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Contents

Federal Register

Vol. 62, No. 177

Friday, September 12, 1997

Agricultural Marketing Service
RULES
Milk marketing orders:
Tennessee Valley, 47923–47927
Oranges, grapefruit, tangerines, and tangelos grown in Florida, 47913–47923

Agriculture Department
See Agricultural Marketing Service
See Natural Resources Conservation Service

Army Department
See Engineers Corps
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Materials Sciences Corp., 48064
Senior Executive Service:
Performance Review Boards; membership, 48064

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Commerce Department
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement list; additions and deletions, 48049–48050

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Indonesia, 48063
Mauritius, 48063–48064

Customs Service
NOTICES
Commercial gauger and commercial laboratory accreditations:
Revocation—
Corelab Petroleum Testing Services, 48131

Defense Department
See Army Department
See Engineers Corps
See Navy Department

Employment and Training Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 48111

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 48111–48113

Energy Department
See Energy Efficiency and Renewable Energy Office
See Federal Energy Regulatory Commission
See Hearings and Appeals Office, Energy Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Marshall Islands; special medical care to specific group of citizens, 48065–48073
Inventions, Government-owned; availability for licensing, 48073
Meetings:
Environmental Management Advisory Board, 48073–48074

Energy Efficiency and Renewable Energy Office
NOTICES
Meetings:
State Energy Advisory Board, 48074

Engineers Corps
NOTICES
Environmental statements; notice of intent:
Lower Cape May Meadows, Cape May County, NJ; environmental restoration and storm damage reduction project, 48064–48065

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Ohio, 47946–47947
Hazardous waste program authorizations:
Texas, 47947–47954
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Georgia, 48027–48033
Ohio, 48026–48027
Texas, 48033–48034
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 48085–48086
Drinking water:
Underground injection control program—
Fort Peck Assiniboine and Sioux Tribes, MT; primacy application, 48086–48087
Environmental statements; availability, etc.:
Agency statements—
Weekly receipts, 48087
Meetings:
National Drinking Water Advisory Council, 48087–48088

Federal Aviation Administration
RULES
Air carrier certification and operations:
Digital flight data recorder upgrade requirements Correction, 48135–48136
Airworthiness directives:
Boeing, 47927–47929
Dassault, 47931–47932
Saab, 47930–47931
Sikorsky, 47933–47934

PROPOSED RULES
Class E airspace, 48025–48026
NOTICES
Exemption petitions; summary and disposition, 48125–48126
Meetings:
Aviation Rulemaking Advisory Committee, 48126–48127
RTCA, Inc., 48127
Passenger facility charges; applications, etc.:
Portland International Airport, OR, 48127–48128
Rhode Island Airport Corporation et al., 48128–48129
Tyler Pounds Field Airport, TX, 48129–48130

Federal Communications Commission
RULES
Practice and procedure:
Radiofrequency electromagnetic fields; environmental effects; evaluation guidelines, 47960–47968
PROPOSED RULES
Common carrier services:
Access charges—
Subscriber line charges, etc.; price cap rules; primary lines definition, 48042–48047
Practice and procedure:
Radiofrequency emissions; environmental effects; State and local regulations; procedures for reviewing requests for relief, 48034–48042
NOTICES
Agency information collection activities:
Proposed collection; comment request, 48088–48089

Federal Deposit Insurance Corporation
PROPOSED RULES
Insured State banks; activities and investments; withdrawn, 48025
Insured State banks and savings associations; activities, 47969–48025
NOTICES
Meetings; Sunshine Act, 48089

Federal Emergency Management Agency
RULES
Flood elevation determinations:
Connecticut, 47954–47955
Connecticut et al., 47955–47961

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Midwest Energy, Inc., et al., 48076–48078
Minnesota Power & Light Co. et al., 48078–48083
Environmental statements; availability, etc.:
Rochester Gas & Electric Corp., 48083
Environmental statements; notice of intent:
Texas Gas Transmission Corp., 48083–48084
Applications, hearings, determinations, etc.:
ANR Pipeline Co., 48074
CNG Transmission Corp., 48075
Crossroads Pipeline Co., 48075
KO Transmission Co., 48075
Michigan Gas Storage Co., 48076
Williams Natural Gas Co., 48076

Federal Financial Institutions Examination Council
NOTICES
Uniform retail credit classification policy; comment request, 48089–48092

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 48092
Formations, acquisitions, and mergers, 48092
Meetings; Sunshine Act, 48092

Federal Trade Commission
NOTICES
Cigarette testing methodology; tar, nicotine, and carbon monoxide yields determination and advertising ratings, 48158–48163
Premerger notification waiting periods; early terminations, 48092–48097

Food and Drug Administration
NOTICES
Meetings:
Nonprescription Drugs Advisory Committee et al., 48098

General Accounting Office
NOTICES
Meetings:
Federal Accounting Standards Advisory Board, 48097

Health and Human Services Department
See Food and Drug Administration
See Health Care Financing Administration
See Public Health Service
See Substance Abuse and Mental Health Services Administration
NOTICES
Meetings:
Welfare Indicators Advisory Board, 48097–48098

Health Care Financing Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
State children's health insurance program, 48098–48105

Hearings and Appeals Office, Energy Department
NOTICES
Decisions and orders, 48084–48085

Housing and Urban Development Department
NOTICES
Organization, functions, and authority delegations:
Multifamily Housing Division, Greensboro, NC, Director; nationwide authority for multifamily coinsurance program, 48106–48107

Immigration and Naturalization Service
RULES
Nonimmigrant classes:
Treaty trader and investor aliens; E classification, 48138–48149

Interior Department
See Land Management Bureau
See National Park Service

Internal Revenue Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 48131–48134

International Development Cooperation Agency
See Overseas Private Investment Corporation

Justice Department
See Immigration and Naturalization Service
See Juvenile Justice and Delinquency Prevention Office

Juvenile Justice and Delinquency Prevention Office
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 48109–48110

Labor Department
See Employment and Training Administration
See Employment Standards Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 48110–48111

Land Management Bureau
NOTICES
Alaska Native claims selection:
Chugach Alaska Corp., 48107
Opening of public lands:
Wyoming, 48107

National Institute of Standards and Technology
NOTICES
Information processing standards, Federal:
Advanced encryption standard; candidate algorithm nominations request, 48051–48058

National Oceanic and Atmospheric Administration
PROPOSED RULES
Fishery conservation and management:
Northeastern United States fisheries—
Atlantic mackerel, squid, and butterfish, 48047–48048
NOTICES
Committees; establishment, renewal, termination, etc.:
Federal Investment Task Force, 48058
Environmental statements; notice of intent:
Spiny dogfish in U.S. waters in Western Atlantic Ocean, 48058–48060
Fishery conservation and management:
Scup and black sea bass; moratorium, 48060–48061
Meetings:
Pacific Fishery Management Council, 48061–48062
Western Pacific Fishery Management Council, 48062
Permits:
Marine mammals, 48062–48063

National Park Service
NOTICES
National Register of Historic Places:
Pending nominations, 48107–48108
Native American human remains and associated funerary objects:
Southwestern College, CA; inventory, 48108

National Women's Business Council
NOTICES
Meetings; Sunshine Act, 48113

Natural Resources Conservation Service
NOTICES
Environmental statements; availability, etc.:
Bayou Bourbeux Watershed, LA, 48049

Navy Department
RULES
Navigation, COLREGS compliance exemptions:
USS Decatur, 47944–47946

Nuclear Regulatory Commission
NOTICES
Petitions; Director's decisions:
Florida Power & Light Co., 48116–48120
Senior Executive Service:
Performance Review Boards; membership, 48120–48121
Applications, hearings, determinations, etc.:
Cleveland Electric Illuminating Co. et al., 48113
Detroit Edison Co., 48113–48116

Nuclear Waste Technical Review Board
NOTICES
Meetings, 48121–48122

Overseas Private Investment Corporation
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 48109

Public Health Service
See Food and Drug Administration
See Substance Abuse and Mental Health Services Administration
NOTICES
Committees; establishment, renewal, termination, etc.:
National Vaccine Advisory Committee, 48105

Securities and Exchange Commission
RULES
Investment companies:
Registration fees; calculation methods and payment requirements, 47934–47944
NOTICES
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 48123–48124
Applications, hearings, determinations, etc.:
Public utility holding company filings, 48122–48123

State Department
RULES
Visas; nonimmigrant documentation:
Substantial, definition; and treaty trader/investor visa classification principles, 48149–48155

Substance Abuse and Mental Health Services Administration
NOTICES
Grant and cooperative agreement awards:
National Association of State Alcohol and Drug Abuse Directors, Inc., 48105–48106

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Dallas, Garland & Northeastern Railroad, Inc., 48130
Omaha Public Power District, 48130
Track Tech, Inc., 48130–48131
Railroad services abandonment:
R.J. Corman Railroad Co./Pennsylvania Lines, Inc., 48131

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Federal Aviation Administration
See Surface Transportation Board
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 48124–48125
Aviation proceedings:
Agreements filed; weekly receipts, 48125
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 48125

Treasury Department
See Customs Service
See Internal Revenue Service

Separate Parts In This Issue

Part II
Department of Justice, Immigration and Naturalization Service/Department of State, 48138–48155

Part III
Federal Trade Commission, 48158–48163

Reader Aids
Additional information, including a list of telephone numbers, finding aids, reminders, and a list of Public Laws appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
905.....47913
1011.....47923

8 CFR
214.....48138

12 CFR

Proposed Rules:
303.....47969
337.....47969
362 (2 documents) 47969, 48025

14 CFR
39 (4 documents) 47927, 47930, 47931, 47933
121.....48135
125.....48135
135.....48135

Proposed Rules:
71.....48025

17 CFR
202.....47934
230.....47934
232.....47934
239.....47934
270.....47934
274.....47934

22 CFR
41.....48149

32 CFR
706.....47944

40 CFR
52.....47946
271.....47947

Proposed Rules:
52 (3 documents) 48026, 48027, 48033

44 CFR
65.....47954
67.....47955

47 CFR
1.....47960
2.....47960
26.....47960
97.....47960

Proposed Rules:
1.....48034
54.....48042
69.....48042

50 CFR

Proposed Rules:
648.....48047

Rules and Regulations

Federal Register
Vol. 62, No. 177
Friday, September 12, 1997

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.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV97–905–1 IFR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Limiting the Volume of Small Florida Red Seedless Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule limits the volume of small red seedless grapefruit entering the fresh market under the Florida citrus marketing order. The marketing order regulates the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida and is administered locally by the Citrus Administrative Committee (committee). This rule limits the volume of size 48 and/or size 56 red seedless grapefruit handlers can ship during the first 11 weeks of the 1997–1998 season that begins in September. This limitation provides a sufficient supply of small sized red seedless grapefruit to meet market demand, without saturating all markets with these small sizes. This rule is necessary to help stabilize the market and improve grower returns.

DATES: Effective September 15, 1997, through November 30, 1997. Comments received by September 22, 1997 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Christian D. Nissen, Southeast Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883; telephone: (941) 299–4770, Fax: (941) 299–5169; or Anne Dec, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–5053, Fax: (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement No. 84 and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

The order provides for the establishment of grade and size requirements for Florida citrus, with the concurrence of the Secretary. These grade and size requirements are designed to provide fresh markets with citrus fruit of acceptable quality and size. This helps create buyer confidence and contributes to stable marketing conditions. This is in the interest of growers, handlers, and consumers, and is designed to increase returns to Florida citrus growers. The current minimum grade standard for red seedless grapefruit is U.S. No. 1, and the minimum size requirement is size 56 (at least 3$\frac{5}{16}$ inches in diameter).

Section 905.52 of the citrus marketing order provides authority to limit shipments of any grade or size, or both, of any variety of Florida citrus. Such limitations may restrict the shipment of a portion of a specified grade or size of a variety. Under such a limitation, the quantity of such grade or size that may be shipped by a handler during a particular week is established as a percentage of the total shipments of such variety by such handler in a prior period, established by the committee and approved by the Secretary, in which the handler shipped such variety.

Section 905.153 of the order provides procedures for limiting the volume of small red seedless grapefruit entering the fresh market. The procedures specify that the committee may recommend that only a certain percentage of size 48 and/or 56 red seedless grapefruit be made available for shipment into fresh market channels for any week or weeks during the regulatory period. The 11 week period begins the third Monday in September. Under such a limitation, the quantity of sizes 48 and/or 56 red seedless grapefruit that may be shipped by a handler during a regulated week is calculated using the recommended percentage. By taking the recommended weekly percentage times the average weekly volume of red grapefruit handled by such handler in

the previous five seasons, handlers can calculate the volume of sizes 48 and/or 56 they may ship in a regulated week.

This rule limits the volume of small red seedless grapefruit entering the fresh market for each week of an 11 week period beginning the week of September 15. The rule limits the volume of sizes 48 and/or 56 red seedless grapefruit by establishing a weekly percentage for each of the 11 weeks. This rule establishes the weekly percentage for the first three weeks (September 15 through October 5) at 50 percent, for the next three weeks (October 6 through October 26) at 35 percent, and at 30 percent for the remainder of the 11 weeks. This is a change in the percentage originally recommended by the committee. The committee had voted to establish a weekly percentage of 25 percent for each of the 11 weeks in a vote of 10 in favor to 7 opposed at its meeting on May 28, 1997. The committee recommended adjusting the percentages at its meeting August 26, 1997, in a vote of 14 in favor to 3 opposed.

For the past few seasons, returns on red seedless grapefruit have been at all time lows, often not returning the cost of production. On tree prices for red seedless grapefruit have declined steadily from $9.60 per box (1⅗ bushel) during the 1989–90 season, to $3.11 per box during the 1992–93 season, to $1.82 per box during the 1994–95 season, to $1.55 per box during the 1996–97 season. The committee believes that to stabilize the market and improve returns to growers, demand for fresh red seedless grapefruit must be stabilized and increased.

One problem contributing to the current state of the market is the excessive number of small sized grapefruit shipped early in the marketing season. During the past three seasons, sizes 48 and 56 accounted for 34 percent of total shipments during the 11 week regulatory period, with the average weekly percentage exceeding 40 percent of shipments. This contrasts with sizes 48 and 56 representing only 26 percent of total shipments for the remainder of the season. While there is a market for early grapefruit, the shipment of large quantities of small red seedless grapefruit in a short period oversupplies the fresh market for these sizes and negatively impacts the market for all sizes.

