers, and receipts of bulk milk received by transfer or diversion.

For the Upper Midwest Order only, the due date for handlers to submit reports of receipts and utilization should be changed, from the 10th of the month to the 8th of the month. Currently, the Upper Midwest Order requires handlers to submit reports by the 10th of the month, and the Uniform Price to be announced by the 11th of the month, allowing only one day for the pooling process. The other four orders involved in this decision allow a longer period of time for the processing of data and the announcement of the Uniform Price. In the Chicago Regional Order, handler reports are due on the 10th, and the Uniform Price is announced on the 14th, a period of 4 days. In the Iowa Order, handler reports are due on the 8th, and the Uniform Price is announced on the 12th, a period of 4 days. In the Nebraska-Western Iowa Order, handler reports are due on the 7th, and the Uniform Price is announced on the 12th, a period of 5 days. In the Eastern South Dakota Order, handler reports are due on the 8th, and the Uniform Price is announced on the 12th, a period of 4 days.

The order changes recommended in this decision will require the market administrator of each order to carry out a more comprehensive review and analysis of the data than is required currently. As noted at the hearing, the pooling process will become somewhat more complicated because data submitted will involve not only skim and butterfat pounds, but also pounds of protein and other solids. Thus, it is appropriate to allow the market administrator for the Upper Midwest Order a period of 3 days to compute and announce the producer price differential and the statistical uniform price. By changing the due date for handler reports from the 10th to the 8th, but retaining the 11th as the day the producer price differential and statistical uniform price are to be announced, the pooling process will be better accommodated.

For purposes of allocation of producer receipts the assumption will be made that the protein and other solids cannot easily be separated from skim milk. The protein and other solids will therefore be allocated proportionately with the skim milk based on the percentage of protein and other solids in the skim milk received from producers.

The implementation of this multiple component pricing decision will require several changes in the way handlers pay for milk. Partial payment at the Class III price for the previous month for milk deliveries during the first 15 days of a month was proposed by both NAJ and CMPC. Although no objections to the proposal were expressed, there was no testimony supporting or opposing the proposal. Therefore, there is no basis in the record of the proceeding to make substantive changes in the payment provisions of the orders that provide for partial payments at a significantly different level.

Currently, the Nebraska-Western Iowa order, the Upper Midwest order, and the Iowa order require partial payments to be based on the prior month's uniform price. Since this component pricing plan does not contain a uniform price, these three orders will be changed to require the partial payments to be made at the "statistical uniform price", announced by the market administrator on or before the 14th day of the month for which partial payment is to be made.

The Chicago Regional order will also be changed from the current requirement that the partial payment be based on the lowest class price for the prior month to a partial payment based on the prior month's Class III price. The Eastern South Dakota order does not need to be changed.

Final payment to producers will be determined by the total hundredweight of milk times the producer price differential adjusted by the applicable location adjustment, plus or minus the total hundredweight of milk times the adjustment for somatic cells, plus the pounds of protein times the protein price, plus the pounds of other solids times the other solids price, plus the pounds of butterfat times the butterfat price, minus any authorized deductions currently allowed.

Handlers purchasing milk from cooperative pool plants will pay for Class I milk at the Class I differential price plus the pounds of skim milk in Class I at the skim milk price plus the pounds of butterfat at the butterfat price; for Class II milk at the Class II differential price plus the pounds of protein at the protein price, plus the pounds of other solids at the other solids price, plus the pounds of butterfat at the butterfat price; and for Class III milk at the protein pounds times the protein price, plus the pounds of other solids at the other solids price, plus the pounds of butterfat at the butterfat price. All milk purchased will be adjusted by the appropriate somatic cell adjustment. Payment for 9(c) milk will be based on the producer price differential adjusted for location at the plant of receipt and somatic cells, plus the value of protein, other solids, and butterfat contained in the milk.

Since producers will be receiving payments based on the component levels of their milk, the payroll reports that handlers supply to producers must reflect the basis for such payment. Therefore the handler will be required to supply the producer not only with the information currently supplied, but also: (a) The pounds of butterfat, the pounds of protein, and the pounds of other solids contained in the producer's milk, as well as the producer's average somatic cell count, and (b) the minimum rate that is required for

payment for each component and, if a different rate is paid, the effective rate also.

The handler's value of milk will be determined by combining: (a) The pounds of producer milk in Class I times the Class I differential price, (b) the pounds of producer milk in Class II times the Class II differential price, (c) the value of overage, (d) the value of inventory reclassification, (e) the value, at the Class I minus Class III price difference, of other source receipts and receipts from unregulated supply plants allocated to Class I, (g) the value of handler location adjustments, (h) Class III–A credits, (i) the pounds of skim milk in Class I times the skim milk price, (j) the pounds of protein in Class II and Class III times the protein price, and (k) the pounds of other solids in Class II and Class III times the other solids price.

The pounds of protein and other solids in Class II and Class III will be determined by multiplying the percent protein or percent other solids in the skim milk of the total producer milk received by the handler times the pounds of skim milk allocated to Class II and Class III.

Handler's obligations to the producer settlement fund will be determined by subtracting from the handler's value of milk the following: (a) The total pounds of each handler's producer milk times the producer price differential adjusted for location, (b) the total pounds of protein contained in the producer milk times the protein price, (c) the total pounds of other solids contained in the producer milk times the other solids price, and (d) the value of other source milk at the producer price differential with any applicable location adjustment at the plant from which the milk was shipped deducted from the handler's value of milk.

The amendments to order language accompanying this recommended decision are based on the current language of the five orders. There are two national amendatory proceedings in process (the M-W replacement and Class II pricing) that may result in changes to some of the provisions that will also be changed by this proceeding. No attempt has been made in drafting the order language amendments accompanying this decision to accommodate any of the changes that may result from the other two proceedings. Any adjustments needed will be made on the basis of the order language in effect at the time a final decision is issued.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the aforementioned orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing areas, and the minimum prices specified in the tentative marketing agreements and the orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements upon which a hearing has been held.

Recommended Marketing Agreements and Order Amending the Orders

The recommended marketing agreements are not included in this decision because the regulatory provisions thereof would be the same as those contained in the orders, as hereby proposed to be amended. The following order amending the orders, as amended, regulating the handling of milk in the aforementioned marketing areas is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out.

List of Subjects in 7 CFR Parts 1030, 1065, 1068, 1076 and 1079

Milk marketing orders.

For the reasons set forth in the preamble, 7 CFR Parts 1030, 1065, 1068, 1076 and 1079 are proposed to be amended as follows:

1. The authority citation for 7 CFR Parts 1030, 1065, 1068, 1076 and 1079 continues to read as follows:

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

PART 1030—MILK IN THE CHICAGO REGIONAL MARKETING AREA

1. Section 1030.30 is amended by revising paragraphs (a) and (c) and removing paragraph (d), to read as follows:

§ 1030.30 Reports of receipts and utilization.

* * * * *

(a) Each handler described in § 1030.9(a) shall report for each plant of the handler (except if a handler requests and the request is approved by the market administrator, a handler may file a consolidated report for supply plants and a consolidated report for distributing plants); and each handler described in § 1030.9 (b) and (c) shall report the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, and pounds of solids-not-fat other than protein (other solids) contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(ii) Receipts of milk from handlers described in § 1030.9(c); and

(iii) Receipts by transfer or diversion of bulk fluid milk products from pool plants, including a separate statement of the net receipts from each supply plant computed pursuant to § 1030.7(b)(4);

(2) Product pounds and pounds of butterfat contained in:

(i) Receipts of fluid milk products not included in paragraph (a)(1) of this section and bulk fluid cream products from any source;

(ii) Receipts of other source milk; and

(iii) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1030.40(b)(1); and

(3) The utilization or disposition of all milk, filled milk, and milk products

required to be reported pursuant to this paragraph.

* * * * *

(c) Each handler not specified in paragraphs (a) and (b) of this section shall report with respect to its receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

2. Section 1030.31 is amended by revising paragraph (a) to read as follows:

§ 1030.31 Payroll reports.

(a) On or before the 25th day after the end of each month, each handler described in § 1030.9 (a), (b), and (c) shall report to the market administrator its producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer the information specified in § 1030.73(e).

* * * * *

3. Section 1030.50 is amended by revising the section heading, introductory text and paragraph (a), and adding paragraphs (e) through (k) to read as follows:

§ 1030.50 Class and component prices.

Subject to the provisions of § 1030.52, the class prices per hundredweight of milk containing 3.5 percent butterfat and the component prices for the month shall be as follows:

(a) *Class I price.* The Class I price for the month per hundredweight of milk containing 3.5 percent butterfat shall be the basic formula price for the second preceding month plus $1.40.

* * * * *

(e) *Class I differential price.* The Class I differential price shall be the difference between the current month's Class I and Class III prices (this price may be negative).

(f) *Class II differential price.* The Class II differential price shall be the difference between the current month's Class II and Class III prices (this price may be negative).

(g) *Skim milk price.* The skim milk price per hundredweight, rounded to the nearest cent, shall be the Class III price less an amount computed by multiplying the butterfat differential by 35.

(h) *Butterfat price.* The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the Class III price plus an amount computed by multiplying the butterfat differential by 965 and dividing the resulting amount by one hundred.

(i) *Protein price.* The protein price per pound, rounded to the nearest one-hundredth cent, shall be 1.32 times the average monthly price per pound for 40-pound block Cheddar cheese on the National Cheese Exchange as reported by the Department.

(j) *Other solids price.* Other solids are herein defined as solids-not-fat other than protein. The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the skim milk price times .965, less the average protein test of the basic formula price as reported by the Department for the month times the protein price, and dividing the resulting amount by the average other solids test of the basic formula price as reported by the Department. If the resulting price is less than zero, then the protein price will be reduced so that the other solids price equals zero.

(k) *Somatic cell adjustment.* The somatic cell adjustment per hundredweight shall be computed by subtracting the monthly average somatic cell count, in thousands, of the producer's milk from 350 and multiplying the remaining quantity by .0005 times the monthly cheddar cheese price as defined in paragraph (i) of this section.

4. Section 1030.53 is revised to read as follows:

§ 1030.53 Announcement of class and component prices.

(a) On or before the 5th day of the month, the market administrator shall announce the following prices:

(1) The Class I price for the following month;

(2) The Class III price for the preceding month;

(3) The Class III–A price for the preceding month;

(4) The skim milk price for the preceding month;

(5) The butterfat price for the preceding month;

(6) The protein price for the preceding month;

(7) The other solids price for the preceding month; and

(8) The butterfat differential for the preceding month.

(b) On or before the 15th day of the month, the market administrator shall announce the Class II price for the following month computed pursuant to § 1030.50(b).

5. The section heading in § 1030.60 and the undesignated centerheading preceding it, the introductory text, and paragraphs (a) and (f) are revised to read as follows:

Producer Price Differential

§ 1030.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler described in § 1030.9 (a), (b), and (c), as follows:

(a) Calculate the following values:

(1) Multiply the total hundredweight of producer milk in Class I as determined pursuant to § 1030.44(c) by the Class I differential price for the month;

(2) Add an amount obtained by multiplying the total hundredweight of producer milk in Class II as determined pursuant to § 1030.44(c) by the Class II differential price for the month;

(3) Add an amount obtained by multiplying the hundredweight of skim milk in Class I as determined pursuant to § 1030.44(a) by the skim milk price;

(4) Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to § 1030.44(a) by the average protein content of producer skim milk received by the handler, and multiplying the resulting pounds of protein by the protein price; and

(5) Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to § 1030.44(a) by the average other solids content of producer skim milk received by the handler, and multiplying the resulting pounds of other solids by the other solids price;

* * * * *

(f) Add the amount obtained from multiplying the Class I differential price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1030.43(d) and § 1030.44(a)(7)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1030.44(a)(11) and the corresponding steps of § 1030.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

* * * * *

6. Section 1030.61 is amended by revising the section heading, introductory text, and paragraph (a) to read as follows:

§ 1030.61 Producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight for

Zone 1. If the unreserved cash balance in the producer settlement fund to be included in the computation is less than 2 cents per hundredweight of producer milk on all reports, the report of any handler who has not made the payments required pursuant to § 1030.71 for the preceding month shall not be included in the computation of the producer price differential. The report of such handler shall not be included in the computation for succeeding months until he has made full payment of outstanding monthly obligations. Subject to the aforementioned conditions, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total for all handlers:

(1) The values computed pursuant to § 1030.60 (a)(1), (a)(2) and (b) through (k) for all handlers;

(2) Add values computed pursuant to § 1030.60 (a)(3), (a)(4), and (a)(5) and subtract the values obtained by multiplying the handlers' total pounds of protein and total pounds of other solids contained in such milk by their respective prices; and

(3) Subtract the value obtained by multiplying the difference between the Class III price and the Class III–A price times the pounds of product determined pursuant to § 1030.43(e);

* * * * *

7. Section 1030.62 is revised to read as follows:

§ 1030.62 Announcement of producer prices.

On or before the 14th day after the end of each month, the market administrator shall announce the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The other solids price;

(d) The butterfat price;

(e) The average protein test and other solids test of producer milk; and

(f) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

8. Section 1030.71 is amended by revising paragraph (a)(2) to read as follows:

§ 1030.71 Payments to the producer-settlement fund.

(a) * * *

(2) The sum of:

(i) An amount obtained by multiplying the total hundredweight of producer milk as determined pursuant to § 1030.44(c) by the producer price differential as adjusted pursuant to § 1030.75;

(ii) An amount obtained by multiplying the total pounds of protein contained in producer milk by the protein price;

(iii) An amount obtained by multiplying the total pounds of other solids contained in producer milk by the other solids price; and

(iv) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1030.60(f) by the producer price differential as adjusted pursuant to § 1030.52.

* * * * *

9. Section 1030.73 is amended by revising paragraphs (a), (c), and (d) and adding paragraph (e), to read as follows:

§ 1030.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay each producer for producer milk received from such producer and for which payment is not made to a cooperative association pursuant to paragraph (b) or (c) of this section as follows:

(1) On or before the 3rd day after the end of each month, to each producer who has not discontinued shipping milk to such handler before the end of the month, for producer milk received during the first 15 days of the month at a rate per hundredweight not less than the Class III price for milk of 3.5 percent butterfat for the preceding month, less proper deductions authorized in writing by such producer; and

(2) On or before the 18th day after the end of the month, payment for producer milk received during such month shall not be less than the sum of:

(i) The hundredweight of producer milk received times the producer price differential as adjusted pursuant to §§ 1030.75 and 1030.86;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of butterfat received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month;

(vi) Less any payment made pursuant to paragraph (a) of this section;

(vii) Less proper deductions authorized in writing by such producer and plus or minus adjustments for errors in previous payments made to such producer; and

(3) If by such date the handler has not received full payment from the market administrator pursuant to § 1030.72 for such month, it may reduce pro rata its payment to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following receipt of the balance due from the market administrator.

* * * * *

(c) Each handler shall pay a cooperative association for milk received by the handler from pool plant(s) operated by a cooperative association as follows:

(1) For milk received during the first 15 days of the month, the handler shall pay the cooperative association on or before the 1st day after the end of the month during which the milk was received at a rate per hundredweight not less than the Class III price for milk of 3.5 percent butterfat for the preceding month; and

(2) For milk received during the month the handler shall pay the cooperative association on or before the 16th day after the end of the month during which the milk was received as follows:

(i) The hundredweight of Class I milk received times the Class I differential price for the month plus the pounds of Class I skim milk times the skim milk price for the month;

(ii) The hundredweight of Class II milk received times the Class II differential price for the month;

(iii) The pounds of butterfat received times the butterfat price for the month;

(iv) The pounds of protein received in Class II and Class III times the protein price for the month;

(v) The pounds of other solids received in Class II and Class III times the other solids price for the month;

(vi) The hundredweight of milk received times the somatic cell adjustment; and

(vii) Less any payment made pursuant to paragraph (c)(1) of this section.

(d) Each handler shall pay a cooperative association for milk received by the handler from a cooperative association acting as a handler described under § 1030.9(c) as follows:

(1) For milk received during the first 15 days of the month, the handler shall pay the cooperative association on or before the 1st day after the end of the month during which the milk was received at a rate per hundredweight not less than the Class III price for milk of 3.5 percent butterfat for the preceding month; and

(2) For milk received during the month the handler shall pay the cooperative association on or before the 16th day after the end of the month during which the milk was received as follows:

(i) The hundredweight of milk received times the producer price differential as adjusted pursuant to § 1030.75;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month;

(vi) Less any payment made pursuant to paragraph (a) of this section;

(vii) Less proper authorized deductions.

(e) In making payments for producer milk pursuant to paragraph (a)(2) or (b)(2) of this section, each handler shall furnish each producer or cooperative association to whom such payment is made a supporting statement in such form that it may be retained by the recipient which shall show:

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

(2) The daily and total pounds for each producer;

(3) The total pounds of butterfat contained in the producer's milk;

(4) The total pounds of protein contained in the producer's milk;

(5) The total pounds of other solids contained in the producer's milk;

(6) The somatic cell count of the producer's milk;

(7) The minimum rate or rates at which payment to the producer is required pursuant to this order;

(8) The rate that is used in making payment if such rate is other than the applicable minimum rate;

(9) The amount, or the rate per hundredweight, or rate per pound of component, and the nature of each deduction claimed by the handler; and

(10) The net amount of payment to such producer or cooperative.

10. Sections 1030.74 and 1030.75 are revised to read as follows:

§ 1030.74 Butterfat differential.

The butterfat differential, rounded to the nearest one-tenth cent, shall be 0.138 times the butter price less 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month. The butter price means the simple average for the month of the daily prices per pound of Grade A (92 score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division using the price reported each week as the daily price for that day and for each following day until the next price is reported.

§ 1030.75 Plant location adjustments for producers and on nonpool milk.

(a) The producer price differential for producer milk received at a plant shall be adjusted according to the location of the plant at the rates set forth in § 1030.52(a).

(b) The producer price differential applicable to other source milk shall be reduced at the rates set forth in § 1030.52(a).

11. Section 1030.76 is amended by revising paragraph (a)(4) and the third sentence of paragraph (b)(1)(ii), to read as follows:

§ 1030.76 Payments by handler operating a partially regulated distributing plant.

* * * * *

(a) * * *

(4) Multiply the remaining pounds by the amount by which the Class I differential price exceeds the producer price differential, both prices to be applicable at the location of the partially regulated distributing plant; and

* * * * *

(b) * * *

(1) * * *

(ii) * * * Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1030.60 shall be priced at the statistical uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee plant, with such statistical uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

* * * * *

PART 1065—MILK IN THE NEBRASKA-WESTERN IOWA MARKETING AREA

1. Section 1065.30 is amended by revising paragraphs (a) and (c) and removing paragraph (d), to read as follows:

§ 1065.30 Reports of receipts and utilization.

* * * * *

(a) Each handler described in § 1065.9 (a), (b), and (c) shall report for each of its operations the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, and pounds of solids-not-fat other than protein (other solids) contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the handler;

(ii) Receipts of milk from handlers described in § 1065.9(c); and

(iii) Receipts by transfer or diversion of bulk fluid milk products from pool plants;

(2) Product pounds and pounds of butterfat contained in:

(i) Receipts of fluid milk products not included in paragraph (a)(1) of this section and bulk fluid cream products from any source;

(ii) Receipts of other source milk;

(iii) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1065.40(b)(1); and

(3) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

* * * * *

(c) Each handler not specified in paragraphs (a) and (b) of this section shall report with respect to its receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

2. Section 1065.31 is amended by revising paragraph (a) to read as follows:

§ 1065.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1065.9 (a), (b), and (c) shall report to the market administrator its producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer the information described in § 1065.73(e).

* * * * *

3. Section 1065.50 is amended by revising the section heading, introductory text and paragraph (a), and adding paragraphs (e) through (k), to read as follows:

§ 1065.50 Class and component prices.

Subject to the provisions of § 1065.52, the class prices per hundredweight of milk containing 3.5 percent butterfat and the component prices for the month shall be as follows:

(a) *Class I price.* The Class I price for the month per hundredweight of milk containing 3.5 percent butterfat shall be the basic formula price for the second preceding month plus $1.75.

* * * * *

(e) *Class I differential price.* The Class I differential price shall be the

difference between the current month Class I and Class III prices (this price may be negative).

(f) *Class II differential price.* The Class II differential price shall be the difference between the current month Class II and Class III prices (this price may be negative).

(g) *Skim milk price.* The skim milk price per hundredweight, rounded to the nearest cent, shall be the Class III price less an amount computed by multiplying the butterfat differential by 35.

(h) *Butterfat price.* The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the Class III price plus an amount computed by multiplying the butterfat differential by 965 and dividing the resulting amount by one hundred.

(i) *Protein price.* The protein price per pound, rounded to the nearest one-hundredth cent, shall be 1.32 times the average monthly price per pound for 40-pound block Cheddar cheese on the National Cheese Exchange as reported by the Department.

(j) *Other solids price.* Other solids are herein defined as solids not fat other than protein. The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the skim milk price times .965, less the average protein test of the basic formula price as reported by the Department for the month times the protein price, and dividing the resulting amount by the average other solids test of the basic formula price as reported by the Department. If the resulting price is less than zero, then the protein price will be reduced so that the other solids price equals zero.

(k) *Somatic cell adjustment.* The somatic cell adjustment per hundredweight shall be computed by subtracting the monthly average somatic cell count, in thousands, of the producer's milk from 350 and multiplying the remaining quantity by .0005 times the monthly cheddar cheese price as defined in paragraph (i) of this section.

4. Section 1065.53 is revised to read as follows:

§ 1065.53 Announcement of class and component prices.

(a) On or before the 5th day of the month, the market administrator shall announce the following prices:

(1) The Class I price for the following month;

(2) The Class III price for the preceding month;

(3) The Class III–A price for the preceding month;

(4) The skim milk price for the preceding month;

(5) The butterfat price for the preceding month;

(6) The protein price for the preceding month;

(7) The other solids price for the preceding month; and

(8) The butterfat differential for the preceding month.

(b) On or before the 15th day of the month, the market administrator shall announce the Class II price for the following month computed pursuant to § 1065.50(b).

5. The section heading in § 1065.60 and the undesignated centerheading preceding it, the introductory text, and paragraphs (a) and (f) are revised to read as follows:

Producer Price Differential

§ 1065.60 Handler's value of milk.

For the purpose of computing a handler's obligation for milk the market administrator shall determine for each month the value of milk of each handler described in § 1065.9(a) with respect to each of its pool plants and each handler described in § 1065.9(b) and (c).

(a) The handler's obligation for producer milk shall be computed as follows:

(1) Multiply the total hundredweight of milk in Class I as determined pursuant to § 1065.44(c) by the Class I differential price for the month;

(2) Add an amount obtained by multiplying the total hundredweight of milk in Class II as determined pursuant to § 1065.44(c) by the Class II differential price for the month;

(3) Add an amount obtained by multiplying the hundredweight of skim milk in Class I as determined pursuant to § 1065.44(a) by the skim milk price;

(4) Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to § 1065.44(a) by the average protein content of producer skim milk received by the handler, and multiplying the resulting pounds of protein by the protein price; and

(5) Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to § 1065.44(a) by the average other solids content of producer skim milk received by the handler, and multiplying the resulting pounds of other solids by the other solids price;

* * * * *

(f) Add the amount obtained from multiplying the Class I differential price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1065.43(d) and § 1065.44(a)(7)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1065.44(a)(11) and the corresponding steps of § 1065.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

* * * * *

6. Section 1065.61 is amended by revising the section heading, introductory text, and paragraphs (a) and (f), to read as follows:

§ 1065.61 Producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight of milk received from producers, as follows:

(a) Combine into one total for all handlers:

(1) The values computed pursuant to § 1065.60(a)(1), (a)(2), and (b) through (i) for all handlers;

(2) Add values computed pursuant to § 1065.60(a)(3), (a)(4), and (a)(5) and subtract the values obtained by multiplying the handlers' total pounds of protein and total pounds of other solids contained in such milk by their respective prices; and

(3) Subtract the value obtained by multiplying the difference between the Class III price and the Class III–A price times the pounds of product determined pursuant to § 1065.43(e);

* * * * *

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be the "producer price differential."

7. Section 1065.62 is revised to read as follows:

§ 1065.62 Announcement of producer prices.

On or before the 12th day after the end of each month, the market administrator shall announce the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The other solids price;

(d) The butterfat price;

(e) The average protein and other solids content of producer milk; and

(f) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III

price and the producer price differential.

8. Section 1065.71 is amended by revising paragraph (a)(2) to read as follows:

§ 1065.71 Payments to the producer-settlement fund.

(a) * * *

(2) The sum of:

(i) An amount obtained by multiplying the total hundredweight of producer milk determined pursuant to § 1065.44(c) by the producer price differential as adjusted pursuant to § 1065.75;

(ii) An amount obtained by multiplying the total pounds of protein contained in producer milk by the protein price;

(iii) An amount obtained by multiplying the total pounds of other solids contained in producer milk by the other solids price; and

(iv) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1065.60(f) by the producer price differential as adjusted pursuant to § 1065.52.

* * * * *

9. Section 1065.73 is amended by revising paragraphs (a), (c), (d) and (e) to read as follows:

§ 1065.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay for milk received from producers for which payment is not made to a cooperative association pursuant to paragraph (b) or (c) of this section as follows:

(1) On or before the 27th day of the month, to each producer who has not discontinued shipping milk to such handler before the end of the month, for producer milk received during the first 15 days of the month at a rate per hundredweight not less than the statistical uniform price computed pursuant to § 1065.62(f) for the preceding month, less proper deductions authorized in writing by such producer; and

(2) On or before the 18th day after the end of the month, payment for producer milk received during such month shall not be less than the sum of:

(i) The hundredweight of producer milk received times the producer price differential as adjusted pursuant to § 1065.75;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month;

(vi) Less any payment made pursuant to paragraph (a)(1) of this section;

(vii) Less proper deductions authorized in writing by such producer and plus or minus adjustments for errors in previous payments made to such producer;

(viii) Less deductions for marketing services pursuant to 1065.86 and for advertising and promotion pursuant to § 1065.107; and

(ix) If by such date the handler has not received full payment from the market administrator pursuant to § 1065.72 for such month, it may reduce pro rata its payment to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following receipt of the balance due from the market administrator.

* * * * *

(c) Each handler shall pay a cooperative association for milk received by the handler from a cooperative association acting as a handler described in § 1065.9(c) as follows:

(1) For milk received during the first 15 days of the month, the handler shall pay the cooperative association on or before the 26th day of the month during which the milk was received at a rate per hundredweight not less than the statistical uniform price computed pursuant to § 1065.62(f) for the preceding month; and

(2) For milk received during the month the handler shall pay the cooperative association on or before the 17th day after the end of the month during which the milk was received as follows:

(i) The hundredweight of milk received times the producer price differential applicable at the location of the receiving handler's plant;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month; and

(vi) Less any payment made pursuant to paragraph (c)(1) of this section.

(d) Each handler shall pay a cooperative association for fluid milk products received by transfer or diversion from a pool plant operated by the cooperative association as follows:

(1) For milk received during the first 15 days of the month, the handler shall pay the cooperative association on or before the 26th day of the month during which the milk was received at a rate per hundredweight not less than the Class III price for the preceding month; and

(2) For milk received during the month the handler shall pay the cooperative association on or before the 17th day after the end of the month during which the milk was received as follows:

(i) The hundredweight of Class I milk received times the Class I differential price for the month applicable at the transferee plant, plus the pounds of Class I skim milk times the skim milk price for the month;

(ii) The hundredweight of Class II milk received times the Class II differential price for the month;

(iii) The pounds of butterfat received times the butterfat price for the month;

(iv) The pounds of protein received in Class II and Class III times the protein price for the month;

(v) The pounds of other solids received in Class II and Class III times the other solids price for the month;

(vi) The hundredweight of milk received times the somatic cell adjustment; and

(vii) Less any payment made pursuant to paragraph (d)(1) of this section.

(e) In making payments for producer milk pursuant to paragraph (a)(2) or (b)(2) of this section, each handler shall furnish each producer or cooperative association to whom such payment is made a supporting statement in such form that it may be retained by the recipient which shall show:

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

(2) The daily and total pounds for each producer;

(3) The total pounds of butterfat contained in the producer's milk;

(4) The total pounds of protein contained in the producer's milk;

(5) The total pounds of other solids contained in the producer's milk;

(6) The somatic cell count of the producer's milk;

(7) The minimum rate or rates which payment to the producer is required pursuant to this order;

(8) The rate that is used in making payment if such rate is other than the applicable minimum rate;

(9) The amount, or the rate per hundredweight, or rate per pound of component, and the nature of each deduction claimed by the handler; and

(10) The net amount of payment to such producer or cooperative.

* * * * *

10. Sections 1065.74 and 1065.75 are revised to read as follows:

§ 1065.74 Butterfat differential.

The butterfat differential, rounded to the nearest one-tenth cent, shall be 0.138 times the butter price less 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month. The butter price means the simple average for the month of the daily prices per pound of Grade A (92 score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division using the price reported each week as the daily price for that day and for each following day until the next price is reported.

§ 1065.75 Plant location adjustments for producers and on nonpool milk.

(a) The producer price differential for producer milk shall be adjusted according to the location of the plant of actual receipt at the rates set forth in § 1065.52.

(b) For purposes of computations pursuant to §§ 1065.71 and 1065.72, the producer price differential shall be adjusted at the rates set forth in § 1065.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted producer price differential shall not be less than zero.

11. Section 1065.76 is amended by revising paragraph (a)(4) and the third sentence of paragraph (b)(1)(ii), to read as follows:

§ 1065.76 Payments by handler operating a partially regulated distributing plant.

* * * * *

(a) * * *

(4) Multiply the remaining pounds by the amount by which the Class I differential price exceeds the producer price differential, both prices to be applicable at the location of the partially regulated distributing plant, with the difference to be not less than zero; and

* * * * *

(b) * * *

(1) * * *

(ii) * * * Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1065.60 shall be priced at the statistical uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such statistical uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

* * * * *

PART 1068—MILK IN THE UPPER MIDWEST MARKETING AREA

1. Section 1068.30 is amended by revising the introductory text and paragraphs (a) and (c) and removing paragraph (d), to read as follows:

§ 1068.30 Reports of receipts and utilization.

On or before the 8th day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler described in § 1068.9 (a), (b), and (c) shall report for each of its operations the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, and pounds of solids-not-fat other than protein (other solids) contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the handler;

(ii) Receipts of milk from handlers described in § 1068.9(c); and

(iii) Receipts by transfer or diversion of bulk fluid milk products from pool plants;

(2) Product pounds and pounds of butterfat contained in:

(i) Receipts of fluid milk products not included in paragraph (a)(1) of this section and bulk fluid cream products from any source;

(ii) Receipts of other source milk;

(iii) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1068.40(b)(1); and

(3) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

* * * * *

(c) Each handler not specified in paragraphs (a) and (b) of this section shall report with respect to its receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

2. Section 1068.31 is amended by revising paragraph (a) to read as follows:

§ 1068.31 Payroll reports.

(a) On or before the 22nd day of each month, each handler described in § 1068.9 (a), (b), and (c) shall report to the market administrator its producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer the information described in § 1068.73(f).

* * * * *

3. Section 1068.50 is amended by revising the section heading, introductory text and paragraph (a), and adding paragraphs (e) through (k) to read as follows:

§ 1068.50 Class and component prices.

Subject to the provisions of § 1068.52, the class prices per hundredweight of milk containing 3.5 percent butterfat and the component prices for the month shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.20.

* * * * *

(e) *Class I differential price.* The Class I differential price shall be the difference between the current month's Class I and Class III prices (this price may be negative).

(f) *Class II differential price.* The Class II differential price shall be the difference between the current month's Class II and Class III prices (this price may be negative).

(g) *Skim milk price.* The skim milk price per hundredweight, rounded to the nearest cent, shall be the Class III price less an amount computed by multiplying the butterfat differential by 35.

(h) *Butterfat price.* The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the Class III price plus an amount computed by multiplying the butterfat differential by 965 and dividing the resulting amount by one hundred.