For the majority of the season, larger sizes return better prices than smaller sizes. However, there is a push early in the season to get fruit into the market to take advantage of the higher prices available at the beginning of the season. The early season crop tends to have a greater percentage of small sizes. This creates a glut of smaller, lower priced fruit on the market that drives down the price for all sizes. Early in the season, larger sized fruit commands a premium price. In some cases, the f.o.b. is $4 to $6 a carton (⅘ bushel) more than for the smaller sizes. In early October, the f.o.b. for a size 27 averages around $10.00 per carton. This compares to an average f.o.b. of $5.50 per carton for size 56. By the end of the 11 week period outlined in this rule, the f.o.b. for large sizes has dropped to within two dollars of the f.o.b. for small sizes.

In the past three seasons, during the period covered by this rule, prices of red seedless grapefruit have fallen from a weighted average f.o.b. of $7.80 per carton to an average f.o.b. of $5.50 per carton. Even though later in the season the crop has sized to naturally limit the amount of smaller sizes available for shipment, the price structure in the market has already been negatively affected. In the past three years, the market has not recovered, and the f.o.b. for all sizes fell to around $5.00 to $6.00 per carton for most of the rest of the season.

The committee discussed this issue at length at several meetings. The committee believes that the over shipment of smaller sized red seedless grapefruit early in the season has contributed to below production cost returns for growers and lower on tree values. An economic study done by the University of Florida—Institute of Food and Agricultural Sciences (UF–IFAS) in May 1997, found that on tree prices have fallen from a high near $7.00 in 1991–92 to around $1.50 for this past season. The study projects that if the industry elects to make no changes, the on tree price will remain around $1.50. The study also indicates that increasing minimum size restrictions could help to raise returns.

The committee examined shipment data covering the 11 week regulatory period for the last four seasons. The information contained the amounts and percentages of sizes 48 and 56 shipped during each week. They compared this information with tables outlining weekly f.o.b. figures for each size. Based on this statistical information from past seasons, the committee members believe there is an indication that once shipments of sizes 48 and 56 reach levels above 250,000 cartons a week, prices decline on those and most other sizes of red seedless grapefruit. Without volume regulation, the industry has been unable to limit the shipments of small sizes. The committee believes that if shipments of small sizes can be maintained at around 250,000 cartons a week, prices should stabilize and demand for larger, more profitable sizes should increase.

The committee has had considerable discussion regarding at what level to establish the weekly percentages. They wanted to recommend weekly percentages that would provide a sufficient volume of small sizes without adversely impacting the markets for larger sizes. At its May 28, 1997, meeting, the committee recommended that the percentage for each of the 11 weeks be established at the 25 percent level. Their reasoning was that this percentage, when combined with the average weekly shipments for the total industry, provided a total industry allotment of 244,195 cartons of sizes 48 and/or 56 red seedless grapefruit per regulated week. This percentage would have allowed total shipments of small red seedless grapefruit to approach the 250,000 carton mark during regulated weeks without exceeding it.

The committee met again August 26, 1997, and revisited the weekly percentage issue. At the meeting, the committee recommended that the weekly percentages be changed from 25 percent for each of the 11 regulated weeks to 50 percent for the first three weeks (September 15 through October 5), 35 percent for the next three weeks (October 6 through October 26), and 30 percent for the remainder of the 11 weeks.

In its discussion of this change, the committee reviewed the initial percentages recommended and the current state of the crop. The committee also reexamined shipping information from past seasons, looking particularly at volume across the 11 weeks. Based on shipments from the past four seasons, available allotment under a 25 percent restriction would have exceeded actual shipments for each of the first three weeks that are regulated under this rule.

The committee recognized that in terms of available allotment, establishing a weekly percentage of 25 percent for the first three regulated weeks would not be restrictive. However, they said that this was based on total available allotment, not on data for each individual handler. The committee determined that if available allotment would exceed shipments for the first three weeks even when establishing a percentage of 25 percent, it would give individual handlers greater flexibility during these three weeks to establish the percentage at 50 percent. They argued that this would provide each handler with additional allotment during these three weeks, reducing the number of loans and transfers needed to utilize the available

allotment, yet having little or no affect on the volume of small sizes. The committee also agreed that setting the percentage at 50 percent rather than 100 percent would still provide some restriction should shipments for September 15 through October 5 for this season exceed past quantities.

For the remainder of the 11 weeks, the committee believed that the weekly percentage needed to be less than 50 percent (which would have resulted in virtually no limitation on shipments of small sizes) but greater than 25 percent. The committee held that it is important to control small sizes, but it is also important to be able to service the markets that demand small sizes. The issue was raised regarding the possible market impact when small sizes exceed 250,000 cartons in a week. The committee recognized that ideally, 244,195 cartons of red seedless grapefruit would be available to the industry for each of the 11 weeks if the percentage was set at 25 percent. However, the committee was concerned that the true amount available would be lower.

Several members stated that setting a weekly percentage at 25 percent to approximate the 250,000 cartons was based on total utilization of allotment, and that assumption was unreasonable. The committee agreed that loans and transfers are beneficial, but that even with their availability a percentage of allotment would most likely not be used.

Several other members raised concerns about focusing too much on total allotment available, rather than on allotment available to individual handlers. The committee stated that the way a handler's base is calculated using an average week is probably the most equitable way to do so. However, they acknowledged that it did present some problems. Members concurred that the season for red seedless grapefruit is approximately 33 weeks. However, the members agreed that this did not mean that every handler was shipping during all 33 weeks. They discussed how a handler's average weekly shipments are calculated by averaging their shipments from the past five seasons, and then dividing this number by the 33 weeks to establish an average week. Members stated that the calculated average week was often lower than their actual weekly shipments during the periods they were shipping because they were not shipping during all 33 weeks. They also stated that applying a weekly percentage of 25 percent to their average week would have resulted in limiting their shipments to a level closer to 15 percent of their actual shipments during this period.

Based on this discussion, the committee thought a weekly percentage of 25 percent would be overly restrictive. The committee believed that since total available allotment most probably will not be fully utilized, and how individual handlers are affected, establishing a weekly percentage of 35 percent for the regulation weeks October 6 through October 26 would be more appropriate. They believe this level will provide a sufficient supply of small sizes without exceeding amounts that would negatively affect other markets.

The committee further recommended that the weekly percentage for the remainder of the 11 weeks be established at 30 percent. The committee resolved that a lower percentage was desirable moving into the last five weeks of regulation. The committee believed that as industry moves into the season and shipments increase, that a weekly percentage of 30 percent will provide the best balance between supply and demand for small sized red seedless grapefruit.

The committee again included in its deliberations that if crop and market conditions should change, the committee could recommend that the percentages be increased or eliminated to provide for the shipment of more small sizes in any one, or all of the 11 weeks. While the official crop estimate will not be available until October, information in the UF–IFAS study and committee discussions indicate that the 1997–98 season production will be near or greater than the 1996–97 estimate of 30.8 million boxes of red seedless grapefruit. Committee members also stated that the crop is sizing well and should produce a greater number of larger sizes than the past season. Using this information on the 1997–98 crop, the committee members believe that establishing the weekly percentages as recommended will provide enough small sizes to supply those markets without disrupting the markets for larger sizes.

Under the procedures in section 905.153, the quantity of sizes 48 and/or 56 red seedless grapefruit that may be shipped by a handler during a regulated week is calculated using the recommended percentage for that week. By taking the established weekly percentage times the average weekly volume of red grapefruit handled by such handler in the previous five seasons, handlers can calculate the volume of sizes 48 and/or 56 they may ship in a regulated week.

An average week has been calculated by the committee for each handler using the following formula. The total red seedless grapefruit shipments by a handler during the 33 week period beginning the third Monday in September and ending the first Sunday in May during the previous five seasons are added and divided by five to establish an average season. This average season is then divided by the 33 weeks in a season to derive the average week. This average week is the base for each handler for each of the 11 weeks contained in the regulation period. The applicable weekly percentage is then multiplied by a handler's average week. The total is that handler's allotment of sizes 48 and/or 56 red seedless grapefruit for the given week.

Under this interim final rule, the calculated allotment is the amount of small sized red seedless grapefruit a handler can ship. If the minimum size established under section 905.52 remains at size 56, handlers can fill their allotment with size 56, size 48, or a combination of the two sizes such that the total of these shipments are within the established limits. If the minimum size under the order is 48, handlers can fill their allotment with size 48 fruit such that the total of these shipments are within the established limits. The committee staff will perform the specified calculations and provide them to each handler.

To illustrate, suppose Handler A shipped a total of 50,000 cartons, 64,600 cartons, 45,000 cartons, 79,500 cartons, and 24,900 cartons of red seedless grapefruit in the last five seasons, respectively. Adding these season totals and dividing by five yields an average season of 52,800 cartons. The average season is then divided by 33 weeks to yield an average week, in this case, 1,600 cartons. This is handler A's base. Assuming the weekly percentage is 50 percent, this percentage is then applied to the handler's base. This provides this handler with a weekly allotment of 800 cartons ($1,600 \times .50$) of size 48 and/or 56.

The average week for handlers with less than five previous seasons of shipments is calculated by the committee by averaging the total shipments for the seasons they did ship red seedless grapefruit during the immediately preceding five years and dividing that average by 33. New handlers with no record of shipments have no prior period on which to base their average week. Therefore, a new handler can ship small sizes up to the established weekly percentage as a percentage of their total volume of shipments during their first shipping week. Once a new handler has established shipments, their average

week is calculated as an average of the weeks they have shipped during the current season.

This interim final rule establishes a weekly percentage of 50 percent for the first three weeks (September 15 through October 5), 35 percent for the next three weeks (October 6 through October 26), and 30 percent for the remainder of the 11 weeks to be regulated. The regulatory period runs from the first Monday in September (September 15, 1997) through the last Sunday in November (November 30, 1997). Each regulation week begins Monday at 12:00 a.m. and ends at 11:59 p.m. the following Sunday, since most handlers keep records based on Monday being the beginning of the work week. If necessary, the committee can meet and recommend changes in the percentages to the Secretary at any time during the regulatory period.

The rules and regulations contain a variety of provisions designed to provide handlers with some marketing flexibility. When regulation is established by the Secretary for a given week, the committee calculates the quantity of small red seedless grapefruit which may be handled by each handler. Section 905.153(d) provides allowances for overshipments, loans, and transfers of allotment. These allowances should allow handlers the opportunity to supply their markets while limiting the impact of small sizes on a weekly basis.

During any week for which the Secretary has fixed the percentage of sizes 48 and/or 56 red seedless grapefruit, any handler can handle an amount of sizes 48 and/or 56 red seedless grapefruit not to exceed 110 percent of their allotment for that week. The quantity of overshipments (the amount shipped in excess of a handler's weekly allotment) will be deducted from the handler's allotment for the following week. Overshipments are not allowed during week 11 because there are no allotments the following week from which to deduct the overshipments.

If handlers fail to use their entire allotments in a given week, the amounts undershipped will not be carried forward to the following week. However, a handler to whom an allotment has been issued can lend or transfer all or part of such allotment (excluding the overshipment allowance) to another handler. In the event of a loan, each party will, prior to the completion of the loan agreement, notify the committee of the proposed loan and date of repayment. If a transfer of allotment is desired, each party will promptly notify the committee so that proper adjustments of the records can be made. In each case, the committee will confirm in writing all such transactions prior to the following week. The committee can also act on behalf of handlers wanting to arrange allotment loans or participate in the transfer of allotment. Repayment of an allotment loan is at the discretion of the handlers party to the loan.

The committee computes each handler's allotment by multiplying the handler's average week by the percentage established by regulation for that week. The committee will notify each handler prior to that particular week of the quantity of sizes 48 and 56 red seedless grapefruit such handler can handle during a particular week, making the necessary adjustments for overshipments and loan repayments.

This rule does not affect the provision that handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day exempt from regulatory requirements. Fruit shipped in gift packages that are individually addressed and not for resale, and fruit shipped for animal feed are also exempt from handling requirements under specific conditions. Also, fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements under the order.

During committee deliberations at the May 28, 1997, meeting, several concerns were raised regarding this regulation. One area of concern was the possible impact this regulation may have on exports. Several members stated that there is a strong demand in some export markets for small sizes. Other members responded that the percentages set allow handlers enough volume of small sizes to meet the demand in these markets. It was also stated that any shortfall an individual handler might have can be filled by loan or transfer. There was also some discussion that markets that normally demand small sizes have shown a willingness to purchase larger sizes. In addition, committee data indicate that the majority of export shipments occur after the 11 week period when there are no restrictions on small sizes.

Another concern raised was the effect this rule will have on packouts. It was stated that this rule can reduce the volume packed, resulting in higher packinghouse costs. The purpose of this rule is to limit the volume of small sizes marketed early in the season. Larger sizes can be substituted for smaller sizes with a minimum effect on overall shipments. This rule may require more selective picking of only the sizes desired, something that many growers are doing already. The UF–IFAS study presented indicated that it would increase returns if growers would harvest selectively and return to repick groves as the grapefruit sized. This also would allow growers to maximize returns on fresh grapefruit by not picking unprofitable grades and sizes of red grapefruit that will be sent to the less profitable processing market. The study also indicated that selective harvesting can reduce the f.o.b. cost per carton. Therefore, this action should have a positive impact on grower returns.

Several members were concerned about what would happen if market conditions were to change. Other committee members responded that if industry conditions were to change (for example, if there was a freeze, or if the grapefruit was not sizing), the committee can meet and recommend that the percentage be raised to allow for more small sizes, or that the limits be removed all together.

Another concern raised was that market share could be lost to Texas. According to the Economic Analysis Branch (EAB), of the Fruit and Vegetable Division, of the Agricultural Marketing Service (AMS), limiting shipments of small Florida grapefruit will probably not result in a major shift to Texas grapefruit because the Texas industry is much smaller and has higher freight costs to some markets supplied by Florida. The UF-IFAS study made similar findings. Texas production is much smaller and has been susceptible to freezes that take it out of the market. This has lessened its impact on the overall grapefruit market.