(i) *Protein price.* The protein price per pound, rounded to the nearest one-hundredth cent, shall be 1.32 times the average monthly price per pound for 40-pound block Cheddar cheese on the National Cheese Exchange as reported by the Department.

(j) *Other solids price.* Other solids are herein defined as solids-not-fat other than protein. The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the skim milk price times .965, less the average protein test of the basic formula price as reported by the Department for the month times the protein price, and dividing the resulting amount by the average other solids test of the basic formula price as reported by the

Department. If the resulting price is less than zero, then the protein price will be reduced so that the other solids price equals zero.

(k) *Somatic cell adjustment.* The somatic cell adjustment per hundredweight shall be computed by subtracting the monthly average somatic cell count, in thousands, of the producer's milk from 350 and multiplying the remaining quantity by .0005 times the monthly cheddar cheese price as defined in paragraph (i) of this section.

4. Section 1068.53 is revised to read as follows:

§ 1068.53 Announcement of class and component prices.

(a) On or before the 5th day of the month, the market administrator shall announce the following prices:

(1) The Class I price for the following month;

(2) The Class III price for the preceding month;

(3) The Class III–A price for the preceding month;

(4) The skim milk price for the preceding month;

(5) The butterfat price for the preceding month;

(6) The protein price for the preceding month;

(7) The other solids price for the preceding month; and

(8) The butterfat differential for the preceding month.

(b) On or before the 15th day of the month, the market administrator shall announce the Class II price for the following month computed pursuant to § 1068.50(b).

5. The section heading in § 1068.60 and the undesignated centerheading preceding it, the introductory text and paragraphs (a), (f), and (g), are revised to read as follows:

Producer Price Differential

§ 1068.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler described in § 1068.9 (a), (b), and (c).

(a) The handler's obligation for producer milk shall be computed as follows:

(1) Multiply the total hundredweight of producer milk in Class I as determined pursuant to § 1068.44(c) by the Class I differential price for the month;

(2) Add an amount obtained by multiplying the total hundredweight of producer milk in Class II as determined pursuant to § 1068.44(c) by the Class II differential price for the month;

(3) Add an amount obtained by multiplying the hundredweight of skim milk in Class I as determined pursuant to § 1068.44(a) by the skim milk price;

(4) Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to § 1068.44(a) by the average protein content of producer skim milk received by the handler, and multiplying the resulting pounds of protein by the protein price; and

(5) Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to § 1068.44(a) by the average other solids content of producer skim milk received by the handler, and multiplying the resulting pounds of other solids by the other solids price;

* * * * *

(f) Add the amount obtained from multiplying the Class I differential price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1068.43(e) and § 1068.44(a)(7)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1068.44(a)(11) and the corresponding steps of § 1068.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(g) Subtract, for a handler described in § 1068.9(c), the amount charged the preceding month for the skim milk and butterfat contained in inventory at the beginning of the month that was delivered to a pool plant during the month;

* * * * *

6. Section 1068.61 is amended by revising the section heading, introductory text, and paragraphs (a) and (e), to read as follows:

§ 1068.61 Producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight of milk as follows:

(a) Combine into one total for all handlers:

(1) The estimated values computed pursuant to § 1068.60 (a)(1), (a)(2) and (b) through (j) for all handlers;

(2) Add the estimated values computed pursuant to § 1068.60 (a)(3), (a)(4), and (a)(5) and subtract the values obtained by multiplying the handlers' total pounds of protein and total pounds of other solids contained in such milk by their respective prices; and

(3) Subtract the estimated value obtained by multiplying the difference between the Class III price and the Class III-A price times the pounds of product determined pursuant to § 1068.43(f);

* * * * *

(e) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (d) of this section. The result shall be the "producer price differential" for milk received from producers.

7. Section 1068.62 is revised to read as follows:

§ 1068.62 Announcement of producer prices.

On or before the 11th day after the end of each month, the market administrator shall announce the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The other solids price;

(d) The butterfat price;

(e) The average protein and other solids content of producer milk; and

(f) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

8. Section 1068.71 is amended by revising paragraph (a)(2) to read as follows:

§ 1068.71 Payments to the producer-settlement fund.

(a) * * *

(2) The sum of:

(i) The value of such handler's receipts of producer milk and milk received from a handler described in § 1068.9(c). In the case of a handler described in § 1068.9(c), less the amount due from other handlers pursuant to § 1068.73(d). The value of producer milk shall be computed as follows:

(A) An amount obtained by multiplying the total hundredweight of producer milk by the producer price differential as adjusted pursuant to § 1068.75;

(B) An amount obtained by multiplying the total pounds of protein contained in producer milk by the protein price;

(C) An amount obtained by multiplying the total pounds of other solids contained in producer milk by the other solids price; and

(ii) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was

computed pursuant to § 1068.60(f) by the producer price differential as adjusted pursuant to § 1068.52.

* * * * *

9. Sections 1068.73, 1068.74, and 1068.75 are revised to read as follows:

§ 1068.73 Payments to producers and to cooperative associations.

Each handler shall pay for milk received from producers or cooperative associations as follows:

(a) On or before the 25th day of the month, each handler shall pay for skim milk and butterfat received during the first 15 days of the month from a cooperative association:

(1) That is a handler pursuant to § 1068.9(a), at not less than the Class I price for the month at the location of the transferee or transferor plant, whichever is higher, adjusted by the butterfat differential for the preceding month;

(2) That is a handler pursuant to § 1068.9(c), at not less than the statistical uniform price at its plant location for the preceding month, adjusted by the butterfat differential for the preceding month; and

(3) That is not a handler but which is authorized to collect payment on behalf of its member producers and has requested that payment be made to it in aggregate, at not less than the statistical uniform price at its plant location for the preceding month, adjusted by the butterfat differential for the preceding month.

(b) On or before the 4th day after the end of the month, each handler shall pay for skim milk and butterfat received during the first 15 days of the month from a producer for whom payment is not being made pursuant to paragraph (a) of this section and who has not discontinued shipping to such handler, at not less than the statistical uniform price at its plant location for the preceding month, adjusted by the butterfat differential for the preceding month.

(c) On or before the 11th day after the end of the month, each handler shall pay for milk received during the month from a cooperative association which is a handler pursuant to § 1068.9(a) adjusted at the location of the transferee or transferor plant, whichever is higher, payment shall be determined as follows:

(1) The hundredweight of Class I milk received times the Class I differential price for the month plus the pounds of Class I skim milk times the skim milk price for the month;

(2) The hundredweight of Class II milk received times the Class II differential price for the month;

(3) The pounds of butterfat received times the butterfat price for the month;

(4) The pounds of protein received in Class II and Class III times the protein price for the month;

(5) The pounds of other solids received in Class II and Class III times the other solids price for the month;

(6) The hundredweight of milk received times the somatic cell adjustment; and

(7) Less any payment made pursuant to paragraph (a)(1) of this section.

(d) On or before the 18th day after the end of the month:

(1) Each handler shall make payment as described in this paragraph to:

(i) A cooperative association that is a handler pursuant to § 1068.9(c);

(ii) A cooperative association that is not a handler but which is authorized to collect payment on behalf of its member producers and has requested that payment be made to it in aggregate;

(iii) A producer for whom payment is not being made pursuant to paragraphs (d)(1)(i) and (ii) of this section.

(2) Payment shall be determined by:

(i) The hundredweight of producer milk received times the producer price differential as adjusted pursuant to § 1068.75;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month; and

(vi) Less any payment made pursuant to paragraph (a) or (b) of this section.

(e) In making payments pursuant to paragraphs (a) (2) and (3), (b) and (d) of this section, deductions may be made for marketing services pursuant to § 1068.86 and for any proper deductions authorized by the producer. In the event a handler has not received full payment from the market administrator pursuant to § 1068.72 by the 18th day of the month, he may reduce pro rata his payments to producers pursuant to paragraph (d) of this section by not more than the amount of such underpayment. Following receipt of the balance due from the market administrator, the handler shall complete payments to producers not later than the next payment date provided under this section.

(f) In making payment to individual producers as required by this section, each handler shall furnish each producer from whom it received milk a supporting statement, in such form that it may be retained by the producer, which shall show:

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

(2) The total pounds of milk received from the producer;

(3) The total pounds of butterfat contained in the producer's milk;

(4) The total pounds of protein contained in the producer's milk;

(5) The total pounds of other solids contained in the producer's milk;

(6) The somatic cell count of the producer's milk;

(7) The minimum rate or rates at which payment to the producer is required pursuant to this section;

(8) The rate that is used in making payment if such rate is other than the applicable minimum;

(9) The amount, or the rate per hundredweight, or rate per pound of component, of each deduction claimed by the handler, including any deduction claimed under § 1068.86, together with a description of the respective deductions; and

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

§ 1068.74 Butterfat differential.

The butterfat differential, rounded to the nearest one-tenth cent, shall be 0.138 times the butter price less 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month. The butter price means the simple average for the month of the daily prices per pound of Grade A (92 score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division using the price reported each week as the daily price for that day and for each following day until the next price is reported.

§ 1068.75 Plant location adjustments for producers and on nonpool milk.

(a) The producer price differential for producer milk received at a pool plant or delivered to a nonpool plant shall be adjusted according to the location of the plant of actual receipt at the rates set forth in § 1068.52.

(b) The producer price differential applicable to other source milk shall be reduced at the rates set forth in § 1068.52, except that the adjusted producer price differential shall not be less than zero.

10. Section 1068.76 is amended by revising paragraph (a)(4) and the third sentence of paragraph (b)(1)(ii) to read as follows:

§ 1068.76 Payments by handler operating a partially regulated distributing plant.

* * * * *

(a) * * *

(4) Multiply the remaining pounds by the amount by which the Class I differential price exceeds the producer price differential, both prices to be applicable at the location of the partially regulated distributing plant, with the difference to be not less than zero; and

* * * * *

(b) * * *

(1) * * *

(ii) * * * Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1068.60 shall be priced at the statistical uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such statistical uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

* * * * *

PART 1076—MILK IN EASTERN SOUTH DAKOTA MARKETING AREA

1. Section 1076.30 is amended by revising paragraphs (a) and (c) and removing paragraph (d) to read as follows:

§ 1076.30 Reports of receipts and utilization.

* * * * *

(a) Each handler described in § 1076.9 (a), (b), and (c) shall report for each of its operations the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, and pounds of solids-not-fat other than protein (other solids) contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the handler;

(ii) Receipts of milk from handlers described in § 1076.9(c); and

(iii) Receipts by transfer or diversion of bulk fluid milk products from pool plants;

(2) Product pounds and pounds of butterfat contained in:

(i) Receipts of fluid milk products not included in paragraph (a)(1) of this section and bulk fluid cream products from any source;

(ii) Receipts of other source milk;

(iii) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1076.40(b)(1); and

(3) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

* * * * *

(c) Each handler not specified in paragraphs (a) and (b) of this section shall report with respect to its receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

2. Section 1076.31 is amended by revising paragraph (a) to read as follows:

§ 1076.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1076.9 (a), (b), and (c) shall report to the market administrator its producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer the information described in § 1076.73(e).

* * * * *

3. Section 1076.50 is amended by revising the section heading, introductory text and paragraph (a), adding and reserving paragraph (d), and adding paragraphs (e), (f), (g) ,(h), (i), (j), and (k) to read as follows:

§ 1076.50 Class and component prices.

Subject to the provisions of § 1076.52, the class prices per hundredweight of milk containing 3.5 percent butterfat and the component prices for the month shall be as follows:

(a) *Class I price.* The Class I price for the month per hundredweight of milk containing 3.5 percent butterfat shall be the basic formula price for the second preceding month plus $1.50.

* * * * *

(d) [Reserved]

(e) *Class I differential price.* The Class I differential price shall be the difference between the current month Class I and Class III prices (this price may be negative).

(f) *Class II differential price.* The Class II differential price shall be the difference between the current month Class II and Class III prices (this price may be negative).

(g) *Skim milk price.* The skim milk price per hundredweight, rounded to the nearest cent, shall be the Class III price less an amount computed by multiplying the butterfat differential by 35.

(h) *Butterfat price.* The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the Class III price plus an amount computed by multiplying the butterfat differential by 965 and dividing the resulting amount by one hundred.

(i) *Protein price.* The protein price per pound, rounded to the nearest one-hundredth cent, shall be 1.32 times the average monthly price per pound for 40-pound block Cheddar cheese on the National Cheese Exchange as reported by the Department.

(j) *Other solids price.* Other solids are herein defined as solids not fat other than protein. The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the skim milk price times .965 less the average protein test of the basic formula price as reported by the Department for the month times the protein price, and dividing the resulting amount by the average other solids test of the basic formula price as reported by the Department. If the resulting price is less than zero, then the protein price will be reduced so that the other solids price equals zero.

(k) *Somatic cell adjustment.* The somatic cell adjustment per hundredweight shall be computed by subtracting the monthly average somatic cell count, in thousands, of the producer's milk from 350 and multiplying the remaining quantity by .0005 times the monthly cheddar cheese price as defined in paragraph (i) of this section.

4. Section 1076.53 is revised to read as follows:

§ 1076.53 Announcement of class and component prices.

(a) On or before the 5th day of the month, the market administrator shall announce the following prices:

(1) The Class I price for the following month;

(2) The Class III price for the preceding month;

(3) [Reserved]

(4) The skim milk price for the preceding month;

(5) The butterfat price for the preceding month;

(6) The protein price for the preceding month;

(7) The other solids price for the preceding month; and

(8) The butterfat differential for the preceding month.

(b) On or before the 15th day of the month, the market administrator shall announce the Class II price for the following month computed pursuant to § 1076.50(b).

5. The section heading in § 1076.60 and the undesignated centerheading preceding it, the introductory text, and paragraphs (a) and (f) are revised to read as follows:

Producer Price Differential

§ 1076.60 Handler's value of milk.

For the purpose of computing a handler's obligation for milk the market administrator shall determine for each month the value of milk of each handler described in § 1076.9(a) with respect to each of its pool plants and each handler described in § 1076.9 (b) and (c).

(a) The handler's obligation for producer milk and milk received from handler described in § 1076.9(c) shall be computed as follows:

(1) Multiply the total hundredweight of milk in Class I as determined pursuant to § 1076.43(a) and § 1076.44(c) by the Class I differential price for the month;

(2) Add an amount obtained by multiplying the total hundredweight of milk in Class II as determined pursuant to § 1076.43(a) and § 1076.44(c) by the Class II differential price for the month;

(3) Add an amount obtained by multiplying the hundredweight of skim milk in Class I as determined pursuant to § 1076.44(a) by the skim milk price;

(4) Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to § 1076.44(a) by the average protein content of the skim milk received by the handler, and multiplying the resulting pounds of protein by the protein price; and

(5) Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to § 1076.44(a) by the average other solids content of the skim milk received by the handler, and multiplying the resulting pounds of other solids by the other solids price;

* * * * *

(f) Add the amount obtained from multiplying the Class I differential price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1076.43(d) and § 1076.44(a)(7)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1076.44(a)(11) and the corresponding steps of § 1076.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

* * * * *

6. Section 1076.61 is amended by revising the section heading, introductory text, and paragraphs (a) and (e), to read as follows:

§ 1076.61 Producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight of milk received from producers as follows:

(a) Combine into one total for all handlers:

(1) The values computed pursuant to § 1076.60 (a)(1), (a)(2), and (b) through (i) for all handlers;

(2) Add values computed pursuant to § 1076.60 (a)(3), (a)(4), and (a)(5) and subtract the values obtained by multiplying the handlers' total pounds of protein and total pounds of other solids contained in such milk by their respective prices;

* * * * *

(e) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (d) of this section. The result shall be the "producer price differential."

7. Section 1076.62 is revised to read as follows:

§ 1076.62 Announcement of producer prices.

On or before the 12th day after the end of each month, the market administrator shall announce the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The other solids price;

(d) The butterfat price;

(e) The average protein and other solids content of producer milk; and

(f) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

8. Section 1076.71 is amended by revising paragraph (a)(2) to read as follows:

§ 1076.71 Payments to the producer-settlement fund.

(a) * * *

(2) The sum of:

(i) An amount obtained by multiplying the total hundredweight of producer milk and milk received from a handler described in § 1076.9(c) by the producer price differential as adjusted pursuant to § 1076.75;

(ii) An amount obtained by multiplying the total pounds of protein contained in producer milk and milk received from a handler described in § 1076.9(c) by the protein price;

(iii) An amount obtained by multiplying the total pounds of other solids contained in producer milk and milk received from a handler described in § 1076.9(c) by the other solids price; and

(iv) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1076.60(f) by the producer price differential as adjusted pursuant to § 1076.52.

* * * * *

§ 1076.72 [Amended]

9. Section 1076.72 is amended by removing the last sentence.

10. Section 1076.73 is amended by revising paragraphs (a), (c), (d) and (e) to read as follows:

§ 1076.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay each producer for milk received from producers for which payment is not made to a cooperative association pursuant to paragraph (b) or (c) of this section as follows:

(1) On or before the last day of each month, for producer milk received during the first 15 days of the month at a rate per hundredweight not less than the Class III price for the preceding month; and

(2) On or before the 18th day after the end of the month, payment for producer milk received during such month shall not be less than the sum of:

(i) The hundredweight of producer milk received times the producer price differential as adjusted pursuant to § 1076.75;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month;

(vi) Less any payment made pursuant to paragraph (a)(1) of this section;

(vii) Less proper deductions authorized in writing by such producer and plus or minus adjustments for errors in previous payments made to such producer;

(viii) Less deductions for marketing services pursuant to § 1076.86; and

(ix) If by such date the handler has not received full payment from the market administrator pursuant to § 1076.72 for such month, it may reduce pro rata its payment to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments

pursuant to this paragraph next following receipt of the balance due from the market administrator.

* * * * *

(c) Each handler shall pay a cooperative association for milk received by the handler from a cooperative association acting as a handler described in § 1076.9(c) as follows:

(1) For milk received during the first 15 days of the month, the handler shall pay the cooperative association on or before the 28th day of the month during which the milk was received at a rate per hundredweight not less than the statistical uniform price computed pursuant to § 1076.62(f) for the preceding month; and

(2) For milk received during the month the handler shall pay the cooperative association on or before the 15th day after the end of the month during which the milk was received as follows:

(i) The hundredweight of milk received times the producer price differential applicable at the location of the receiving handler's plant;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month; and

(vi) Less any payment made pursuant to paragraph (c)(1) of this section.

(d) Each handler shall pay a cooperative association for fluid milk products received by transfer from pool plant(s) operated by the cooperative association as follows:

(1) For milk received during the first 15 days of the month, the handler shall pay the cooperative association on or before the 28th day of the month during which the milk was received at a rate per hundredweight not less than the statistical uniform price computed pursuant to § 1076.62(f) for the preceding month; and

(2) For milk received during the month the handler shall pay the cooperative association on or before the 15th day after the end of the month during which the milk was received, as follows:

(i) The hundredweight of Class I milk received times the Class I differential price for the month applicable at the transferee plant, plus the pounds of Class I skim milk times the skim milk price for the month;

(ii) The hundredweight of Class II milk received times the Class II differential price for the month,

(iii) The pounds of butterfat received times the butterfat price for the month;

(iv) The pounds of protein received in Class II and Class III times the protein price for the month;

(v) The pounds of other solids received in Class II and Class III times the other solids price for the month;

(vi) The hundredweight of milk received times the somatic cell adjustment; and

(vii) Less any payment made pursuant to paragraph (d)(1) of this section.

(e) In making payments for producer milk pursuant to paragraph (a)(2) or (b)(2) of this section, each handler shall furnish each producer or cooperative association to whom such payment is made a supporting statement in such form that it may be retained by the recipient which shall show:

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

(2) The daily and total pounds for each producer;

(3) The total pounds of butterfat contained in the producer's milk;

(4) The total pounds of protein contained in the producer's milk;

(5) The total pounds of other solids contained in the producer's milk;

(6) The somatic cell count of the producer's milk;

(7) The minimum rate or rates which payment to the producer is required pursuant to this order;

(8) The rate that is used in making payment if such rate is other than the applicable minimum rate;

(9) The amount, or the rate per hundredweight, or rate per pound of component, and the nature of each deduction claimed by the handler; and

(10) The net amount of payment to such producer or cooperative.

11. Sections 1076.74 and 1076.75 are revised to read as follows:

§ 1076.74 Butterfat differential.

The butterfat differential, rounded to the nearest one-tenth cent, shall be 0.138 times the butter price less 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month. The butter price means the simple average for the month of the daily prices per pound of Grade A (92 score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division using the price reported each week as the daily price for that day and for each following day until the next price is reported.

§ 1076.75 Plant location adjustments for producers and on nonpool milk.

(a) The producer price differential for producer milk shall be adjusted according to the location of the plant of actual receipt at the rates set forth in § 1076.52; and

(b) For the purpose of computations pursuant to §§ 1076.71 and 1076.72 the producer price differential shall be adjusted at the rates set forth in § 1076.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted producer price differential shall not be less than zero.

12. Section 1076.76 is amended by revising paragraphs (a)(4) and the last sentence of (b)(1)(ii) to read as follows:

§ 1076.76 Payments by handler operating a partially regulated distributing plant.

* * * * *

(a) * * *

(4) Multiply the remaining pounds by the amount by which the Class I differential price exceeds the producer price differential, both price to be applicable at the location of the partially regulated distributing plant, with the difference to be not less than zero; and

* * * * *

(b) * * *

(1) * * *

(ii) * * * Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1076.60 shall be priced at the statistical uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such statistical uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

* * * * *

PART 1079—MILK IN THE IOWA MARKETING AREA

1. Section 1079.30 is amended by revising paragraphs (a) and (c) and removing paragraph (d), to read as follows:

§ 1079.30 Reports of receipts and utilization.

* * * * *

(a) Each handler described in § 1079.9(a), (b), and (c) shall report for each of its operations the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, and pounds of solids-not-fat other than protein (other solids) contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the handler;

(ii) Receipts of milk from handlers described in § 1079.9(c); and

(iii) Receipts by transfer or diversion of bulk fluid milk products from pool plants;

(2) Product pounds and pounds of butterfat contained in:

(i) Receipts of fluid milk products not included in paragraph (a)(1) of this section and bulk fluid cream products from any source;

(ii) Receipts of other source milk;

(iii) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1079.40(b)(1); and

(3) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

* * * * *

(c) Each handler not specified in paragraphs (a) and (b) of this section shall report with respect to its receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

2. Section 1079.31 is amended by revising paragraph (a) to read as follows:

§ 1079.31 Payroll reports.

(a) On or before the 22nd day after the end of each month, each handler described in § 1079.9(a), (b), or (c) shall report to the market administrator its producer payroll for such month in the detail prescribed by the market administrator, showing for each producer the information described in § 1079.73(e).

* * * * *

3. Section 1079.50 is amended by revising the section heading, introductory text and paragraph (a), and adding paragraphs (e) through (k) to read as follows:

§ 1079.50 Class and component prices.

Subject to the provisions of § 1079.52, the class prices per hundredweight of milk containing 3.5 percent butterfat and the component prices for the month shall be as follows:

(a) *Class I price.* The Class I price for the month per hundredweight of milk containing 3.5 percent butterfat shall be the basic formula price for the second preceding month plus $1.55.

* * * * *

(e) *Class I differential price.* The Class I differential price shall be the difference between the current month Class I and Class III prices (this price may be negative).

(f) *Class II differential price.* The Class II differential price shall be the difference between the current month Class II and Class III prices (this price may be negative).

(g) *Skim milk price.* The skim milk price per hundredweight, rounded to the nearest cent, shall be the Class III price less an amount computed by multiplying the butterfat differential by 35.

(h) *Butterfat price.* The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the Class III price plus an amount computed by multiplying the butterfat differential by 965 and dividing the resulting amount by one hundred.

(i) *Protein price.* The protein price per pound, rounded to the nearest one-hundredth cent, shall be 1.32 times the average monthly price per pound for 40-pound block Cheddar cheese on the National Cheese Exchange as reported by the Department.

(j) *Other solids price.* Other solids are herein defined as solids not fat other than protein. The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the skim milk price times .965, less the average protein test of the basic formula price as reported by the Department for the month times the protein price, and dividing the resulting amount by the average other solids test of the basic formula price as reported by the Department. If the resulting price is less than zero, then the protein price will be reduced so that the other solids price equals zero.

(k) *Somatic cell adjustment.* The somatic cell adjustment per hundredweight shall be computed by subtracting the monthly average somatic cell count, in thousands, of the producer's milk from 350 and multiplying the remaining quantity by .0005 times the monthly cheddar cheese price as defined in paragraph (i) of this section.

4. Section 1079.53 is revised to read as follows:

§ 1079.53 Announcement of class and component prices.

(a) On or before the 5th day of the month, the market administrator shall announce the following prices:

(1) The Class I price for the following month;

(2) The Class III price for the preceding month;

(3) The Class III–A price for the preceding month;

(4) The skim milk price for the preceding month;

(5) The butterfat price for the preceding month;

(6) The protein price for the preceding month;

(7) The other solids price for the preceding month; and

(8) The butterfat differential for the preceding month.

(b) On or before the 15th day of the month, the market administrator shall announce the Class II price for the following month computed pursuant to § 1079.50(b).

5. The section heading in § 1079.60 and the undesignated centerheading preceding it, the introductory text, and paragraphs (a), (f), and (g), are revised to read as follows:

Producer Price Differential

§ 1079.60 Handler's value of milk.

For the purpose of computing a handler's obligation for milk the market administrator shall determine for each month the value of milk of each handler described in § 1079.9(a) with respect to each of its pool plants, and each handler described in § 1079.9 (b) and (c).

(a) The handler's obligation for producer milk and milk received from a handler described in § 1079.9(c) shall be computed as follows:

(1) Multiply the total hundredweight of milk in Class I as determined pursuant to § 1079.43(a) and § 1079.44(c) by the Class I differential price for the month;

(2) Add an amount obtained by multiplying the total hundredweight of milk in Class II as determined pursuant to § 1079.43(a) and § 1079.44(c) by the Class II differential price for the month;

(3) Add an amount obtained by multiplying the hundredweight of skim milk in Class I as determined pursuant to § 1079.44(a) by the skim milk price;

(4) Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to § 1079.44(a) by the average protein content of the skim milk received by the handler, and multiplying the resulting pounds of protein by the protein price; and

(5) Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to § 1079.44(a) by the average other solids content of the skim milk received by the handler, and multiplying the resulting pounds of other solids by the other solids price;

* * * * *

(f) Add the amount obtained from multiplying the Class I differential price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1079.43(d) and § 1079.44(a)(7)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1079.44(a)(11) and the corresponding steps of § 1079.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(g) Subtract for a handler described in § 1079.9(c) the amount charged the preceding month for the skim milk and butterfat contained in inventory at the beginning of the month that was delivered to a pool plant during the month;

* * * * *

6. Section 1079.61 is amended by revising the heading, introductory text, and paragraphs (a) and (e) to read as follows:

§ 1079.61 Producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight for Zone 1. If the unreserved cash balance in the producer settlement fund to be included in the computation is less than 2 cents per hundredweight of producer milk on all reports, the report of any handler who has not made the payments required pursuant to § 1079.71 for the preceding month shall not be included in the computation of the producer price differential. The report of such handler shall not be included in the computation for succeeding months until he has made full payment of outstanding monthly obligations. Subject to the aforementioned conditions, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total for all handlers:

(1) The values computed pursuant to § 1079.60 (a)(1), (a)(2), and (b) through (j) for all handlers;

(2) Add values computed pursuant to § 1079.60 (a)(3), (a)(4), and (a)(5) and subtract the values obtained by multiplying the handlers' total pounds of protein and total pounds of other solids contained in such milk by their respective prices; and

(3) Subtract the value obtained by multiplying the difference between the Class III price and the Class III-A price times the pounds of product determined pursuant to § 1079.43(e);

* * * * *

(e) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (d) of this section. The result shall be known as the "producer price differential."

7. Section 1079.62 is revised to read as follows:

§ 1079.62 Announcement of producer prices.

On or before the 12th day after the end of each month, the market administrator shall announce the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The other solids price;

(d) The butterfat price;

(e) The average protein and other solids content of producer milk; and

(f) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

8. Section 1079.71 is amended by revising paragraph (a)(2) and adding and reserving paragraph (b), to read as follows:

§ 1079.71 Payments to the producer-settlement fund.

(a) * * *

(2) The sum of:

(i) An amount obtained by multiplying the total hundredweight of producer milk and milk received from a handler described in § 1079.9(c) by the producer price differential as adjusted by § 1079.75. In the case of a handler described in § 1079.9(c), less the amount due from handlers pursuant to § 1079.73;

(ii) An amount obtained by multiplying the total pounds of protein contained in producer milk and milk received from a handler described in § 1079.9(c) by the protein price;

(iii) An amount obtained by multiplying the total pounds of other solids contained in producer milk and milk received from a handler described in § 1079.9(c) by the other solids price; and

(iv) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1079.60(f) by the producer price differential as adjusted pursuant to § 1079.52.

(b) [Reserved]

9. Sections 1079.73, 1079.74 and 1079.75 are revised to read as follows:

§ 1079.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay for milk received from producers for which payment is not made to a cooperative association pursuant to paragraph (b) or (c) of this section as follows:

(1) On or before the last day of each month, to each producer who has not discontinued shipping milk to such handler before the end of the month, for producer milk received during the first 15 days of the month at a rate per hundredweight not less than the statistical uniform price computed pursuant to § 1079.62(f) for the preceding month and adjusted pursuant to § 1079.75, less proper deductions authorized in writing by such producer; and

(2) On or before the 18th day after the end of the month, payment for producer milk received during such month shall not be less than the sum of:

(i) The hundredweight of producer milk received times the producer price differential adjusted pursuant to § 1079.75;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month;

(vi) Less any payment made pursuant to paragraph (a)(1) of this section;

(vii) Less proper authorized deductions authorized in writing by such producer and plus or minus adjustments for errors in previous payments made to such producer;

(viii) Less deductions for marketing services pursuant to § 1079.86; and

(ix) If by such date the handler has not received full payment from the market administrator pursuant to § 1079.72 for such month, it may reduce pro rata its payment to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following receipt of the balance due from the market administrator.

(b) Each handler shall pay a cooperative association as follows for milk received from producers if the cooperative association has filed a written request for payment with the handler and if the market administrator has determined that such cooperative

association is authorized to collect payment:

(1) On or before the last day of the month, an amount not less than the sum of the individual payments otherwise payable to producers pursuant to paragraph (a)(1) of this section, less any deductions authorized in writing by such cooperative association; and

(2) On or before the 18th day after the end of each month an amount not less than the sum of the individual payments otherwise payable to producers pursuant to paragraph (a)(2) of this section, less proper deductions authorized in writing by such cooperative association.

(c) Each handler shall pay a cooperative association for milk received by the handler from a cooperative association acting as a handler described in § 1079.9(c) as follows:

(1) For milk received during the first 15 days of the month, the handler shall pay the cooperative association on or before the last day of the month during which the milk was received at a rate per hundredweight not less than the statistical uniform price computed pursuant to § 1079.62(f), applicable at the location of the receiving handler's plant, for the preceding month; and

(2) For milk received during the month the handler shall pay the cooperative association on or before the 18th day after the end of the month during which the milk was received as follows:

(i) The hundredweight of milk received times the producer price differential applicable at the location of the receiving handler's plant;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month; and

(vi) Less any payment made pursuant to paragraph (c)(1) of this section.

(d) Each handler shall pay a cooperative association for fluid milk products received by transfer from pool plant(s) operated by a cooperative association as follows:

(1) For milk received during the first 15 days of the month, the handler shall pay the cooperative association on or before the last day of the month during which the milk was received at a rate per hundredweight not less than the statistical uniform price computed pursuant to § 1079.62(f), applicable at the transferee plant, for the preceding month; and

(2) For milk received during the month the handler shall pay the cooperative association on or before the 18th day after the end of the month during which the milk was received, as follows:

(i) The hundredweight of Class I milk received times the Class I differential price for the month applicable at the transferee plant, plus the pounds of Class I skim milk times the skim milk price for the month;

(ii) The hundredweight of Class II milk received times the Class II differential price for the month;

(iii) The pounds of butterfat received times the butterfat price for the month;

(iv) The pounds of protein received in Class II and Class III times the protein price for the month;

(v) The pounds of other solids received in Class II and Class III times the other solids price for the month;

(vi) The hundredweight of milk received times the somatic cell adjustment; and

(vii) Less any payment made pursuant to paragraph (d)(1) of this section.