One handler expressed that they ship early in the season and this action could be very restrictive. Members responded that the availability of loans and transfers address these concerns. There was also discussion of how restrictive this rule actually is. Based on shipments from the past four seasons, available allotment would have exceeded actual shipments for each of the first three weeks that are regulated under this rule even if the weekly percentage was set at 25 percent. In the three seasons prior to last season, if a 25 percent restriction on small sizes had been applied during the 11 week period, only an average of 4.2 percent of overall shipments during that period would have been affected. This rule affects even fewer shipments by establishing less restrictive weekly percentages. In addition, a large percentage of this volume most likely could have been replaced by larger sizes. A sufficient volume of small sized red grapefruit is still allowed into all channels of trade, and allowances are in

place to help handlers address any market shortfall.

At the August 26, 1997, meeting, the concern was raised that the weekly percentages recommended were not restrictive enough. Committee members responded that not all available allotment would be utilized, and that the recommended percentages would still restrict shipments of small sizes, while providing handlers with flexibility to supply those markets that demand small sizes.

After considering the concerns expressed, and the available information, the committee determined that this rule was needed to regulate shipments of small sized red seedless grapefruit.

Section 8(e) of the Act requires that whenever grade, size, quality or maturity requirements are in effect for certain commodities under a domestic marketing order, including grapefruit, imports of that commodity must meet the same or comparable requirements. This rule does not change the minimum grade and size requirements under the order, only the percentages of sizes 48 and/or 56 red grapefruit that may be handled. Therefore, no change is necessary in the grapefruit import regulations as a result of this action.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 80 handlers subject to regulation under the order and approximately 11,000 growers of citrus in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000.

Based on the Florida Agricultural Statistics Service and committee data for the 1995–96 season, the average annual f.o.b. price for fresh Florida red grapefruit during the 1995–96 season was $5.00 per 4/5 bushel cartons for all grapefruit shipments, and the total shipments for the 1995-96 season were 23 million cartons of grapefruit. Approximately 20 percent of all handlers handled 60 percent of Florida grapefruit shipments. In addition, many of these handlers ship other citrus fruit and products which are not included in committee data but would contribute further to handler receipts. Using the average f.o.b. price, about 80 percent of grapefruit handlers could be considered small businesses under SBA's definition and about 20 percent of the handlers could be considered large businesses. The majority of Florida grapefruit handlers, and growers may be classified as small entities.

The committee believes that the over shipment of smaller sized red seedless grapefruit early in the season has contributed to below production cost returns for growers and lower on tree values. For the past few seasons, returns on red seedless grapefruit have been at all time lows, often not returning the cost of production. On tree prices for red seedless grapefruit have declined steadily from $9.60 per box during the 1989–90 season, to $3.11 per box during the 1992–93 season, to $1.82 per box during the 1994–95 season, to $1.55 per box during the 1996–97 season. The committee believes that to stabilize the market and improve returns to growers, demand for fresh red seedless grapefruit must be stabilized and increased.

Under the authority of section 905.52 of the order, this rule limits the volume of small red seedless grapefruit entering the fresh market for each week of the 11 week period beginning the week of September 15. The rule limits the volume of sizes 48 and/or 56 red seedless grapefruit by establishing the weekly percentages at 50 percent for the first three weeks (September 15 through October 5), 35 percent for the next three weeks (October 6 through October 26), and 30 percent for the remainder of the 11 weeks. Under such a limitation, the quantity of sizes 48 and/or 56 red seedless grapefruit that may be shipped by a handler during a particular week is calculated using the recommended percentage. By taking the recommended percentage times the average weekly volume of red grapefruit handled by such handler in the previous five seasons, the committee calculates a handler's weekly allotment of small sizes. This rule provides a supply of small sized red seedless grapefruit sufficient to meet market demand, without saturating all markets with these small sizes. This rule is necessary to help stabilize the market and improve grower returns.

At the May 28, 1997, meeting, the committee recommended that the percentage for each of the 11 weeks be established at the 25 percent level. They reasoned that this percentage, when combined with the average weekly shipments for the total industry, would provide a total industry allotment of 244,195 cartons of sizes 48 and/or 56 red seedless grapefruit per regulated week. This percentage would have allowed total shipments of small red seedless grapefruit to approach the 250,000 carton mark during regulated weeks without exceeding it.

The committee met again August 26, 1997, and revisited the weekly percentage issue. The committee recommended that the weekly percentages be set to 50 percent for the first three weeks (September 15 through October 5), 35 percent for the next three weeks (October 6 through October 26), and 30 percent for the remainder of the 11 weeks.

In the discussion of this change, the committee reviewed the initial percentages recommended, the current state of the crop, and shipping information from past seasons. The committee recognized that in terms of available allotment, even establishing a weekly percentage of 25 percent for the first three regulated weeks would not be restrictive. Shipment data from the past four seasons indicate that available allotment under a 25 percent restriction would exceeded actual shipments for each of the first three weeks that are regulated under this rule.

The committee determined that if available allotment would exceed shipments for the first three weeks even when establishing a percentage of 25 percent, it would give individual handlers greater flexibility during these three weeks to establish the percentage at 50 percent. They argued that this would provide each handler with additional allotment during these three weeks, reducing the number of loans and transfers needed to utilize the available allotment, yet having little or no affect on the volume of small sizes. The committee also agreed that setting the percentage at 50 percent would still provide some restriction should shipments for this period this season exceed past quantities.

For the remainder of the 11 weeks, the committee believed that the weekly percentage needed to be tighter than 50 percent which would impose nearly no restriction but greater than 25 percent. The issue was raised regarding the possible market impact when small sizes exceed 250,000 cartons in a week. The committee recognized that ideally, 244,195 cartons of red seedless

grapefruit would be available to the industry for each of the 11 weeks if the percentage was set at 25 percent. However, the committee was concerned that the true amount available would be lower. Several members stated that setting a weekly percentage at 25 percent to approximate the 250,000 cartons was based on total utilization of allotment, and that assumption was unreasonable. The committee agreed that loans and transfers are beneficial, but that even with their availability a percentage of allotment would most likely not be used.

Several other members raised concerns about focusing too much on total allotment available, rather than on allotment per handler. Members concurred that the season for red seedless grapefruit is approximately 33 weeks. However, this did not mean that every handler was shipping during all 33 weeks. Using 33 weeks to divide an average season to calculate an average week often resulted in amounts lower than their actual weekly shipments because they were not shipping during all 33 weeks. They stated that applying a 25 percent restriction regulated them at a level closer to 15 percent of their actual shipments during the regulation period.

Based on this discussion, the committee thought a weekly percentage of 35 percent for the regulation weeks October 6 through October 26 would be a more appropriate level. They believe that because total allotment will not be fully utilized and the way individual handlers are affected, this level would provide a sufficient supply of small sizes without overly exceeding amounts that would negatively affect other markets.

The committee further recommended that the weekly percentage for the remainder of the 11 weeks be established at 30 percent. The committee resolved that moving into the last five weeks of regulation that a tighter percentage was desirable. The committee believed that as industry moves into the season and shipments increase, that a weekly percentage of 30 percent provides the best balance between supply and demand for small sized red seedless grapefruit.

At the May 28, 1997, meeting, there was discussion regarding the expected impact of this change on handlers and growers in terms of cost. Discussion focused on the possibility that market share could be lost to Texas and that this rule could increase packinghouse costs. According to EAB, limiting shipments of small Florida grapefruit probably will not result in a major shift to Texas grapefruit because the Texas industry is much smaller and has higher freight costs to some markets supplied by Florida. The UF–IFAS study made similar findings. Texas production is much smaller and has been susceptible to freezes that take it out of the market. This has lessened its impact on the overall grapefruit market.

The concern about packinghouse costs was that this action means lower packouts which may increase cost. However, the availability of loans and transfers provides some flexibility. Also, this rule only affects small sizes and only during the 11 week period. By substituting larger sizes and using loans and transfers, packouts should approach the weekly volume of seasons prior to this rule.

A weekly percentage of 25 percent, when combined with the average weekly shipments for the total industry, would provide a total industry allotment of 244,195 cartons of sizes 48 and/or 56 red seedless grapefruit. Based on shipments from the past four seasons, a total available allotment of 244,195 cartons would exceed actual shipments for each of the first three weeks regulated under this rule.

In addition, if a 25 percent restriction on small sizes had been applied during the 11 week period in the three seasons prior to last season, an average of 4.2 percent of overall shipments during that period would have been affected. This rule affects even fewer shipments by establishing less restrictive weekly percentages. In addition, a large percentage of this volume most likely could have been replaced by larger sizes. Under this rule a sufficient volume of small sized red grapefruit is still allowed into all channels of trade, and allowances are in place to help handlers address any market shortfall. Therefore, the overall impact on total seasonal shipments and on industry cost should be minimal.

The committee also discussed the state of the market and the cost of doing nothing. During the past three seasons, sizes 48 and 56 accounted for 34 percent of total shipments during the 11 week regulatory period, with the average weekly percentage exceeding 40 percent of shipments. For the remainder of the season, sizes 48 and 56 represent only 26 percent of total shipments. While there is a market for early grapefruit, the shipment of large quantities of small red seedless grapefruit in a short period oversupplies the fresh market for these sizes and negatively impacts the market for all sizes.

The early season crop tends to have a greater percentage of small sizes. The large volume of smaller, lower priced fruit drives down the price for all sizes. Early in the season, larger sized fruit commands a premium price. In some cases, the f.o.b. is $4 to $6 a carton more than for the smaller sizes. In early October, the f.o.b. for a size 27 averages around $10.00 per carton. This compares to an average f.o.b. of $5.50 per carton for size 56. By the end of the 11 week period outlined in this rule, the f.o.b. for large sizes has dropped to within two dollars of the price for small sizes.

In the past three seasons, during the period covered by this rule, prices of red seedless grapefruit have fallen from a weighted average f.o.b. of $7.80 per carton to an average f.o.b. of $5.50 per carton. Even though later in the season the crop has sized to naturally limit the amount of smaller sizes available for shipment, the price structure in the market has already been negatively affected. This leaves the f.o.b. for all sizes around $5.00 to $6.00 per carton for the rest of the season.

As previously stated, the on tree price of red seedless grapefruit has also been falling. On tree prices for fresh red seedless grapefruit have declined steadily from $9.60 per box during the 1989–90 season, to $3.11 per box during the 1992–93 season, to $1.82 per box during the 1994–95 season, to $1.55 per box during the 1996–97 season. In many cases, prices during the past two seasons have provided returns less than production costs. This price reduction could force many small growers out of business. If no action is taken, the UF–IFAS study indicates that on tree returns will remain at levels around $1.50.

This rule provides a supply of small sized red seedless grapefruit to meet market demand, without saturating all markets with these small sizes. The committee believes that if the supply of small sizes were limited early in the season, prices can be stabilized at a higher level. This provides increased returns for growers. In addition, if more small grapefruit were allowed to remain on the tree to increase in size and maturity, it could provide greater returns to growers.

The committee surveyed shipment data covering the 11 week regulatory period for the last four seasons and examined tables outlining weekly f.o.b. figures for each size. The committee believes that if shipments of small sizes can be maintained at around 250,000 cartons a week, prices should stabilize and demand for larger, more profitable sizes should increase. The established weekly percentages, when combined with the average weekly shipments for the total industry, should help maintain industry shipments of sizes 48 and/or 56 red seedless grapefruit at quantities

close to the 250,000 carton level per regulated week. A stabilized price that returns a fair market value benefits both small and large growers and handlers.

This rule may require more selective picking of only the sizes desired, something that many growers are doing already. The UF–IFAS study indicated that returns could increase if growers harvest selectively and return to repick groves as the grapefruit sized. This also allows growers to maximize returns on fresh grapefruit by not picking unprofitable grades and sizes of red grapefruit that are sent to the less profitable processing market. The study indicated that selective harvesting can reduce the f.o.b. cost per carton. The study also indicates that increasing minimum size restrictions could help to raise returns.

Fifty-nine percent of red seedless grapefruit is shipped to fresh market channels. There is a processing outlet for grapefruit not sold into the fresh market. However, the vast majority of processing is squeezing the grapefruit for juice. Because of the properties of the juice of red seedless grapefruit, including problems with color, the processing outlet is limited, and not currently profitable. Therefore, it is essential that the market for fresh red grapefruit be fostered and maintained. Any costs associated with this action are only for the 11 week regulatory period. However, benefits from this action could stretch throughout the entire 33 week season. Even if this action was successful only in raising returns a few pennies a carton, when applied to 34 million cartons of red seedless grapefruit shipped to the fresh market, the benefits should more than outweigh the costs.

The limits established under this action are based on percentages applied to a handler's average week. This process was established by the committee because it was the most equitable. All handlers have access to loans and transfers. Handlers and growers both will benefit from increased returns. The costs or benefits of this rule are not expected to be disproportionately more or less for small handlers or growers than for larger entities.

The committee discussed alternatives to this action. The committee discussed eliminating shipments of size 56 grapefruit all together. Several members expressed that there is a market for size 56 grapefruit. Members favored the percentage rule recommended because it supplies a sufficient quantity of small sizes should there be a demand for size 56. Therefore, the motion to eliminate size 56 was rejected. Another alternative discussed was to do nothing. However, the committee rejected this option, taking in account that returns would remain stagnant without action. Thus, the majority of committee members agreed that weekly percentages should be established as recommended for the shipment of small sized red seedless grapefruit for the 11 week period beginning September 15, 1997.

This rule changes the requirements under the Florida citrus marketing order. Handlers utilizing the flexibility of the loan and transfer aspects of this action are required to submit a form to the committee. The rule increases the reporting burden on approximately 80 handlers of red seedless grapefruit who will be taking about 0.03 hour to complete each report regarding allotment loans or transfers. The information collection requirements contained in this section have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and assigned OMB number 0581–0094. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

As noted in the initial regulatory flexibility analysis, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. However, red seedless grapefruit must meet the requirements as specified in the U.S. Standards for Grades of Florida Grapefruit (7 CFR 51.760 through 51.784) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627). Further, the public comments received concerning the proposal did not address the initial regulatory flexibility analysis.

In addition, the committee meetings were widely publicized throughout the citrus industry and all interested persons were invited to attend the meeting and participate in committee deliberations on all issues. Like all committee meetings, the May 28, 1997, meeting and the August 26, 1997, meeting were public meetings and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on Tuesday, July 29, 1997 (62 FR 40482). Copies of the rule were mailed or sent via facsimile to all committee members and to grapefruit growers and handlers. The rule was also made available through the Internet by the Office of the Federal Register.

A 15-day comment period was provided to allow interested persons to respond to the proposal. Fifteen days was deemed appropriate because this rule needs to be in place as soon as possible since handlers begin shipping grapefruit in September and handlers need time to consider their allotment and how best to service their customers. The comment period ended August 13, 1997. Thirty five comments were received.