(e) In making payments for producer milk pursuant to paragraph (a)(2) or (b)(2) of this section, each handler shall furnish each producer or cooperative association to whom such payment is made a supporting statement in such form that it may be retained by the recipient which shall show:

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

(2) The daily and total pounds for each producer;

(3) The total pounds of butterfat contained in the producer's milk;

(4) The total pounds of protein contained in the producer's milk;

(5) The total pounds of other solids contained in the producer's milk;

(6) The somatic cell count of the producer's milk;

(7) The minimum rate or rates at which payment to the producer is required pursuant to this order;

(8) The rate that is used in making payment if such rate is other than the applicable minimum rate;

(9) The amount, rate per hundredweight, or rate per pound of component, and the nature of each deduction claimed by the handler; and

(10) The net amount of payment to such producer or cooperative.

§ 1079.74 Butterfat differential.

The butterfat differential, rounded to the nearest one-tenth cent, shall be 0.138 times the butter price less 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month. The butter price means the simple average for the month of the daily prices per pound of Grade A (92 score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division using the price reported each week as the daily price for that day and for each following day until the next price is reported.

§ 1079.75 Plant location adjustments for producers and on nonpool milk.

(a) The producer price differential for producer milk pursuant to § 1079.61 received at a pool plant or diverted from a pool plant shall be reduced according to the location of the plant of actual receipt at the rates set forth in § 1079.52

(b) For purposes of computations pursuant to §§ 1079.71 and 1079.72 the producer price differential shall be adjusted at the rates set forth in § 1079.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted producer price differential shall not be less than zero.

10. Section 1079.76 is amended by revising paragraph (a)(4) and the last sentence of paragraph (b)(1)(ii) to read as follows:

§ 1079.76 Payments by handler operating a partially regulated distributing plant.

* * * * *

(a) * * *

(4) Multiply the remaining pounds by the amount by which the Class I differential price exceeds the producer price differential, both prices to be applicable at the location of the partially regulated distributing plant, with the difference to be not less than zero; and

* * * * *

(b) * * *

(1) * * *

(ii) * * * Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1079.60 shall be priced at the statistical uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such statistical uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk

shall be priced at the lowest class price of the respective order; and

* * * * *

Dated: October 25, 1994.

Lon Hatamiya,

Administrator.

[FR Doc. 94–26906 Filed 11–1–94; 8:45 am]

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Wednesday
November 2, 1994

Part III

Department of Housing and Urban Development

Environmental Protection Agency

24 CFR Part 38
40 CFR Part 745

Lead; Proposed Requirements for Disclosure of Information Concerning Lead-Based Paint in Housing; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 38

[Docket No. R-94-1756; FR-3483-P-01]

RIN 2501-AB58

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 745

[OPPTS-62130; FRL-4637-4]

RIN 2070-AC75

Lead; Proposed Requirements for Disclosure of Information Concerning Lead-Based Paint in Housing

AGENCIES: Department of Housing and Urban Development (HUD) and the Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 directs EPA and HUD to jointly issue regulations requiring disclosure of certain information by persons selling or leasing (leasing includes renting) housing that may contain lead-based paint or lead-based paint hazards. Under that authority, EPA and HUD propose the following requirements. Sellers and lessors, or any agent acting on their behalf, of most residential housing built before 1978 would be required to provide purchasers and lessees with all information known to the seller, lessor, or agent on the presence of lead-based paint and lead-based paint hazards, as well as an EPA pamphlet on lead-based paint hazards. In addition, sellers would be required to grant purchasers 10 calendar days to conduct an inspection or risk assessment for lead-based paint hazards before being obligated under any contract to purchase that housing. Finally, the regulation would require that a standard warning, disclosure, and acknowledgement form be attached to all leases and sales contracts involving target housing. The rule would require the completion of these disclosure activities before the purchaser or lessee had become obligated under any contract to purchase or lease the target housing.

DATES: Written comments in response to this proposed rule must be received on or before January 3, 1995. If persons request time for oral comment, EPA and HUD will consider holding an informal hearing in Washington, DC. Requests for oral comment must be received by December 2, 1994. EPA and HUD will decide whether to hold such a hearing by December 19, 1994. The exact date, time, and location of any such hearing will be made available by telephoning EPA's Environmental Assistance Division at the telephone number listed under **FOR FURTHER INFORMATION CONTACT**. For further information regarding the submission of information claimed as confidential business information (CBI), see Unit XI of this preamble.

ADDRESSES: Please submit three copies of all written comments on this joint HUD/EPA proposed rule, including any comments directed specifically to HUD, to: TSCA Document Receipts (7407), Rm. E-G99, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. All comments on this proposed rule should be identified by the docket number OPPTS-62130A. In order to reduce the burden on the commenters, receipt of all comments will be centralized at EPA.

FOR FURTHER INFORMATION CONTACT: For general information or to obtain copies of the proposed rule, contact Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202-554-1404, TDD: 202-554-0551. For technical information: At HUD, contact Conrad C. Arnolts, Office of Lead-Based Paint Abatement and Poisoning Prevention, Department of Housing and Urban Development, 451 7th St., SW., Washington, DC 20410, Telephone: (202) 755-1810. At EPA, contact Charles Franklin, Program Development Branch, Chemical Management Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202-260-1781.

SUPPLEMENTARY INFORMATION:

I. Authority

This proposed rule is issued under the authority of section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, [42 U.S.C. 4852(d)]. The Residential Lead-Based Paint Hazard Reduction Act is Title X of the Housing and Community and Development Act of 1992, Public Law 102-550.

II. Background

A. Legal Background

In 1992, Congress, recognizing the need to control exposure to lead-based paint hazards, passed the Residential Lead-Based Paint Hazard Reduction Act of 1992 (the Act). The main purpose of the Act was to develop the infrastructure and standards necessary to reduce lead-based paint hazards in housing (section 1003 of the Act). Congress recognized that lead poisoning is a particular threat to children under age 6, and particularly emphasized the needs of this vulnerable population within various sections of the Act. Section 1021 of the Act amends the Toxic Substances Control Act ("TSCA"), 15 U.S.C. 2601 et seq., by adding a new Title IV entitled "Lead Exposure Reduction."

Actions under some sections of the Act are to be implemented and administered by HUD, some by EPA, and some jointly by both agencies, often in consultation with other federal agencies.

This proposed rule is issued under the authority of section 1018 of the Act. Section 1018 requires EPA and HUD to jointly promulgate regulations for disclosure of lead-based paint or lead-based paint hazards in target housing which is offered for sale or lease. Target housing is defined in section 1004(27) of the Act and in Unit V. of this preamble. Specifically, section 1018 requires: (1) Sellers or lessors to provide the purchaser or lessee of target housing with a lead information pamphlet to be developed under section 406(a) of TSCA; (2) sellers and lessors of target housing to disclose any known lead-based paint or lead-based paint hazard in such housing; (3) sellers of target housing to permit purchasers a 10-day opportunity to conduct a risk assessment or inspection for the presence of lead-based paint hazards; and (4) attachment of a lead warning statement to each contract for purchase and sale of target housing. Violation of section 1018 may result in civil and criminal penalties and potential triple damages in a private civil suit. Section 1018 provides that regulations under this section must be promulgated no later than 2 years after the date of enactment of the Act and must take effect 3 years after enactment of the Act. Thus, Congress intended that the section 1018 regulations must be published as final by October 28, 1994, and must take effect on October 28, 1995. Although 1018 specified that final regulations should be promulgated no later than October 28, 1994, EPA/HUD will not be able to meet this deadline. It appears that Congress' intent in section 1018 was to provide a year between the promulgation of the final rule, and the effective date of the rule. Congress reasonably could have

believed that this year was necessary in order that the real estate industry, landlords, sellers, etc. could become familiar with the rule requirements and set up procedures for compliance. For this reason, EPA and HUD believe that the effective date of the rule should be no earlier than 1 year after promulgation of the final rule, even if this occurs later than October 28, 1995. EPA and HUD believe that this interpretation is the one most consistent with Congressional intent.

Several related provisions of the Act and of the new Title IV of TSCA, added by section 1021 of the Act, are briefly discussed below to further clarify this proposed rule.

The section most closely related to section 1018 is section 406 of TSCA. Section 406(a) directs EPA to develop and publish, after notice and comment, a lead hazard information pamphlet on lead and lead-based paint hazards in the home. EPA has developed the draft pamphlet in consultation with HUD and the Centers for Disease Control and Prevention (CDC), and published a notice in the **Federal Register** of March 9, 1994 (59 FR 11119), announcing the pamphlet's availability for public review and comment. As required under section 1018 of the Act, the section 406 pamphlet will be given to purchasers and lessees under the EPA/HUD disclosure regulations proposed today.

Sections 1004(15), 1004(16), and 1004(17) of the Act generally define lead-based paint hazards, lead-contaminated dust, and lead-contaminated soil. Congress charged EPA under section 403 of TSCA to issue regulations identifying more specifically the meaning of these three terms, for the purposes of other provisions of TSCA and the Act. Thus, EPA is in the process of defining more precisely what constitutes a lead-based paint hazard, including lead-contaminated dust and lead-contaminated soil. However, EPA and HUD believe that the provisions of this proposed section 1018 rule can be carefully considered on their own merit and independent of decisions made under the section 403 rulemaking.

Therefore, EPA and HUD are soliciting public comment on this proposed rule prior to the availability of proposed or final regulations under section 403. EPA and HUD believe the public has adequate information and opportunity to comment on the contents of this proposed rule and on the relationship between regulations promulgated under sections 1018 and 403 for the following reasons:

(1) While known lead-based paint hazards must be disclosed, this requirement is only one of a number of requirements for which sellers and lessors of target housing are responsible. Therefore, EPA's definition of "lead-based paint hazards" does not change the affected population, although that definition has clear implications for the extent of disclosure.

(2) The requirements under section 1018 will apply to all target housing regardless of the presence of lead-based paint hazards in that housing. That is, all owners, sellers, and lessors of target housing will be on notice that EPA and HUD are issuing disclosure requirements, and that they will be required to retain and disclose certain types of information and to allow for the 10–day inspection period, regardless of whether their housing contains lead-based paint or a lead-based paint hazard.

(3) The Act clearly specifies the requirements of this proposed rule. Therefore, regardless of the standards proposed and issued in the section 403 regulations, EPA and HUD do not have flexibility to change the basic provisions specified by Congress.

(4) Section 403, on the other hand, does give EPA flexibility to consider a number of factors in developing health-based standards. Comments specifically concerning the implications of EPA's section 403 standards, given the concrete legislative requirements of section 1018, will be most appropriately addressed by EPA during the development of the section 403 rule.

Section 402 of TSCA requires that EPA (in consultation with HUD, the Department of Labor, and the Department of Health and Human Services) promulgate regulations to ensure that individuals engaged in certain lead-based paint activities are trained, that such training programs are accredited, and that contractors engaging in such activities are certified. This section also requires that EPA, in consultation with the above agencies, shall develop standards for performance of lead-based paint activities. Pursuant to section 402, EPA is in the process of developing regulations which would require that detailed reports be written at the completion of any lead inspection or risk assessment, whether voluntary or required. Such reports would have to be disclosed as information known to the seller or lessor under the proposed section 1018 disclosure requirements being proposed today.

B. Lead Background

1. *Lead and lead-based paint.* Lead is a soft, bluish metallic element mined from rock and found in its natural state all over the world. Lead is virtually indestructible, is nonbiodegradable, and has been known since antiquity for its adaptability in making various useful items. In modern times it has been used to manufacture many different products, including paint, batteries, pipes, solder, pottery, and gasoline. From the turn of the century through the 1940's, paint manufacturers frequently used lead as a primary ingredient in many oil-based interior and exterior house paints. Usage gradually decreased through the 1950's and 60's as latex paints (which are generally lead-free) became more widespread. Although the Consumer Product Safety Commission (CPSC) banned lead-based paints from residential use in 1978 (paint currently may not have greater than .06 percent lead by weight) (Ref. 1), HUD estimates that 75 percent of the houses built in the United States before 1978 contain some lead-based paint (Ref. 2). By current estimations, approximately 57 million homes may contain lead-based paint (Ref. 2). Thus lead-based paint may pose a potential hazard to the occupants under some conditions.

2. *Lead hazards.* Lead affects virtually every system of the body. While it is harmful to individuals of all ages, lead exposure is especially harmful to children, fetuses, and women of childbearing age. Results of recent studies suggest that lead's adverse effects occur at blood-lead levels previously thought to be safe; in fact, there does not yet appear to be a discernable threshold for the adverse effects of lead on the young (Ref. 3).

Lead poisoning has been referred to as "the silent disease" because its effects often occur gradually and imperceptibly, showing no obvious symptoms. Over time, low levels of lead in the bloodstream can cause learning disabilities, interfere with growth, cause permanent hearing and visual impairment, and cause other damage to the brain and nervous system. In large doses, lead can cause blindness, brain damage, convulsions, and even death. Lead exposure before or during pregnancy can also affect fetal development and cause miscarriages (Ref. 3).

In 1991, the Secretary of the Department of Health and Human Services characterized lead poisoning as the "number one environmental threat to the health of children in the United States" (Ref. 4).

Although the percentage of children with elevated blood-lead levels has declined over the last 20 years with the reduction of lead in gasoline, millions of U.S. children still have levels of lead in their blood high enough to seriously threaten their health (Ref. 5).

Lead-based paint poses a health threat through various routes of exposure. Children under age 6 may ingest lead-based paint chips from flaking walls, windows, and doors. Lead from exterior house paint can flake off or leach into the soil around the outside of a home, contaminating children's playing areas. Dust caused during normal lead-based paint wear (especially around windows and doors) can create an invisible film over surfaces in a house. In some cases, cleaning and renovation activities can actually increase the threat of lead-based paint exposure by dispersing fine lead dust particles in the air and over accessible household surfaces. Both adults and children can receive hazardous exposures by inhaling the fine dust or by ingesting paint-dust during hand-to-mouth activities.

III. Purpose

The purpose of this proposed rule is to ensure that families are aware of: (1) The existence of lead-based paint or lead-based paint hazards in target housing, (2) the hazards of exposure to lead-based paint, and (3) ways to avoid such exposure before they become obligated to purchase or lease housing that may contain lead-based paint. EPA and HUD are proposing identical rules to appear in both Title 40 of the Code of Federal Regulations (CFR) where other EPA lead rules will appear and in Title 24 of the CFR where other HUD lead rules appear.

IV. Scope and Applicability

Section 1018 of the Act applies to contracts for sale or lease of target housing as defined in section 1004(27) of the Act. Therefore, this rulemaking would apply to virtually all transactions involving a written contract to sell or lease target housing. EPA and HUD have identified the following several specific areas that would be excluded or where coverage would be limited in the proposed rule.

A. Foreclosure Sales

EPA and HUD have identified both legal and policy reasons to exclude the sale of properties at foreclosure from the section 1018 requirements. First, when a property is sold at foreclosure, the sale is conducted at public auction by or on behalf of a secured lender, and the property is sold to the highest bidder without any form of arms-length negotiation and without a sales contract. In most of these cases, the lender is not in possession of the property being sold and never has been; the property is controlled by the owner, who is often hostile to the lender and to any potential purchaser.

For this reason, the lender (or the party conducting the sale for the lender) is often not in a position to provide a potential purchaser with access to the property for a risk assessment or inspection, nor are they usually in possession of information concerning the existence of lead-based paint, as required by section 1018(a)(1)(B). In fact, lenders typically know very little about the history of single-family properties in their portfolios, and these make up the vast majority of the properties being foreclosed.

HUD's experience in foreclosure sales suggests that most properties sold at foreclosure are not sold to private investors or people attempting to purchase a residence for themselves. Rather, the secured lender, acting to protect its security for the defaulted loan, is the successful bidder in nearly all foreclosure sales, purchasing the property at auction. When the lender is the purchaser, the lender will typically attempt to recover its investment by selling the property to a third party and, at that point, the protections of section 1018 would clearly apply.

B. Informal Rental Agreements

Because this proposed rulemaking only applies to transactions to lease housing which involve a written contract, EPA and HUD have concluded that it should not apply to informal rental agreements which do not involve a lease. Such arrangements, by virtue of their informality, make the administration and enforcement of these requirements extremely difficult. To the extent practicable, however, EPA and HUD encourage individuals engaging in such informal arrangements to obtain available information on lead-based paint before occupying target housing.

C. Renewals of Existing Leases

EPA and HUD do not believe that individuals would significantly benefit from multiple receipt of previously disclosed information during renewals of existing leases and see no justification for placing repetitive disclosure requirements on lessors. For that reason, renewals of existing leases would only be covered by this proposed regulation if the tenant has not previously received the lead-based paint hazard information required under section 1018. If, however, the lessor becomes aware of additional information about the property concerning lead-based paint or lead-based paint hazards during the term of the lease, he or she would be required to disclose this information prior to renewal of the lease.

V. Definitions

In order to implement section 1018 of the Act, certain terms need to be defined. This section will provide the regulatory definition followed by an explanation of the definition's source. Where possible, EPA and HUD have drawn definitions directly from section 1004 of the Act. In cases where the statute either failed to define terms for the rulemaking or where the definition lacked sufficient detail, EPA and HUD are proposing appropriate definitions, along with an explanation of the reasons for their choices. EPA and HUD are accepting comment on all definitions not taken directly from the statute.

Abatement means any set of measures designed to permanently eliminate lead-based paint hazards in accordance with standards established by appropriate Federal agencies. Such term includes: (1) The removal of lead-based paint and lead-contaminated dust, the permanent containment or encapsulation of lead-based paint, the replacement of lead painted surfaces or fixtures, and the removal or covering of lead-contaminated soil; and (2) all preparation, clean up, disposal, and post abatement clearance testing activities associated with such measures.

This definition appears in section 1004(1) of the Act. In accordance with the development of standards for the performance of abatements by EPA under section 402 of TSCA, EPA may propose modifications to this definition in a separate proposed rule. If such a revision is proposed, EPA and HUD would consider including the revised definition in the final rule for these requirements.

The Act means the Residential Lead-Based Paint Hazard Reduction Act of 1992, Title X of the Housing and Community Development Act of 1992, Pub. L. 102-550.

Agent means any party who enters into a contract with a seller or lessor to represent the seller or lessor for the purpose of selling or leasing target housing.

This definition is based on the statutory wording of section 1018(a)(4) of the Act, which states that "Whenever a seller or lessor *has entered into a contract with an agent for the purpose of selling or leasing a residential dwelling of target housing*, the regulations promulgated under this section shall require the agent, on behalf of the seller or lessor, to ensure compliance with the requirements of this section" [emphasis added]. This provision clearly identifies an agent as a party who has entered into a contract

for the purpose of selling or leasing target housing.

State statutory provisions and common law may vary on the topic of real estate contracts and the concept of agency. In response to this diversity in state law, EPA and HUD propose a definition of "agent" which does not seek to differentiate various real estate agent activities. The agencies believe that this proposed definition provides necessary flexibility regarding which parties could be defined as "agents" who have entered into a contract to sell or lease target housing and, as a consequence, would be covered by the requirements of this regulation.

For example, it is EPA's and HUD's understanding that in many states, it is typical for a seller or lessor to enter into a contract to sell or lease target housing with a licensed "real estate broker," who may or may not perform the actual duties of an "agent" associated with selling or leasing housing. In these states, individuals working for the licensed broker, typically called "real estate agents," may perform some or all of the duties of an "agent" but may be treated as an employee of the broker or independent contractor. If the "real estate agent" were to fail to ensure compliance with the requirements of the rulemaking, the broker would assume liability for that failure, just as if the broker had performed all agent duties themselves. In other states, the real estate agent is considered an independent contractor rather than an employee of the broker, and the agent, rather than the broker, is held liable for negligence under common law. Because of these variations in state law, EPA/HUD propose a flexible definition of agent, one that could include broker and/or agent, depending on the particular circumstance. If state law does not recognize the difference between a real estate agent and a real estate broker, the party identified in the contract, and in any subcontract to perform those duties, would be liable for any failure to comply, regardless of whether they were called brokers or agents.

Specifically excluded from the requirements of this regulation, however, would be agents or brokers who operate solely on behalf of the buyer(s) or lessee(s) and who receive all remuneration from the buyer/lessee (so called "buyers' agents"). This exclusion is based on the language of section 1018(a)(4) which focuses on agents entering into a contract with a seller or lessor.

Common Area means a portion of a building generally accessible to all residents/users including, but not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, and boundary fences.

EPA and HUD are proposing this definition to maintain consistency with the definition of "common area" proposed in a separate notice in the **Federal Register** of March 9, 1994 (59 FR 11108), pursuant to the requirements of section 406 of TSCA. This definition is purposefully broad to allow for its use in other EPA and HUD regulations that might also cover commercial and public buildings.

Contract for the purchase and sale of residential real property means any contract or agreement in which one party agrees to purchase an interest in real property on which there is situated one or more residential dwellings used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

This definition appears in section 1004(4) of the Act.

Evaluation means a risk assessment and/or inspection.

This definition appears in section 1004(6) of the Act.

Inspection means (1) a surface-by-surface investigation to determine the presence of lead-based paint as provided in section 302(c) of the Lead-Based Paint Poisoning and Prevention Act [42 U.S.C. 4822], and (2) the provision of a report explaining the results of the investigation.

This definition appears in section 1004(12) of the Act.

Lead-based paint means paint or other surface coatings that contain lead in excess of 1.0 milligrams per centimeter squared or 0.5 percent by weight or (1) in the case of paint or other surface coatings on target housing, such lower level as may be established by the Secretary of Housing and Urban Development as defined under section 302(c) of the Lead-Based Paint Poisoning Prevention Act [42 U.S.C. 4822], or (2) in the case of any other paint or surface coatings, such other level as may be established by the Administrator.

This definition appears in section 401 of TSCA. Title IV of TSCA was added by the Act, and, given the close relationship between the section 1018 requirements and the provisions of TSCA Title IV, EPA and HUD believe it is consistent to use the Title IV definition for section 1018 purposes.

Lead-based paint hazard means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established by the appropriate Federal Agency.

This definition appears in section 1004(15) of the Act. The exact levels of lead in dust, paint, and soil that would be defined as a hazard will be addressed in a separate rulemaking, mandated by section 403 of TSCA. For the purposes of this rulemaking, however, the statutory definition is sufficient to provide the public with notice to comment on the rulemaking's requirements and structure. Parties who wish to provide comments specifically on what levels of lead in dust and soil (or what conditions or locations of lead-based paint) should be considered a hazard, should do so separately in the section 403 rulemaking process.

Lessee means any entity that enters into an agreement to lease or rent target housing, including but not limited to individuals, partnerships, corporations, trusteeships, government agencies, Indian tribes, or nonprofit organizations.

This proposed definition is based on the agencies' interpretation of the intent of the Act in identifying individuals entering into a contract to lease target housing.

Lessor means any entity that offers target housing for lease, including but not limited to individuals, partnerships, corporations, trusteeships, government agencies, Indian tribes, or nonprofit organizations.

This definition is based on the agencies' interpretation of the Act's intent in identifying entities entering into an agreement to lease target housing.

Owner means any entity that has legal title to target housing, including but not limited to individuals, partnerships, corporations, trusteeships, government agencies, Indian tribes, or nonprofit organizations.

This definition is based on the agencies' interpretation of the intent of the Act relating to owners of target housing.

Purchaser means any entity that submits a written offer to purchaser an interest in target housing, including but not limited to individuals, partnerships, corporations, trusteeships, government agencies, Indian tribes, or nonprofit organizations.

EPA and HUD are proposing to limit the scope of this regulation to parties that demonstrate a real interest in purchasing target housing, so that sellers or agents representing sellers need not provide all parties who view a property with a 10 calendar-day opportunity to inspect for lead-based

paint hazards. This definition is based on the agencies' interpretation of the Act's intent in identifying purchasers of target housing.

Residential dwelling means (1) a single-family dwelling, including attached structures such as porches and stoops; or (2) a single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the residence of one or more persons.

This definition is provided in section 1004(23) of the Act.

Risk assessment means an on-site investigation to determine and report the existence, nature, severity, and location of lead-based paint hazards in residential dwellings, including: (1) Information gathering regarding the age and history of the housing and occupancy by children under age 6; (2) visual inspection; (3) limited wipe sampling or other environmental sampling techniques; (4) other activity as may be appropriate, and; (5) provision of a report explaining the results of the investigation.

This definition is provided in section 1004(25) of the Act.

Secretary means the Secretary of the Department of Housing and Urban Development.

Seller means any entity that sells an interest in target housing, including but not limited to individuals, partnerships, corporations, trusteeships, government agencies, Indian tribes, or nonprofit organizations. The term seller also includes: (1) An entity which transfers shares in a cooperatively-owned project and (2) an entity which transfers its interest in a leasehold in jurisdictions or circumstances where it is legally permissible to separate the fee title from the title to the improvement.

EPA and HUD have proposed this definition to cover the range of entities and arrangements that may be involved in the "sale" of target housing and that the agencies interpret to be covered by the Act. The second part of the proposed definition describes sellers who have legal title to the improvements (residential dwellings) on property that is leased from another person.

Target housing means any housing constructed prior to 1978, except 0-bedroom dwellings, or housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in the dwelling). In the case of jurisdictions which banned the sale or use of lead-based paint prior to 1978, the Secretary, at the Secretary's discretion, may designate an earlier date.

This definition appears in section 1004(27) of the Act. The Act excludes housing constructed after 1978 since the allowable lead in paint was reduced to .06 percent by CPSC after that date (Ref. 1).

EPA and HUD interpret the term "0-bedroom dwelling" to mean any dwelling in which the living area is unseparated from the sleeping area. Under this definition, efficiency, studio apartments, loft space, and single-room dormitory units would be exempt from the requirements of the rule unless children under 6 years of age reside or may reside in the unit.

EPA and HUD interpret the term "housing for the elderly," to mean retirement communities or similar types of housing reserved for persons 62 years of age or older. EPA and HUD request comment on what additional specificity might be necessary for identifying housing for the elderly.

EPA and HUD also considered whether Congress meant to include hotels, motels, inns, and other commercial lodging facilities in the term "housing." Most hotels, motels, inns, and other commercial lodging are 0-bedroom dwellings, and would typically be exempt from the requirements of this proposed rule. In addition, EPA and HUD believe it is reasonable to interpret that Congress' intent was to distinguish residential housing from commercial lodging facilities.

Specifically, the definition of target housing intended to capture housing designed for long-term or continuous residence, as opposed to lodging facilities offering temporary accommodations. Given the high frequency and short duration of transactions, EPA and HUD believe it is impractical to apply the requirements of this proposed rule to rental transactions in motels, hotels, and other commercial lodging facilities.

As directed in the statute, the exclusions for 0-bedroom dwelling, elderly housing, and handicapped housing do not apply to any housing in which children under 6 years old reside or are expected to reside. Similarly, in cases where families with children under 6 might enter into a contract to purchase or lease commercial housing as long-term residences, however, EPA and HUD believe it is consistent with the statute that such establishments be considered target housing under this proposed rule's requirements.

0-Bedroom dwelling means any residential dwelling in which the living area is unseparated from the sleeping area.

EPA and HUD are proposing this definition to clarify the term used in the Act's definition of target housing. Under this definition, efficiency, studio apartments, loft space, and single-room dormitory units would be considered 0-bedroom dwellings.

VI. Proposed Regulatory Requirements

Section 1018 requires EPA and HUD to promulgate joint regulations for disclosure of lead-based paint hazards in target housing which is offered for sale or lease. Specifically, section 1018 requires that before purchasers or lessees become obligated under any purchase or lease contract, sellers or lessors must provide the purchaser or lessee with a lead information pamphlet (being developed by EPA under TSCA section 406) and disclose any lead-based paint or lead-based paint hazards known to the seller or lessor in such housing. In addition, before obligating purchasers under a contract to purchase the housing, sellers must permit purchasers a 10-day period to conduct a risk assessment or inspection for the presence of lead-based paint hazards, and must attach a specific lead warning statement and acknowledgement, signed by the purchaser, to each contract. Violation of Section 1018 may result in civil and criminal penalties, and potential triple damages in a private civil suit. In this unit, EPA and HUD present a more detailed discussion of these requirements as proposed in the EPA and HUD regulations. As noted above, EPA and HUD are proposing joint and equivalent regulations that would appear in Title 40 of the CFR with other EPA lead regulations and in Title 24 of the CFR with other HUD lead regulations. Including the joint regulations in both CFR locations will help ensure that sellers, lessors, agents, buyers, and lessees are informed of their existence.

A. Disclosure Requirement

Section 1018(a)(1)(B) of the Act requires the seller or lessor of target housing to provide all information known to the seller or lessor on lead-based paint and lead-based paint hazards in the housing to the purchaser or lessee before the purchaser or lessee is obligated under any contract to purchase or lease target housing. EPA and HUD are proposing such a disclosure requirement in 24 CFR 38.20 and 40 CFR 745.107. Under the proposed regulations, the seller or lessor, or the agent acting on behalf of the seller or lessor, is required to provide the purchaser or lessee with written documentation of all information known to the seller or

lessor, or the agent regarding the presence of lead-based paint or lead-based paint hazards associated with the housing being sold or leased. Consistent with the statute, records of this information must be provided to the purchaser or lessee before they become obligated under any contract to purchase or lease the target housing.

For the purposes of this proposed rule, EPA and HUD propose that "information known to the seller or lessor" comprise, at minimum, the information described in 24 CFR 38.20 and 40 CFR 745.107 of these regulations. The proposed information would include, but not be limited to, the following items:

1. Reports from all lead-based paint inspections, risk assessments, and abatement activities known to the seller or lessor and conducted on or in the target housing, including any known reports completed before the effective date of the final rule if such reports are available to the seller or lessor on or after the effective date. Section 1018(a)(1)(B) requires sellers or lessors of target housing to "provide to the purchaser or lessee any lead hazard evaluation report available to the seller or lessor." EPA and HUD recognize that reports from some lead-based paint activities conducted before the effective date of the final rule may no longer be available to the seller or lessor given that the seller or lessor had not been put on notice that disclosure of such records would be required. However, those reports in the possession of the seller or lessor on or after November 2, 1994 would become part of the permanent record for that unit of target housing.

2. Records of lead-based paint inspections, assessments, and abatement activities conducted for current or past sellers or lessors in common areas of target housing containing more than one residential dwelling. EPA and HUD are concerned that lead-based paint in common areas may pose an additional exposure risk to occupants, especially in buildings where lead-based paint chips and dust are allowed to accumulate. Also, the presence of lead-based paint in common areas of buildings containing target housing may signal the presence of lead-based paint within the residential dwellings. For these reasons, EPA and HUD are proposing to require the disclosure of records and reports of lead-based paint in common areas.

3. Information known to the seller or lessor regarding whether other residential dwellings in the target housing contain or have contained lead-based paint or lead-based paint hazards. This would only apply to target housing containing more than one residential dwelling, and would be of primary value in cases where information on lead-based paint and lead-based paint hazards only exists for some, but not all residential dwellings. The presence of lead-based paint in some of the residential dwellings may suggest a greater likelihood of lead-based paint existing in the residential dwellings that have yet to be tested.

To balance the indirect value of the information with the disclosure burden of providing such information during transactions, EPA and HUD propose to require that sellers/lessors disclose only whether or not lead-based paint is or has been present in other residential dwellings within the target housing, rather than requiring that sellers and lessors provide specific reports on those residential dwellings. The seller or lessor would, of course, retain the option of providing more detailed information, but would not be required to provide specific data on each residential dwelling.

EPA and HUD believe that such information will help potential occupants make more informed decisions when considering leasing or purchasing target housing. For example, such information could persuade purchasers to exercise their option to conduct an inspection or risk assessment before purchasing the property. Similarly, knowledge of lead-based paint on the premises could prompt lessees to take greater precautions to guard against exposure. EPA and HUD request comment on whether requiring disclosure of information regarding other residential units is warranted and, if so, whether a more stringent disclosure standard is needed.

4. Other available information that may indicate lead-based paint or a lead-based paint hazard in the unit. This proposed requirement is directed at other relevant information on lead-based paint hazards that may be known by the seller or lessor.

EPA and HUD request information and comment on other appropriate information that may be commonly available to owners of target housing and which should be itemized in the final rule. For example, should information on past cases of lead-poisoning of occupants be disclosed to purchasers or lessees? If such information is to be considered, what level of detail would be appropriate given the privacy implications of medical records?

In addition, EPA and HUD request comment on whether the final rule should impose specific recordkeeping requirements on owners of target housing to retain information known to the owner on lead-based paint and lead-based paint hazards, as identified in proposed 24 CFR 35.20 and 40 CFR 745.107. If promulgated, the time period for such a recordkeeping requirement for owners of target housing could range in length from the length of ownership to a discrete number of years (3 years, 5 years, 10 years, etc), based on its feasibility and utility in ensuring compliance with the regulations. In evaluating the value of an owner record retention requirement, EPA and HUD will consider its potential value both in aiding and supporting Agency enforcement efforts as well as its potential value in supporting civil actions for damages taken under section 1018(b)(3).

B. Lead-Hazard Information Pamphlet

Section 1018(a)(1)(A) requires that sellers and lessors of target housing provide the purchaser or lessee with a copy of the EPA pamphlet *Lead Paint: Protect Your Family* before the purchaser or lessee is obligated under any contract to purchase or lease the housing. A primary function of the pamphlet is to educate families on the potential health risks associated with lead exposure and ways to avoid such exposure. By requiring that families receive the pamphlet at the beginning of the real estate transaction, Congress ensured that families would be informed about lead-based paint issues during the transaction process. Therefore, the joint provisions of these regulations (located in §§ 38.20(a) and 745.107(a) of the proposed regulatory text) would require that purchasers and lessees receive the pamphlet before becoming obligated under any contract.

The draft pamphlet was developed by EPA in consultation with HUD and CDC and was released to the public for a 60-day comment period and announced in the **Federal Register** of March 9, 1994, (59 FR 11119). In addition, EPA has conducted a series of focus tests and interviews in different regions of the country to ensure that the pamphlet meets both high technical and editorial standards.

The final pamphlet will be made available to the public through the Government Printing Office (GPO) for a nominal fee. In addition, EPA will make a limited number of camera-ready copies of the final pamphlet available to organizations that wish to print copies for private distribution, and the pamphlet will be available in electronic form through the GPO Bulletin Board. EPA and HUD are continuing to explore methods for printing and distributing the pamphlet in a quick and

inexpensive way to the regulated community and the general public at large. EPA and HUD welcome comment on other potential distribution methods for the pamphlet.

C. Disclosure and Acknowledgment Form

In addition to requiring written documentation of the information known by the seller or lessor, defined in proposed 24 CFR 38.20(b) and 40 CFR 745.107(b) of the regulatory text, EPA and HUD have developed disclosure and acknowledgement forms to be attached to all sales and leasing contracts for target housing. Form A for sellers and Form B for lessors are included as Appendix A to the proposed HUD regulatory text. EPA and HUD believe that the forms will help ensure that (1) All information known to the seller or lessor on lead-based paint and lead-based paint hazards is disclosed and documented, (2) all purchasers and lessees are aware of their rights under the provisions of section 1018, and (3) sellers, lessors, and agents are aware of their obligations under their rule. In addition, these forms would be an important enforcement tool by providing a record of compliance with the rule. By maintaining completed forms after a transaction to purchase or lease target housing, the seller, lessor, and agents would have documentation of their compliance with the disclosure activities and of the purchaser's/lessee's receipt and acknowledgement. Because sellers and lessors have different obligations under the requirements mandated by section 1018, EPA and HUD believe that it is appropriate to provide two separate and distinct forms for the two types of transactions.

EPA and HUD initially considered including the elements in the forms as separate provisions for inclusion in the leasing or purchase contracts themselves. Ultimately, that concept was rejected because it would be more burdensome and confusing. By creating one form covering all regulated parties for each type of transaction, EPA and HUD hope to minimize confusion over the new requirements, decrease the recordkeeping burden, and ensure a greater level of compliance.

1. Form for Transactions to Sell Target Housing

For the reasons discussed above, EPA and HUD are proposing in §§ 745.107(a)(4) and 38.20(a)(4), respectively, that each contract to sell property defined as target housing contain a signed and dated copy of the joint HUD/EPA form entitled *Disclosure and Acknowledgement of Lead-Based Paint Before Sale.*

The form is divided into four distinct parts: a general notice statement, a certification of compliance statement by the seller, a certification of compliance statement by the agent (where applicable), and an acknowledgement statement by the purchaser. Each part is discussed below.

a. *Notice to purchasers of target housing.* Section 1018(a)(3) of the Act provides a specific "lead warning statement" to be included in all contracts involving the purchase and sale of any interest in target housing. The statute states that the lead warning statement shall contain the required language printed in large type on a separate sheet of paper attached to the contract. Because the disclosure and acknowledgement form would serve as an attachment to the contract, EPA and HUD propose to include this lead warning statement as the first part of the form, and to print it in a larger type than the rest of the form to ensure its prominence. The required text would read:

> Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

In addition, EPA and HUD propose that, in cases where the sales contract is written in a language other than English, the lead warning statement must be included in the language of the contract as well, based on a translation of the English-version lead warning statement. While this is not expressly required by the statute, such a requirement would be consistent with Congress' intent of ensuring that families be fully aware of the potential hazards of lead-based paint before purchasing target housing. EPA and HUD request comment on this proposed requirement.

b. *Certification of compliance statement by the seller.* The second part of the form would require the seller to list all information known to the seller on lead-based paint and lead-based paint hazards in the target housing. EPA and HUD believe that it is necessary to create a single record of the information provided by the lessor/owner. Completion of this part would ensure that at the time of the contract agreement, both the seller and the purchaser would be aware of the disclosure requirements under these regulations and the lead-based paint hazard information being disclosed.

If information described in Part II of the form is in the possession of the seller, the seller would be required to provide the information in written form to the purchaser, check the appropriate box, and note the dates and type of known information in the space provided. This information would be a necessary record during the disclosure process, both to inform the purchaser of the information the purchaser should have received, and as a later measure of compliance by the seller and the seller's agent.

c. *Certification of compliance statement by the agent.* The third part of the form would require an agent, if one is used, to certify that the requirements of section 1018 have been satisfied, either by the seller or by the agent.

d. *Acknowledgement of lead-based paint requirements in target housing by the purchaser.* Section 1018(a)(2) requires that contracts to purchase target property include an acknowledgement signed by purchasers. EPA and HUD propose that the purchaser indicate the following in the acknowledgement: That they have read and understood the lead warning statement, received any information on lead-based paint and lead-based paint hazards noted in the seller certification, received a lead hazard information pamphlet, and that they are aware that they must receive an opportunity for a 10–day inspection period before becoming obligated under a contract to purchase the property. In the fourth part of the form, EPA and HUD propose such an acknowledgement. The acknowledgement would state:

> I acknowledge that I have read and understood the attached lead warning statement in Part I of this form, received the information noted in Part II of this form, received the lead hazard information pamphlet *Lead-Based Paint: Protect Your Family.* In addition, I acknowledge that, pursuant to 42 U.S.C. 4852(d) and its implementing regulations, the attached contract entitles me to up to 10 calendar days to conduct a risk assessment or inspection for the presence of lead-based paint hazards before becoming obligated under a contract to purchase, unless I agree otherwise in writing.

2. Form for Transactions to Lease Target Housing

EPA and HUD are proposing in §§ 745.107(a)(5) and 38.20(a)(5), respectively, that each contract to lease target housing contain a signed and dated copy of the joint HUD/EPA form entitled *Disclosure and Acknowledgement of Lead-Based Paint Before Lease.*

The form is divided into four distinct parts: a general notice statement, a certification of compliance statement by the lessor, a certification of compliance statement by the agent (where applicable), and an acknowledgement statement by the lessee. Each part is discussed below; however, where statutory justifications and background are the same as that presented in the part on the form for sales of target housing, the repetitive elements have been omitted.

a. *Notice to residents of target housing.* EPA and HUD propose to include a tailored lead warning statement as the first part of the form, and to print it in a larger type than the rest of the form to ensure its prominence. Although not specifically required by section 1018, EPA and HUD believe that this statement provides a useful context for information disclosed to lessees, just as for purchasers, concerning the hazards of lead-based paint. The required text would read:

A residential structure built prior to 1978 may present exposure to lead from lead-based paint. This exposure may place young children at risk of developing lead poisoning. Lead poisoning in young children can produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The lessor of any residential dwelling is required to provide the lessee with any information on lead-based paint hazards from risk assessments or inspections in the lessor's possession and notify the lessee of any known lead-based paint hazards.

In addition, EPA and HUD propose that, in cases where the lease is written in a language other than English, a translation of this lead warning statement would be required to be attached in the language of the contract. EPA and HUD believe that this translation requirement may be even more critical in the case of leasing transactions than in purchases as many non-English speakers may be more likely to lease housing for themselves and their families. EPA and HUD request comment on this proposed requirement.

b. *Certification of compliance statement by the lessor.* The second part of the form would require the lessor to list all information known to the lessor on lead-based paint and lead-based paint hazards in the target housing.

If information listed in Part II of the form is in the possession of the lessor, the lessor would be required to provide it in written form to the lessee, check the appropriate box, and note the dates and type of known information in the space provided.

c. *Certification of compliance statement by the agent.* The third part of the form would require an agent, if one is used, to certify that the requirements of section 1018 have been satisfied, either by the lessor or by the agent.

d. *Acknowledgement of lead-based paint requirements in target housing by the lessee.* The fourth part of the form consists of an acknowledgement by the lessee that the necessary disclosure steps, as required by section 1018(a)(1), had been performed. The acknowledgement language reads:

I acknowledge that I have read and understood the attached lead warning statement in Part I of this form, received the information noted in Part II of this form and received the lead hazard information pamphlet *Lead Paint: Protect Your Family*

3. Request for Comment on the Forms

EPA and HUD request comments on all aspects of the disclosure and acknowledgement forms. Specific questions include: Are the forms effective in communicating the importance of lead-based paint hazard awareness and the rights of purchasers and lessees? Is there other information that should be included on the forms? Is some of the included information that is not required by the statute unnecessary?

4. Retention of Disclosure and Acknowledgment Form

The disclosure and acknowledgement form documents the fulfillment of the mandated disclosure requirements during the sale or lease of target housing. This record, if maintained by the seller or lessor after the completion of the transaction, would provide a valuable record of the fulfillment of these requirements to both the agencies and courts. If this record were not regularly maintained, EPA and HUD are concerned that they would have little ability to determine whether the necessary disclosure steps had occurred.

For that reason, proposed §§ 38.20 and 745.107 of the regulatory text would require that the signed notice and disclosure form be maintained by sellers, lessors, and agents for a full 3 years from: (a) The commencement of the lease period in the case of a transaction to lease target housing, or (b) the completion of the sale in the case of a sale of target housing. EPA and HUD chose 3 years as the retention period for the disclosure form in order to allow adequate time for enforcement action by HUD or EPA. If the regulation were to mandate a shorter period of time, Federal enforcement actions could be hampered, undermining the efficacy of the regulations mandated by statute. EPA and HUD are concerned that requiring a longer retention period would place an undue burden on the regulated community.

EPA and HUD have not identified any less burdensome alternative to support compliance monitoring and enforcement actions but are sensitive to the need to impose minimum recordkeeping burdens on the regulated community, especially given the large number of transactions affected. The agencies are willing to consider alternatives to the proposed requirements, including the reduction or omission of recordkeeping requirements, if the alternatives would still ensure the successful administration and enforcement of the provisions of section 1018 of the Act.

Such alternatives could include the imposition of a longer or shorter retention period for the disclosure form, or the addition or substitution of other records as part of a post-transaction recordkeeping requirement. EPA is also considering the potential efficacy of instituting recordkeeping requirements with a sunset provision, which would phase them out over time as the market increasingly embraced and institutionalized the disclosure process.

Regardless of what recordkeeping time limits the agencies impose, these limits would not effect time limits on lawsuits under section 1018(b)(3) by injured parties against former sellers, lessors, or agents who fail to comply with these regulations. For this reason EPA and HUD would encourage sellers, lessors, and agents to maintain signed, dated forms beyond the required recordkeeping period as proof of compliance.

D. 10-Day Inspection Period

Section 1018(a)(1)(C) of the Act requires that, before a party is obligated under any contract to purchase target housing, the seller shall grant the purchaser a 10–day period to conduct a risk assessment or inspection for the presence of lead-based paint hazards in target housing.

EPA and HUD interpret the term "10–day period" to mean 10 calendar days. While the seller and purchaser may mutually agree to a shorter or longer period, without written proof of an agreed upon change to the time, the legally enforceable period would remain 10 calendar days. Given the diversity of

definitions for "business" or "working" days, EPA and HUD believe that an alternative interpretation of the 10–day period would lead to confusion among the public. In cases where a 10 calendar-day inspection or assessment period would be insufficient, the purchaser would retain the option of negotiating in writing for a longer period.

Since known lead-based paint information may affect a purchaser's decision to utilize the 10–day inspection period option, EPA and HUD propose to require that sellers perform and document all disclosure activities required under this proposed rule before providing the purchaser with the opportunity for the 10–day period. EPA and HUD believe that the purchaser will be most able to determine whether a risk assessment or inspection is necessary or appropriate after receiving the disclosed information.

EPA and HUD also believe that reports from inspections conducted during the 10–day inspection/assessment period should become part of the permanent record retained by the owner of the housing. Therefore, EPA and HUD are also requesting comment on whether purchasers who conduct inspections or risk assessments during the 10–day period but who do not ultimately purchase the housing should be required, under this rulemaking, to provide a copy of any report to the owner for their records.

Some purchasers and sellers may prefer to conduct the 10–day inspection/assessment period before the parties have signed a contract for the purchase and sale of the target housing. Others may prefer to conduct the inspection period after the contract is signed. In implementing these requirements, EPA and HUD have considered several approaches to fulfilling the statutory provision that the purchaser receive the opportunity for a 10–day inspection period before becoming obligated under a contract to purchase the housing. These regulations propose several approaches to Federal implementation of the 10–day inspection period.

Option 1. Require Contract Language Addressing Outcome of Inspection (Preferred Option)

To insure that the purchaser receives the statutorily required 10–day opportunity to conduct a risk assessment or inspection *before* becoming obligated under the contract, the proposed regulation (24 CFR 38.21 and 40 CFR 745.110) requires that, if the parties elect to ratify the contract prior to completion of the 10–day opportunity, the seller or agent must include appropriate language in the contract to reflect that the contract shall be contingent on the condition that no lead-based paint hazard is found in the inspection or risk assessment. If a lead-based paint hazard is found during the inspection or risk assessment, the seller and purchaser would mutually determine the terms under which the sale will or will not proceed.

Option 2. Base Regulatory Text on Statutory Language

The least prescriptive option for implementing section 1018(a)(1)(C) requirement for a 10–day inspection opportunity is to state in the regulation simply that "the seller shall provide the purchaser with an opportunity for a 10–day inspection period (unless the parties agree to a mutually agreed upon different period of time) before becoming obligated under the contract to purchase the housing to conduct a risk assessment or inspection for the presence of lead-based paint hazards." While this option would provide the regulated community with flexibility in determining how to comply, EPA and HUD are concerned that the lack of detail would provide inadequate guidance to the regulated community, regarding the measures needed for proper compliance.

Option 3. Mandate Specific Contingency Language for All Contracts Completed Before Inspection or Assessment Period

EPA and HUD are considering the merit of requiring that all contracts to purchase target housing include specific language mandated by HUD and EPA addressing the purchaser's opportunity for a 10–day inspection period. In addition to further informing the purchaser of his/her rights to the inspection/assessment period, EPA and HUD could provide specific language addressing the rights of the purchaser in cases where the inspection/assessment period was provided after the purchaser had signed a contract to purchase the target housing. These requirements have the advantage of providing a clear message regarding what the seller and agent must do to comply and regarding what rights the purchaser has in cases where the purchaser does not receive the inspection or assessment period until after having signed a contract.

Option 4. Require the Inspection/Assessment Period Before the Contract is Signed

EPA and HUD also requests comment on requiring that the 10–day opportunity for inspection or assessment be provided before the purchaser signs a contract for the purchase of target housing. This would ensure that all purchasers were aware of the presence of any lead-based paint and lead-based paint hazards before they entered into the contract to purchase the housing. EPA and HUD do not currently prefer to impose such a prescriptive requirement on the real estate community; however, recognizing that both purchasers and sellers may prefer, at times, to implement the inspection period after all parties have acknowledged serious interest in completing the transaction.

In addition, EPA and HUD request comment on whether more prescriptive regulations would be of value regarding exactly what level or conditions of lead-based paint or lead-based paint hazards would allow for purchasers to escape their obligation under a contract signed before the inspection. Alternatively, the agencies would also like comment on whether the regulatory language and safeguards being proposed may be overly prescriptive regarding implementation of the 10–day opportunity.

E. Role of Agent

As set forth in section 1018(a)(4) of the Act, agents entering into a contract with a seller or lessor to sell or lease target housing must ensure compliance with all requirements imposed upon the seller or lessor under section 1018. If the sale or lease of target housing was aided or accomplished by an agent who has entered into a contract with a seller or lessor, the agent can be held liable for their failure to comply with the requirements of section 1018 and the regulations and can be liable for all penalties, both criminal and civil.

EPA and HUD propose to impose an affirmative obligation on agents to advise the seller of the provisions of the rule, including the seller's obligation to inform the agent of lead-based paint or lead-based paint hazards in the target housing. The language of the disclosure form reflects this notification requirement.

As a method for demonstrating compliance, EPA and HUD have proposed a requirement that agents sign and maintain copies of the signed notice and disclosure forms from each sale or lease of target housing. As proposed for sellers and lessors, the agent would have to maintain these records for 3 years from the commencement of the leasing period or for 3 years from the completion of the sale.

In determining an appropriate recordkeeping requirement, EPA and HUD considered both the burden on the regulated community and the information and duration necessary to ensure adequate compliance monitoring and enforcement of the rule's provisions. EPA and HUD rejected the

"no-recordkeeping requirement" for agents because it would hinder Federal compliance assurance activities and make it difficult to determine whether a disclosure had taken place. Similarly, a recordkeeping requirement of less than 3 years would provide inadequate time for inspection of records and initiation of appropriate enforcement actions.

If no agents were employed during the leasing or purchasing process, then all liability for failure to adhere to the proposed requirements would rest solely with the seller or lessor.

EPA and HUD request comment on the rule's proposed definition of agent (see Unit IV of the preamble and §§ 38.15 and 745.103 of the regulatory text) and on the interpretation of their compliance assurance provision in section 1018(a)(4).

F. Effective Date

Section 1018(a)(1) of the Act directs EPA and HUD to jointly issue these requirements as final regulations by October 28, 1994, and pursuant to section 1018(d), the regulations will take effect on October 28, 1995.

Although section 1018 specified that final regulations should be promulgated no later than October 28, 1994, EPA/HUD will not be able to meet this deadline. It appears that Congress' intent in section 1018 was to provide a year between the promulgation of the final rule, and the effective date of the rule. Congress reasonably could have felt that this year was necessary in order that the real estate industry, landlords, sellers, etc. could become familiar with the rule requirements and set up procedures for compliance. For this reason, EPA/HUD believe that the effective date of the rule should be no early than 1 year after promulgation of the final rule, even if this means occurring later than October 28, 1995, as mandated by section 1018. EPA and HUD believe that this interpretation is the one most consistent with Congressional intent.

VII. Non-Compliance and Penalties

In addition to civil liability under section 1018(b)(3), section 1018 provides both EPA and HUD with other enforcement authority for these requirements. The enforcement authority is discussed below.

A. HUD Authority

Section 1018(b)(1) of the Act authorizes HUD to impose civil monetary penalties on any person who knowingly violates section 1018. HUD interprets this authority to apply to violators of the regulations under section 1018 as well. HUD shall impose penalties under section 102 of the Department of Housing and Urban Development Reform Act of 1989 [42 U.S.C. 3545]. These penalties may be up to $10,000 for each violation. In addition, section 1018(b)(2) of the Act authorizes the Secretary of HUD to "take such lawful action as may be necessary to enjoin any violation" of the rule's provisions. Section 1018(b)(5) provides that any violation of section 1018 will be a violation of section 409. Section 412(a) of TSCA provides that the U.S. district courts have jurisdiction to restrain any violation of section 409 of TSCA. Thus, the district courts will have jurisdiction over violations of section 1018.

B. EPA Authority

1. Civil

Section 1018(b)(5) of the Act provides that failure or refusal to comply with section 1018 or its implementing regulations is a violation of TSCA section 409. Violations of TSCA section 409 are subject to TSCA section 16 penalties. Thus, a violator of section 1018 will be subject to penalties under TSCA section 16 of up to $10,000 for each violation.

2. Criminal

Since TSCA section 16 includes violations under section 409, TSCA section 16(b) provides that any person who knowingly or willfully violates section 409 (and thus section 1018) would, in addition to or instead of any civil penalty, be subject, upon conviction, to a fine of not more than $10,000 for each day of violation or to imprisonment for not more than 1 year, or both. As violations of each provision can only occur one time during each transaction (as opposed to on a daily basis), the $10,000 penalty may be interpreted as "for each violation."

C. Civil Liability

In addition to the EPA and HUD enforcement authority for the provisions of this proposed rule, under section 1018(b)(3) of the Act, "Any person who knowingly violates the provisions of this section shall be jointly and severally liable to the purchaser or lessee in an amount equal to 3 times the amount of damages incurred by such individual." This provision allows the purchaser or lessee to seek direct compensation for any damages incurred based on the seller or lessor's noncompliance. Section 1018(b)(4) authorizes the court to award court costs, reasonable attorney fees, and expert witness fees to the plaintiff if the plaintiff prevails.

D. Validity of Contracts and Liens

Section 1018(c) provides that nothing in section 1018 (or implementing rules) shall affect the validity or enforceability of any sale or contract for the purchase and sale or lease of any interest in residential real property or any loan, loan agreement, mortgage, or lien, made or arising in connection with a mortgage loan." It also provides that nothing in section 1018 (or its implementing rules) shall "create a defect in title." EPA and HUD have looked at section 1018(c) in the context of other section 1018 provisions, which outline specific clauses which must be attached to contracts for the purchase and sale of target housing, and specific procedural protections which must be given to the purchaser/lessee. EPA and HUD interpret section 1018 as a whole to provide that, once the contract is ratified, if certain attachments are not included in the ratified contract and if certain protections afforded in section 1018 were not given to the lessee/purchaser, the remedy available to the purchaser or lessee under section 1018 against the seller or lessor would be monetary damages.

It appears clear from the language of section 1018(c), that such an injured purchaser/lessee could not void or nullify the contract after ratification and could not void any transfer of real estate, through the use of section 1018 authority, even if it could be proven that the seller/lessor violated section 1018 provisions. Congress appears to have wanted to avoid upsetting real estate transactions once they were completed, and to have intended to limit the purchaser/lessee's remedies to civil damage suits. Also, Congress appears to have wanted not to create an independent cause of action for breach of contract or for any breach associated with real estate transfers through the use of section 1018. Of course, traditional causes of action under state law for misrepresentation/fraud would still exist, and possibly could be applied to some section 1018 violations. Also, violations of section 1018 would be subject to civil and criminal penalties administered by EPA and HUD under section 1018(b).

VIII. Procedures for Requesting a Public Hearing

The Act mandates Federal involvement in housing transactions at an unprecedented level. Recognizing the broad scope of these provisions, EPA and HUD will consider holding an informal hearing for public comment on this proposed rule in Washington, DC. To ensure adequate preparation for the

hearing by all parties involved, persons or organizations desiring to participate in an informal hearing must file a written request for a hearing or to participate in any such hearing. The written request must be sent to the Environmental Assistance Division at the address listed under FOR FURTHER INFORMATION CONTACT. The written request to participate must include: (1) A brief statement of the interest of the person or organization in the proceeding; (2) a brief outline of the points to be addressed; (3) an estimate of the time required; and (4) if the request comes from an organization, a non-binding list of the persons to take part in the presentation. The request must be received by December 2, 1994. Should a hearing be held, organizations are requested to bring with them, to the extent possible, employees with individual expertise in and responsibility for each one of the areas to be addressed. Organizations which do not file written comments in response to the proposed rule will not be allowed to participate at the hearing.

IX. Summary of Regulatory Impact Analysis

EPA has prepared a Regulatory Impact Analysis (RIA) examining the potential costs, benefits, and impacts of regulations for the disclosure of lead-based paint hazards in residential property upon the transfer of the property for sale or rental. The analysis is presented in five sections:

- Framework for Analyzing the Costs of the Lead-Based Paint Hazard Disclosure Rule for Real Estate Transfers
- Profile of Sectors Affected by the Lead-Based Paint Hazard Disclosure Rule for Real Estate Transfers
- Estimated Costs to Private Parties from the Lead-Based Paint Hazard Disclosure Rule for Real Estate Transfers
- Effect of the Lead-Based Paint Hazard Disclosure Rule for Real Estate Transfers on Small Businesses-Initial Regulatory Flexibility Analysis
- Assessment of the Benefits of the Lead-Based Paint Hazard Disclosure Rule for Real Estate Transfers.

1. *Framework for Analyzing the Costs of the Lead-Based Paint Hazard Disclosure Rule for Real Estate Transfers*

Those parties directly affected by the proposed rule are the seller, lessor, agent, property manager, buyer, and tenant. EPA found the required activities which give rise to regulatory burden imposed on the affected parties to fall into four categories for cost estimation purposes:

- Start-up costs, which include learning the rule's requirements and establishing compliance procedures.
- Disclosure activities, which refers to the costs resulting from the actual transfer of information and obtaining of needed signatures.
- Recordkeeping, which results from the requirement that signed acknowledgement forms must be retained by the provider of the information.
- Materials, which are linked primarily to the disclosure requirement, as the lead hazard information pamphlet must be purchased or photocopied (acknowedgement forms must also be duplicated). Costs may also be incurred for filing where a high number of acknowledgement forms are generated (e.g., agents), though such burden was estimated to be quite modest.

The requirements of section 1018 of the Act fall primarily on the seller or lessor of "target housing," which is defined to be any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0 bedroom dwelling. However, if an agent or property manager acts on behalf of the seller or lessor, which EPA has estimated to be the case in the great majority of transfers, the responsibilities fall to such agents or managers.

To estimate the cost impacts of the proposed rule, data were sought pertaining to the number of affected parties in each classification listed above, the frequency with which affected purchase and lease transactions are completed, and the incremental costs, in labor and materials, added to each transaction by the proposed regulations.

2. *Profile of Sectors Affected by the Lead-Based Paint Hazard Disclosure Rule for Real Estate Transfers*

The larger of the two affected sectors expected to bear the principal effects of the proposed rule falls within Standard Industrial Classification (SIC) code 651, Real Estate Operators and Lessors. EPA estimates there to be 96,000 establishments potentially affected by the proposed rule. Also affected are business establishments falling within SIC code 653, Real Estate Agents and Managers; an estimated 72,000 establishments could be affected by the proposed rule.

Employment data for these industries were obtained for occupations most likely to be involved in transactions subject to the rule. EPA estimates that 339,000 real estate agents and 225,000 property managers will be affected.

With regard to transaction volume, EPA found that 2.9 million sales transactions and 9.3 million rental transactions occur annually in target housing.

3. *Estimated Costs to Private Parties from the Lead-Based Paint Hazard Disclosure Rule for Real Estate Transfers*

Table 1 below presents a summary of the estimated annual compliance costs associated with the proposed rule. Each of the four cost categories appearing in the table are discussed briefly below.

The first category, start-up costs, represents about one-third of overall annual costs. Factors affecting the magnitude of these costs include the number of employees having to familiarize themselves with the regulations, both initially (employees in the existing workforce) and over time (new entrants to the affected sectors); the time required to learn the activities which must be undertaken in order to comply; and the hourly compensation of affected employees.

As is evident from Table 1 below, disclosure event costs constitute the greatest portion of overall costs. Factors affecting the magnitude of these costs include the frequencies of regulated events; the time involved in performing required activities, such as providing the prospective purchaser/tenant with the required information and obtaining the required signatures; and the hourly compensation of all involved parties. EPA also took into account the fact that a number of States have similar requirements pertaining to information transfer regarding potential lead hazards in the sale of residential property. Thus, an allowance was made in the burden estimates for transactions occurring in such States to reflect a certain level of current compliance.

TABLE 1.—SUMMARY OF ANNUAL COSTS OF COMPLIANCE

Sales Transactions	
Start-up Costs*	$24.5 million
Disclosure Event Costs	18.8 million
Recordkeeping Costs	0.6 million
Materials Costs	1.1 million
Total for Sales Transactions:	$45.0 million
Rental Transactions	
Start-up Costs*	$ 0.9 million
Disclosure Event Costs	23.9 million
Recordkeeping Costs	1.8 million
Materials Costs	2.6 million
Total for Sales Transactions:	$29.2 million
Total Estimated Annual Costs:	$74.2 million

*First-year costs annualized at 3 percent rate.

Recordkeeping and materials costs comprise a relatively modest share of overall annual costs. Factors affecting

the magnitude of these cost items include the number of affected parties per transaction; the frequency of transactions, the costs of acquiring/duplicating documents, which include the lead hazard information pamphlet and signed acknowledgement forms; and costs to maintain documents.

4. *Effect of the Lead-Based Paint Hazard Disclosure Rule for Real Estate Transfers on Small Businesses - Initial Regulatory Flexibility Analysis*

EPA investigated the potential impacts of the proposed rule on small businesses, and has prepared an Initial Regulatory Flexibility Analysis (IRFA). While a large number of small establishments will be potentially affected by the rule, cost impacts were not found to be of sufficient magnitude to cause undue harm to such establishments. Consequently, no regulatory alternatives are being proposed in connection with small business impacts. The IRFA is summarized separately below in Unit XI.C of this preamble.

5. *Assessment of the Benefits of the Lead-Based Paint Hazard Disclosure Rule for Real Estate Transfers*

The market imperfection that the proposed rule is intended to correct is the lack of information available to prospective home buyers and renters on lead-based paint hazards in homes they may be considering for purchase or rent. Under the proposed rule, general information about risks associated with lead-based paint will be provided (through the provision of a brochure) and, when available, information about the presence of or abatement of lead in the specific unit being considered for purchase or rent must also be disclosed (e.g., information concerning previous testing for the presence of lead-based paint, abatement history, evidence of previous poisoning, etc.). The failure of the marketplace to provide this information or to provide prospective home buyers and renters the opportunity to develop such information means that prospective buyers and renters might purchase or lease a property, or make pricing or rental payment decisions regarding properties, without understanding possible lead-related health risks or risk management costs accompanying the transaction.

EPA and HUD expect that this rulemaking will generate benefits by providing prospective home buyers and renters access to information which they otherwise may not have been able to acquire, such as information pertaining to abatement activities for a specific residence, or, in the case of more general information, which they may have been able to acquire only through their own effort at some cost. In addition, EPA believes the information will generate health benefits by leading many buyers and renters to modify their behavior in a way that will reduce risks from lead-based paint. For example, purchasers could undertake abatement activities subsequent to taking ownership of a dwelling, change household cleaning practices, or request professional assistance when undertaking renovation activities. The proposed rule may also prompt property owners, due to reluctance on the part of prospective buyers/renters to select housing containing lead-based paint, to act to reduce lead-related hazards associated with their residential dwellings. In cases where action is taken to remediate a lead-based paint hazard, additional costs would be incurred, and would have to be subtracted from the expected benefits associated with the remediation.

EPA and HUD note that the regulation does not require actions to be taken to reduce lead-based paint hazards in residential housing; thus, the extent to which health benefits accrue depends upon how transaction participants, that is, sellers/lessors and prospective buyers/renters, value and respond to the additional information.