As previously stated, subsequent to the end of the comment period, the committee met and recommended modifying its original recommendation. The committee recommended that the weekly percentages be changed from 25 percent for each of the 11 regulated weeks to 50 percent for the first three weeks (September 15 through October 5), 35 percent for the next three weeks (October 6 through October 26), and 30 percent for the remainder of the 11 weeks. Because of this recommendation, the Department has determined that interested parties should be provided the opportunity to comment on the changes to the original recommendation. However, the Department has further determined that extending the comment period with no percentages in effect limiting the shipments of small red seedless grapefruit when the period of regulation begins would be detrimental to the industry. Therefore, the Department is instituting the regulations on small red seedless grapefruit through this interim final rule which will allow 10 additional days to comment. The discussion on the comments to the proposed rule follow.

Thirty-five comments were received, twenty-four in favor and eleven in opposition to the proposed rule. Three additional comments in favor of the proposed rule were received after the closing date for comments. The vast majority of the points made by the commenters were thoroughly discussed prior to the committee vote.

The manager of the committee submitted a comment to the proposed rule. It stated that the committee went to great lengths to ensure that the entire Florida citrus industry had an opportunity to discuss or comment on this rule. The committee met three times in a sixty day period to review and consider this rule. This included a meeting where an economic study on the grapefruit industry prepared by UF–IFAS was presented. The comment stated that after these meetings and discussion the committee voted to implement a weekly percentage for each week in the regulatory period. The comment further stated that this action was considered and recommended by the Florida Citrus Commission and its

appointed subcommittee the Grapefruit Advisory Council. The comment also affirmed that prior to the May 28, 1997, committee meeting, all Florida fresh citrus fruit shippers were notified of their average weekly base.

In their comments, most of the producers and handlers supporting the rule confirmed their support for the need to regulate the volume of small sizes this season. Many referenced the procedures established to regulate the small sizes in their comments, indicating that they contributed to the support of this regulation.

Fifteen commenters stated specifically that the over shipment of small sizes early in the season has resulted in reduced prices. Eleven comments expressed that this regulation brings the early volume of small size red grapefruit to levels similar to weekly shipments during most of the season. Nine commenters wrote that total industry shipments average around one million cartons per week, and that during the regular part of the season, small sizes account for around 25 percent of shipments or 250,000 cartons. This regulation limits early shipments of small sized red seedless grapefruit to levels close to this amount. Six commenters further stated that the regulatory period was the appropriate length, ending as shipments begin to adjust naturally due to the fruit sizing.

Many commenters discussed the market stabilizing benefits they expect from of this regulation. Five comments stated that this action will dampen spikes in the levels of shipments that lead to predatory pricing. Five also stated that this action will provide steadier, more balanced marketing that is less disruptive to markets. Four commenters expressed that with the regulation in place, there will be a good flow of all sizes to market.

The comments also discussed the fairness of the rule. Seven commenters contended that this action is fair to all growing areas and shippers. Several of the commenters favoring this action stated they had groves in more than one growing region. They said they did not believe this action benefited one area at the expense of another. Another commenter stated that the regulation affects part and only part of everyone's shipments. Ten referenced the use of an average week as promoting fairness. They stated that this provided allotment to all shippers, not just those who had shipped early in the past, thus giving everyone allotment to service the early markets. Seven expressed that the availability of transfers will also help spread allotment to those who need it. Seven comments also asserted that this action will not be unfair to consumers.

Several comments inferred that this regulation actually promotes fairness. Five commenters believe this regulation will prevent the oversupply of small sizes early that negatively affects prices before the majority of growers are in the market. Two comments said the rule will help address to beat the crowd mentality of pushing fruit on to the market. This regulation may help stabilize prices, providing better returns throughout the season, and benefiting all growers, not just those in the market early.

Several comments indicated that this regulation will make growers plan ahead on what is harvested. Three comments stated they have already been holding back on picking sizes 48 and 56, allowing them to size. They said this has enabled them to provide larger, higher quality fruit to their customers. Two of the three stated specifically that selective picking has resulted in better returns. Two additional commenters also stated that they have been using spot picking effectively.

The remaining eleven commenters raised several issues opposing the limitation of small sizes. Many commenters who raised objections to this action posed concerns regarding the possible loss of markets and the impact the rule will have on different regions of the production area. Each issue raised is addressed herein.

Eight of the comments received opposing this action stated that there are strong markets for small sizes, particularly in the export markets. Many of these commenters believe that this rule will keep Florida from being able to service these markets and that they will be lost to Texas and foreign competitors. These concerns were raised and discussed at the committee meeting.

As stated above, the purpose of this regulation is not to eliminate the marketing of sizes 48 and 56, but rather to prevent the overshipment of such sizes from saturating all markets. In making its recommendations, the committee recognized that markets exist for small sizes. That is why they recommended limiting the volume of small sizes instead of eliminating them. In making its recommendation for a weekly percentage of size, the committee considered the markets available for small sizes and set a weekly percentage sufficient to address these markets. They also considered what percentage of the volume did small sizes represent during most of the season. They used this information to recommend a weekly percentage for each of the regulated weeks.

Sales of smaller sizes continue throughout the season, with certain markets preferring the small sizes. Examining the demand for small sizes across the season gives a picture of the level of that demand. During most of the season, sizes 48 and 56 represent only 26 percent of total shipments. Comments received stated that total industry shipments average around one million cartons per week, and that during most of the season, small sizes account for around 25 percent of shipments or 250,000 cartons. However, sizes 48 and 56 accounted for 34 percent of total shipments during the 11 week regulatory period the past three seasons, with the average weekly percentage exceeding 40 percent of shipments.

The weekly percentages, when combined with the average weekly shipments for the total industry, provide for a total weekly industry allotment of sizes 48 and/or 56 red seedless grapefruit per regulated week. A weekly percentage of 26 percent, the percentage of small sizes to total shipments during most of the season, would provide a weekly allotment of about 254,000 cartons. The established percentages provide additional cartons above this amount, allowing the industry to service the markets for small sizes while providing restrictions to prevent total saturation of all markets with these sizes. The established percentages will help bring the early volume of small size red grapefruit to levels similar to weekly shipments during most of the season.

In terms of exports of red seedless grapefruit, volume has averaged around 3,779,650 cartons from September through November. Based on information available on sizes exported, on average 43 percent of the exports from the Interior region are larger than size 48, and 61 percent of the exports from the Indian River region are larger than size 48. Total allotment available during the 11 weeks as established by the percentages in this rule exceed the average volume of exports during the regulation period. Considering the export data from these two regions, and the fact that the Indian River region accounted for 74 percent of exports during the 11 week period this past season, the allotment of small sizes provided under this rule should be sufficient to service export demand for small sizes.

In addition, in the three seasons prior to last season, if a 25 percent restriction on small sizes had been applied during the 11 week period, only an average of 4.2 percent of overall shipments during that period would have been affected. This rule establishes less restrictive

weekly percentages and will affect even fewer shipments. In addition, a large percentage of this volume most likely could have been replaced by larger sizes. Thus, the available allotment should be sufficient to address the demand for small sizes, allowing Florida to maintain those markets.

The provisions of this rule also provide for overshipments, loans and transfers. These allowances are provided to move allotment to those who have markets for smaller grapefruit. Any shortage an individual handler might have in allotment may be filled by loan or transfer. The committee discussion also indicated that markets that normally demand small sizes have shown a willingness to purchase larger sizes. Therefore, a sufficient volume of small sized red grapefruit should be available for all channels of trade, and allowances are in place to help handlers address their specific market needs.

In regards to Texas or foreign competitors taking markets from Florida, available information indicates that this should not be a significant problem. As mentioned earlier, according to EAB, limiting shipments of small Florida grapefruit would probably not result in a major shift to Texas grapefruit because the Texas industry is much smaller and would have higher freight costs to some markets supplied by Florida. The UF–IFAS study made similar findings. Texas production is much smaller and has been susceptible to freezes that take it out of the market. This has lessened its impact on the overall grapefruit market. In terms of foreign competition, the UF–IFAS study determined that current foreign competition is minimal. It also infers that even in cases of tightened standards, foreign competitors are not likely to take market share from Florida.

Four comments asserted that the market forces of supply and demand should be relied upon to regulate the market. The declaration of policy in the Act includes a provision concerning establishing and maintaining such orderly marketing conditions as will provide, in the interests of producers and consumers, an orderly flow of the supply of a commodity throughout the normal marketing season to avoid unreasonable fluctuations in supplies and prices. As previously stated, during the 11 week period of regulation, prices have dropped considerably. This is thought to stem from an oversupply of small sizes early in the season.

Limiting the quantity of small red seedless grapefruit that handlers may handle early in the season is expected to contribute to the Act's objectives of orderly marketing and improving producers' returns. This regulation provides a practical system to control the volume of small red seedless grapefruit early in the season, reducing gluts of small sizes, enhancing producer returns and stabilizing the markets for all sizes. Thus, the rule promotes orderly marketing by avoiding price-depressing oversupplies of small sizes during the first few months of the season when supplies are heaviest.

Four comments stated that the benefits of this rule are regional. Two comments alleged that this rule benefits one growing area at the expense of another. They state that fruit grown in the Gulf region reaches maturity before other areas in the State. One comment attested that past seasonal data indicates that in some years, the Gulf area represents 90 percent of shipments during the first week of the regulation period, and 50 percent of shipments during the first three weeks. The commenter stated further that cutting three-quarters of their shipping volume will significantly reduce their returns.

As previously stated, this rule limits the volume of small sizes that can be shipped during the first 11 weeks of a season. The rule only affects sizes 48 and/or 56, there are no restrictions on large sizes. Because of the way allotment is calculated, shipments from past seasons indicate that there will be more allotment available during the first three weeks of the regulation period than there are shipments of small sizes. Therefore, regardless of a handler's location, with the availability of loans and transfers, their shipments should not be restricted during these first three weeks, even if their entire supply consists of small sizes.

One of the comments alleges that growers in other regions, particularly the Indian River area, realize that there is a market for small sizes, and the 11 week period was established to prevent Gulf growers from selling their small sizes early in the season. The commenter contends the other areas support this rule because they want the opportunity to sell these sizes when their fruit matures.

Again, this regulation only limits the volume of small sizes, it does not eliminate them. There are no restrictions on large sizes. With their allotment, and the availability of loans and transfers, handlers should be able to address the markets demanding small sizes.

In terms of maturity, the Gulf area is normally the first region to begin shipping. During the weeks in September, they do represent the majority of domestic shipments. However, when total shipments, domestic and export are considered, the Indian River area has averaged similar or higher shipments than the Gulf in September the past three seasons. In October and November, both of which are included in this regulation, the shipping totals from the Indian River area substantially exceed the totals from other regions. The shipment figures do not support the claims of regional inequity.

Several comments expressed how profitable the early markets are due to the high prices available during the early season. This regulation is not an attempt to keep individuals from taking advantage of these markets. The goal of this rule is to control the volume of small sizes to keep them from saturating all markets and dragging down prices. By doing so, this action may buoy prices providing better returns throughout the season, not just during the first three weeks.

Granted, there is a profitable market for small sizes early in the season. However, there is an opportunity for those that do not market responsibly to dump small sizes on the market, early in the season. This appears to be occurring presently. The red seedless grapefruit season is longer than a few weeks. Taking profits early in the season at the expense of far lower returns for the remainder of the season does not provide for orderly marketing or reasonable returns to growers. The Department must consider the situation of all growers covered under the order. It is in the interest of all areas that adequate funds are returned to the grower throughout the season. This is best accomplished by providing stable, reasonable returns throughout the season.

Another comment argued that the vote of the committee signals a lack of consensus on this issue and the industry is not united in its support. In the marketing order, the voting requirements necessary to recommend regulation are clearly stated. The order states that for any decision or recommendation of the committee to be valid, ten concurring votes, five of which must be grower votes, shall be necessary. The committee vote supporting this regulation met these requirements. In terms of industry support, all industry members had ample opportunity to express their opinions on this issue. The Department considered all views expressed prior to instituting this interim final rule.

One commenter stated that there are seasons when there are no large sizes available during the early season. The committee meets each season to consider implementing the procedures

to control the volume of small sizes early in the season. One of the things the committee considers, is the status of the crop in terms of size. In seasons where fruit is running small, the committee could establish a higher percentage to allow for more small sizes or choose not to establish regulation. In the case of this season, the committee indicated that fruit was sizing well. However, if there is a change in the status of the fruit or the market, the committee could meet and vote to increase the percentage to allow for more small sizes, or eliminate the regulation altogether.

This same commenter also asserts that enforcing this rule will create an administrative problem and will create a market for allotment. The committee staff has already calculated and distributed the allotment for each handler. Information supplied by the Federal State Inspection Service will be used to determine compliance with this rule. Violators will be subject to the penalties provided for under the Act. The committee staff will also collect information regarding loans and transfers. It is expected that allotment itself should not have a monetary value, although it certainly may be transferred and loaned between handlers.

In another comment, a handler stated that they have a responsibility to their stockholders, and that running its facility at maximum volume provides them a higher return on their dollar. A handler that charges growers per field box does increase its revenue by handling the greatest number of boxes it can. The Department takes into account all those affected by a particular action. However, the order benefits growers through orderly marketing and improved returns. This rule is an attempt to do both. The purpose of this rule is to limit the volume of small sizes marketed early in the season. In the three seasons prior to last season, if a 25 percent restriction on small sizes had been applied during the 11 week period, only an average of 4.2 percent of overall shipments during that period would have been affected. This rule establishes less restrictive weekly percentages and will affect even fewer shipments. In addition, a large percentage of this volume most likely could have been replaced by larger sizes. A sufficient volume of small sized red grapefruit is still allowed into all channels of trade, and allowances are in place to help handlers address any market shortfall.

Several comments said that increasing standards will raise the amount of fruit that does not meet the requirements to be packed fresh, thereby increasing eliminations going to the processor and lowering grower returns. This rule controls the volume of small sizes. It is only in effect during the first 11 weeks of the season. As some comments to this rule stated, it may cause growers to plan their harvest. If a grove has a significant amount of small sizes, it may benefit the grower to delay harvesting until the fruit sizes. Several comments stated that they had used this selective picking successfully in the past.