In the RIA, three approaches are detailed that are evolving and can be seen as a starting point in an effort to expand the level of understanding of how benefits from information products can be valued. However, an information base and the associated accepted analytic methods necessary to predict consumer reaction to information products on lead-based paint hazards are not readily available; thus, quantifying the expected benefits of this proposed rule would be extremely difficult. Given the high level of uncertainty associated with the results from such a quantitative analysis, and given the prescriptive nature of section 1018 of the Act, EPA and HUD believe that the information provided in the qualitative analysis presented in the RIA served to inform decisionmaking. EPA invites comment, however, on its benefits analysis and on alternative approaches to assessing the benefits of the proposed rule.

X. Confidential Business Information

While EPA and HUD do not anticipate the receipt of much (if any) confidential business information (CBI) in connection with this rulemaking, a person may assert a claim of confidentiality for any information, including all or portions of written comments, submitted in connection with the proposed rule. Any person who submits a comment subject to a claim of confidentiality must also submit a nonconfidential version. Any claim of confidentiality must accompany the information when it is submitted. Persons must label information claimed as confidential by circling, bracketing, or underlining it, and marking it with "CONFIDENTIAL" or some other appropriate designation. A determination of whether information will be disclosed will be made pursuant to the Freedom of Information Act. If a person does not assert a claim of confidentiality for information in comments at the time they are submitted to EPA, EPA will place the information in the public record for this rulemaking without further notice to that person.

XI. Rulemaking Record

A record for this proposed rule has been established under docket number "OPPTS–62130." The public version of this record (which does not contain any information claimed as CBI) is available for inspection from noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in EPA's TSCA Nonconfidential Information Center (NCIC), Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

The following is a list of documents which EPA and HUD referred to in developing this regulation and which can be found in the docket. In addition, other documents, including those submitted with written comments from interested parties, will be included in the docket following the publication of this proposed rule in the **Federal Register**.

The draft of the proposed rule submitted by EPA and HUD to the Office of Management and Budget (OMB) for review prior to proposal will also be contained in the docket. The drafts of the final rule submitted for review before promulgation will be placed into the docket as well.

1. CPSC, Notice Reducing Allowable Levels of Lead in Lead-Based Paint. Federal Register, [42 FR 44199, September 1, 1977].

2. U.S. Congress. The Residential Lead-Based Paint Hazard Reduction Act of 1992 (Pub. L. 102–550).

3. HUD, Comprehensive and Workable Plan for the Abatement of Lead-Based Paint in Privately-Owned Housing. Report to Congress, December 7, 1990.

4. HUD, Office of Lead-Based Paint Abatement and Poisoning Prevention. Lead-Based Paint; Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing; Notice. [55 FR 14556, April 18, 1990].

5. DOL, OSHA, Lead Exposure in Construction; Interim Final Rule. Federal Register [58 FR 26590, May 4, 1993).

6. EPA, Draft: Reducing Exposure to Lead in The Home; An Action Guide For Families. (January 1992).

7. HUD, Lead-Based Paint: A Threat to Your Children. U.S. GPO: 1993-351-568. January 1993.

8. EPA, Lead Poisoning and Your Children. EPA/800-B-920002, September 1992.

9. HHS, PHS, CDC, Preventing Lead Poisoning in Young Children; A Statement By the Centers for Disease Control. October 1991.

10. Alliance to End Childhood Lead Poisoning, Preventing Childhood Lead Poisoning: The First Comprehensive National Conference; Final Report. October 6, 7, and 8, 1991.

11. HHS, PHS, ATSDR, The Nature and Extent of Lead Poisoning in Children in the United States: A Report to Congress. July 1988.

XII. References

1. CPSC, "Notice Reducing Allowable Levels of Lead in Lead-Based Paint. Federal Register. [42 FR 44199, September 1, 1977].

2. HUD, Comprehensive and Workable Plan for the Abatement of Lead-Based Paint in Privately-Owned Housing. Report to Congress, December 7, 1990.

3. HHS, PHS, CDC, Preventing Lead Poisoning in Young Children; A Statement By the Centers For Disease Control. October 1991, pp. 7–10.

4. Alliance to End Childhood Lead Poisoning, Preventing Childhood Lead Poisoning: The First Comprehensive National Conference; Final Report. October 6, 7, 8, 1991, p. A-3.

XIII. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grant, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the Presidents priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, it has been determined that this proposed rule is a "significant regulatory action" because it is raising novel policy issues arising out of its legal mandate. As such, this action was submitted to OMB for review, and any comments or changes made in response to OMB suggestions or recommendations have been documented in the public record.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires each Federal agency to perform a Regulatory Flexibility Analysis for all rules that are likely to have a "significant impact on a substantial number of small entities." In an effort to identify and characterize the proposed rule's effects on small business, EPA and HUD have prepared an Initial Regulatory Flexibility Analysis (IRFA). This assessment has been included as part of the RIA, and is summarized below.

In preparing the IRFA, EPA and HUD first developed an establishment profile for each major sector (SIC 651 and SIC 653). This profile indicated that approximately 75 percent of all establishments in SIC 651 (Real Estate Operators and Lessors) and approximately 71 percent of all establishments in SIC 653 (Real Estate Agents and Managers) fell within the 1 to 4 employee size class. These proportions increased to 90 percent and 86 percent, respectively, when employee size class 1 to 9 was examined.

To measure the cost impacts of the proposed rule on these small establishments, representative, or model establishments were designed. These model establishments corresponded to typical establishments, with respect to number of employees and annual transaction volume, in each affected sector. Since transaction activity was reported to vary widely, a range of transaction volume was estimated for each establishment type.

For each model establishment, annual regulatory costs were then calculated and compared to annual labor and overhead costs. Ratios were computed for both high and low estimates of the range of transaction activity. In the case of a real estate sales organization, regulatory costs were found to represent from 0.18 to 0.38 percent of labor and overhead costs. In the case of a rental establishment, impacts were slightly higher, ranging from 0.20 to 0.46 percent. An establishment engaged in both activities was projected to sustain impacts of 0.26 to 0.59 percent.

Thus, while a large number of small establishments will be potentially affected by the rule, cost impacts were not found to be of sufficient magnitude to cause undue harm to such establishments. Consequently, no regulatory alternatives are being proposed in connection with small business impacts.

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA and HUD (ICR No. 1710.01) and a copy may be obtained from Sandy Farmer, Information Policy Branch (MC-2136), Environmental Protection Agency, 401 M St., SW., Washington, DC or by calling (202) 260–2740.

The collection of information that would be associated with this proposed rule is estimated to have a public burden averaging 19.5 minutes per

response (at 6.5 minutes per an average of 3 respondents), and to require 15.4 minutes per respondent, annually. This includes time for gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch (MC-2136); Environmental Protection Agency; 401 M St., SW; Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposed rule.

D. Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.19 and 50.20(o)(2) of the HUD regulations, the policies and procedures contained in this proposed rule relate only to information services and, therfore, are categorically excluded from the requirements of the National Environmental Policy Act.

E. HUD's Regulatory Agenda

This proposed rule was listed as Item No. 1517 in HUD's Semiannual Agenda of Regulations published on April 25, 1994 (59 FR 20424, 20431), in accordance with Executive Order 12866 and the Regulatory Flexibility Act, and was requested by and submitted to the Committee on Banking, Finance and Urban Affairs of the House of Representatives under section 7(o) of the Department of Housing and Urban Development Act.

List of Subjects in 24 CFR Part 38

Environmental protection, Lead poisoning, Mortgage insurance, Recordkeeping and reporting requirements, and Rent subsidies.

List of Subjects in 40 CFR Part 745

Environmental protection, Hazardous substances, Lead, Recordkeeping and notification requirements.

Dated: October 17, 1994.

Henry Cisneros,

Secretary, Housing and Urban Development.

Dated: October 21, 1994.

Carol M. Browner,

Administrator, Environmental Protection Agency.

Therefore, it is proposed that 24 CFR subtitle A and 40 CFR Chapter I be amended as follows.

24 CFR Subtitle A

A new part 38 is added to 24 CFR subtitle A to read as follows:

PART 38—LEAD-BASED PAINT POISONING PREVENTION IN CERTAIN RESIDENTIAL STRUCTURES

Subpart A—Disclosure of Information Concerning Lead-Based Paint Upon Transfer of Residential Property

Sec.
38.5 Purpose.
38.7 Scope and applicability.
38.10 Effective date.
38.15 Definitions.
38.20 Disclosure requirements.
38.21 Ten calendar-day opportunity to inspect.
38.22 Disclosure and acknowledgement forms.
38.25 Agent responsibilities.
38.30 Penalties.

Appendix A to Subpart A

Subparts B-G—[Reserved]

Authority: 42 U.S.C. 4852(d).

Subpart A—Disclosure of Information Concerning Lead-Based Paint Upon Transfer of Residential Property

§ 38.5 Purpose.

This subpart implements the provisions of section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, which imposes certain requirements on the sale or lease of target housing. Under this subpart, a seller or lessor of target housing shall disclose to the purchaser or lessee all information known by the seller or lessor about lead-based paint and lead-based paint hazards, provide the purchaser with a lead hazard information pamphlet, and attach specific disclosure and warning language to the sales contract or lease. Sellers must also give the purchaser a 10–day opportunity to conduct an inspection or risk assessment, before the purchaser is obligated under a contract to purchase such housing.

§ 38.7 Scope and applicability.

This subpart does not apply to the sale of properties at foreclosure and informal rental agreements not involving a lease. Renewals of existing leases would be covered by the requirements of this subpart only if the lessor:

(a) Did not previously provide the lessee with the lead-based paint hazard information required under § 38.20; or

(b) If the lessor becomes aware of additional information concerning lead-based paint hazards during the term of the lease, in which case he or she is required to disclose this information prior to renewal of the lease.

§ 38.10 Effective date.

The requirements in this subpart shall apply to any transaction to sell or lease target housing on or after October 28, 1995.

§ 38.15 Definitions.

All definitions as set forth in section 1004 of the Residential Lead-Based Paint Hazard Reduction Act apply in this part. In addition, the following definitions are provided for the purposes of this part.

Abatement means any set of measures designed to permanently eliminate lead-based paint hazards in accordance with standards established by appropriate Federal agencies. Such term includes:

(1) The removal of lead-based paint and lead-contaminated dust, the permanent containment or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or covering of lead-contaminated soil.

(2) All preparation, clean up, disposal, and post-abatement clearance testing activities associated with such measures.

The Act means the Residential Lead-Based Paint Hazard Reduction Act of 1992, (Title X of the Housing and Community Development Act of 1992, Pub. L. 102–550).

Administrator means the Administrator of the Environmental Protection Agency.

Agent means any party who enters into a contract with a seller or lessor to represent the seller or lessor for the purpose of selling or leasing target housing.

Common area means a portion of a building generally accessible to all residents/users including, but not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, and boundary fences.

Contract for the purchase and sale of residential real property means any contract or agreement in which one party agrees to purchase an interest in real property on which there is situated one or more residential dwellings used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

EPA means the Environmental Protection Agency.

Evaluation means a risk assessment and/or inspection.

Inspection means:

(1) A surface-by-surface investigation to determine the presence of lead-based paint as provided in section 302(c) of the Lead-Based Paint Poisoning and Prevention Act [42 U.S.C. 4822], and

(2) The provision of a report explaining the results of the investigation.

Lead-based paint means paint or other surface coatings that contain lead in excess of 1.0 milligrams per centimeter squared or 0.5 percent by weight or

(1) In the case of paint or other surface coatings on target housing, such lower level as may be established by the Secretary of Housing and Urban Development as defined under section 302(c) of the Lead-Based Paint Poisoning Prevention Act [42 U.S.C. 4822], or

(2) In the case of any other paint or surface coatings, such other level as may be established by the Administrator.

Lead-based paint hazard means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established by the appropriate Federal Agency.

Lessee means any entity that enters into an agreement to lease or rent target housing, including but not limited to individuals, partnerships, corporations, trusteeships, government agencies, Indian tribes, or nonprofit organizations.

Lessor means any entity that offers target housing for lease, including but not limited to individuals, partnerships, corporations, trusteeships, government agencies, Indian tribes, or nonprofit organizations.

Owner means any entity that has legal title to target housing, including but not limited to individuals, partnerships, corporations, trusteeships, government agencies, Indian tribes, or nonprofit organizations.

Purchaser means any entity that submits a written offer to purchase an interest in target housing, including but not limited to individuals, partnerships, corporations, trusteeships, government agencies, Indian tribes, or nonprofit organizations.

Residential dwelling means:

(1) A single-family dwelling, including attached structures such as porches and stoops; or

(2) A single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the residence of one or more persons.

Risk assessment means an on-site investigation to determine and report the existence, nature, severity, and location of lead-based paint hazards in residential dwellings, including:

(1) Information gathering regarding the age and history of the housing and occupancy by children under age 6.

(2) Visual inspection.

(3) Limited wipe sampling or other environmental sampling techniques.

(4) Other activity as may be appropriate.

(5) Provision of a report explaining the results of the investigation.

Secretary means the Secretary of Housing and Urban Development.

Seller means any entity that sells an interest in target housing, including but not limited to individuals, partnerships, corporations, trusteeships, government agencies, Indian tribes, or nonprofit organizations. The term seller also includes:

(1) An entity which transfers shares in a cooperatively owned project.

(2) An entity which transfers its interest in a leasehold in jurisdictions or circumstances where it is legally permissible to separate the fee title from the title to the improvement.

Target housing means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling.

0-Bedroom dwelling means any residential dwelling in which the living area is unseparated from the sleeping area.

§ 38.20 Disclosure requirements.

(a) The following activities shall be completed before the purchaser or lessee is obligated under any contract to purchase or lease target housing.

(1) The seller or lessor, or the agent acting on behalf of the seller or lessor, shall provide the purchaser or lessee with a copy of EPA's lead-hazard information pamphlet, entitled *Lead-Based Paint: Protect Your Family*, issued under section 406 of the Toxic Substances Control Act.

(2) The seller or lessor, or the agent acting on behalf of the seller or lessor, shall provide the purchaser or lessee with written descriptions, or actual copies where available, of all information known by the seller or lessor or the agent on the presence of lead-based paint or lead-based paint hazards associated with the target housing being sold or leased. Such information includes, but is not limited to, the following items:

(i) Reports from all lead-based paint inspections, risk assessments, and abatement activities known by the seller or lessor, or agent.

(ii) If the target housing contains more than one residential dwelling:

(A) Records of lead-based paint inspections, assessments, and abatement activities conducted in common areas of the property.

(B) Records indicating whether other residential dwellings in the target housing contain or have contained lead-based paint or lead-based paint hazards.

(iii) Other information known by the seller or lessor, or agent that may indicate the presence of lead-based paint or lead-based paint hazards in the residential dwelling.

(3) The seller shall make copies of the information required under paragragh (a)(2) of this section, accessible for inspection or copying by purchasers and lessees.

(4) Each contract or agreement to sell property defined as target housing shall contain a completed, signed, and dated copy of the joint HUD/EPA form entitled *Form A-Disclosure and Acknowledgement of Lead-Based Paint Before Sale* (Form A).

(5) Each contract or agreement to lease property defined as target housing shall contain a completed, signed, and dated copy of the joint HUD/EPA form entitled *Form B-Disclosure and Acknowledgement of Lead-Based Paint Before Lease* (Form B).

(b) The seller or lessor shall disclose to the agent, any information known to the seller or lessor regarding lead-based paint or lead-based paint hazards within the target housing, as defined in paragragh (a)(2) of this section.

(c) The seller, and any agent acting on behalf of the seller, shall retain a copy of the completed Form A required under paragraph (a)(4) of this section for 3 years from the completion date of the sale. The lessor, and any agent acting on behalf of the lessor, shall retain a copy of the completed Form B required under paragraph (a)(5) of this section for 3 years from the commencement of the leasing period.

§ 38.21 Ten calendar-day opportunity to inspect.

This section applies only to transactions to sell target housing. As described in this section, each purchaser of target housing shall be given a 10 calendar-day opportunity to conduct an inspection or risk assessment of the target housing for lead-based paint and lead-based paint hazards prior to being bound to purchase the target housing. Unless otherwise agreed in writing by the parties, the inspection period shall be provided in the following manner.

(a) The seller, or the agent acting on behalf of the seller, shall permit the

purchaser 10 calendar days to conduct a risk assessment or inspection of the target housing for the presence of lead-based paint or lead-based paint hazards.

(b) This opportunity shall be provided to the purchaser after the seller or the seller's agent has disclosed, in accordance with § 38.20(a)(2), all information known to the seller and agent regarding lead-based paint and lead-based paint hazards in the target housing and after the purchaser has received the lead hazard information pamphlet required under § 38.20(a)(1).

(c) The 10 calendar-day opportunity to inspect or assess shall commence at the time the purchaser signs a contract to purchase the target housing.

(d) The contract shall be contingent on finding no lead-based paint hazard in the inspection or risk assessment conducted by a certified firm. If a lead-based paint hazard is found during the inspection or risk assessment, the seller and purchaser shall mutually determine the terms under which the sale will or will not proceed.

(e) The purchaser is not required to conduct a risk assessment or inspection of the target housing for the presence of lead-based paint or lead-based paint hazards. The purchaser and seller may mutually agree in writing to lengthen, shorten, or eliminate the 10–day inspection period.

(f) The identity of the company performing the risk assessment or inspection and the results shall be provided to the seller.

§ 38.22 Disclosure and acknowledgement forms.

(a) *Availability of forms.* Form A–Disclosure and Acknowledgement of Lead-Based Paint Before Sale (GPO #XXX) and Form B–Disclosure and Acknowledgement of Lead-Based Paint Before Lease (GPO #XXX) are included for reference in Appendix A of this part. Copies are available from the Government Printing Office (GPO) by writing to: Government Printing Office, Superintendent of Documents, Mail Stop XXX, Washington, DC 20402–9328. In addition, persons may contact EPA's TSCA Hotline at 202–554–1404 for further information on obtaining copies.

(b) *Seller and purchaser requirements.* (1) Part I of Form A is a "Lead Warning Statement" required under section 1018(a)(3) of the Act. If the contract is written in a language other than English, the contract shall include a translation of the Lead Warning Statement in the language of the contract as an attachment to the contract. The statement shall consist of the following language:

Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

(2) In Part II of Form A, the seller shall certify, by signing and dating the form, that he or she has:

(i) Disclosed to the purchaser any information known to the seller on lead-based paint and lead-based paint hazards in the target housing.

(ii) Given the purchaser the EPA lead pamphlet.

(iii) Provided the purchaser with a 10 calendar-day opportunity to conduct a risk assessment or inspection.

(3) In Part III of Form A, the agent, if any, shall certify, by signing and dating the form, that the agent has:

(i) Informed the seller of the seller's obligation under this subpart.

(ii) Ensured that any information known to the agent on lead-based paint and lead-based paint hazards in the target housing has been disclosed to the purchaser.

(iii) Ensured that the EPA lead pamphlet has been provided to the purchaser.

(iv) Ensured that the purchaser has been or will be given a 10 calendar-day opportunity to conduct a risk assessment or inspection.

(4) In Part IV of Form A, the purchaser shall acknowledge, by signing and dating the form, that he or she has:

(i) Read and understood the attached lead warning statement.

(ii) Received the disclosures in Part II of Form A.

(iii) Received the lead hazard information pamphlet.

(iv) Understands that he or she is entitled, by law, to a 10 calendar-day opportunity to conduct a risk assessment or inspection.

(c) *Lessor and lessee requirements.* (1) Part I of Form B is a statement warning of the hazards of lead-based paint poisoning. The statement shall consist of the following language:

A residential structure built prior to 1978 may present exposure to lead from lead-based paint. This exposure may place young children at risk of developing lead poisoning. Lead poisoning in young children can produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The lessor of any residential dwelling is required to provide the lessee with any information on lead-based paint hazards from risk assessments or inspections in the lessor's possession and notify the lessee of any known lead-based paint hazards.

(2) In Part II of Form B, the lessor shall certify that he or she has disclosed any information known to the lessor on lead-based paint and lead-based paint hazards in the target housing and provided the lessee with the EPA lead pamphlet. The lessor shall sign and date the form.

(3) In Part III of Form B, the agent, if any, shall certify that he or she has notified the lessor of the lessor's obligation under this subpart, ensured that any information known to the lessor and the agent on lead-based paint and lead-based paint hazards in the target housing has been disclosed, and ensured that the lessee has been given the EPA lead pamphlet. The agent shall sign and date the form.

(4) In Part IV of Form B, the lessee shall acknowledge that he or she received the disclosures in Part II of Form B and the EPA lead pamphlet. The lessee shall sign and date the form.

§ 38.25 Agent responsibilities.

(a) Each agent shall ensure compliance with all requirements of this subpart. To ensure compliance, the agent shall:

(1) Inform the seller or lessor of their obligations under §§ 38.20, 38.21, and 38.22, and to disclose to the agent information known to the seller or lessor regarding lead-based paint and lead-based paint hazards.

(2) Either:

(i) Make certain that the seller or lessor has performed all activities required under §§ 38.20, 38.21, and 38.22.

(ii) Personally comply with the requirements of §§ 38.20, 38.21, and 38.22.

(b) If the agent has complied with § 38.25(a), the agent shall not be liable for the failure to disclose to a purchaser or lessee information regarding lead-based paint or lead-based paint hazards known by a seller or lessor but not disclosed to the agent.

§ 38.30 Penalties.

(a) Under section 1018(b)(1) of the Act, any person who knowingly fails to comply with any provision of this

subpart shall be subject to civil monetary penalties in accordance with the provisions of section 102 of the Department of Housing and Urban Development Reform Act of 1989 [42 U.S.C. 3545] and 24 CFR part 30.

(b) Under section 1018(b)(2) of the Act, the Secretary is authorized to take such action as may be necessary to enjoin any violation of this subpart in the appropriate Federal district court.

(c) Under section 1018(b)(3) of the Act, any person who knowingly violates the provisions of this subpart shall be jointly and severally liable to the purchaser or lessee in an amount equal to 3 times the amount of damages incurred by such individual.

(d) In any civil action brought for damages pursuant to section 1018(b)(3) of the Act, the appropriate court may award court costs to the party commencing such action, together with reasonable attorney fees and any expert witness fees, if that party prevails.

(e) It is a prohibited act under section 409 of the Toxic Substances Control Act [15 U.S.C. 2689] for any person to fail or refuse to comply with a provision of this subpart. For purposes of enforcing this subpart under the Toxic Substances Control Act, the penalty for each violation applicable under section 16 of that Act is not more than $10,000.

Appendix A to Supart A of Part 38

Form A—Disclosure and Acknowledgment of Lead-Based Paint Before Sale

OMB #_____

Part I: Lead Warning Statement

Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller or any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessments or inspection for possible lead-based paint hazards is recommended prior to purchase.

Part II: Seller's Certification

Seller certifies to have disclosed to the purchaser and agent all information known to the seller regarding the presence of lead-based paint and lead-based paint hazards within this target housing (Seller initials box and insert date).

(a)

On _____
(insert date)
seller provided the purchaser with lead-hazard reports based on lead-based paint inspections, assessments, or abatements conducted on the following dates:

(b)

On _____
(insert date)
the seller provided the purchaser with the following information on lead-based paint hazards in common areas:

(c)

On _____
(insert date)
the seller provided the purchaser with following additional information that may indicate lead-based paint and lead-based paint hazards in the target housing.

(d)

On _____
(insert date)
Seller certifies that no additional information is known about this target housing. (Note: By selecting (d), seller does not avoid liability for lead-based paint and lead-based paint hazards known to the seller that are not noted under (a), (b), or (c).

(e)

On _____
(insert date)
the seller provided the purchaser with the lead hazard information pamphlet *Lead-Based Paint: Protect Your Family.*

The seller is aware that Federal laws requires the seller to permit the purchaser a 10 calendar day period to conduct a risk assessment or inspection for the presence of lead-based paint hazards before becoming obligated under a contract to purchase target housing (unless mutually agreed otherwise in writing). That opportunity was or will be provided between the following dates:

_____.

_____
Date

_____
Seller

_____
Seller

Part III: Agent's Certification (When Applicable)

Agent certifies to have informed the seller of his/her obligation to disclose to the purchasers and agent all information known to the seller regarding the presence of lead-based paint and lead-based paint hazards within this target housing and that all information known to the agent regarding the presence of lead-based paint and lead-based paint hazards within this target housing has been disclosed to the purchaser. Agent further certifies that the purchaser received the lead hazard information pamphlet *Lead-Based Paint: Protect Your Family* and that the purchaser has or will be given a 10 calendar-day period (unless otherwise agreed in writing) to conduct a risk assessment or inspection for the presence of lead-based paint before becoming obligated under the contract to purchase the target housing.

_____
Date

_____
Agent

_____
Date

_____
Agent

Part IV: Purchaser's Acknowledgment

I acknowledge that I have read and understood the attached lead warning statement in part I of this form and received all information noted in Part II of this form, including the lead hazard information pamphlet *Lead-Based Paint: Protect Your Family.* I further acknowledge that, pursuant to 42 U.S.C. 4852(d) and its implementing regulations, the attached contract entitles me to 10 calendar days to conduct a risk assessment or inspection for the presence of lead-based paint hazards before becoming obligated under a contract to purchase this target housing, unless mutually agreed otherwise, in writing.

_____
Date

_____
Purchaser

_____
Purchaser

Appendix A to Subpart A of Part 38

Form B—Disclosure and Acknowledgment of Lead-Based Paint Before Lease

OMB #_____

Part I: Lead Warning Statement

A residential structure built prior to 1978 may present exposure to lead from lead-based paint. This exposure may place young children at risk of developing lead poisoning. Lead poisoning in young children can produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The lessor of any residential dwelling is required to provide the lessee with any information on lead-based paint hazards from risk assessments or inspections in the lessor's possession and notify the lessee of any known lead-base paint hazards.

Part II: Lessor's Certification

Lessor certifies to have disclosed to the lessee and agent all information known to the lessor regarding the presence of lead-based paint and lead-based paint hazards within this target housing. The information provided includes:

(a)

On _____
(insert date)
the lessor provided the lessee with lead-hazard reports based on lead-based paint inspections, assessments, or abatements conducted on the following dates:

(b)

On _____
(insert date)
the lessor provided the lessee with the following information on lead-based paint hazards in common areas:

(c)

On _____
(insert date)

the lessor provided the lessee with following additional information that may indicate lead-based paint and lead-based paint hazards in the target housing.

(d)

On _____
(insert date)

Lessor certifies that no additional information is known about this target housing.

Note: By selecting (d), lessor does not avoid liability for lead-based paint and lead-based paint hazards known to the lessor that are not noted under (a), (b), or (c).

(e)

On _____
(insert date)

the lessor provided the lessee with the lead hazard information pamphlet *Lead-Based Paint: Protect Your Family.*

_____
Date

_____
Lessor

_____
Lessor

Part III: Agent's Certification (When Applicable)

Agent certifies to have informed the lessor of his/her obligation to disclose to the lessee and agent all information known to the lessor regarding the presence of lead-based paint and lead-based paint hazards within this target housing and that all information known to the agent regarding the presence of lead-based paint and lead-based paint hazards within this target housing has been disclosed to the lessee. Agent further certifies that the lessee received the lead hazard information pamphlet *Lead-Based Paint: Protect Your Family.*

_____
Date

_____
Agent

_____
Date

_____
Agent

Part IV: Lessee's Acknowledgment

I acknowledge that I have read and understood the attached lead warning statement in Part I of this form, received the information noted in Part II of this form, and received the materials noted above, including the pamphlet *Lead-Based Paint: Protect Your Family.*

_____
Date

_____
Lessee

_____
Date

_____
Lessee

BILLING CODE 6560-50-M

Subparts B–G—[Reserved]

40 CFR Chapter I

Part 745 of 40 CFR Chapter I which was proposed to be added on March 9, 1994, at 59 FR 11116 would be further amended as follows:

PART 745—LEAD EXPOSURE REDUCTION

1. The authority citation for part 745 would be revised to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2681–2692 and 42 U.S.C. 4852(d).

2. Subpart F would be added to read as follows:

Subpart F — Disclosure of Information Concerning Lead-Based Paint Upon Transfer of Residential Property

Sec.

745.100 Purpose.
745.101 Scope and applicability.
745.102 Effective date.
745.103 Definitions.
745.107 Disclosure requirements.
745.110 Ten calendar-day opportunity to inspect.
745.113 Disclosure and acknowledgment forms.
745.115 Agent responsibilities.
745.118 Penalties.

Subpart F — Disclosure of Information Concerning Lead-Based Paint Upon Transfer of Residential Property

§ 745.100 Purpose.

This subpart implements the provisions of section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, which imposes certain requirements on the sale or lease of target housing. Under this subpart, a seller or lessor of target housing shall disclose to the purchaser or lessee all information known by the seller or lessor about lead-based paint and lead-based paint hazards, provide the purchaser with a lead hazard information pamphlet, and attach specific disclosure and warning language to the sales contract or lease. Sellers must also give the purchaser a 10–day opportunity to conduct an inspection or risk assessment, before the purchaser is obligated under a contract to purchase such housing.

§ 745.101 Scope and applicability.

This subpart does not apply to the sale of properties at foreclosure and informal rental agreements not involving a lease. Renewals of existing leases would be covered by the requirements of this subpart only if the lessor:

(a) Did not previously provide the lessee with the lead-based paint hazard information required under § 745.107; or

(b) If the lessor becomes aware of additional information concerning lead-based paint hazards during the term of the lease, in which case he or she is required to disclose this information prior to renewal of the lease.

§ 745.102 Effective date.

The requirements in this subpart shall apply to any transaction to sell or lease target housing if the transaction is completed on or after October 28, 1995.

§ 745.103 Definitions.

All definitions as set forth in section 1004 of the Residential Lead-Based Paint Hazard Reduction Act apply in this subpart. In addition, the following definitions are provided for the purposes of this subpart.

Abatement means any set of measures designed to permanently eliminate lead-based paint hazards in accordance with standards established by appropriate Federal agencies. Such term includes:

(1) The removal of lead-based paint and lead-contaminated dust, the permanent containment or encapsulation of lead-based paint, the replacement of lead painted surfaces or fixtures, and the removal or covering of lead-contaminated soil.

(2) All preparation, clean up, disposal, and post-abatement clearance testing activities associated with such measures.

The Act means the Residential Lead-Based Paint Hazard Reduction Act of 1992, (Title X of the Housing and Community Development Act of 1992, Pub. L. 102–550).

Administrator means the Administrator of the Environmental Protection Agency.

Agent means any party who enters into a contract with a seller or lessor to represent the seller or lessor for the purpose of selling or leasing target housing.

Common area means a portion of a building generally accessible to all residents/users including, but not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, and boundary fences.

Contract for the purchase and sale of residential real property means any contract or agreement in which one party agrees to purchase an interest in real property on which there is situated one or more residential dwellings used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

Evaluation means a risk assessment and/or inspection.

Inspection means:

(1) A surface-by-surface investigation to determine the presence of lead-based paint as provided in section 302(c) of the Lead-Based Paint Poisoning and Prevention Act [42 U.S.C. 4822], and

Inspection means:

(1) A surface-by-surface investigation to determine the presence of lead-based paint as provided in section 302(c) of the Lead-Based Paint Poisoning and Prevention Act [42 U.S.C. 4822], and

(2) The provision of a report explaining the results of the investigation.

Lead-based paint means paint or other surface coatings that contain lead in excess of 1.0 milligrams per centimeter squared or 0.5 percent by weight or

(1) In the case of paint or other surface coatings on target housing, such lower level as may be established by the Secretary of Housing and Urban Development as defined under section 302(c) of the Lead-Based Paint Poisoning Prevention Act [42 U.S.C. 4822], or

(2) In the case of any other paint or surface coatings, such other level as may be established by the Administrator.

Lead-based paint hazard means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces or impact surfaces that would result in adverse human health effects as established by the appropriate Federal Agency.

Lessee means any entity that enters into an agreement to lease or rent target housing, including but not limited to individuals, partnerships, corporations, trusteeships, government agencies, Indian tribes, or nonprofit organizations.

Lessor means any entity that offers target housing for lease, including but not limited to individuals, partnerships, corporations, trusteeships, government agencies, Indian tribes, or nonprofit organizations.

Owner means any entity that has legal title to target housing, including but not limited to individuals, partnerships, corporations, trusteeships, government agencies, Indian tribes, or nonprofit organizations.

Purchaser means any entity that submits a written offer to purchase an interest in target housing, including but not limited to individuals, partnerships, corporations, trusteeships, government agencies, Indian tribes, or nonprofit organizations.

Residential dwelling means:

(1) A single-family dwelling, including attached structures such as porches and stoops; or

(2) A single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the residence of one or more persons.

Risk assessment means an on-site investigation to determine and report the existence, nature, severity, and location of lead-based paint hazards in residential dwellings, including:

(1) Information gathering regarding the age and history of the housing and occupancy by children under age 6.

(2) Visual inspection.

(3) Limited wipe sampling or other environmental sampling techniques.

(4) Other activity as may be appropriate.

(5) Provision of a report explaining the results of the investigation.

Secretary means the Secretary of Housing and Urban Development.

Seller means any entity that sells an interest in target housing, including but not limited to individuals, partnerships, corporations, trusteeships, government agencies, Indian tribes, or nonprofit organizations. The term seller also includes:

(1) An entity which transfers shares in a cooperatively owned project.

(2) An entity which transfers its interest in a leasehold in jurisdictions or circumstances where it is legally permissible to separate the fee title from the title to the improvement.

Target housing means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling.

0-Bedroom dwelling means any residential dwelling in which the living area is unseparated from the sleeping area.

§ 745.107 Disclosure requirements.

(a) The following activities shall be completed before the purchaser or lessee is obligated under any contract to purchase or lease target housing.

(1) The seller or lessor, or the agent acting on behalf of the seller or lessor, shall provide the purchaser or lessee with a copy of EPA's lead-hazard information pamphlet, entitled *Lead-Based Paint: Protect Your Family*, issued under section 406 of the Toxic Substances Control Act.

(2) The seller or lessor, or the agent acting on behalf of the seller or lessor, shall provide the purchaser or lessee with written descriptions, or actual copies where available, of all information known by the seller or lessor or the agent on the presence of lead-based paint or lead-based paint hazards associated with the target housing being sold or leased. Such information includes, but is not limited to, the following items:

(i) Reports from all lead-based paint inspections, risk assessments, and abatement activities known by the seller or lessor, or agent.

(ii) If the target housing contains more than one residential dwelling:

(A) Records of lead-based paint inspections, assessments, and abatement activities conducted in common areas of the property.

(B) Records indicating whether other residential dwellings in the target housing contain or have contained lead-based paint or lead-based paint hazards.

(iii) Other information known by the seller or lessor, or agent that may indicate the presence of lead-based paint or lead-based paint hazards in the residential dwelling.

(3) The seller shall make copies of the information required under paragraph (a)(2) of this section accessible for inspection or copying by purchasers and lessees.

(4) Each contract or agreement to sell property defined as target housing shall contain a completed, signed, and dated copy of the joint HUD/EPA form entitled *Form A-Disclosure and Acknowledgement of Lead-Based Paint Before Sale* (Form A).

(5) Each contract or agreement to lease property defined as target housing shall contain a completed, signed, and dated copy of the joint HUD/EPA form entitled *Form B-Disclosure and Acknowledgement of Lead-Based Paint Before Lease* (Form B).

(b) The seller or lessor shall disclose to the agent, any information known to the seller or lessor regarding lead-based paint or lead-based paint hazards within the target housing, as defined in paragraph (a)(2) of this section.

(c) The seller, and any agent acting on behalf of the seller, shall retain a copy of the completed Form A required under paragraph (a)(4) of this section for 3 years from the completion date of the sale. The lessor, and any agent acting on behalf of the lessor, shall retain a copy of the completed Form B, required under paragraph (a)(5) of this section, for 3 years from the commencement of the leasing period.

§ 745.110 Ten Calendar-Day Opportunity to Inspect.

This section applies only to transactions to sell target housing. As described in this section, each purchaser of target housing shall be given a 10 calendar-day opportunity to conduct an inspection or risk assessment of the target housing for lead-based paint and lead-based paint hazards prior to being bound to purchase the housing. Unless otherwise agreed in writing by the parties, the

inspection period shall be provided in the following manner.

(a) The seller, or the agent acting on behalf of the seller, shall permit the purchaser 10 calendar days to conduct a risk assessment or inspection of the target housing for the presence of lead-based paint or lead-based paint hazards.

(b) This opportunity shall be provided to the purchaser after the seller or the seller's agent has disclosed, in accordance with § 745.107(a)(2), all information known to the seller and agent regarding lead-based paint and lead-based paint hazards in the target housing and after the purchaser has received the lead hazard information pamphlet required under § 745.107(a)(1).

(c) The 10 calendar-day opportunity to inspect or assess shall commence at the time the purchaser signs a contract to purchase the target housing.

(d) The contract shall be contingent on finding no lead-based paint hazard in the inspection or risk assessment conducted by a certified firm. If a lead-based paint hazard is found during the inspection or risk assessment, the seller and purchaser shall mutually determine the terms under which the sale will or will not proceed.

(e) The purchaser is not required to conduct a risk assessment or inspection of the target housing for the presence of lead-based paint or lead-based paint hazards. The purchaser and seller may mutually agree in writing to lengthen, shorten, or eliminate the 10–day inspection period.

(f) The identity of the company performing the risk assessment or inspection and the results shall be provided to the seller.

§ 745.113 Disclosure and acknowledgement forms.

(a) *Availability of forms.* Form A–Disclosure and Acknowledgement of Lead-Based Paint Before Sale (GPO #XXX) and Form B–Disclosure and Acknowledgement of Lead-Based Paint Before Lease (GPO #XXX) are included for reference in Appendix A of this part. Copies are available from the Government Printing Office (GPO) by writing to: Government Printing Office, Superintendent of Documents, Mail Stop XXX, Washington, DC 20402–9328. In addition, persons may contact EPA's TSCA Hotline at 202–554–1404 for further information on obtaining copies.

(b) *Seller and purchaser requirements.* (1) Part I of Form A is a "Lead Warning Statement" required under section 1018(a)(3) of the Act. If the contract is written in a language other than English, the contract shall include a translation of the Lead Warning Statement in the language of the contract as an attachment to the contract. The statement shall consist of the following language:

> Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

(2) In Part II of Form A, the seller shall certify, by signing and dating the form, that he or she has:

(i) Disclosed to the purchaser any information known to the seller on lead-based paint and lead-based paint hazards in the target housing.

(ii) Given the purchaser the EPA lead pamphlet.

(iii) Provided the purchaser with a 10 calendar-day opportunity to conduct a risk assessment or inspection.

(3) In Part III of Form A, the agent, if any, shall certify, by signing and dating the form, that the agent has:

(i) Informed the seller of the seller's obligation under this subpart.

(ii) Ensured that any information known to the agent on lead-based paint and lead-based paint hazards in the target housing has been disclosed to the purchaser.

(iii) Ensured that the EPA lead pamphlet has been provided to the purchaser.

(iv) Ensured that the purchaser has been or will be given a 10 calendar-day opportunity to conduct a risk assessment or inspection.

(4) In Part IV of Form A, the purchaser shall acknowledge, by signing and dating the form, that he or she has:

(i) Read and understood the attached lead warning statement.

(ii) Received the disclosures in Part II of Form A.

(iii) Received the lead hazard information pamphlet.

(iv) Understands that he or she is entitled, by law, to a 10 calendar-day opportunity to conduct a risk assessment or inspection.

(c) *Lessor and lessee requirements.* (1) Part I of Form B is a statement warning of the hazards of lead-based paint poisoning. The statement shall consist of the following language:

> A residential structure built prior to 1978 may present exposure to lead from lead-based paint. This exposure may place young children at risk of developing lead poisoning. Lead poisoning in young children can produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The lessor of any residential dwelling is required to provide the lessee with any information on lead-based paint hazards from risk assessments or inspections in the lessor's possession and notify the lessee of any known lead-based paint hazards.

(2) In Part II of Form B, the lessor shall certify that he or she has disclosed any information known to the lessor on lead-based paint and lead-based paint hazards in the target housing and provided the lessee with the EPA lead pamphlet. The lessor shall sign and date the form.

(3) In Part III of Form A, the agent, if any, shall certify that the agent has informed the lessor of the lessor's obligation under this subpart, ensured that any information known to the agent on lead-based paint and lead-based paint hazards in the target housing has been disclosed to the lessee, and ensured that the EPA lead hazard information pamphlet has been provided to the lessee. The agent shall sign and date the form.

(4) In Part IV of Form B, the lessee shall acknowledge that he or she received the disclosures in Part II of Form B and the EPA lead pamphlet. The lessee shall sign and date the form.

§ 745.115 Agent responsibilities.

(a) Each agent shall ensure compliance with all requirements of this subpart. To ensure compliance, the agent shall:

(1) Inform the seller or lessor of their obligations under §§ 745.107, 745.110, and 745.113 (including the seller or lessor's obligation to disclose to the agent any information known to the seller or lessor regarding lead-based paint and lead-based paint hazards; and,.

(2) Either:

(i) Make certain that the seller or lessor has performed all activities required under §§ 745.107, 745.110, and 745.113.

(ii) Personally comply with the requirements of §§ 745.107, 745.110, and 745.113.

(b) If the agent has complied with paragraph (a) of this section, the agent shall not be liable for the failure to disclose to a purchaser or lessee

information regarding lead-based paint or lead-based paint hazards known by a seller or lessor but not disclosed to the agent.

§ 745.118 Penalties.

(a) Under section 1018(b)(1) of the Act, any person who knowingly fails to comply with any provision of this subpart shall be subject to civil monetary penalties in accordance with the provisions of section 102 of the Department of Housing and Urban Development Reform Act of 1989 [42 U.S.C. 3545] and 24 CFR part 30.

(b) Under section 1018(b)(2) of the Act, the Secretary is authorized to take such action as may be necessary to enjoin any violation of this subpart in the appropriate Federal district court.

(c) Under section 1018(b)(3) of the Act, any person who knowingly violates the provisions of this subpart shall be jointly and severally liable to the purchaser or lessee in an amount equal to 3 times the amount of damages incurred by such individual.

(d) In any civil action brought for damages pursuant to section 1018(b)(3) of the Act, the appropriate court may award court costs to the party commencing such action, together with reasonable attorney fees and any expert witness fees, if that party prevails.

(e) It is a prohibited act under section 409 of the Toxic Substances Control Act (15 U.S.C. 2689) for any person to fail or refuse to comply with a provision of this subpart. For purposes of enforcing this subpart under the Toxic Substances Control Act, the penalty for each violation applicable under section 16 of that Act is not more than $10,000.

[FR Doc. 94–27097 Filed 10–28–94; 10:12am]

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federal register

Wednesday
November 2, 1994

Part IV

Securities and Exchange Commission

17 CFR Part 240

Payment of Order Flow; Internalized/Affiliate Practices, Payment for Order Flow and Order Routing Practices; Final Rule and Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–34902; File No. S7–29–93]

RIN 3235–AG00

Payment for Order Flow

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission announces the adoption of Rule 11Ac1–3 and amendments to Rule 10b–10 under the Securities Exchange Act of 1934 which, together, require enhanced disclosure of payment for order flow practices on customer confirmations, and account statements, as well as upon opening new accounts. The new Rule and amendments to Rule 10b–10 are designed to provide relevant information to customers regarding factors influencing the routing of their orders. The new Rule and amendments to Rule 10b–10 also will serve to enhance investor protection and further competition for retail orders by enabling customers to evaluate more effectively the markets to which their orders are routed.

EFFECTIVE DATE: April 3, 1995.

FOR FURTHER INFORMATION CONTACT: Jill W. Ostergaard, Attorney, 202/942–3197, Branch of the National Market System, Office of Market Supervision, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Mail Stop 5–1, Washington, DC 20549. For interpretation of Rule 10b–10 after March 1, 1996, please contact the Office of the Chief Counsel, 202/942–0073, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Mail Stop 7–10, Washington, DC 20549. For interpretation of Rule 11Ac1–3 please contact the Office of Market Supervision, Division of Market Regulation, 202/942–3197.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

On October 6, 1993, the Securities and Exchange Commission ("SEC" or "Commission") proposed for comment amendments to Rule 10b–10 (17 CFR 240.10b–10) and new Rule 11Ac1–3 (17 CFR 240.11Ac1–3) under the Securities Exchange Act of 1934 ("Act") concerning payment for order flow practices.[1] Taken together, those proposals were designed to improve information available to investors about their broker-dealer's order routing practices, and whether the broker-dealer received market center[2] inducements for routing unspecified order flow to them. These disclosures would occur when the investor opened an account, annually thereafter, and on the required trade confirmations. In the Proposing Release, the Commission invited commenters to address issues related to the proposals as well as alternative approaches to payment for order flow, such as banning the practice outright, mandatory pass-through of payments to customers, and requiring exchanges, national securities associations and broker-dealers to convert to decimal pricing.

The Commission received 53 comment letters concerning the proposals. Of those commenters, 31 supported the disclosure approach and 17 opposed it.[3] Many of the commenters supporting the approach offered suggestions to improve the effectiveness of disclosure.

The Commission is adopting the proposed disclosure approach as discussed below. The Commission believes this approach will further the investor protection goals of the Act, and is consistent with the general philosophy underlying disclosure that "sunlight is the best disinfectant."[4] The Commission, in response to commenters' suggestions, has modified the proposed Rule and amendments to Rule 10b–10, as described below.

The Commission is modifying Rule 11Ac1–3 and amendments to Rule 10b–10 as proposed, to include Nasdaq Small-Cap and Over-The-Counter ("OTC") Bulletin Board securities. The Commission also is modifying the proposed amendments to Rule 10b–10 to limit the disclosure of payment for order flow on customer confirmations to a statement that the broker or dealer receives payment for order flow. In addition, the Commission is revising proposed Rule 11Ac1–3 regarding customer account statements by requiring disclosure of the broker-dealer's policies for determining where to route customer orders that are the subject of payment for order flow absent specific instructions from customers, including a description of the extent to which orders can be executed at prices superior to the national best bid or best offer ("NBBO").

In a parallel action, the Commission is proposing for comment amendments to Rule 10b–10 and Rule 11Ac1–3 that would extend those Rules to the options market.[5] In addition, the Commission is proposing for comment a requirement that broker-dealers disclose in writing, on confirmations, upon opening new accounts and on annual disclosure statements, ranges of payment for order flow received on a per share basis; and include, in new account documentation and on annual disclosure statements, an estimate of the aggregate amount of payment for order flow received on an annual basis.[6] The Commission also is proposing for comment a requirement that broker-dealers disclose whether they execute orders as principal ("internalize") or route orders to an affiliated broker-dealer or exchange specialist for execution and, a requirement that broker-dealers quantify and disclose information about internalized/affiliate practices.[7] The Commission further is proposing for comment a requirement that broker-dealers disclose their order routing practices regardless of whether the broker-dealer received payment for order flow or engaged in internalized/affiliate practices. The Companion Release also solicits comment on expanding the definition of payment for order flow.[8]

II. Basis and Purpose of the Rule

The practice of paying for order flow has generated much debate and controversy[9] regarding the potential benefits and harm to public investors and whether receipt and retention of payment for order flow compromises a

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[1] Securities Exchange Act Release No. 33026 (Oct. 6, 1993), 58 FR 52934 (Oct. 13, 1993) ("Proposing Release").

[2] As used in this release, the term market center includes exchanges and dealers acting as market makers. *See* 17 CFR 240.11Ac1–2(a)(14) (defining "reporting market center").

[3] The Commission's staff has prepared a summary of the comments, a copy of which has been placed in the official file.

The Division of Market Regulation ("Division") also solicited comment on payment for order flow in its study of the equity markets. *See* Securities Exchange Act Release No. 30920 (July 14, 1992), 57 FR 32587 (July 22, 1992) ("Market 2000 Concept Release"). *See also* Division of Market Regulation, Securities and Exchange Commission, *Market 2000: An Examination of Current Equity Market Developments* (Jan. 1994) ("*Market 2000*"). Many of the same parties commenting on this proposal commented on *Market 2000. Id.*, Appendix IV at 41–48.

[4] L. Brandeis, Other People's Money and How the Bankers Use It, 92 (Frederick A. Stokes Co. ed. 1932).

[5] *See* Securities Exchange Act Release No. 34903 (October 27, 1994) ("Companion Release").

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] For a detailed discussion of this controversy, see Note, *The Perils of Payment for Order Flow*, 107 Harv. L. Rev. 1675 (1994).

broker-dealer's duties to its customer.[10] Congress has shown continuing interest in the resolution of that controversy.[11] The history of that debate and other background information can be found in the Proposing Release.[12] In their response to the Proposing Release, few commenters suggested that the Commission not act at all regarding payment for order flow practices.[13] Most commenters supported the disclosure approach, with modifications. These commenters suggested that payment for order flow practices are a mechanism for competition among market centers for order flow. Many commenters argued that there is no harm in these practices. Others argued that disclosure to the customer adequately would address any perceived conflict of interest.

As noted in the Proposing Release, payment for order flow may result in lower execution costs, facilitate technological advances in retail customer order handling practices and facilitate competition among broker-dealers and securities markets. At the same time, however, the practice raises concern as to whether the customer is being treated fairly. Specifically, payment for order flow raises concerns about whether a firm is meeting its obligation of best execution to its customer. Not all market centers expose market orders to other order flow or attempt to improve the price at which market orders are executed. Thus, the decision to route an unpriced order to a market center offering immediate execution at the NBBO, could mean that the customer has lost an opportunity for execution at a superior price because of the lack of exposure to other order flow.[14] For the reasons discussed below, the Commission believes disclosure that payment for order flow has been received and a description of whether the customer's order has an opportunity for price improvement will enhance investor protection and provide customers with information to evaluate more effectively the markets to which their orders are routed.

III. Discussion

The Rules adopted today represent a tiered approach to disclosure of payment for order flow practices in the broader context of broker-dealer order handling practices and the special relationship that already exists between a broker-dealer and its customer.[15] The components of the Rules include disclosure at the time an account is opened, annually thereafter, and on the transaction confirmation.

First, the Rules adopted today require broker-dealers to inform customers in writing, when a new account is opened, about the dealer's policies regarding the receipt of payment for order flow, including whether payment for order flow is received; and a detailed description of the nature of the compensation received. As discussed in greater detail below, the new Rule and Rule amendments require that broker-dealers provide information in account opening documents about order routing decisions in orders subject to payment for order flow, including an explanation of the extent to which unpriced orders can be executed at prices superior to the displayed NBBO at the time the order is received. Second, the Rules adopted today require dealers to update this information and to provide such information annually to all customers. Taken together, this information should assist customers in assessing the quality of trade executions they receive and encourage broker-dealers to consider the opportunity for price improvement in establishing order routing arrangements. Finally, the Rules adopted today require broker-dealers to indicate on confirmations whether the broker or dealer receives payment for order flow, and the availability of further information on request. These are described in greater detail below, beginning with the scope of securities subject to the Rules and the types of inducements covered by the Rules.

A. Securities Subject to Disclosure Obligations and Definition of Payment for Order Flow

1. Securities Subject to Disclosure Obligations

As proposed, the obligations of both Rule 11Ac1–3 and the amendments to Rule 10b–10 were limited to orders in national market system securities. The Commission requested comment on whether both Rules should be extended to Nasdaq Small-Cap and OTC Bulletin Board Securities.[16] Commenters addressing this issue supported the inclusion of both and, accordingly, the Commission is expanding Rule 11Ac1–3 and amendments to Rule 10b–10 to include these securities. As revised, both Rules would include "any subject security as defined in § 240.11Ac1–2 or a security authorized for quotation on an automated interdealer quotation system that has the characteristics set forth in Section 17B of the Act * * *."[17]

The Commission believes that inclusion of these securities provides customers with the best picture of a broker-dealer's policies regarding the routing of customer orders and the receipt of payment for order flow. As

[10] Private litigation in several state courts currently is pending regarding payment for order flow. *See, e.g., Investors' State Actions Against Brokers Seek Return of Cash Paid for Order Flow* (BNA), Special Report, Vol. 26, pp. 590–94 (April 22, 1994). Two cases were dismissed on grounds of federal preemption and are currently on appeal. *See Dahl* v. *Charles Schwab & Co., Inc.* (MC 93–106272, District Court, Fourth Judicial District, Hennepin County, Minnesota); *Orman* v. *Charles Schwab & Co., Inc.* (93 CH 7365, Circuit Court of Cook County, Illinois).

[11] *See* letter from John D. Dingell, Chairman, House Committee on Energy and Commerce, to Honorable Richard C. Breeden, Chairman, SEC, dated March 6, 1992. On May 13, 1993, the Subcommittee on Telecommunications and Finance of the House Committee on Energy and Commerce held a hearing regarding the future of the stock market and inducements for order flow. *See National Market System: Hearings Before the Subcomm. on Telecommunications and Finance of the House Comm. on Energy & Commerce*, 103d Cong., 1st Sess. (1993) ("National Market System Hearings").

[12] *See* Proposing Release, *supra* note 1, 58 FR at 52935.

[13] Some commenters believe that current disclosure requirements are adequate and additional disclosure is unnecessary.

[14] *See Market 2000, supra* note 3, Study V at 3–4.

[15] A broker-dealer's duty to seek to obtain best execution of customer orders derives, in part, from the common law agency duty of loyalty, which obligates an agent to act exclusively in the principal's best interest. Restatement 2d Agency section 387 (1958). Thus, when an agent acts on behalf of a customer in a transaction, the agent is under a duty to exercise reasonable care to obtain the most advantageous terms for the customer. Restatement 2d Agency section 424 (1958).

[16] *See* Proposing Release, *supra* note 1, 58 FR at 52940 n.44 and n.46. Two commenters support the inclusion of Nasdaq Small-Cap and OTC Bulletin Board securities in the Commission's proposal. One commenter states that if the goal of disclosure is to provide customers with as much information as possible to make an informed decision regarding where to place their orders, it does not make sense to limit the disclosure requirement to national market system securities but rather the requirement should extend to Nasdaq Small-Cap and OTC Bulletin Board securities.

Two exchanges support the inclusion of options in the confirmation disclosure requirements. One exchange suggests that the Commission consider the ramifications that payment for order flow may have on the options marketplace, especially once multiple trading of options is taken into consideration. *See* letter from Leopold Korins, Chairman and Chief Executive Officer, Pacific Stock Exchange, Inc., to Jonathan G. Katz, Secretary, SEC, dated December 9, 1993. The Commission, therefore, is soliciting comment in a parallel action today on whether amendments to Rule 10b–10 and Rule 11Ac1–3 should extend to the options markets. *See* Companion Release, *supra* note 5.

[17] The OTC Bulletin Board is currently the only automated quotation system that has the characteristics set forth in Section 17B of the Act. *See* letter from Margaret H. McFarland, Deputy Secretary, SEC, to Richard Ketchum, Executive Vice President, National Association of Securities Dealers, Inc. ("NASD"), dated Dec. 30, 1992. The revision to Rule 11Ac1–3 is intended to cover securities included in any other automated quotation systems at such time as the Commission designates them under Rule 15g–3(c)(5).

discussed in the Proposing Release,[18] the practice of payment for order flow originated in the OTC market, and since then has been routinely used as a competitive tool in that market. Payments for Nasdaq and OTC Bulletin Board stocks, moreover, are generally greater than for exchange-listed national market system securities.[19] Accordingly, the Commission believes that the disclosure protections should be extended to the OTC market.

2. Definition of Payment for Order Flow

As proposed, Rule 10b–10(e)(9) defined payment for order flow broadly, to include all forms or arrangements compensating for directing order flow. The Commission received 23 comment letters addressing the scope of the definition. The majority of these commenters were supportive of the Commission's efforts and agreed that non-cash inducements for order flow are economically equivalent to, and have the same effect as, cash payments for order flow. Opponents of the proposed definition, which include most of the exchanges, argued that rebates and fee reductions are structurally different from other cash payments and should be excluded from "monetary" payment for order flow.[20] The Commission has considered all the comments, and for the reasons discussed below, believes that the items enumerated in Rule 10b–10(e)(9) appropriately include arrangements involving payment for order flow.[21]

Rule 10b–10(e)(9) defines payment for order flow to include any monetary payment, service, property, or any other benefit that results in remuneration, compensation or consideration to a broker or dealer in return for the routing of customer orders. Broker-dealers should examine order routing arrangements carefully, with a view toward determining whether the firm has received some form of remuneration as a result of routing orders to that market. As noted, payment for order flow includes non-monetary compensation, such as clearing services or reciprocal order swapping arrangements. It is the Commission's view that monetary and non-monetary inducements are alternative methods of payment to attract order flow and are economically equivalent.[22] As such, non-cash remuneration is as likely to influence the broker's order routing decision as cash. In addition, as is the case with monetary payments, the customer is unlikely to be aware of many of these practices. Thus, the net effect of non-monetary arrangements is not appreciably different than that of monetary payment for order flow. Therefore, the Commission concludes that non-monetary payment for order flow should be included in the definition and should be subject to the regulatory treatment set forth in the proposal.

Payment for order flow also includes any credit, rebate, or discount against execution fees that exceeds the fee charged for executing the order.[23] It is the Commission's view that although SRO fee schedules are reviewed by the Commission under section 19(b) of the Act and appear in the **Federal Register**, the connection between these fee arrangements and a member firm's order routing practices may not be known or apparent to that firm's customers. Moreover, it is possible for an exchange to adjust its fee schedule for members routing orders to provide the economic equivalent of payment for order flow. The existence of such remuneration to the firm, whether in the form of monetary payments or other benefits, should be disclosed directly to customers.[24]

B. New Account and Annual Disclosures

The Commission is adopting Rule 11Ac1–3 to require broker-dealers to provide to customers information regarding their payment for order flow practices when a new account is opened and to all customers annually. The Commission is modifying the Rule to require a description of the broker-dealer's policies for determining where to route customer orders that are subject to payment for order flow absent specific instructions from customers, including a description of the extent to which orders can be executed at prices superior to the NBBO.

In sum, the revised Rule requires broker-dealers to disclose whether they receive payment for order flow. If any type of payment for order flow is received, the broker-dealer must provide a detailed description of the nature of the compensation received and, as discussed below, information about the routing of unspecified orders and whether those orders can be executed at prices better than the NBBO at the time the order is received.

1. Order Routing and Best Execution

To the extent that market center structures differ materially in the opportunity for unpriced orders to be executed at prices that are superior to the NBBO, the receipt of payment for order flow could be viewed as improperly affecting a dealer's determination regarding where to route customer orders and the dealer's ability to satisfy its best execution obligation, if the dealer does not provide as good an overall opportunity for best execution as it would without the payment for order flow.[25] In particular, this could happen when dealers decide to route orders to a market center which does not provide an opportunity for price improvement, although other factors such as the size of the order, speed of execution, and the costs and difficulty associated with achieving best execution in a particular market may negate this conclusion.[26]

[18] *See* Proposing Release, *supra* note 1, 58 FR at 52935.

[19] *See id.*, 58 FR at 52936 n.16.

[20] Several exchanges argue that, unlike cash payments, all exchange charges and fees are filed with the Commission pursuant to Rule 19b–4 under the Act and are a matter of public record. The New York Stock Exchange ("NYSE") added that unlike exchange fee structures, dealers do not charge fees to brokers for use of their services; because there is no "fee" to discount, the NYSE argues that it is disingenuous to suggest any similarity between the two practices. *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan G. Katz, Secretary, SEC, dated December 9, 1993.

[21] In the Companion Release, the Commission is soliciting comment on whether to expand the definition of payment for order flow.

[22] *See, e.g.*, "Inducements for Order Flow," A Report to the Board of Governors, NASD, July 1991; *see also* National Market System Hearings, *supra* note 11.

[23] Thus, payment for order flow would include a fee arrangement in which an exchange charges 50 cents per order but offers a $2.00 per order credit for agency orders, which can be used to offset other fees incurred on that exchange. *See e.g.*, Securities Exchange Act Release No. 32377 (May 27, 1993), 58 FR 31568 (Approving NYSE practice of offering a rebate on every small order (100–2099 shares) delivered via SuperDot and executed by the NYSE specialist). However, payment for order flow would not include fee arrangements in which the market's net charge for executing the order, after any discount, rebate, or credit, is greater than zero.

[24] As initially proposed, "payment for order flow" was defined as "any compensation received from any broker-dealer (including market makers), exchange members, or exchanges to which a broker-dealer routes customers orders for execution, including: Monetary payments, research, products or services * * * discounts and rebates, or any other reduction of or credit against any fee, expense or other financial obligation of the broker or dealer routing a customer order."

In response to comments, the Commission has clarified that the definition of payment for order flow includes discounts, rebates, credits, or other fee arrangements only to the extent that such discounts exceed the fee charged. In addition, the Commission has clarified that payment for order flow received from a registered securities association is also subject to the disclosure rules. The Companion Release solicits comment on whether the definition of payment for order flow should be expanded.

[25] *See Market 2000, supra* note 3, Study V at 4.

[26] As stated in the *Second Report on Bank Securities Activities*,

[While] brokers have not been held by the Commission, the self-regulatory organizations or the courts to an absolute requirement of achieving the most favorable price on each order [,] [w]hat has been required is that the broker endeavor, using due diligence, to obtain the best execution possible

The Commission noted in the Proposing Release that broker-dealers are under a duty to seek the "best execution" of their customer's orders.[27] Broker-dealers accepting remuneration from a market center for directing order flow to that market center are still obligated to fulfill their duty of best execution to their customers.[28] The Commission understands that most firms that pay for order flow guarantee, at a minimum, executions at the NBBO. As stated in the Proposing Release, such so-called quote-derived executions in many ways are not materially different from automated execution systems operated by the regional exchanges for years. While automated execution systems offer fast and assured executions to customers, orders sent to an exchange for manual handling and orders sent to an OTC dealer for manual (or in some cases automated) handling may have a greater opportunity for an execution between the spread than do orders that are routed to a quote-based automated execution system.[29]

The Commission traditionally has concluded that a broker-dealer routing customer orders for automated execution could satisfy its best execution obligations so long as the broker-dealer assesses periodically the quality of competing markets to ensure that its order flow is directed to markets providing the most advantageous terms for its customers' orders.[30] Nevertheless, the Commission's staff recently has warned against presuming that guaranteed executions at the best bid or offer always will satisfy the broker-dealer's best execution duties for small orders in listed securities.[31] For example, as a general matter, trades in listed securities routed to an exchange will be exposed to other public orders or interest in the trading crowd, with the possibility that the order may receive a price that is better than the existing quotations (so-called "price improvement"). Most regional exchanges, for example, have incorporated order exposure features into their small order routing and execution systems with a view toward offering price improvement.[32]

The Commission believes that the possibility for price improvement, while not the exclusive factor, bears on the question of whether a broker-dealer is fulfilling its duty to seek best execution, especially when payment is received by the broker-dealer in return for guaranteeing order flow.[33] Although it may be impractical for a broker or dealer that handles a heavy volume of orders to make an individual determination regarding where to route each order it receives, the broker or dealer must use due diligence to seek the best execution possible given all facts and circumstances. The Commission believes a broker or dealer must assess whether the order flow in the aggregate, is receiving best execution and that a broker-dealer must not allow a payment or an inducement for order flow to interfere with its efforts to obtain best execution. Accordingly, in light of a broker-dealer's obligation to assess periodically the quality of the markets to which it routes packaged order flow absent specific instructions from customers, the Commission does not believe such a broker-dealer violates its best execution obligation merely because it receives payment for order flow.

In this connection, the Commission has taken several steps recently to expand the opportunity for customer market orders to be executed at prices better than the NBBO at the time of receipt, including proposal of a Rule to require limit order price protection in Nasdaq National Market securities.[34] Nevertheless, considerable differences among market centers exist today. Accordingly, consistent with these steps to help customers understand payment for order flow practices, and to facilitate fair competition among exchange and non-exchange market centers, the Commission believes that it is appropriate to require broker-dealers to disclose to customers their policies regarding where they route unspecified orders that are subject to payment for

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given all the facts and circumstances. These factors include, among other things, the size of the order, the trading characteristics of the security involved, the availability of accurate information affecting choices as to the most favorable market in which execution might be sought, the availability of technological aids to process such data, the availability of economic access to the various market centers and the costs and difficulty associated with achieving an execution in a particular market center.