Another option considered by the commenter would be to spot pick, but he stated that was expensive. However, two comments received on this rule were from growers who are using spot picking effectively. Also, information provided by the UF–IFAS study indicated that it would increase returns if growers would harvest selectively and return to repick groves as the grapefruit sized. Growers could maximize returns on fresh grapefruit by not picking unprofitable grades and sizes of red grapefruit that will be sent to the less profitable processing market. The study also indicated that selective harvesting can reduce the f.o.b. cost per carton, and increase packout rates over clean harvesting.

Another comment stated that this rule will make the current problems with grapefruit worse. It said the rule will decrease the market window, further depressing prices. It also said that this action will increase the total volume by people picking large sizes and allowing small fruit to size, thereby increasing the total number of boxes available later in the season when prices barely cover costs. This regulation does not shorten the marketing window. The rule provides for a sufficient amount of small sizes and places no restrictions on larger sizes. This action should improve returns on all sizes. In addition, allowing the fruit to size, could increase returns as larger sizes can yield higher returns.

One comment expressed that a restriction of shipments of sizes 48 and 56 will put an upward pressure on price. The comment said this would be bad for the consumer. The EAB reviewed this comment and determined that it is true that retail prices tend to track f.o.b. prices. However, variations do appear where there are other factors that influence retail prices including transportation and marketing costs, the price situation with competitive fruits, changes in consumer preferences, and marketing strategies of individual retail operations. No undue price enhancement is expected as a result of this rule. Consumers will benefit from the rule because fewer small fruits will be shipped, resulting in larger, more mature fruit available to the consumer. Additionally, the profitability of grower operations will be improved, helping to maintain a competitive environment for marketing, to the benefit of consumers.

Also, the f.o.b. price would need to rise considerably to have a significant impact on the consumer. Even if this regulation was successful in maintaining the f.o.b. price at one dollar above the average f.o.b. price from this past season, such an increase would translate into an increase of a few cents per fruit. However, this same increase would provide an additional return of a dollar per carton to the grower. This increase could be the difference between profit and loss.

The comment also states that restrictions should not be applied when prices are above parity. Parity, as calculated by the National Agricultural Statistics Service, was $12.03 for the 1996–97 season. The preliminary calculation of parity for the 1997–98 season is $10.43. At the beginning of the season, high prices are available. However, the prices quickly drop as the volume of shipments increase. The purpose of this rule is to stabilize prices, so that the price, even though it declines, will be maintained at a higher level. This rule should not elevate prices to levels above parity. If it were to maintain prices at a level greater than parity, the Department would review the situation and revise or modify the regulation.

One comment questioned the accuracy of references made in the rule in terms of on tree prices. The commenter stated that on tree returns should have been used. The comment also stated that it was not clear whether the figures were stated in boxes (1⅗ bushels) or cartons (⅘ bushels). It also stated that the 1989–90 numbers were unusually high due to a freeze, and that numbers were missing for the 1995–96 season.

The on tree prices referenced in the rule are from the Florida Agricultural Statistics Service. The prices were attributed to cartons in the proposed rule. The prices should have been attributed to boxes. This has been corrected, and the figures updated. These figures were chosen to demonstrate the current status of the industry. A similar portrait could have been painted using on tree returns as suggested by the comment. On tree returns were $6.87 per box in 1991–92, $3.38 per box in 1993–94, and were $1.21 per box for the 1995–96 season. The on tree price information for the 1995–96 season is $1.71 per box.

This same comment stated that the cause of the decrease in price throughout the season is a result of total

volume, not the amount of small sizes shipped early in the season. The Department recognizes that there are several factors contributing to the current problems facing the grapefruit industry. However, this rule is not an attempt to fix every potential problem. Rather, this rule seeks to slow the drastic price decline that occurs during the 11 weeks regulated hereunder. The early season crop tends to have a greater percentage of small sizes. The large volume of smaller, lower priced fruit drives down the price for all sizes.

Larger sized fruit commands a premium price early in the season. The f.o.b. for these sizes can be $4 to $6 a carton more than for the smaller sizes. In early October, the f.o.b. for a size 27 averages around $10.00 per carton, compared to an average f.o.b. of $5.50 per carton for size 56. By the end of the 11 week period in this rule, the f.o.b. for large sizes has dropped to within two dollars of the price for small sizes. In addition, during the 11 week period, prices of red seedless grapefruit have fallen from a weighted average f.o.b. of $7.80 per carton to an average f.o.b. of $5.50 per carton, the f.o.b. for size 56, for the past three seasons.

Later in the season the crop tends to naturally limit the amount of smaller sizes available for shipment. However, the price structure in the market has already been negatively affected, and the f.o.b. price for all sizes remains around $5.00 to $6.00 per carton for the rest of the season.

In addition, the committee examined shipment information detailing the amounts and percentages of sizes 48 and 56 shipped during the 11 week regulatory period for the last four seasons. They compared this information with tables outlining weekly f.o.b. figures for each size. Based on this statistical information from past seasons, the committee members believe there is an indication that once shipments of sizes 48 and 56 reach levels above 250,000 cartons a week, prices decline on those and most other sizes of red seedless grapefruit. The committee believes that if shipments of small sizes can be maintained at around 250,000 cartons a week, prices should stabilize and demand for larger, more profitable sizes should increase.

Utilizing these procedures contributes to the Act's objectives of orderly marketing and improving producers' returns. According to EAB, since sizes 48 and 56 red grapefruit are a small part of the total supply of Florida red grapefruit, limiting shipments of these sizes will have a moderate effect on the total quantity shipped. It may, however, help to prevent the average price for all Florida red grapefruit from being reduced to below the cost of production. This rule limitation provides a sufficient supply of small sized red seedless grapefruit to meet market demand, without saturating all markets with these small sizes. This should help stabilize prices for all sizes.

After thoroughly analyzing the comments received and other available information, including the additional recommendation by the committee, the Department has concluded that this interim final rule is appropriate.

A 10-day comment period is provided to allow interested persons to respond to this proposal. Ten days is deemed appropriate because the regulation period begins on September 15, 1997, and continues for 11 weeks. Adequate time will be necessary so that any changes made to the regulations based on comments filed could be made effective during the 11-week period. All written comments timely received will be considered before a final determination is made on this matter.

After consideration of all relevant matter presented, including the information and recommendations submitted by the committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public intent to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because this rule needs to be in place when handlers begin shipping grapefruit in September. This rule is necessary to help stabilize the market and to improve grower returns. Further, handlers are aware of this rule, which was recommended at public meetings. Also, a 15-day comment period was provided for in the proposed rule and a 10-day comment period is provided in this rule.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR part 905 is amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR part 905 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 905.306, paragraphs (a) and (b), the word ''During'' is removed and the words ''Except as otherwise provided in § 905.601, during'' are added in its place.

3. A new § 905.601 is added to read as follows:

Note: The following section will not appear in the Code of Federal Regulations.

§ 905.601 Red seedless grapefruit regulation 101.

The schedule below establishes the weekly percentages to be used to calculate each handler's weekly allotment of small sizes. If the minimum size in effect under section 905.306 for red seedless grapefruit is size 56, handlers can fill their allotment with size 56, size 48, or a combination of the two sizes such that the total of these shipments are within the established weekly limits. If the minimum size in effect under section 905.306 for red seedless grapefruit is 48, handlers can fill their allotment with size 48 red seedless grapefruit such that the total of these shipments are within the established weekly limits. The weekly percentages for sizes 48 and/or 56 red seedless grapefruit grown in Florida, which may be handled during the specified weeks are as follows:

Week	Weekly percentage
(a) 9/15/97 through 9/21/97	50
(b) 9/22/97 through 9/28/97	50
(c) 9/29/97 through 10/5/97	50
(d) 10/6/97 through 10/12/97	35
(e) 10/13/97 through 10/19/97	35
(f) 10/20/97 through 10/26/97	35
(g) 10/27/97 through 11/2/97	30
(h) 11/3/97 through 11/9/97	30
(i) 11/10/97 through 11/16/97	30
(j) 11/17/97 through 11/23/97	30
(k) 11/24/97 through 11/30/97	30

Dated: September 9, 1997.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97–24307 Filed 9–11–97; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1011

[DA–97–09]

Milk in the Tennessee Valley Marketing Area; Termination of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; termination order.

SUMMARY: This rule terminates all but certain administrative provisions of the Tennessee Valley Federal milk marketing order. The remaining administrative provisions will be terminated at a later date. On the basis of public hearings held in May and December 1996 on proposed amendments to 4 southeastern milk orders, including the Tennessee Valley milk order, the Department concluded that each of the 4 orders should be similarly amended. Although the amended orders were approved by producers in 3 of the 4 marketing areas, the issuance of the proposed amended order for the Tennessee Valley marketing area did not receive the required two-thirds mandate. After reviewing the comments filed in response to a notice of proposed termination of the order published on July 3, 1997, the Department has concluded that the present Tennessee Valley order should be terminated.

EFFECTIVE DATE: October 1, 1997.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, PO. Box 96456, Washington, DC 20090–6456, (202) 690–1932, e-mail address Nicholas__Memoli@usda.gov.

SUPPLEMENTARY INFORMATION: Prior documents related to this proceeding:

Notice of Hearing: Issued May 1, 1996; published May 3, 1996 (61 FR 19861).

Tentative Partial Final Decision: Issued July 12, 1996; published July 18, 1996 (61 FR 37628).

Interim Amendment of Orders: Issued August 2, 1996; published August 9, 1996 (61 FR 41488).

Extension of Time for Filing Comments: Issued August 16, 1996; published August 23, 1996 (61 FR 43474).

Extension of Time for Filing Comments: Issued October 18, 1996; published October 25, 1996 (61 FR 55229).

Notice of Reopened Hearing: Issued November 19, 1996; published November 25, 1996 (61 FR 59843).

Partial Final Decision: Issued May 12, 1997; published May 20, 1997 (62 FR 27525).

Notice of Proposed Termination: Issued June 30, 1997; published July 3, 1997 (62 FR 36022).

Extension of Time for Filing Comments to the Proposed Termination: Issued July 9, 1997; published July 14, 1997 (62 FR 37524).

Order Amending the Orders: Issued July 17, 1997; published July 23, 1997 (62 FR 39737).

Partial Recommended Decision: Issued July 17, 1997; published July 23, 1997 (62 FR 39470).

The Department is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule will 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 request modification or exemption from such order by filing 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. 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.

Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a ''small business'' if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees. For the purposes of determining which dairy farms are ''small businesses,'' the $500,000 per year criterion was used to establish a production guideline of 326,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most ''small'' dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

During the representative month of February 1997, the milk of 1,469 producers was pooled on the Tennessee Valley order. Of these producers, 1,442 are considered as small businesses.

There were 7 handlers operating 8 pool distributing plants regulated under the Tennessee Valley milk order for February 1997. Of these handlers, 3 are considered small businesses.

Upon termination of the Tennessee Valley order, it is likely that all but 2 of the handlers currently regulated under the order will become regulated under the Carolina, Southeast, or Louisville-Lexington-Evansville Federal milk orders. The regulations under these other orders are, for the most part, comparable to those of the Tennessee Valley order, but each of these 4 orders has a different price structure and a unique uniform price to producers that is computed each month. The impact of these regulatory changes on producers will depend upon which order the former Tennessee Valley handlers become regulated under. In some cases, the uniform price paid to producers will be somewhat higher, but in other cases it will be a little lower.

Those handlers who will become regulated under other Federal orders will continue to be responsible for the recordkeeping, reporting, and compliance requirements of those orders.

Preliminary Statement

This order of termination is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and of the order regulating the handling of milk in the Tennessee Valley marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on July 3, 1997 (62 FR 36022), concerning a proposed termination of the order. Interested persons were afforded opportunity to file written data, views and arguments thereon.

In total, 11 comments were received, 3 supporting the termination, 3 opposed to it, and 5 taking no position on the termination but offering comments on questions raised by the Department in the notice of proposed termination.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that the current order regulating the handling of milk in

the Tennessee Valley marketing area (7 CFR part 1011) does not tend to effectuate the declared policy of the Act.

Statement of Consideration

This rule terminates the Tennessee Valley Federal milk marketing order effective October 1, 1997. On May 12, 1997, the Department issued a partial final decision on proposed amendments to the Carolina, Southeast, Tennessee Valley, and Louisville-Lexington-Evansville milk orders (i.e., Orders 5, 7, 11, and 46) which was published on May 20, 1997 (62 FR 27525). The final decision document contained proposed amended orders for the 4 southeast marketing areas, including the Tennessee Valley order, and directed the respective market administrators of the 4 orders to ascertain whether producers approved the issuance of the amended orders. The final decision concluded that amended orders were needed to effectuate the declared policy of the applicable statutory authority.

Less than two-thirds of the producers whose milk is pooled in the Tennessee Valley marketing area approved the issuance of the proposed amended order. The Act requires approval by at least two-thirds of the producers before an amended order may be issued.

In the Department's Notice of Proposed Termination of the Order, interested parties also were requested to specifically address two issues: (1) The disposition of the Tennessee Valley order transportation credit balancing fund (TCBF) and (2) transportation credit ineligibility on milk of producers located in the area comprising the Tennessee Valley marketing area under Orders 5, 7, and 46.

Comments submitted by two handlers, Mayfield Dairy Farms, Inc., and Land-O-Sun Dairies, Inc., both of which operate pool plants currently regulated under the Tennessee Valley order, support the Department's recommendation that funds accumulated in the Tennessee Valley order's TCBF be transferred prorata to the respective orders where such handlers will become regulated, based on each handler's contribution to the Tennessee Valley order's TCBF.

A comment submitted by Barber Pure Milk Company (Barber) and Dairy Fresh Corporation (Dairy Fresh), handlers regulated under the Southeast milk order, states that the handlers support the Department's proposal to transfer the money in the Tennessee Valley order's TCBF to the TCBFs of the orders under which Tennessee Valley order handlers become regulated. Barber and Dairy Fresh also state that it would be unfair to return the money that Tennessee Valley order handlers have contributed to the Order 11 TCBF to those handlers and then permit these handlers to draw credits out of the TCBFs in the Carolina, Southeast, or Louisville-Lexington-Evansville orders without having ever contributed to such funds. Additionally, the commentors support the Department's position that the milk of producers located geographically within the Tennessee Valley marketing area be ineligible for transportation credits under the other 3 southeastern milk orders.

The Fleming Companies, Inc. (Fleming), a handler operating a pool plant regulated under the Southeast order, submitted a comment urging the Department to speedily complete the process of termination of the Tennessee Valley milk marketing order. The handler contends that termination will result in handlers becoming regulated along competitive lines rather than artificial geographic lines.

Fleming supports the recommendation that funds in the Tennessee Valley order's TCBF be transferred prorata into the comparable funds of markets under which the Order 11 handlers will become regulated. Fleming states that the prorated share of any transportation credit balancing funds to follow each handler should be based on that handler's proportionate share of Class I milk marketed under the Tennessee Valley order. The handler also supports the interpretation that milk of producers located geographically within the Tennessee Valley marketing area should be ineligible for transportation credits subsequent to its termination.

A comment filed on behalf of Mid-America Dairymen, Inc. (Mid-Am), a cooperative association with producers on the 4 southeastern orders, states that Mid-Am supports the Department's proposal concerning the disbursement of the Tennessee Valley's TCBF and contends that a prorata transfer of funds is the most equitable method of disbursement. The cooperative states that in the event that two of the handlers that are currently regulated under Order 11 become unregulated, these handlers should be reimbursed for their contributions. Mid-Am also recommends the adoption of the Department's interpretation concerning the ineligibility for transportation credits for milk of producers located within the geographic boundaries of the Tennessee Valley marketing area.

Associated Milk Producers, Inc. (AMPI), stated that the Tennessee Valley order should be terminated since the order, as amended, was not approved by the producers voting in the referendum. AMPI also contends that since the major handlers on Order 11 will become regulated under Orders 5, 7, or 46, all of which provide similar transportation credit provisions, it is only fair and reasonable that the transportation credit assessments which have been contributed by those Order 11 handlers follow them to their new market of regulation and be added to the fund balance of that market.

AMPI concurs with the Department's determination that milk of producers located within the boundaries of the Tennessee Valley marketing area should be ineligible to receive transportation credits.

A comment submitted by Peeler Jersey Farms, Inc. (Peeler), a handler with distributing plants regulated under the Carolina and Southeast milk orders, states that a termination of the Tennessee Valley milk order may not be in the best interest of the Federal milk order program if an environment is created in which regulated milk competes with unregulated milk. Peeler states that to prevent this inequity the Department should modify pooling standards so that all handlers currently regulated under the Tennessee Valley milk order will be regulated under one of the other 3 southeastern milk orders.

Peeler supports the Department's proposal to transfer the funds in the Tennessee Valley order's TCBF to the TCBF of the respective order where handlers will become regulated based upon their contributions to the Order 11 TCBF. Additionally, the handler states that the milk of dairy farmers pooled on the Tennessee Valley milk order should not be eligible for transportation credits if the order is terminated.

A comment submitted by Carolina-Virginia Milk Producers Association, Inc. (Carolina-Virginia), a cooperative association representing producers whose milk is pooled on the Carolina, Southeast, and Tennessee Valley milk orders, states that Carolina-Virginia takes no position on the proposed termination of the Tennessee Valley milk order. However, the cooperative association does favor the Department's proposal to transfer prorated funds accumulated in the Tennessee Valley order's TCBF to each of the TCBFs of the respective orders where the former Tennessee Valley handlers become regulated. Carolina-Virginia also supports the return of the prorata share of the TCBF to the 2 handlers who will likely become unregulated and recommends the adoption of the Department's interpretation concerning the reference to the Tennessee Valley marketing area as it pertains to transportation credit ineligibility.

Southeastern Graded Milk Producers Association, a cooperative association with nearly 300 producers located in Kentucky, filed a comment in opposition to the termination of the Tennessee Valley order as proposed.

Southern Belle Dairy, a handler operating a pool distributing plant in Somerset, Kentucky, regulated under the Tennessee Valley milk order, also filed a comment opposing the termination of the Tennessee Valley milk marketing order. Southern Belle states that the current Tennessee Valley milk order continues to effectuate the declared policy of the Act and, therefore, should not be terminated. In addition, the handler argues that since less than 50% of the producers requested termination, the Secretary is not required to terminate the order. According to the handler, any termination of the order will create the very disorderly marketing of milk and plant price inequities the Act tends to eliminate.

Southern Belle maintains that in the event that Order 11 is terminated and Southern Belle becomes regulated under Order 7, the handler would be placed at a competitive disadvantage. The handler states that the disadvantage in the milkshed resulting from termination will require Southern Belle to pay significantly more for milk in order to secure a supply. According to the handler, despite the lower Class I price that Southern Belle would be responsible for under regulation of the Southeast order, the blend price at the plant's location would be reduced relative to the blend price of nearby Order 46 handlers competing for milk supplies and, therefore, interfere with Southern Belle's procurement of milk.

The handler also requests that if the Tennessee Valley order is terminated the funds paid into the Order 11 TCBF be returned to Southern Belle since it did not receive transportation credits in 1996 and does not intend to apply for credits in 1997 or thereafter. Southern Belle states that such reimbursement is the only equitable method of distribution of the TCBF.

Milk Marketing Inc. (MMI), a regional cooperative representing 7,500 producers whose milk is pooled under 8 different Federal milk orders, submitted a comment fully supporting the continuation of the Tennessee Valley order. MMI believes that the Federal Order Program has served the public very well and states there is no reason to terminate the Tennessee Valley order.

According to MMI, many businesses would encounter severe economic hardship if the Tennessee Valley order were terminated. MMI indicated that Southern Belle, which is supplied in part by MMI, would be financially harmed. MMI stated that Southern Belle would most likely become regulated under the Southeast Order. Were this to happen, it states, Southern Belle would experience a 32.5 cents reduction in its Class I price, but this reduction would be more than offset by a substantial increase in its procurement cost for all milk received at the Southern Belle plant because its blend price under Order 7 would be well below (e.g., 41 cents during 1996) the blend price at Somerset under Order 46. Thus, the cooperative noted, the prices received by producers servicing this plant would be severely reduced.

MMI agreed with the Department's interpretation that milk of producers located in the Tennessee Valley marketing area should still be ineligible for a transportation credit under Orders 5, 7, and 46.

Conclusion. The Department has determined that the Tennessee Valley milk order must be terminated since the existing order does not tend to effectuate the declared policy of the Act. The comments that were filed in response to the notice of proposed termination provide no basis for questioning the validity of the vote on the proposed amended order or the determination that the existing order needed to be amended.

The Act specifically prohibits the issuance of any milk order that is not favored by more than two-thirds of producers by number or by volume of milk marketed. Accordingly, since less than two-thirds of the producers, by number and volume of milk marketed, approved of the proposed new amended Tennessee Valley order, it cannot be issued. No comments disputed this point.

Several comments suggested that the Secretary was not required to terminate the existing Tennessee Valley marketing order. In the Partial Final Decision, however, the Secretary determined that recent experience under the existing marketing order demonstrated there were certain serious problems with the order that needed to be corrected (62 FR 27532–27536). The Secretary determined that the new proposed amended order was ''the detailed and appropriate means of effecting'' these corrections, and he specifically rejected the previous findings and determinations for the existing marketing order in this regard (62 FR 27537–27538). Thus, the existing marketing order does not tend to effectuate the declared policy of the Act. None of the comments dispute the Secretary's conclusions on this point.

The comments essentially just claim that a particular handler may feel competitive pressure if it is pooled under Order 7. Under Federal marketing orders, a handler located in an unregulated area is pooled under the particular marketing order where it has most of its sales. This is the main area where it chooses to compete with other handlers. If such a handler does not wish to be regulated under a particular order, it is free to sell its milk in a different geographic area and, thus, effectively choose the marketing order under which it is regulated. Similarly, any handler is free to purchase its milk supply from any producers wherever located. But certainly the existence or boundaries of Federal marketing orders should not be controlled by the marketing or procurement strategies of one particular milk plant. Furthermore, as noted above, such a claim is not even directly relevant to the question of whether the existing marketing order required certain changes in order to continue to effectuate the declared policy of the Act.

The termination of the Tennessee Valley order will not result in a regulatory void in the Tennessee Valley marketing area. In fact, it appears that all but two of the handlers now regulated under Order 11 will continue to be fully regulated under Order 5, Order 7, or Order 46. The two handlers likely to become unregulated have very limited distribution areas. Virtually all of the producers whose milk is priced under the Tennessee Valley order will continue to receive the benefits of a Federally mandated minimum price, albeit under a different order.

As requested, many of the comments received addressed the issue of disbursement of the Order 11 TCBF. A majority of the commentors support the Department's proposal to transfer the funds prorata based upon handlers' contributions to the funds of the orders that they will become regulated under. Since the handlers will be eligible to request transportation credits once they become regulated under the Carolina, Southeast or Louisville-Lexington-Evansville orders, it is the most equitable means for disbursement in accordance with 7 CFR 1000.4.

It is also reasonable, and fully supported by the comments received, to continue to exclude transportation credits under Orders 5, 7, and 46 for milk received from a dairy farm within the defined area known as the Tennessee Valley marketing area. Accordingly, there will be no change in the interpretation of Section 82(c)(2)(iii)

of Orders 5, 7, and 46 after Order 11 is terminated.

It is hereby found and determined that the Tennessee Valley milk marketing order should be terminated pursuant to 7 U.S.C. 608(c)(16)(A).

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The termination is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area;

(b) This termination does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this termination.

Therefore, good cause exists for making this order effective less than 30 days from the date of publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1011

Milk marketing orders.

Order

It is therefore ordered, That the terms and provisions of the order, as amended, regulating the handling of milk in the Tennessee Valley marketing area, (7 CFR part 1011) except § 1011.1 which incorporates the General Provisions in part 1000, are hereby terminated effective October 1, 1997.

PART 1011—MILK IN THE TENNESSEE VALLEY MARKETING AREA

1. The authority citation for 7 CFR part 1011 continues to read as follows:

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

§§ 1011.2 through 1011.86 [Removed]

2. Part 1011 is amended by removing §§ 1011.2 through 1011.86.

Dated: September 5, 1997.

Lon Hatamiya,

Administrator, Agricultural Marketing Service.

[FR Doc. 97–24174 Filed 9–11–97; 8:45 am]

BILLING CODE 3410–02–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–180–AD; Amendment 39–10128; AD 97–19–08]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that currently requires ultrasonic inspection of certain engine strut diagonal brace lugs for cracks, and replacement, if necessary. This amendment requires new repetitive inspections to detect discrepancies of the diagonal brace lugs, and rework of the diagonal brace lug, if necessary. In lieu of accomplishing the rework for certain cases, this amendment provides for an option to defer the rework by accomplishing repetitive inspections and resealing the bushing. This amendment also provides for an optional terminating modification for repetitive inspections. This amendment is prompted by additional reports of fatigue cracking in the diagonal brace lug. The actions specified in this AD are intended to prevent such fatigue cracking, which could result in failure of the strut and consequent separation of the engine from the airplane.

DATES: Effective September 29, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 29, 1997.

Comments for inclusion in the Rules Docket must be received on or before November 12, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–180–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tamara L. Dow, Aerospace Engineer, Airframe Branch, ANM–120S, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2771; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: On March 14, 1989, the FAA issued AD 89–07–15, amendment 39–6167 (54 FR 11693, March 22, 1989), applicable to certain Boeing Model 747 series airplanes, to require ultrasonic inspection of certain engine strut diagonal brace lugs for cracks, and replacement, if necessary. That action was prompted by reports of cracked diagonal braces. The actions required by that AD are intended to prevent overloading of the remaining strut attach points and possible structural damage.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the FAA has received several reports of six additional diagonal braces with cracks in one lug of the aft clevis on Boeing Model 747 series airplanes. These incidents occurred following accomplishment of the optional terminating action specified in AD 89–07–15.

One diagonal brace, which had 3,386 flight cycles, had a crack from the bore to the part edge in the aft lug. The second diagonal brace, which had 5,206 flight cycles, had one lug in the aft clevis completely fractured. The third diagonal brace, which had 13,964 flight cycles, had a crack less than 0.10 inch in the aft lug bore. The fourth diagonal brace, which had 1,275 flight cycles, had a crack from the bore to the part edge in the aft lug. The fifth diagonal brace, which had approximately 3,360 flight cycles, had a through thickness crack in the lug. The sixth diagonal brace, which had approximately 8,350 flight cycles, had a crack in the aft lug. The length of the cracks for the fifth and sixth diagonal braces is not known. (The above mentioned flight cycles refer to cycles following accomplishment of the rework.)

Investigation revealed that the apparent cause of these cracks was attributed to fatigue, which may initiate at lug bore corrosion pits or other lug surface anomalies. Fatigue cracking in the diagonal brace lugs, if not detected and corrected in a timely manner, could result in failure of the strut and consequent separation of the engine from the airplane.

Discussion of Relevant Service Information

Subsequent to the finding of this new cracking, the manufacturer issued, and

the FAA reviewed and approved, Boeing Alert Service Bulletin 747–54A2126, Revision 5, dated June 26, 1997. The revised alert service bulletin describes procedures for new repetitive detailed visual and ultrasonic inspections to detect cracking, corrosion, and migrated or rotated bushings of the diagonal brace lugs, and rework of the diagonal brace lug or a follow-on ultrasonic inspection, if necessary. In lieu of the rework for certain cases, the revised alert service bulletin also describes procedures for resealing the bushing and follow-on repetitive inspections. In addition, the revised alert service bulletin provides procedures for modification of the strut/wing, which would eliminate the need for repetitive inspections. The revised alert service bulletin also expands the effectivity listing to include additional airplanes that are subject to the addressed unsafe condition.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this AD supersedes AD 89–07–15 to require new repetitive detailed visual and ultrasonic inspections to detect cracking, corrosion, and migrated or rotated bushings of the diagonal brace lugs, and rework of the diagonal brace lugs, if necessary. In lieu of accomplishing the rework (prior to further flight) for certain cases where no cracks or corrosion is detected, this AD provides operators with an option to defer the rework for a short period of time by accomplishing repetitive inspections and resealing the bushing. This AD also provides procedures for modification of the strut/wing, which would constitute terminating action for the repetitive inspections requirements. In addition, this AD expands the applicability of the existing AD to include additional airplanes.

Determination of Rule's Effective Date

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

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this 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 under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the 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 AD will be filed in the rules docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–180–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the rules docket. A copy of it, if filed, may be obtained from the rules docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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. 106(g), 40113, 44701.