See Second Report on Bank Securities Activities: Comparative Regulatory Framework Regarding Brokerage-Type Services 97–98, n.233 (Feb. 3, 1977), *as reprinted in* H.R. Rep. No. 145, 95th Cong., 1st Sess. 2333 (Comm. Print 1977).

Furthermore, the Commission has stated that "the creation of [other] explicit obligation(s) upon broker-dealers would in no way limit a broker's existing duty to seek to obtain best execution of his customers' orders." SEC, Status Report on the Development of a National Market System, Securities Exchange Act Release No. 15671 (Mar. 22, 1979), 44 FR 20360 (April 4, 1979) ("Status Report") (citing Restatement 2d Agency section 424 (1958)).

[27] *See* Proposing Release, *supra* note 1 at n.24.

As a general matter, the duty of "best execution" refers to the duty of the broker to seek to execute a customer's order in the best available market. *See* Section 11A(a)(1)(C)(iv) of the Act, 15 U.S.C. 78k–1(a)(1)(C)(iv)(1988); Securities Exchange Act Release No. 26870 (May 26, 1989), 54 FR 23963, 23966 n.51 (June 5, 1989 ("Multiple Trading of Standardized Options Release"). *See also Market 2000, supra* note 3, Study V. In its purest form, best execution can be thought of as executing a customer's order so that the customer's total cost or proceeds are the most favorable under the circumstances. *See* Market 2000 Concept Release, *supra* note 3, note 57 and accompanying text.

[28] A broker-dealer's duty to seek best execution of customer orders derives from, among other sources, the common law agency duty of loyalty, which obligates an agent to act exclusively in the principal's best interest. The Commission noted in the Proposing Release its concern that the availability of payments in return for order flow commitments may influence the evaluation by a broker-dealer of the most advantageous market or market maker to whom to route its customer order. Indeed, some opponents of the practice of payment for order flow believe that acceptance and retention of payments by brokers from market makers constitute a breach of duty not permitted under agency common law. *See* Restatement 2d Agency section 388 (1958). While the Commission is concerned about a broker-dealer's fiduciary duty to seek to obtain the best execution for its customer, it believes that bulk order routing based, in part, on the receipt of payment for order flow is not, in and of itself, a violation of those duties. Disclosure of payment for order flow, moreover, could help inform customers and negate the concern that customers are unable to evaluate whether they receive inferior executions due to undisclosed rebates. *See* Securities Exchange Act Release No. 19047 (Sept. 14, 1982), 47 FR 41896 (Sept. 21, 1982).

[29] *See* Proposing Release, *supra* note 1, 58 FR at 52941 n. 59. The footnote cites several studies in this regard: C. Lee, Purchase of Order Flow and Favorable Executions: An intermarket Comparison (1991); T. McInish and R. Wood, Price Discovery, Volume and Regional/Third Market Trading (Feb. 1992); M. Bloom and M. Goldstein, Displayed and Effective Spreads by Market (Dec. 1992).

[30] *See* Status Report, *supra* note 26. *See also Market 2000, supra* note 3, Study V at 1 n.8; Multiple Trading of Standardized Options Release, *supra* note 27, 54 FR at 23973 n. 127; and Securities Exchange Release Act Nos. 17583 (Feb. 27, 1981), 46 FR 15713, 15715 n. 16 (Mar. 9, 1981); and 15926 (June 15, 1979), 44 FR 36912, 36923 n.118 (June 6, 1979).

[31] *Market 2000, supra* note 3, Study V at 4.

[32] *Id.* This feature by itself, however, rarely provides an execution between the spread. Most regional exchanges program their automatic execution systems to ensure that customer orders receive a price at the NBBO or better, and the specialist is provided an opportunity to improve the price. The Philadelphia Stock Exchange ("Phlx") does not have such a feature in its automatic execution system, although the Commission has recommended for years that it be included. *See Market 2000, supra* note 3, Study V at 4 n.19; Proposing Release, *supra* note 1, 58 FR at 52938 n.28; Market 2000 Concept Release, *supra* note 3 57 FR at 32595 n.53; Securities Exchange Act Release Nos. 27013 (July 7, 1989) 54 FR 30298 n.2 (July 19, 1989); 22750 (Dec. 31, 1985), 51 FR 799, 801 (Jan. 6, 1986); 20350 (Nov. 4, 1983), 48 FR 51722, 71723 n.10 (Nov. 10, 1983); 19858 (June 9, 1983), 48 FR 27872, 27873 (June 17, 1983); and 19372 (Dec. 23, 1982), 47 FR 58287, Technical Appendix, n.12 (Dec. 30, 1982).

[33] Because executions of market orders for listed stocks in an exchange market include the possibility for a price between the quotes, the staff has concluded that the existence of this possibility, even if the price is not actually improved, can be a factor in determining whether best execution has been sought. *Market 2000, supra* note 3, Study V.

[34] *See* Securities Exchange Act Release No. 34753 (Sept. 29, 1994), 59 FR 50866 (Oct. 6, 1994).

order flow.[35] This provision requires a description of the extent to which orders so routed can be executed at prices superior to the NBBO at the time the order is received. Dealers should explain, in simple terms, whether the market center to which they route unspecified orders executes orders to purchase or sell at the NBBO and whether it provides an opportunity for execution at prices superior to the NBBO.[36]

2. Annual Disclosure

Several commenters opposed annual disclosure because it would duplicate the account opening disclosure and suggested that the Commission require additional disclosure only upon a material change in the firm's policies. The Commission is retaining the annual disclosure requirement because it believes this will serve to remind customers that evaluation of a dealer's services involves more than a comparison of commission rates and to encourage broker-dealers to continue to evaluate the quality of service they receive from market centers from which they receive payment for order flow.

3. Quantification of Monetary Payment for Order Flow

Over 20 commenters addressed the proposed requirement that broker-dealers inform customers annually about the aggregate amount of monetary compensation received for routing order flow. The majority oppose the inclusion of any aggregate value requirement.[37] The Commission has determined to solicit further comment on this issue in the Companion Release because it believes that aggregate information provides useful information to customers to evaluate the magnitude of payment for order flow practices and whether such payments, taken as a whole, might affect adversely order routing determinations. As discussed in the Companion Release, the Commission has determined to solicit further comment on this issue in conjunction with its proposal to require valuation of all forms of payment for order flow because disclosure of monetary payment for order flow without similar disclosures regarding non-monetary payment for order flow and internalization could mislead investors or foster non-monetary payments or internalized/affiliate practices.

C. Customer Confirmation Statements

As proposed, amended Rule 10b–10(a)(7)(iii)[38] required customer confirmations to disclose whether any payment for order flow has been received for a national market system security and the amount of any monetary payment, discount, rebate or reduction of fee. More than 30 commenters expressed concern about the proposed requirement that broker-dealers disclose on customer order confirmations the amount of any monetary payment, discount, rebate or reduction of fee received in connection with a transaction in a national market system security. Most of these commenters considered this unworkable.[39]

In response to commenters' concerns, the Commission has modified the Rule to require a statement on order confirmations that payment for order flow is received by the broker or dealer and that the source and nature of the payment for order flow received in connection with the particular transaction will be furnished upon written request of the customer.[40] The Commission has determined to allow broker-dealers to conform the statement to the firm's practices, for instance, specifically noting that it limits the receipt of payment for order flow to market orders only, if applicable. Because the definition of payment for order flow includes non-monetary forms of payment for order flow, broker-dealers will be expected to include those forms of compensation in preparing confirmations and to provide the nature and source of the compensation upon written request. The Commission believes that the Rule, as modified, retains informative disclosure to investors.[41] The Commission recognizes that information on the confirmation may not communicate all information of interest to investors about payment for order flow or the quality of order execution. The role of the required disclosures on the confirmation is more limited and is intended to inform customers about the existence of payment for order flow practices and to confirm that which the customer, if interested, already should know about the broker's order handling practices as a result of the new account and annual disclosure statements.

IV. Alternative Proposals

The Commission also solicited comment in the Proposing Release on alternative approaches to regulating the practice of payment for order flow. The Commission invited commenters to address such alternatives as banning payment for order flow and requiring the broker-dealers to pass payment for

[35] As revised, paragraph (a)(2) of the Rule would require broker-dealers to provide information concerning the broker-dealer's policies for determining where to route customer orders that are subject to payment for order flow absent specific instructions from customers, including a description of the extent to which orders can be executed at prices superior to the NBBO.

[36] By the terms of the Rule, this disclosure would be limited to orders that are subject to payment for order flow.

[37] Several broker-dealers argue that disclosure of aggregate amounts of monetary order flow would be misleading to customers. One commenter voiced concerns that investors who transact business in mutual funds or options would be misled by disclosure which only derives from equity order flow. Others believe that even equity customers are likely to be misled because payment derives from large numbers of the broker's own or other customer's orders directed to various marketplaces which may be unrelated to that particular customer's business with the broker-dealer. Still others believe that such disclosure may lead to the misperception that investors are being disadvantaged.

It should be noted that the same commenters opposing aggregate disclosure of monetary compensation also oppose the Commission's proposal regarding confirmation disclosure of monetary compensation *See infra* Section III.C. (Customer Confirmation Statements). In contrast, some commenters suggest quantification requirements extend to non-monetary inducements for order flow and to internalization.

[38] Currently, the Commission's confirmation disclosure rule, Rule 10b–10 under the Act, requires that confirmations sent to customers for agency transactions disclose the "price" of the security purchased or sold by the customer, as well as the remuneration paid to the broker-dealer by the customer in the trade. Rule 10b–10 also requires broker-dealers to disclose the source and amount of any other remuneration received in connection with a transaction. In most transactions, however, the Rule permits broker-dealers merely to state "whether any other remuneration has been or will be received," and to furnish the source and amount of such other remuneration on written request.

[39] Several commenters argue that specific confirmation disclosure is nearly impossible considering that brokers have a variety of arrangements with firms which often include conditions, such as requiring a minimum amount of order flow per month before payments begin; different rates for low-priced securities; and graduated payments based on dollar volume per month. Others argue that it would place an extreme burden on recipient broker-dealers to determine that amount of order flow received for each order in time for a confirmation. Several commenters also argue that specific disclosure would require broker-dealers to reprogram computer systems, perform tracking and report cash payments, and that such expenses are disproportionately high in relation to the potential benefits to customers. Some commenters recommend a generic disclosure statement which would eliminate the high cost of systems changes, yet still inform the customer as to the receipt of payment for order flow. Another concern raised by opponents of the Commission's proposal is that payment is given for an aggregation of orders directed to a particular market center and does not attach to a particular order.

[40] In the Companion Release, the Commission solicits comment on whether broker-dealers should be required to provide ranges, on confirmations, of monetary and non-monetary payment for order flow received and quantification of internalization/affiliate practices on a per share basis. *See* Companion Release, *supra* note 5.

[41] The Commission, however, is proposing in a parallel action, to require quantification of monetary and non-monetary compensation and internalization. *Id.*

order flow through to their customers,[42] and directing securities markets to convert quotations to decimal-based pricing from the current one-eigth fractions. The Commission, however, has determined that these approaches are not the appropriate regulatory response at this time.

A. Banning Payment for Order Flow

The Commission believes disclosure is the appropriate response to the issue raised by payment for order flow. The Commission does not believe that all payment for order flow arrangements are against the customer's best interest and must be banned *per se* as compromising a broker's duty to seek best execution of the customer's order.[43] For example, it is unclear what harm lurks in specialists' or market makers' payment for order flow practices if unpriced orders are subject to a meaningful opportunity for price improvement, or if other benefits are provided to the customer due to the dealer's ability to use the payments. Additionally, the disclosures required by the new Rule and Rule amendments should mitigate concerns opponents may have that investors are unaware of a broker-dealer's order routing practices.

An outright ban at this time, moreover, would represent a radical change to the industry where the payment of cash or its monetary equivalent has become widespread.[44] In addition, banning payment for order flow has associated workability problems.[45] If the practice of cash payment for order flow were banned, because it is only one of many forms of inducement for order flow, the Commission has every reason to believe that an attendant increase in related "soft" inducements for order flow or internalization of order flow would follow.[46] Moreover, it would be impractical to attempt to ban solely soft practices (everything except monetary payment for order flow); such practices are difficult to monitor and industry participants would find alternative avenues for accomplishing the same result. The Commission will continue to monitor developments and will consider additional regulatory steps if necessary to ensure the protection of investors.

B. Decimal Pricing

The Commission also solicited comment on adopting a decimal-based system for the pricing and reporting of all securities for which transactions are reported. Some commenters believe that payment for order flow is, in effect, a reduction in the spread that a market maker charges for executing a pre-determined package of order flow. Under this view, if the NBBO is 20 bid and 20¼ offered, these commenters view the payment of two cents a share for order flow as little more than an indication that, in effect, a market maker is willing to buy at 20.02 and willing to sell at 20.23. Accordingly, these commenters believe that if a decimal pricing system were adopted, market makers could more easily compete by narrowing their displayed quotes, resulting in reduced incentive to pay for order flow. Others question whether the availability of decimals would, in fact eliminate payment for order flow because market makers still only may want to pay for certain types of orders (*e.g.*, a diverse group of small market orders) and, as a result, may not lower their published quotes.

The Commission believes that decimal pricing is the logical next step for the markets to pursue to improve the transparency of the markets and provide opportunities for narrower spreads.[47] Indeed, as an interim measure, the Commission's staff called for the markets to move to pricing in 1/16ths in the near future.[48] In this regard, the Commission understands the markets have undertaken a study of the costs and benefits of changing the current display mechanisms.[49] The Commission looks forward to the prompt completion of the SRO study and the ultimate implementation of revised pricing procedures. While it is currently unclear how decimalization would affect payment for order flow practices, the Commission will monitor the progress of such endeavors and is prepared to reconsider the Rules adopted today, and even to rescind them if decimal pricing or other reforms render payment for order flow obsolete.

V. Implementation Date

The Commission is setting April 3, 1995 as the implementation date for both the amendments to Rule 10b–10 and Rule 11Ac1–3. Thus, for orders received or trades effected on or after April 3, 1995, all customer confirmation statements must contain the new disclosures required by Rule 10b–10, as modified today. For all new accounts opened on or after April 3, 1995, the disclosures required by Rule 11Ac1–3 will be in effect. For existing accounts, the disclosures required by Rule 11Ac1–3 should be made to customers beginning with the first commercially reasonable date after April 3, 1995, but in no event, later than April 3, 1996. For example, if a firm provides annual disclosure statements in January of each year, the disclosures should be made beginning with the January 1996 account statement. If the firm provides quarterly statements, the disclosures should be made beginning with the July 1995 account statement.

The April 3, 1995 date was selected to provide firms with four months to make the necessary systems and forms changes to prepare for the implementation.

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[42] No commenters fully supported the alternative of passing payments through to customers. Three commenters, however, oppose the alternative and argue that the economic advantages of order flow payments already benefit customers of retail firms in the form of lower commission rates. Moreover, some argue compulsory remission of payments may be administratively burdensome for brokers and difficult to enforce due to the difficulty in allocating direct payments for particular orders.

[43] See NASD Rules of Fair Practice, Art. III, section 1, Interpretation of the Board of Governors on Execution of Retail Transactions in the Over-The-Counter Market; and Section 11A(a)(1)(D) of the Act, 15 U.S.C. §78k–1(a)(1)(D) (1988). Broker-dealers also have obligations under the "shingle theory," which states that a dealer who engages in business impliedly represents that he will deal fairly with the public and in accordance with the standards of the profession. *See SEC v. Great Lake Equities Co.*, 755 F. Supp. 211 (E.D. Mich. Sept. 4, 1990); and N. Wolfson, R. Phillips & T. Russo, *Regulation of Brokers, Dealers and Securities Markets* ¶ 2.10, at 2–51 (1977).

[44] Some commenters favor a complete ban on payment for order flow; others favor a ban on cash payments only.

[45] Opponents of a ban argue that payment for order flow is not illegal or unethical and that banning payment for order flow would pose serious workability problems regarding banning some, but not all, practices.

[46] The Commission recognizes that in urging a complete ban, some commenters are looking to address a potential conflict of interest that they believe affects a dealer's ability to meet its fiduciary duties to customers and provide a level playing field for exchange and OTC markets in exchange listed stocks.

[47] *See Market 2000, supra* note 3, Study IV at 8–9.

[48] In January 1994, the Division recommended the adoption of a 1/16th of a dollar increment as a transitional step leading to decimal pricing. *See id.* at 9.

[49] On June 22, 1994, the Subcommittee on Telecommunications and Finance of the House Committee on Energy and Commerce held a hearing regarding decimal-based pricing and unlisted trading privileges. Panelists included: Richard Ketchum, Executive Vice President and Chief Operating Office, NASD; Edward Kwalwasser, Executive Vice President for Regulation, NYSE, Nicholas Giordano, President and Chief Executive Officer, Phlx; and Brandon Becker, Director, Division of Market Regulation, SEC. Congressman Markey and the panelists discussed decimal pricing and moving to sixteenths as an interim measure. Congressman Markey asked the self-regulatory organizations ("SROs") to undertake a joint study, to be completed by January 1995, of the implications of moving to sixteenths (as well as decimal pricing) and the costs and benefits associated with the move. All of the SRO panelists agreed to participate in the study. *The Unlisted Trading Privileges Act of 1994 and Review of the SEC's Market 2000 Study: Hearings Before the Subcomm. on Telecommunications and Finance of the House Comm. on Energy and Commerce*, 103d Cong., 2d Sess. (1994).

VI. Competition Findings

Section 23(a)(2) of the Act[50] requires the Commission in adopting rules under the Act, to consider the anti-competitive effects of such rules, if any, and to balance any impact against the regulatory benefits gained in terms of furthering the purposes of the Act. The Commission believes the proposed Rules will enhance competition among brokers, dealers, and market centers, consistent with the goals of Section 11A and 23(a) of the Act. Several commenters raised concerns that the Rules, as proposed, would require substantial systems changes and therefore, would increase the costs of doing business which would be passed on to customers. The Commission has modified the portion of proposed Rule 10b–10(a)(7)(iii)(B) requiring individualized confirmation disclosure of and the amounts of monetary payment for order flow received. The Rule, as adopted, may eliminate the need for individualized disclosures and for the quantification of payment for order flow. The Commission intends to evaluate these issues further in connection with its Companion Release soliciting comment on amendments to Rule 10b–10 and Rule 11Ac1–3(a)(2).[51] The Commission has considered Rule 11Ac1–3 and amendments to Rule 10b–10 in light of the standard cited in Section 23(a)(2) and believes that adoption of the Rules, as modified, will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

VII. Conclusion

The Commission believes that Rule 11Ac1–3 and amendments to Rule 10b–10(a)(7))iii) and 10b–10(e) will provide relevant, uniform disclosure to customers regarding details of their order executions. It is the Commission's view that the Rule and Rule amendments will enhance investor protection and further competition for retail orders by enabling customers to evaluate better the markets to which their orders are routed. The Commission further believes that broker-dealers can make the necessary systems and forms changes to comply with the Rules, as amended, with limited resource and systems changes. The Commission recognizes, however, that the extent and nature of the modifications depends upon the current capabilities of each firm. Nevertheless, the Commission recommends that, as necessary, broker-dealers that need to make systems changes evaluate their progress as the implementation date approaches and make adjustments as appropriate to ensure a smooth transition to the enhanced disclosure of payment for order flow.

VIII. Summary of Final Regulatory Flexibility Analysis

The Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA") regarding Rules 10b–10 and 11Ac1–3, in accordance with 5 U.S.C. 604. The FRFA notes the potential costs of operational and procedural changes that may be necessary to comply with the Rule. A copy of the FRFA may be obtained by contacting Jill W. Ostergaard, Attorney, Branch of the National Market System, Office of Market Supervision, Division of Market Regulations, Securities and Exchange Commission, 450 Fifth Street NW., Mail Stop 5–1, Washington, DC 20549.

List of Subjects in 17 CFR Part 240

Brokers and dealers, Registration and regulation, Securities.

Text of the Amendments

For the reasons set out in the preamble, the Commission amends Part 240 of Chapter II of Title 17 of the *Code of Federal Regulations* to read as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The general authority citation for part 240 is revised to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78*m*, 78*n*, 78*o*, 78*p*, 78*q*, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4 and 80b-11, unless otherwise noted.

* * * * *

2. By amending § 240.10b-10 by redesignating paragraph (a)(7)(iii) as paragraph (a)(7)(iv), adding paragraphs (a)(7)(iii) and (e)(9), and revising paragraph (a)(8) to read as follows:

§ 240.10b-10 Confirmation of transactions.

(a) * * *

(7) * * *

(iii) For a transaction in any subject security as defined in § 240.11Ac1–2 or a security authorized for quotation on an automated interdealer quotation system that has the characteristics set forth in Section 17B of the Act (15 U.S.C. 78q-2), a statement whether payment for order flow is received by the broker or dealer for transactions in such securities and that the source and nature of the compensation received in connection with the particular transaction will be furnished upon written request of the customer; and

(8) If he is acting as principal for his own account. (i)(A) If he is not a market maker in that security and, if, after having received an order to buy from such customer, he purchased the security from another person to offset a contemporaneous sale to such customer or, after having received an order to sell from such customer, he sold the security to another person to offset a contemporaneous purchase from such a customer, the amount of any mark-up, mark-down, or similar remuneration received in an equity security; or

(B) In any other case of a transaction in a reported security, the trade price reported in accordance with an effective transaction reporting plan, the price to the customer in the transaction, and the difference, if any, between the reported trade price and the price to the customer.

(ii) In the case of a transaction in an equity security, whether he is a market maker in the security (otherwise than by reason of his acting as a block positioner in that security).

* * * * *

(e) * * *

(9) *Payment for order flow* shall mean any monetary payment, service, property, or other benefit that results in remuneration, compensation, or consideration to a broker or dealer from any broker or dealer, national securities exchange, registered securities association, or exchange member in return for the routing of customer orders by such broker or dealer to any broker or dealer, national securities exchange, registered securities association, or exchange member for execution, including but not limited to: research, clearance, custody, products or services; reciprocal agreements for the provision of order flow; adjustment of a broker or dealer's unfavorable trading errors; offers to participate as underwriter in public offerings; stock loans or shared interest accrued thereon; discounts, rebates, or any other reductions of or credits against any fee to, or expense or other financial obligation of, the broker or dealer routing a customer order that exceeds that fee, expense or financial obligation.

* * * * *

3. Section 240.11Ac1–3 is added to read as follows:

§ 240.11Ac1–3 Customer account statements.

(a) No broker or dealer acting as agent for a customer may effect any transaction in, induce or attempt to induce the purchase or sale of, or direct orders for purchase or sale of, any

[50] 15 U.S.C. 78w(a)(2).

[51] *See* Companion Release, *supra* note 5.

subject security as defined in § 240.11Ac1–2 or a security authorized for quotation on an automated inter-dealer quotation system that has the characteristics set forth in section 17B of the Act (15 U.S.C. 78q–2), unless such broker or dealer informs such customer, in writing, upon opening a new account and on an annual basis thereafter, of the following:

(1) The broker's or dealer's policies regarding receipt of payment for order flow as defined in § 240.10b–10(e)(9), from any broker or dealer, national securities exchange, registered securities association, or exchange member to which it routes customers' orders for execution, including a statement as to whether any payment for order flow is received for routing customer orders and a detailed description of the nature of the compensation received; and

(2) The broker's or dealer's policies for determining where to route customer orders that are the subject of payment for order flow as defined in § 240.10b–10(e)(9) absent specific instructions from customers, including a description of the extent to which orders can be executed prices superior to the best bid or best offer as defined in § 240.11Ac1–2.

(b) *Exemptions.* The Commission, upon request or upon its own motion, may exempt by rule or by order, any broker or dealer or any class of brokers or dealers, security or class of securities from the requirements of paragraph (a) of this section with respect to any transaction or class of transactions, either unconditionally or on specified terms and conditions, if the Commission determines that such exemption is consistent with the pubic interest and the protection of investors.

By the Commission.

Dated: October 27, 1994.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–27109 Filed 11–1–94; 8:45 am]

BILLING CODE 8010–01–P–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–34903; File No. S7–30–94]

RIN 3235–AG00

Internalized/Affiliate Practices, Payment for Order Flow and Order Routing Practices

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Securities and Exchange Commission is proposing to revise its rules governing disclosure to customers by broker-dealers of practices related to the routing of order flow, including payment for order flow, internalization of order flow, and affiliate practices. The proposed amendments are intended to provide customers with more useful information in evaluating the quality of executions.

DATES: Comments should be submitted on or before December 15, 1994.

ADDRESSES: Interested persons should submit three copies of their written data, views and opinions to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and should refer to File No. S7–30–94. All submissions will be made available for public inspection and copying at the Commission's Public Reference Room, Room 1024, 450 Fifth Street, NW., Washington DC 20549.

FOR FURTHER INFORMATION CONTACT: Jill W. Ostergaard, 202/942–3197, Attorney, Office of Market Supervision, Division of Market Regulation, Securities and Exchange Commission (Mail Stop 5–1), 450 5th Street, NW., Washington DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

The Securities and Exchange Commission ("SEC" or "Commission") is proposing to amend its rules governing disclosure of broker-dealer payment for order flow and the practice of executing orders as principal or routing orders to an affiliated broker-dealer or exchange specialist ("internalized/affiliate practices"), Rule 10b–10 (17 CFR 240.10b–10) and Rule 11Ac1–3 (17 CFR 240.11Ac1–3) under the Securities Exchange Act of 1934 ("Act"). As described below and in a related release, both payment for order flow and internalized/affiliate practices have been the subject of extensive debate.[1]

The proposed Rule amendments regarding payment for order flow also are intended to enhance disclosure to customers of compensation their broker-dealer may receive from market centers[2] in return for routing customer orders to them for execution.[3] The amendments would require broker-dealers receiving payment for order flow to provide customers additional information regarding the value of the compensation received. The proposed additional disclosures would include, for monetary payment for order flow, the range of payments received on a per share basis and on an aggregate basis annually, and for non-monetary payment for order flow, an estimate of the range of payment for order flow on a per share basis and on an aggregate basis annually. These disclosures would be required when a customer opens an account, on an annual basis thereafter, and in abbreviated fashion on required confirmations. The proposed amendments would require similar disclosure with respect to the value of order flow subject to internalized/affiliate practices.

The Commission also is proposing that broker-dealers disclose to their customers information regarding their order routing practices generally, regardless of whether they receive payment for order flow or engage in internalized/affiliate practices.

The proposed amendments regarding internalized/affiliate practices are intended to address comments the Commission received in connection with its consideration of payment for order flow practices and to elicit further discussion regarding their implications. In connection with the Adopting Release, six commenters indicated that the internalization of order flow by broker-dealers presents issues similar to those commonly associated with payment for order flow. These commenters argued that the opportunity to capture the spread through internalized/affiliate practices encourages broker-dealers to execute orders in house or to send orders to an affiliated broker-dealer or exchange specialist. At the most basic level, under each practice the broker-dealer is influenced with respect to where it will route customer orders.

The proposed amendments would require broker-dealers to inform customers on new account and annual disclosure statements whether they execute orders as principal or route those orders to affiliated firms. These amendments are designed to provide customers with more information about firms' order routing decisions, especially in light of changes that might result from requiring additional disclosure of payment for order flow practices.

Finally, the proposed rule amendments would extend confirmation and account statement disclosure of payment for order flow to transactions in standardized options.

In the Adopting Release issued today, the Commission adopted requirements for additional disclosure of payment for order flow practices.[4] Commenters are encouraged to review the Adopting Release in considering the amendments proposed today. The discussion that follows describes the proposed amendments and solicits views regarding those amendments.

II. Discussion

A. Definition and Quantification of Payment for Order Flow

The proposed amendments would require broker-dealers to provide more detailed information to customers regarding payment for order flow. The proposed amendments would require broker-dealers receiving monetary payment for order flow to disclose the range of payments received on a per share basis and the aggregate amount of payment for order flow received on an annual basis, and, for non-monetary payment for order flow, to disclose an estimate of the range of non-monetary payment for order flow received by the broker-dealer on a per share basis and on an aggregate basis annually.

1. Definition of Payment for Order Flow

The Commission, in the Adopting Release, adopted a definition of payment for order flow that includes monetary payments, services, property or any other benefit offered for order flow that results in remuneration to the firm in return for the routing of customer orders for execution. As discussed below, the proposed amendments would establish definitions of monetary and non-monetary payment for order flow, defining monetary payment for order flow as any monetary payment,

[1] *See* Securities Exchange Act Release No. 34902 (October 27, 1994) ("Adopting Release").

[2] As used in this release, the term market center includes exchanges and dealers acting as market makers. *See* 17 CFR 240.11Ac1–2(a)(14) (defining "reporting market center").

[3] The Commission is also soliciting comment whether certain inducements to routing order flow should be included in the definition of payment for order flow.

[4] *See* Adopting Release, *supra* note 1.

discount, rebate or reduction of fee to the extent that the payment, discount, rebate or reduction exceeds the fee charged. At the same time, however, the Commission is concerned that other practices used by market centers are designed to induce broker-dealers to direct order flow, and, therefore, may present issues similar to those practices currently defined as payment for order flow in the Adopting Release. The Commission is soliciting comment on whether to expand the definition of payment for order flow. Specifically, the Commission is considering expanding the definition to include volume discounts, rebates, reductions or other inducements for order flow, even if not in excess of the execution fee charged by a market center.[5] Commenters should specifically indicate which practices should be included in the definition to provide the maximum benefit to investors and encourage equivalent regulatory treatment among competing market centers consistent with the purposes of the Act.

The Commission also requests the views of commenters as to whether a differential in fees between competing market centers should be considered as the economic equivalent of payment for order flow for either or both general disclosure and quantification purposes. This differential might be viewed as affecting the order routing determination of a broker-dealer in a manner similar to payment for order flow.

Commenters also are asked to address why payment for order flow should exist in certain instances, but not others, when the inducement for order flow to be routed to one market center or another is identical in both instances. For example, assume that one market center currently pays $.02 per share for order flow, while a competing market center charges a fee of $.05 per share to handle customer orders, resulting in an overall differential of $.07 per share. Under the current definition, the first market center would be deemed to be paying for order flow, quantified as $.02 per share. Why should payment for order flow be deemed to no longer exist where, as a result of a $.02 per share increase in costs uniformly incurred by all market centers, the first market center simply ceased paying for order flow in favor of handling customer orders without charge, while its competitor proportionately increased the fees charged for handling customer orders to $.07 per share? In this instance, the first market center maintains the identical differential in terms of the inducement to broker-dealers to direct order flow to the first market center, as opposed to the second.

In a related manner, commenters are requested to indicate whether the proposed quantification of payment for order flow (discussed more fully in the next Section) accurately reflects the inducement to a broker-dealer to route orders to a particular market center. For instance, in the example noted above, is the amount of the inducement that should be disclosed in connection with payment for order flow paid by the first market center $.02 per share, as would be the case under the current definition of payment for order flow in Rule 11Ac1–3, or does the $.07 per share differential more accurately reflect the level of inducement for order flow?

2. Quantification of Payment for Order Flow

The proposed amendments would establish definitions of "monetary payment for order flow" and "non-monetary payment for order flow." The term monetary payment for order flow would be defined in section 10b–10(e)(10) to mean "any monetary payment, discount, rebate or reduction of fee to the extent that the payment, discount, rebate or reduction exceeds the fee charged." The term non-monetary payment for order flow would be defined in section 10b-10(e)(11) to mean "any payment for order flow received other than monetary payment for order flow."

The Adopting Release, while requiring additional disclosure of payment for order flow practices, does not require disclosure of the amount of any payment for order flow. Certain of the proposed amendments to Rule 11Ac1–3 would focus on this disclosure. For monetary payment for order flow, the broker-dealer would be required by Rule 11Ac1–3(a) (3) and (4) to disclose the aggregate amount of monetary payment for order flow received annually, and the range of monetary payment for order flow received on a per share basis. The proposed amendments to Rule 11Ac1–3(a) (5) and (6) would require broker-dealers to disclose to customers at account opening and annually thereafter, an estimate of the aggregate value of non-monetary payment for order flow received by the broker-dealer in return for directing order flow on an annual basis, and an estimate of the range of non-monetary payment for order flow received on a per share basis.

The proposal calls for an estimate of non-monetary payment for order flow, recognizing that precision may not be possible. To the extent that a broker-dealer finds it difficult to estimate the per share value of non-monetary payment for order flow, the Commission would envision permitting the broker-dealer to assume the value of the non-monetary compensation was equal to the cash per share payment for order flow received from the same source, or, if none, similar sources. The assumption would be that a broker-dealer, in choosing the form of payment for order flow, would demand a value that is commensurate with the amount of cash that could be received from the same or competing market maker or specialist. Commenters are requested to identify alternative methods by which firms might arrive at an estimate of the value of non-monetary payment for order flow.[6]

The proposed rule would require an estimate of the range of non-monetary payment for order flow received by the broker-dealer expressed on a per share basis. To comply with this requirement, broker-dealers would be expected to use the estimate required by Rule 11Ac1–3(a)(5) in calculating the range of values to be disclosed. The proposed rule would recognize expressly that the calculation of values represents an estimate.[7]

The Commission also is proposing to require broker-dealers who receive payment for routing orders to include information on the confirmation. Proposed Rule 10b–10(a)(7)(B) would require, for any monetary payment for order flow received, confirmation disclosure of the range of payments received on a per share basis. Proposed Rule 10b–10(a)(7)(iii)(C) would require, for any non-monetary payment for order flow received, an estimate by the broker-dealer of the range in value of non-monetary compensation on a per share basis. Because it may not be possible to identify immediately after execution which orders are subject to payment for order flow arrangements or the *pro rata* value of a specific order, the Commission is proposing to require disclosure of an estimate of the range in

[5] Some commenters have suggested that there is no distinction between cash payment for order flow and these inducements. *See* "Inducements for Order Flow," A Report to the Board of Governors, NASD, July 1991.

[6] Commenters are also requested to indicate the extent to which valuations may vary depending on the form of non-monetary compensation or other factors, and whether this would pose problems for estimating and disclosing the valuations.

[7] One commenter believes that value estimates of non-monetary compensation may be based on fair value as determined in good faith by the management of the broker-dealer. *See* letter from Alan B. Levenson, Fulbright & Jaworski L.L.P. and Irving M. Pollack (on behalf of Herzog, Heine, Geduld, Inc.), to Jonathan G. Katz, Secretary, SEC, dated December 9, 1993.

value of compensation that may have been received, stated on a per share basis. Proposed Rule 10b–10(a)(7)(iii)(B) and (C) also would require, for any non-monetary payment for order flow received, a statement that the nature and source of such compensation will be furnished upon written request of the customer.

In crafting the proposed amendments, the Commission is mindful of the concern that requiring quantification of monetary but not non-monetary payment for order flow could result in broker-dealers moving toward potentially undisclosed compensatory practices, such as non-monetary payment for order flow.[8] Thus, it has sought to require disclosure of non-monetary payment for order flow similar to the disclosure requirements established for monetary payment for order flow. This is intended to provide customers with equivalent information to evaluate a broker-dealer's order routing arrangements, and to remove any regulatory disparity between monetary and non-monetary payments.

The Commission invites commenters to address whether the proposed amendments would accomplish these goals, and whether there are other ways to accomplish these goals. The Commission specifically requests comment on the ability of broker-dealers to determine whether a non-monetary payment is in return for order flow, and their ability to estimate the value of the various forms of non-monetary payments.

B. Internalized/Affiliate Practices

Rule 11Ac1–3, as adopted, requires broker-dealers who receive payment for order flow to disclose their policies for determining where to route orders that are subject to payment for order flow absent specific instructions from customers. That Rule would not expressly require broker-dealers to provide information about their order routing policies if instead of receiving payment for order flow in return for routing orders, they simply executed the orders for their own account.[9]

The Commission is concerned that internalized/affiliate practices may raise questions similar to payment for order flow practices regarding the obligations of brokers to their customers, such as whether firms that internalize order flow are providing best execution of customer orders.[10] In proposing Rule 11Ac1–3 in October 1993, the Commission invited comment on the implications of these practices and whether additional disclosure would be desirable.[11] Seven commenters addressed internalization/affiliate practices; six favored a regulatory response[12] and one opposed it.[13]

The Commission is proposing to amend Rule 11Ac1–3 to require broker-dealers who choose to internalize or route orders to affiliated organizations to provide information about this policy parallel to the information that Rule 11Ac1–3 requires them to provide concerning the routing of orders in return for payment for order flow. As defined in proposed Rule 10b–10(e)(12), internalized/affiliate order routing practices shall mean the execution of an order by a broker-dealer as principal, or the routing of an order by the broker-dealer to an affiliated broker-dealer or exchange member. Specifically, the amendment to Rule 11Ac1–3(a)(2) would require firms to disclose their policies for determining where to route customers' orders, absent specific instructions from customers, including whether orders are executed as principal, orders are routed to an affiliated broker-dealer, or to an unaffiliated broker-dealer or market center, including a description of the extent to which orders can be executed at prices superior to the NBBO.

The Commission also is proposing to extend the confirmation and account statement valuation requirements to internalized/affiliate order flow practices. The Commission requests comment on this aspect of the proposed rule and the ability of broker-dealers to estimate the value of internalized/affiliate order flow. The Commission realizes that, as in the case of non-monetary payment for order flow, precision in this area may not be possible. Therefore, the Commission seeks the views of commenters as to whether the value of internalized order flow may be reasonably approximated by reference to the monetary amount per share that a broker-dealer could have received for such order flow from a competing market center, or by other methods, such as by measuring the difference between the spread received by a broker-dealer engaging in internalized/affiliate practices and the amount that the broker-dealer could have received for the order flow from another market center.[14]

The Commission invites commenters to address whether the proposed amendment would provide customers with meaningful information and would further the goals of section 11A of the Act. To the extent that they believe

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[8] Some commenters argue that treating monetary and non-monetary payment for order flow differently creates an incentive for dealers to restructure cash payment arrangements into payments in kind.

[9] In recent years, multi-service broker-dealers, clearing firms, and others have acquired interests in specialist units, particularly on regional exchanges, although several specialists on the New York Stock Exchange ("NYSE") and American Stock Exchange ("Amex") are affiliated with upstairs firms. These firms then route small customer orders for execution to their affiliated specialist. *See* Division of Market Regulation, Securities and Exchange Commission, *Market 2000: An Examination of Current Equity Market Developments* (Jan. 1994) ("*Market 2000*"), Study II at 9 and Exhibit 29.

The Commission recently discussed the potential implications of internalization for the structure of the national market system in the context of proposals by two national securities exchanges to establish or extend marketplace programs that might facilitate internalization practices. *See* Securities Exchange Act Release Nos. 34078 (May 18, 1994), 59 FR 27082 (May 25, 1994) (File No. SR–BSE–93–12); 34493 (August 5, 1994), 59 FR 41531 (August 12, 1994) (File No. SR–CSE–94–06). Internalized/affiliate practices also were discussed in Congressional hearings on market structure a few months ago and, earlier this year, the Division of Market Regulation discussed this topic in its Market 2000 Report. *See Market 2000*, Study II at 9 and Exhibit 29; *Oversight Hearing on the Structure of the Marketplace with a Focus on the Market 2000 Report and the Unlisted Trading Privileges Act of 1994 Before the Subcomm. on Telecommunications and Finance of the House Comm. on Energy and Commerce*, 103d Cong., 2d Sess. (1994).

[10] An extensive discussion of the "best execution" obligation appears in the Adopting Release as well as the release proposing Rule 11Ac1–3 for comment. *See* Adopting Release, *supra* note 1 at nn.26–36 and accompanying text; Securities Exchange Act Release No. 33026 (October 6, 1993) 58 FR 52934, 52937–52938 (October 13, 1993) ("October 1993 Proposing Release").

[11] *See Id.* at n.38.

[12] Letters to Jonathan G. Katz, Secretary, SEC, from: Jules L. Winters, Chief Operating Officer, American Stock Exchange ("Amex"), dated December 21, 1993 ("Amex letter"); Robert F. Price, Managing Director, Alex. Brown & Sons, Inc., dated December 23, 1993; George A. Brown, Brown & Company, dated December 2, 1993; John N. Tognino, Executive Vice President, Capital Markets and Trading, Charles Schwab & Co. Inc., dated December 8, 1993; Chris A. Hynes, President, State Street Brokerage Services, Inc., dated December 1, 1993 ("State Street letter"); and Thomas W. Clegg, Sr., Vice President, Wheat First Securities, Inc., dated November 30, 1993.

The Amex stated that internalization impedes price discovery and makes best execution less likely, and because internalized order flow provides the executing market maker with a dealer spread on every internalized trade, there is little incentive for the dealer to narrow the quoted spread. *See* Amex letter. One brokerage firm argued that the failure to regulate internalization creates a competitive advantage for large integrated firms. *See* State Street letter.

[13] This commenter noted that in an exchange environment, "the continuous affirmative obligations imposed on exchange specialists and the auction-type trading process inherent in trading on exchanges limit the extent to which internalization can be accomplished." *See* letter from John I. Fitzgerald, Executive Vice President, Legal Affairs and Trading Services, Boston Stock Exchange, Inc., to Jonathan G. Katz, Secretary, SEC, dated December 10, 1993.

[14] The Commission is concerned that to the extent that the value of monetary and non-monetary payment for order flow are quantified but the value of orders subject to internalized/affiliate practices are not, broker-dealers may be encouraged to engage in the latter practices to a greater degree.

payment for order flow and internalized/affiliate practices should be treated differently for regulatory purposes, commenters are requested to indicate why concerns with respect to internalization are less compelling than those frequently associated with payment for order flow practices. Similarly, the Commission recognizes that the unequal regulatory treatment of internalized order flow may result in an increase in the amount of customer orders that are executed directly by a broker-dealer or its affiliates.

C. Order Routing Disclosure

As proposed, Rule 11Ac1–3(a)(2) would require all broker-dealers to disclose their policies for determining where to route customer orders absent specific instructions from the customer, as well as a description of the extent to which orders may receive price improvement. If adopted, this disclosure currently required under Rule 11Ac1–2 would be required for all orders, regardless of whether the broker-dealer received payment for order flow or engaged in internalized/affiliate order routing practices.

The Commission believes that the proposed disclosure of order routing practices is consistent with its goal of providing customers with information to enhance their ability to evaluate the quality of execution received, and to make informed decisions with respect to the selection of broker-dealers. Under Rule 10b–10 of the Act, the Commission currently requires broker-dealers to disclose their capacity as agent or principal with respect to customer transactions, the agency commission received in connection with a particular transaction, and the source and amount of any additional remuneration to be received in connection with a transaction, among other matters.[15] As a result of these disclosures, investors have a better understanding of commissions and other costs associated with the execution of a transaction. The Commission believes that proposed Rule 11Ac1–3(a)(2) will further facilitate the ability of investors to understand order routing possibilities and the decisions made by broker-dealers in this regard. The Commission believes that such information would be of significant benefit to investors.

For example, a broker-dealer's decision regarding the routing of orders involving securities listed for trading on national securities exchanges raises the issue of price improvement. Orders in such securities that are routed to certain exchange facilities typically will receive an opportunity for price improvement,[16] while similar orders routed to other market centers—and, currently, generally with respect to all non-listed securities—may forgo this possibility.

In addition to enhancing the ability of customers to evaluate the costs and benefits of a broker-dealer's order routing determinations, the Commission believes that the proposed amendment to Rule 11Ac1–3(a)(2) will help obviate some of the difficulty in identifying those practices that involve conflicts between the interests of broker-dealers and their customers. In light of the complexity and the perceived economic similarity between payment for order flow and other market practices designed to induce or influence order flow, or that present the same concerns—such as internalization practices—the Commission believes that the requirement that all broker-dealers disclose their order routing practices will help facilitate equal regulation, reduce investor confusion, and further empower investors to make informed decisions in their own best interests. Broker-dealers making disclosure under the proposed rule are encouraged to explain how their order routing determinations are in the overall best interests of their customers.

Finally, the Commission also solicits the views of commenters regarding whether the disclosure of broker and dealer order routing policies should be set forth in a standardized format on the confirmation involving, for example, general categories of order routing practices such as internalized/affiliate order flow, order flow subject to payment for order flow, and order flow routed to unaffiliated market centers, thereby facilitating customer understanding and ease of comprehension.

D. Expanding the Scope of Covered Securities to Include Standardized Options

Rule 11Ac1–3 does not apply to exchange-traded options. Although the October 1993 Proposing Release did not request comment on whether payment for order flow disclosures should be extended to these securities, two exchanges expressed support for such a change, but otherwise no comments were received on this subject.[17] In light of the favorable, albeit limited comments, the Commission proposes to amend Rules 11Ac1–3 and 10b–10 to include standardized options. The Commission particularly invites comment on whether the disclosure requirements would result in unique problems for firms effecting transactions in options.

III. Request for Comment

The Commission invites comment on all the issues raised in this release including expanding the definition of payment for order flow, the proposed amendments to Rule 10b–10, the amendments to Rule 11Ac1–3 regarding disclosure of the value of payment for order flow and internalization/affiliate practices, inclusion of standardized options, and other approaches that address internalization/affiliate practices and payment for order flow, including a requirement that broker-dealers describe their order routing practices for all orders.

The Commission also requests commenters to address the feasibility of adopting the proposed amendments to become effective on April 3, 1995, the date newly adopted Rule 11Ac1–3 and amendments to Rule 10b–10 are to take effect.

In addition to the specific requests for comment set forth above, the Commission requests comment on whether the proposed rule amendments, if adopted, would have an adverse effect on competition or would impose a burden on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act. Comments on the inquiry will be considered by the Commission in complying with its responsibilities under Section 23(a)(2) of the Exchange Act.

IV. Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") in accordance with 5 U.S.C. sec. 603 regarding the proposed rules. The following summarizes the conclusions of the IRFA.

The IRFA uses certain definitions of "small entities" adopted by the Commission for purposes of the Regulatory Flexibility Act. The Analysis notes that the proposed rule amendments would require at the time an account is opened and on an annual basis thereafter, broker-dealers to disclose their policies for routing customer orders in exchange listed securities, provide the range of monetary payment for order flow received on a per share basis on the

[15] 17 CFR 240.10b–10.

[16] *But see* Adopting Release, *supra* note 1, at n.33.

[17] One exchange suggested that the Commission consider the ramifications that payment for order flow may have on the options marketplace, especially once multiple trading of options is taken into consideration. *See* letter from Leopold Korins, Chairman and Chief Executive Officer, Pacific Stock Exchange, Inc., to Jonathan G. Katz, Secretary, SEC, dated December 9, 1993.

confirmation, the aggregate value of monetary payment for order flow, an estimate of the aggregate value of non-monetary payment for order flow and internalized/affiliate orders, and an estimate of the range of non-monetary payment for order flow and internalized/affiliate orders received by the broker-dealer on a per share basis on the confirmation. The proposals could necessitate changes to broker-dealer confirmation systems that generally do not provide that specific information now. Broker-dealers would need to keep records of payment for order flow to fulfill the disclosure requirements of the proposed rule amendments. A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Jill W. Ostergaard, Attorney, Office of Market Supervision, Division of Market Regulation, Securities and Exchange Commission, Washington, DC 20549, 202/942-3197.

V. Text of the Amendments

List of Subjects in 17 CFR Part 240

Brokers; Reporting and recordkeeping requirements; Securities.

For the reasons set out in the preamble, the Commission proposes to amend part 240 of chapter II of title 17 of the Code of Federal Regulations to read as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4 and 80b-11, unless otherwise noted.

* * * * *

2. By amending § 240.10b-10 by revising paragraph (a)(7)(iii), and adding paragraphs (e)(10), (e)(11), and (e)(12) to read as follows:

§ 240.10b-10 Confirmation of transactions.

(a) * * *

(7) * * *

(iii) For a transaction in any subject security as defined in § 240.11Ac1-2, a security authorized for quotation on an automated interdealer quotation system that has the characteristics set forth in Section 17B of the Act (15 U.S.C. 78q-2), or a standardized option as defined in § 240.9b-1.

(A) A statement whether payment for order flow is received by the broker or dealer for transactions in such securities;

(B) For monetary payment for order flow received, the range of payments received for such securities on a per share basis and a statement that the source and amount received in connection with the particular transaction will be furnished upon written request of the customer;

(C) For non-monetary payment for order flow received, an estimate of the range of non-monetary payment for order flow received by the broker or dealer on a per share basis and a statement that the nature and source of such compensation will be furnished upon written request of the customer; and

(D) A statement whether transactions in such securities are subject to internalized/affiliate order routing practices and an estimate of the range in value of such order flow on a per share basis, and that additional information will be furnished upon written request of the customer; and

* * * * *

(e) * * *

(10) *Monetary payment for order flow* shall mean any monetary payment, discount, rebate or reduction of fee to the extent that the payment, discount, rebate or reduction exceeds the fee charged.

(11) *Non-monetary payment for order flow* shall mean any payment for order flow received other than monetary payment for order flow.

(12) *Internalized/affiliate order routing practices* shall mean the execution of an order by the broker or dealer as principal, or the routing of an order by the broker or dealer to an affiliated broker, dealer, or exchange member.

* * * * *

3. By amending § 240.11Ac1-3 by revising the introductory text of paragraph (a), paragraph (a)(2) and adding paragraphs (a)(3) through (a)(8) to read as follows:

§ 240.11Ac1-3 Customer account statements.

(a) No broker acting as agent for a customer may effect any transaction in, induce or attempt to induce the purchase or sale of, or direct orders for purchase or sale of, any subject security as defined in § 240.11Ac1-2, a security authorized for quotation on an automated interdealer quotation system that has the characteristics set forth in section 17B of the Act (15 U.S.C. 78q-2), or a standardized option as defined in 240.9b-1, unless such broker or dealer informs such customer, in writing, upon opening a new account and on an annual basis thereafter, of the following:

(1) * * *

(2) The broker's or dealer's policies for determining where to route customers' orders, absent specific instructions from customers, including:

(i) A statement whether the broker or dealer executes orders as principal, routes orders to an affiliated broker, dealer, or exchange member, or to another broker, dealer, exchange member, or an exchange; and

(ii) A description of the extent to which orders in such securities can be executed at prices superior to the best bid or offer as defined in § 240.11Ac1-2(a)(15);

(3) The aggregate amount of monetary payment for order flow as defined in § 240.10b-10(e)(10) received by the broker or dealer in return for directing order flow on an annual basis;

(4) The range of monetary payment for order flow received by the broker or dealer on a per share basis;

(5) An estimate of the aggregate value of non-monetary payment for order flow, as defined in § 240.10b-10(e)(11), received by the broker or dealer in return for directing order flow on an annual basis;

(6) An estimate of the range of non-monetary payment for order flow, as defined in § 240.10b-10(e)(11), received by the broker or dealer on a per share basis;

(7) An estimate of the aggregate value of the order flow of internalized/affiliate order routing practices, as defined in § 240.10b-10(e)(12), on an annual basis; and

(8) An estimate of the range in value of the order flow of internalized/affiliate order routing practices, as defined in § 240.10b-10(e)(12) on a per share basis.

* * * * *

By the Commission.

Dated: October 27, 1994.

Jonathan G. Katz,

Secretary.

[FR Doc. 94-27108 Filed 11-1-94; 8:45 am]

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H.R. 3678/P.L. 103–426
To authorize the Secretary of the Interior to negotiate agreements for the use of Outer Continental Shelf sand, gravel, and shell resources. (Oct. 31, 1994; 108 Stat. 4371; 2 pages)

H.R. 4196/P.L. 103–427
To ensure that timber-dependent communities adversely affected by the Forest Plan for a Sustainable Economy and a Sustainable Environment qualify for loans and grants from the Rural Development Administration. (Oct. 31, 1994; 108 Stat. 4373; 2 pages)

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To authorize the Export-Import Bank of the United States to provide financing for the export of nonlethal defense articles and defense services the primary end use of which will be for civilian purposes. (Oct. 31, 1994; 108 Stat. 4375; 2 pages)

H.R. 4778/P.L. 103–429
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To designate certain lands in the California Desert as wilderness, to establish the Death Valley and Joshua Tree National Parks, to establish the Mojave National Preserve, and for other purposes. (Oct. 31, 1994; 108 Stat. 4471; 55 pages)

S. 1146/P.L. 103–434
To provide for the settlement of the water rights claims of the Yavapai-Prescott Indian Tribe in Yavapai County, Arizona, and for other purposes. (Oct. 31, 1994; 108 Stat. 4526; 40 pages)

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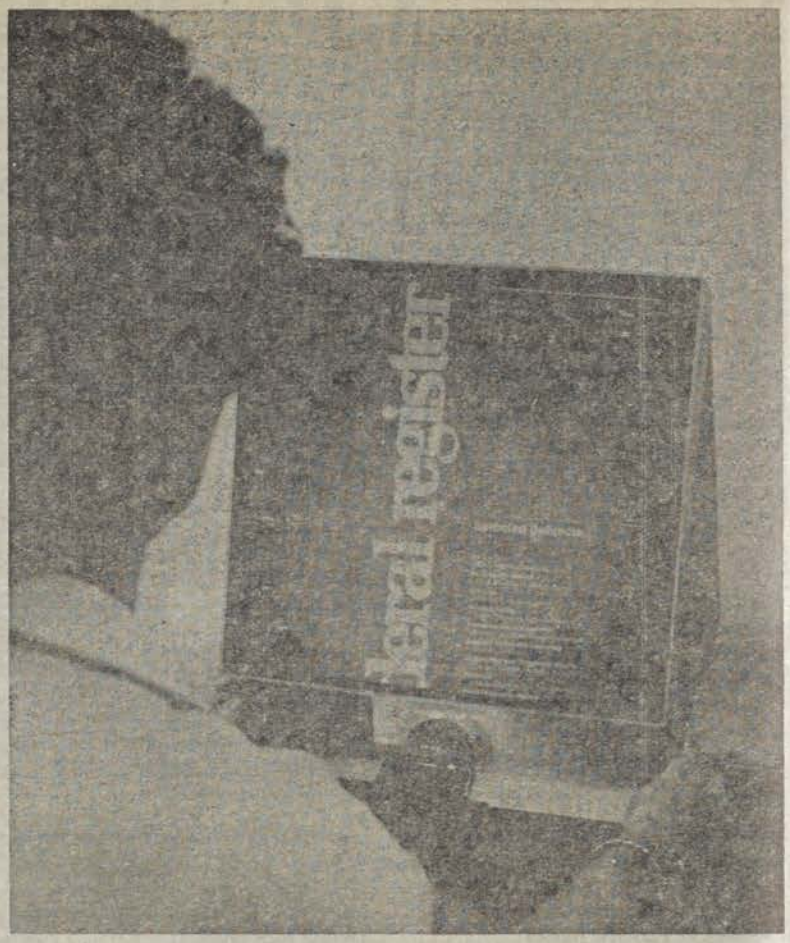

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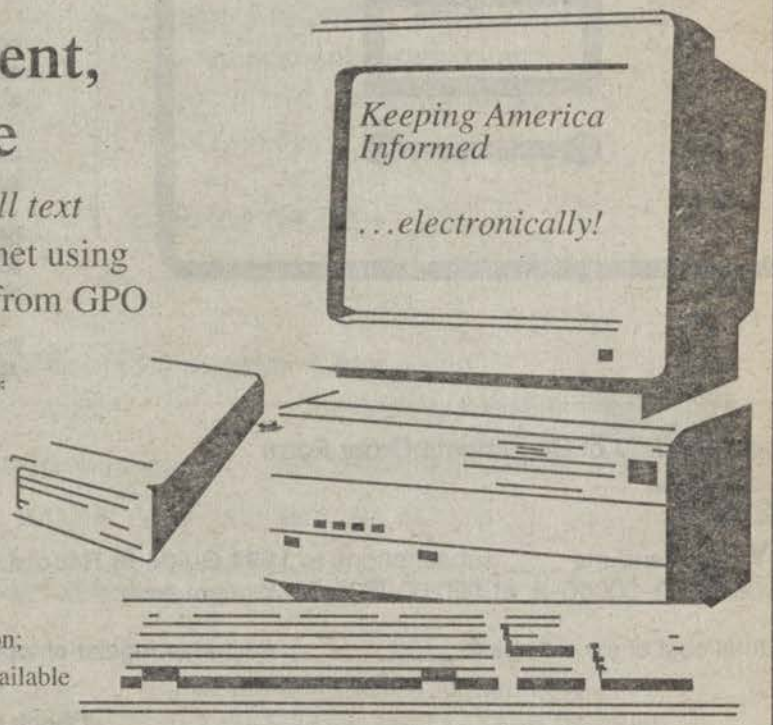

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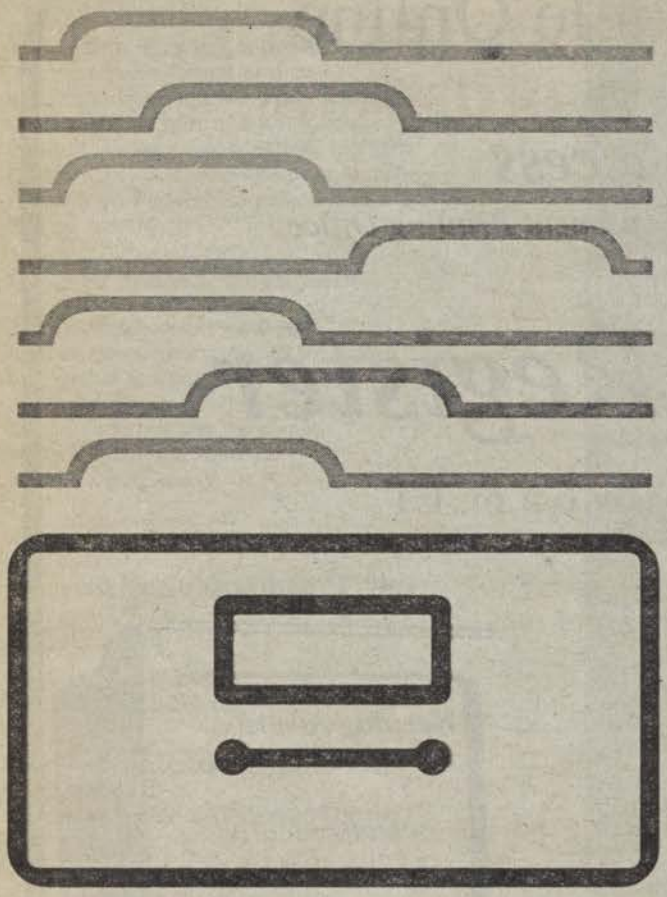

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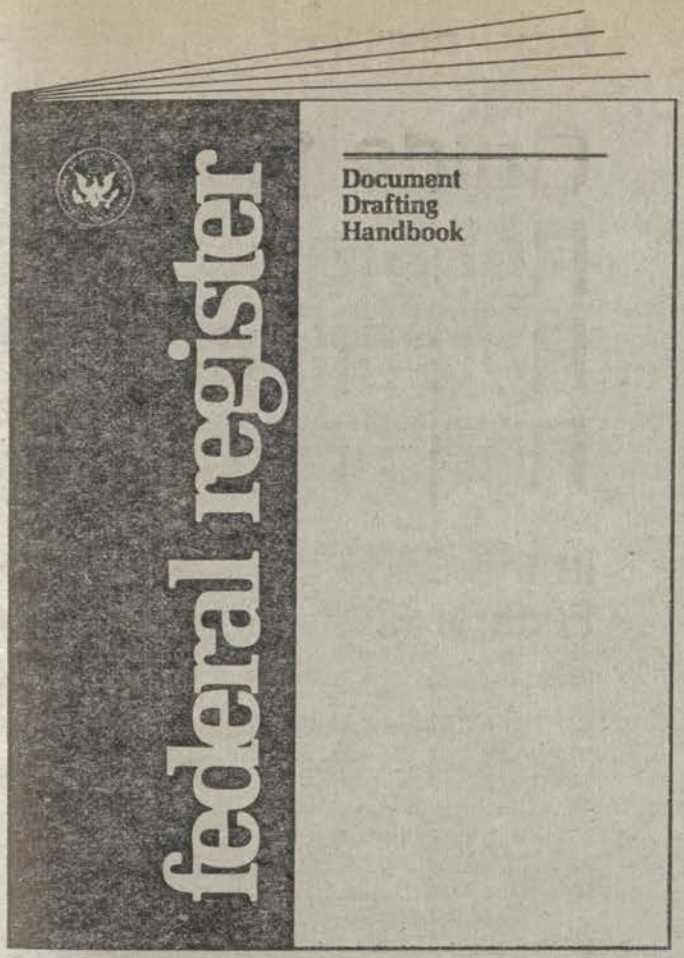

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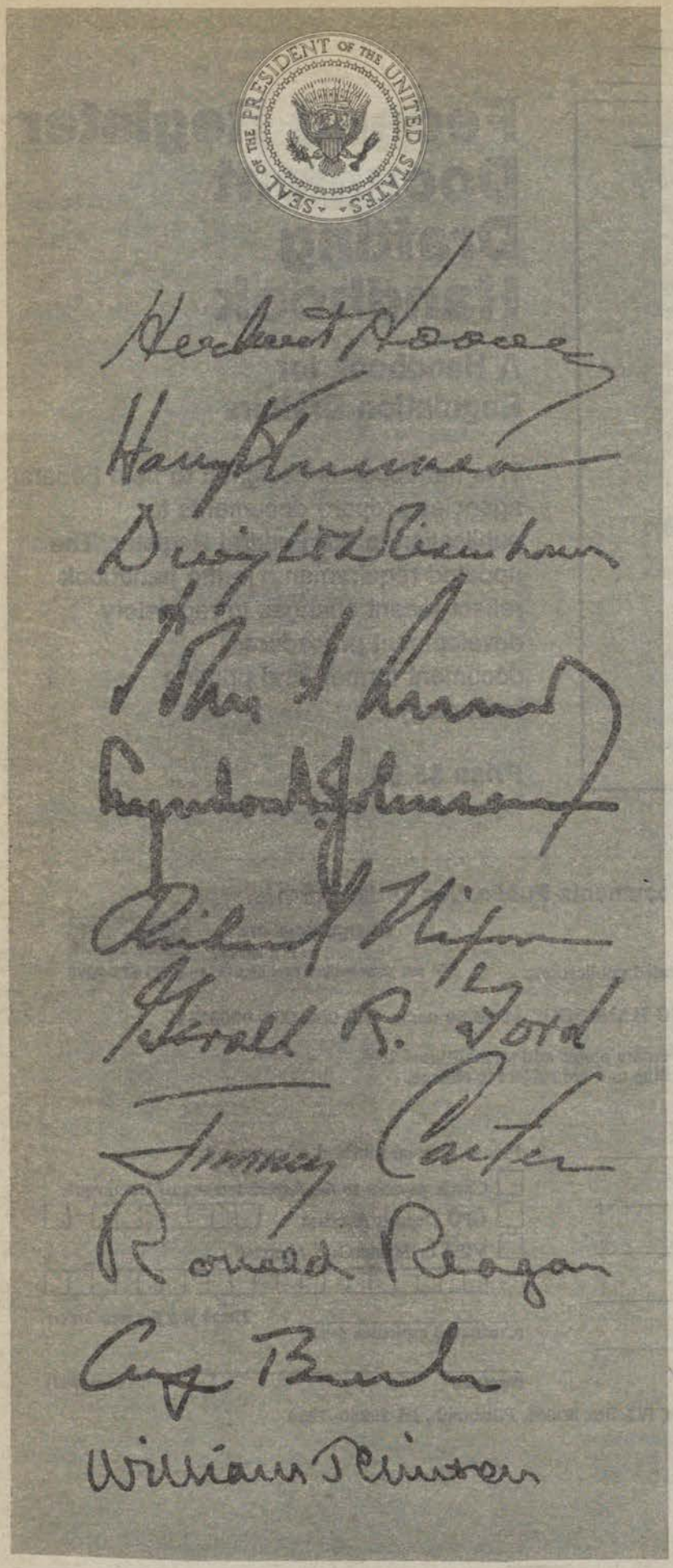

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