§39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6167 (54 FR 11693, March 22, 1989), and by adding a new airworthiness directive (AD), amendment 39–10128, to read as follows:

97–19–08 Boeing: Amendment 39–10128. Docket 97–NM–180–AD. Supersedes AD 89–07–15, Amendment 39–6167.

Applicability: Model 747 series airplanes having line positions 1 through 1046 inclusive; equipped with Pratt & Whitney Model JT9D series engines, General Electric Model CF6–45 and –50 series engines, or Rolls Royce Model RB211 series engines; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking in the diagonal brace lug, which could result in failure of the strut and consequent separation of the engine from the airplane, accomplish the following:

(a) For airplanes identified as Groups 1, 2, 3, and 4 in Boeing Alert Service Bulletin 747–54A2126, Revision 5, dated June 26, 1997: Perform a detailed visual and ultrasonic inspection to detect cracking, corrosion, and migrated or rotated bushings of the diagonal brace lugs, in accordance with and at the times specified in Table 1 of Figure 1 of the alert service bulletin; except that where the alert service bulletin states

that an inspection is to be performed within a specified number of days after receipt of the alert service bulletin, the inspection shall be accomplished within that number of days after the effective date of this AD. Thereafter, repeat the inspections of the diagonal brace lug as specified in paragraph (a)(1) or (a)(2) of this AD, as applicable. After the effective date of this AD, only Revision 5 of the alert service bulletin shall be used.

(1) For the aft diagonal brace lug: Repeat the detailed visual and ultrasonic inspections thereafter at intervals not to exceed those specified in paragraph (d) or (e) in Table 1 of Figure 1 of the alert service bulletin, as applicable.

(2) For the forward diagonal brace lug: Repeat the detailed visual and ultrasonic inspections thereafter at intervals not to exceed 600 landings. These inspections on the forward diagonal brace lug must be accomplished in accordance with 747 Non-Destructive Test (NDT) Manual D6–7170, Part 4, Subject 54–40–05.

Note 2: Where there are differences between the AD and the referenced alert service bulletin, the AD prevails.

(b) For airplanes identified as Groups 3, 4, and 5 in Boeing Alert Service Bulletin 747–54A2126, Revision 5, dated June 26, 1997: Perform a detailed visual and ultrasonic inspection to detect cracking, corrosion, or migrated or rotated bushings of the diagonal brace lugs, in accordance with and at the times specified in Table II of Figure 1 of the alert service; except that where the alert service bulletin states that an inspection is to be performed within a specified number of days after receipt of the alert service bulletin, the inspection shall be accomplished within that number of days after the effective date of this AD. Repeat the detailed visual and ultrasonic inspections thereafter at intervals not to exceed 1,000 flight cycles. After the effective date of this AD, only Revision 5 of the alert service bulletin shall be used.

(c) If any migrated or rotated bushing is detected during any of the inspections required by paragraph (a) or (b) of this AD, prior to further flight, rework the diagonal brace lug, in accordance with Boeing Alert Service Bulletin 747–54A2126, Revision 5, dated June 26, 1997; except as provided in paragraph (d) of this AD. Thereafter, repeat the detailed visual and ultrasonic inspections required by paragraph (a) of this AD prior to the accumulation of 5,000 landings and/or repeat the detailed visual and ultrasonic inspections required by paragraph (b) of this AD prior to the accumulation of 9,000 landings. If the lug bore diameter is not within the rework limits, prior to further flight, replace the diagonal brace or repair it, in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(d) In lieu of accomplishing the requirements of paragraph (c) of this AD, perform an ultrasonic inspection to detect cracking or corrosion of the diagonal brace lug, in accordance with Boeing Alert Service Bulletin 747–54A2126, Revision 5, dated June 26, 1997.

(1) If no other damage is detected during the inspection required by paragraph (d) of this AD, prior to further flight, reseal the bushings in accordance with the alert service bulletin; and thereafter, repeat the inspections of the diagonal brace lug as specified in paragraph (d)(1)(i) or (d)(1)(ii) of this AD, as applicable. Within 15 or 18 months (as applicable in the alert service bulletin) since the initial migrated or rotated bushing was detected, rework the diagonal brace lug in accordance with the alert service bulletin; and thereafter, repeat the detailed visual and ultrasonic inspections required by paragraph (a) of this AD prior to the accumulation of 5,000 landings and/or repeat the detailed visual and ultrasonic inspections required by paragraph (b) of this AD prior to the accumulation of 9,000 landings. If the lug bore diameter is not within the rework limits, prior to further flight, replace the diagonal brace or repair it, in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(i) For the aft diagonal brace lug: Repeat the detailed visual and ultrasonic inspections required by paragraphs (a) and (b) of this AD thereafter at intervals not to exceed those specified in paragraph (d) or (e) in Table 1 and paragraph (d) of Table II of Figure 1 of the alert service bulletin, as applicable; except that the repetitive detailed visual inspections are required within 9 months following accomplishment of the resealing.

(ii) For the forward diagonal brace lug: Repeat the detailed visual and ultrasonic inspections required by paragraphs (a) and (b) of this AD thereafter at the repetitive intervals specified in those paragraphs, as applicable; except that the repetitive detailed visual inspections are required within 9 months following accomplishment of the resealing. These inspections on the forward diagonal brace lug must be accomplished in accordance with 747 NDT Manual D6–7170, Part 4, Subject 54–40–05.

(2) If any cracking or corrosion is detected during the inspection required by paragraph (d) of this AD, prior to further flight, rework the diagonal brace lug in accordance with the alert service bulletin; and thereafter, repeat the detailed visual and ultrasonic inspections required by paragraph (a) of this AD prior to the accumulation of 5,000 landings and/or repeat the detailed visual and ultrasonic inspections required by paragraph (b) of this AD prior to the accumulation of 9,000 landings. If the lug bore diameter is not within the rework limits, prior to further flight, replace the diagonal brace or repair it, in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(e) If any cracking or corrosion is detected during any of the inspections required by paragraph (a) or (b) of this AD, prior to further flight, rework the diagonal brace lug in accordance with Boeing Alert Service Bulletin 747–54A2126, Revision 5, dated June 26, 1997; and thereafter, repeat the detailed visual and ultrasonic inspections required by paragraph (a) of this AD prior to the accumulation of 5,000 landings and/or repeat the detailed visual and ultrasonic inspections required by paragraph (b) of this AD prior to the accumulation of 9,000 landings. If the lug bore diameter is not within the rework limits, prior to further flight, replace the diagonal brace or repair it, in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(f) Accomplishment of the strut/wing modification in accordance with Boeing Alert Service Bulletin 747–54A2126, Revision 5, dated June 26,1997, constitutes terminating action for the repetitive inspection requirements of this AD.

(g)(1) 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, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(g)(2) Alternative methods of compliance, approved previously in accordance with AD 89–07–15, amendment 39–6167, and AD 95–10–16, amendment 39–9233; are not considered to be approved as alternative methods of compliance with this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(i) The actions shall be done in accordance with Boeing Alert Service Bulletin 747–54A2126, Revision 5, dated June 26, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(j) This amendment becomes effective on September 29, 1997.

Issued in Renton, Washington, on September 5, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–24179 Filed 9–11–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–229–AD; Amendment 39–10125; AD 97–19–05]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Saab Model SAAB 2000 series airplanes. This amendment requires replacement of the ignition exciter in the auxiliary power unit (APU) with a part that is designed to operate better in cold weather. This amendment is prompted by two occurrences of the APU failing to start after flight in cold soak conditions. The actions specified by this AD are intended to prevent such APU failure, which could result in the inability of the APU to restart the engines in the event both engines quit operating during flight.

DATES: Effective October 17, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 17, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from SAAB Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ruth Harder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1721; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Saab Model SAAB 2000 series airplanes was published in the **Federal Register** on May 8, 1997 (62 FR 25151). That action proposed to require replacement of the ignition exciter in the auxiliary power unit with a part that is designed to operate better in cold weather.

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

The commenter supports the proposed rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 3 Saab Model SAAB 2000 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required replacement, and that the average labor rate is $60 per work hour. Required parts will be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $180, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished the modification required by this AD action, and that no operator would accomplish this modification in the future if this AD were not adopted.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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. 106(g), 40113, 44701.

§39.13 [Amended]

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

97–19–05 SAAB Aircraft AB: Amendment 39–10125. Docket 96–NM–229–AD.

Applicability: Model SAAB 2000 series airplanes, equipped with an auxiliary power unit (APU) having part number 4500090, serial numbers SP–E941224, and SP–E941228 through SP–E951259 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent auxiliary power unit (APU) failure, which could result in the inability of the APU to restart the engines in the event both engines quit operating during flight, accomplish the following:

(a) Within 60 days after the effective date of this AD: Replace the ignition exciter, part number 4950787, with an ignition exciter having part number 179420–2, in accordance with Saab Service Bulletin 2000–49–005, dated December 19, 1995, including Attachment 1, dated November 30, 1995.

(b) As of the effective date of this AD, no person shall install an ignition exciter having part number 4950787 on any airplane.

(c) 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 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The modification shall be done in accordance with Saab Service Bulletin 2000–49–005, dated December 19, 1995, including Attachment 1, dated November 30, 995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from SAAB Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on October 17, 1997.

Issued in Renton, Washington, on September 3, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aricraft Certification Service.

[FR Doc. 97–23859 Filed 9–11–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–182–AD; Amendment 39–10127; AD 97–19–07]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Falcon 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Dassault Model Falcon 2000 series airplanes. This action requires installing new placards that stipulate the use of certain types of fuels, and revising the Airplane Flight Manual to specify the appropriate types of fuels for use in the affected airplanes. This amendment is prompted by a report indicating that, due to use of certain fuels, engine flame-out may occur. The actions specified in this AD are intended to ensure that certain fuels are prohibited from use; use of these fuels could cause an engine flame-out during a rapid throttle reduction.

DATES: Effective September 29, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 14, 1997.

Comments for inclusion in the Rules Docket must be received on or before November 12, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–182–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, New Jersey 07606. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, Massachusetts; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tom Groves, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056, telephone (425) 227–1503, fax (425) 227–1149; or Eugene Triozzi, Aerospace Engineer, Engine Certification Branch, ANE–141, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 238–7148, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on all Dassault Model Falcon 2000 series airplanes. The DGAC advises that results of bench testing revealed that the use of JET B or JP4 fuel (or equivalent fuels) could result in an engine flame-out during rapid throttle reduction. Such engine flame-out during rapid throttle reduction.

Explanation of Relevant Service Information

Dassault has issued Service Bulletin F2000–80 (F2000–28–3), dated December 11, 1996, which describes procedures for installing new placards stipulating the use of certain types of fuels. The service bulletin also describes procedures for incorporating Temporary Change No. 34 (undated) to the Falcon 2000 Airplane Flight Manual (AFM), into the AFM. Temporary Change No. 34 specifies the appropriate types of fuels in Model Falcon 2000 series airplanes. The DGAC classified this service bulletin as mandatory, and issued French airworthiness directive 96–290–001(B), dated December 4, 1996, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

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.

Explanation of Requirements of Rule

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, this AD is being issued to prevent an engine flame-out during a rapid throttle reduction. This AD requires installing new placards that stipulate the use of certain types of fuels, and revising the Limitations and Abnormal Procedures Sections of the FAA-approved AFM to specify the appropriate types of fuels for use in the affected airplanes. Those actions are required to be accomplished in accordance with the service bulletin described previously.

Determination of Rule's Effective Date

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

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons

are invited to comment on this 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 under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the 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 AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–182–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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. 106(g), 40113, 44701.

§39.13 [Amended]

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

97–19–07 Dassault Aviation: Amendment 39–10127. Docket 97–NM–182–AD.

Applicability: All Model Falcon 2000 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent an engine flame-out during a rapid throttle reduction, accomplish the following:

(a) Within 7 days after the effective date of this AD, revise the Limitations and Abnormal Procedures Sections of the FAA-approved Airplane Flight Manual (AFM), in accordance with Dassault Service Bulletin F2000–80 (F2000–283), dated December 11, 1996.

Note 2: This may be accomplished by inserting a copy of Temporary Change No. 34 (undated) to the Falcon 2000 AFM into the AFM. When this temporary revision has been incorporated in the general revisions of the AFM, the general revisions may be inserted in the AFM, provided the information contained in the general revisions is identical to that specified in Temporary Change No. 34.

(b) Within 30 days after the effective date of this AD, install new placards stipulating the types of airplane fuel to be used, in accordance with Dassault Aviation Service Bulletin F2000–80 (F2000–28–3), dated December 11, 1996.

(c) 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 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The actions shall be done in accordance with Dassault Service Bulletin F2000–80 (F2000–28–3), dated December 11, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Dassault Falcon Jet Corporation, Teterboro Airport, P. O. Box 2000, South Hackensack, New Jersey. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, Massachusetts; or at the Office of the Federal Register, 800 North CapitolStreet, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on September 29, 1997.

Note 4: The subject of this AD is addressed in French airworthiness directive 96–290–001(B), dated December 4, 1996.

Issued in Renton, Washington, on September 5, 1997.

S. R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–24178 Filed 9–11–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–SW–04–AD; Amendment 39–10130; AD 97–19–10]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Aircraft-Manufactured Model S–64E Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Sikorsky Aircraft-manufactured Model S–64E and S–64F helicopters, that currently requires initial and repetitive inspections of the main gearbox assembly second stage lower planetary plate (plate) for cracks, and removal and replacement of the plate if cracks are found; and daily inspections of certain main transmission oil filter packs for magnesium chips, and removal and replacement of the main transmission if chips are found. The AD also provides for reworking and re-identifying the plate, as well as establishes a retirement life for the plate, including those that have been reworked and re-identified. This amendment requires, for Model S–64E helicopters, inspections and rework of the plate and establishes a new retirement life for the plate. This amendment is prompted by the type certificate holder's reports that four plates were discovered to have cracks, three of which had been reworked in accordance with the existing AD. The actions specified by this AD are intended to add another plate to the applicability of the AD, remove the requirements of AD 77–20–01 for the Model S–64F and prevent failure of the plate on the Model S–64E due to fatigue cracking, which could lead to failure of the main gearbox and subsequent loss of control of the helicopter.

DATES: Effective October 17, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of October 17, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Erickson Air-Crane Co., 3100 Willow Springs Rd., P.O. Box 3247, Central Point, OR 97502. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Uday Garadi, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5157, fax (817) 222–5783.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 77–20–01, Amendment 39–3045 (42 FR 51565, September 29, 1977), which was revised by Amendment 39–3064 (42 FR 56600, October 27, 1977), and is applicable to Sikorsky Aircraft-manufactured Model S–64E and S–64F helicopters, was published in the **Federal Register** on October 11, 1996 (61 FR 53339). That action proposed to require, at 1,300 hours time-in-service (TIS), a fluorescent magnetic particle inspection of the plate, part number (P/N) 6435–20229–102, for cracks, replacement of the plate if a crack is found, and reworking the plate if no crack is found. The action also proposed to require, at 1,500 hours TIS, and thereafter at intervals not to exceed 70 hours TIS, for reworked plate, P/N 6435–20229-102, reidentified as P/N 6435–20229–102-TS–107 after rework, and for plate, P/N 6435-20229–104, a borescope inspection for cracks and replacement of the plate if a crack is found. Finally, it was proposed that these part-numbered plates be retired upon reaching 2,600 hours TIS.

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

One commenter states that the AD should not be applicable to Model S64F helicopters as in the existing AD because of differences in part numbers between that model helicopter and the Model S64E helicopter. The FAA concurs, and did not include Model S64F helicopters in the applicability portion of the proposal, nor in this final rule.

A second commenter addressed restricted category Model CH54A helicopters. This AD does not affect those model helicopters—only Model S64E helicopters. The FAA anticipates issuing another AD applicable to Model CH54A helicopters at a later date.

After careful review of the available data, including the comments previously noted, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for adding ''reidentified as'' prior to P/N 6435–20229–102-TS–107, and ''after rework'' after that P/N. The FAA has determined that these non-substantive changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 8 helicopters of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per helicopter to accomplish the inspections and 56 hours to remove and replace the main gearbox assembly, if necessary, and that the average labor rate is $60 per work hour. Required parts will cost $8,000 per helicopter. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $94,720; $3,840 to accomplish the inspections, and $90,880 to replace the plate in the main gearbox assembly in all 8 helicopters, if necessary.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–3045 (42 FR 51565, September 29, 1977) and 39–3064 (42 FR 56600, October 27, 1977), and by adding a new airworthiness directive (AD), Amendment 39–10130, to read as follows:

97–19–10 Erickson Air-Crane Co.: Amendment 39–10130. Docket No. 96–SW–04–AD. Supersedes AD 77–20–01, Amendment 39–3045 and Amendment 39–3064.

Applicability: Sikorsky Aircraft-manufactured Model S–64E helicopters, with main gearbox assembly second stage lower planetary plate (plate), part number (P/N) 6435–20229–102, reidentified as P/N 6435–20229–102–TS–107 after rework, or P/N 6435–20229–104, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the plate due to fatigue cracking, which could lead to failure of the main gearbox and subsequent loss of control of the helicopter, accomplish the following:

(a) For plate, part number (P/N) 6435–20229–102 and P/N 6435–20229–102–TS–107, at 1,300 hours total time-in-service (TIS), inspect and rework or replace the plate, as appropriate, in accordance with the Accomplishment Instructions, paragraph 2A., steps (1), and (3) through (11), of Erickson Air-Crane Co. Service Bulletin No. 64B35–7C, dated November 8, 1995.

(b) For any plate, P/N 6435–20229–102, that has been reworked and identified with ''TS–107'', and for plate, P/N 6435–20229–104, at 1,500 hours TIS and thereafter at intervals not to exceed 70 hours TIS, inspect the plate in accordance with the Accomplishment Instructions, paragraph 2B., step (1), of Erickson Air-Crane Co. Service Bulletin No. 64B35–7C, dated November 8, 1995. If a crack is found, replace the main gearbox assembly with an airworthy assembly.

(c) This AD revises the airworthiness limitation section of the maintenance manual by establishing a retirement life of 2,600 hours TIS for the main gearbox assembly second stage planetary plate, P/N 6435–20229–102, reidentified as P/N 6435–20229–102–TS–107 after rework, and P/N 6435–20229–104.

(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, Rotorcraft Certification Office, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(f) The inspections and rework or replacement, as necessary, shall be done in accordance with Erickson Air-Crane Co. Service Bulletin No. 64B35–7C, dated November 8, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Erickson Air-Crane Co., 3100 Willow Springs Rd., P.O. Box 3247, Central Point, OR 97502. Copies may be inspected at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on October 17, 1997.

Issued in Fort Worth, Texas, on September 5, 1997.

Larry M. Kelly,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 97–24194 Filed 9–11–97; 8:45 am]

BILLING CODE 4910–13–U

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 202, 230, 232, 239, 270, and 274

[Release Nos. 33–7448, IC–22815; File No. S7–19–97]

RIN 3235–AG73

Registration Under the Securities Act of 1933 of Certain Investment Company Securities

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission is amending the rule and the form under the Investment Company Act of 1940 that prescribe the method by which certain investment companies calculate and pay registration fees under the Securities Act of 1933. The amendments implement the provisions of the National Securities Markets Improvement Act of 1996 that simplify the method of determining the amount of these fees.

EFFECTIVE DATE: October 11, 1997.

FOR FURTHER INFORMATION CONTACT: Robin S. Gross, Staff Attorney, Office of Regulatory Policy at (202) 942–0690, or Carolyn A. Miller, Senior Financial Analyst, Office of Financial Analysis at (202) 942–0513, Division of Investment Management, Mail Stop 10–2, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Requests for formal interpretive advice should be directed to the Office of Chief Counsel at (202) 942–0659, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 10–6, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission today is amending rule 24f–2 [17 CFR 270.24f–2] and Form 24F–2 [17 CFR 274.24] under the Investment Company Act of 1940 [15 U.S.C. 80a] (the ''Investment Company Act''). In addition, the Commission is amending rule 485 [17 CFR 230.485] under the Securities Act of 1933 [15 U.S.C. 77a–aa] (the ''Securities Act''); Form N–1A [17 CFR 274.11A and 239.15A], Form N–3 [17 CFR 274.11b and 239.17a], and Form N–4 [17 CFR 274.11c and 239.17b], the registration forms used by certain types of investment companies to register under the Investment Company Act and to register their securities under the Securities Act; Form S–6 [17 CFR 239.16], the form used by unit investment trusts to register their securities under the Securities Act;

Form N–14 [17 CFR 239.23], the form used by investment companies to register under the Securities Act securities issued in business combination transactions; rule 24e–1 under the Investment Company Act [17 CFR 270.24e–1]; rule 13 of Regulation S–T [17 CFR 232.13]; and rule 3a of the Commission's Informal and Other Procedures [17 CFR 202.3a]. The Commission is also rescinding rules 24e–2 and 24f–1 under the Investment Company Act [17 CFR 270.24e–2 and 270.24f–1].

I. Background

The National Securities Markets Improvement Act of 1996 (''Improvement Act'')[1] amended sections 24(e) and (f) of the Investment Company Act to create a new, simpler system for the registration of securities under the Securities Act that are issued by open-end management investment companies, unit investment trusts (''UITs'') and face-amount certificate companies (collectively, ''funds'').[2] Amended section 24(f) of the Investment Company Act, when effective, will provide that a fund will be deemed to have registered an indefinite amount of securities upon the effective date of its registration statement under the Securities Act.[3] The fund then will pay a registration fee within 90 days after the end of each fiscal year based upon the aggregate sale price of fund securities sold during that fiscal year, reduced by the aggregate redemption price of the securities that were redeemed during that year (and during any earlier fiscal year ending on or after October 11, 1995), but that were not used previously by the fund to reduce its registration fees. A fund that makes its fee payment late will be required to pay interest on the unpaid amount at a rate set by the Secretary of the Treasury.[4] Amended section 24(f) will provide the exclusive means for registering fund securities under the Securities Act.[5]

On July 14, 1997, the Commission issued a release proposing to amend or rescind several rules and forms under the Investment Company Act and the Securities Act to implement the Improvement Act's amendments to section 24 (''Proposing Release'').[6] The proposals included revisions to Form 24F–2, the Form that is required to accompany fund registration fees. The Commission received seven comment letters, which generally supported the proposed amendments. The Commission is adopting the amendments substantially as proposed.

II. Discussion

A. Amendments to Rule 24f–2

The Commission proposed amending rule 24f–2 to delete provisions made unnecessary as a result of the Improvement Act, to eliminate the requirement that Form 24F–2 be accompanied by an opinion of counsel, and to require the filing of Form 24F–2 within 90 days as required by amended section 24(f). Commenters supported these amendments, which the Commission is adopting as proposed.

The Commission also proposed certain technical amendments to rule 24f–2 concerning fee payments when a fund ceases operations as a result of a liquidation, merger, or sale of all or substantially all of the assets (collectively, ''merger'') of the fund. The Commission is adopting these amendments, modified slightly from the proposal to reflect technical suggestions by commenters.[7]

Finally, the Commission is rescinding, as proposed, rule 24e–2 and rule 24f–1, which are no longer necessary as a result of the amendment of section 24(f).

B. Amendments to Form 24F–2

The Commission proposed amendments to Form 24F–2 that would substantially shorten and simplify the form. The Commission is adopting these amendments, modified to reflect comments and to add additional instructions to clarify the operation of rule 24f–2, as amended.

1. Prepaid Shares

Since 1977, rule 24f–2 has permitted a fund to offset its aggregate sales with aggregate redemptions in calculating its registration fee.[8] If redemptions exceed sales in a fiscal year, under rule 24e–2 a fund may, under existing rules, use those ''redemption credits'' to offset registration fees payable for securities registered during the next fiscal year in a post-effective amendment to the fund's registration statement. Shares registered pursuant to rule 24e–2 are, in effect, ''pre-paid.''

This system has been substantially revised by the Improvement Act. After the effective date of the adopted rule amendments, unused redemption credits from one fiscal year will be available in succeeding fiscal years, and there will be no need to register shares pursuant to a post-effective amendment.[9] Before the effective date of these rules, however, some funds will have accumulated a ''bank'' of pre-paid shares on which a new registration fee need not be paid under section 24(f), as amended. Form 24F–2, currently and as amended, requires that only shares registered pursuant to section 24(f) be included in determining the aggregate shares sold during the year.[10] At the suggestion of three commenters, the Commission is adding a new item to the Form that will provide funds space on the Form to reflect information on pre-paid shares, which should assist their personnel in tracking that information.[11]

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[1] Pub. L. 104–290 (1996).

[2] Section 203 of the Improvement Act (codified at 15 U.S.C. 80a–24 (e) and (f)).

[3] Section 24(f)(1), as amended. Amended section 24(f) becomes effective on the earlier of October 11, 1997 or the effective date of Commission rulemaking implementing amended section 24(f). *See* 15 U.S.C. 80a–24 note. For purposes of convenience, section 24, as amended when section 203 of the Improvement Act becomes effective, is referred to in this Release as ''amended section 24'' or ''section 24, as amended.''

[4] Section 24(f)(3), as amended.

[5] Section 203 of the Improvement Act rescinded the provisions of sections 24(e) and (f) that allow for post-effective amendment and post-sale registration of securities. Closed-end management investment companies will continue to register their shares and pay registration fees pursuant to section 6(b) of the Securities Act at the time of the offering.

[6] Registration under the Securities Act of 1933 of Certain Investment Company Securities, Investment Company Act Release No. 22747 (July 14, 1997) [62 FR 38495 (July 18, 1997)].

[7] The proposed amendments included a provision clarifying that the special rule provisions for reorganizations are not available in a transaction designed to result in the merger of two operating funds. No commenter addressed this proposed clarification, but one commenter urged that the rule treat all mergers as it does reorganizations and permit any unused redemption credits to be assumed by the successor fund. The Commission's proposal entailed merely clarifying the rule's provisions relating to mergers; thus, the commenter's suggestion is beyond the scope of the rule proposal. The Commission believes this suggestion should be addressed only after its consequences can be fully determined, and is therefore adopting the merger provisions as proposed.

[8] *See* Proposing Release, *supra* note 6 at nn.8–10 and accompanying text.

[9] The Improvement Act amended section 24(f) to permit a fund to reduce its registration fee by the aggregate price of securities redeemed during the fiscal year, and any prior fiscal year ending on or after October 11, 1995 that were not used previously to reduce fees payable to the Commission. In this way, amended section 24(f) will permit funds to net redemptions from previous fiscal years without having to ''preserve'' those redemption credits through filing periodic post-effective amendments pursuant to rule 24e–2, which, as noted above, is being rescinded.

[10] Shares registered pursuant to rule 24e–2 may be excluded from the aggregate shares sold. *See* Item 5(i). Funds may therefore sell pre-paid shares without being required to pay additional registration fees.

[11] Item 6 requires the fund to include the information regarding the number of pre-paid shares, if any, that were used to reduce the aggregate sales price of fund shares sold during the fiscal year, and the balance of any pre-paid shares that may remain and are eligible for use in future years. Commenters and others have inquired if there is a specific method they should use when

Continued

2. Mergers

The Commission is adding two instructions to Form 24F–2 to clarify the operation of the merger provisions of rule 24f–2. The first clarifies that the securities of a fund that are converted or exchanged (the ''Predecessor Fund'') to those of another (the ''Successor Fund'') must be treated as redemptions on the Predecessor Fund's final Form 24F–2.[12] The second clarifies that, in a reorganization in which the Predecessor Fund is not deemed to cease operations for purposes of rule 24f–2, the Successor Fund assumes the sales and the redemption credits of the Predecessor Fund, which need not file a final Form 24F–2.[13]

3. Shares Sold to Unit Investment Trusts

Form 24F–2 has included since its adoption a special instruction that permits a fund to exclude from its aggregate sales, the sales of securities sold to an unmanaged separate account organized as a UIT that itself issued securities on which registration fees have been paid.[14] This exclusion was created to prevent ''double payment'' of registration fees for the same aggregate proceeds from investors in variable insurance products.[15] Two commenters argued that the logic of this exclusion supported extending it to funds selling shares to UITs issuing periodic payment plans. The Commission agrees and is revising the instruction to Form 24F–2 to apply to shares sold to any UIT.[16]

C. Conforming Amendments

The Commission is adopting, as proposed, amendments to several forms and rules to reflect the revisions to section 24(f) and rule 24f–2 and the rescission of rules 24e–2 and 24f–1.[17]

D. Transition/Effective Date

The rule and form amendments adopted today are effective on October 11, 1997, the effective date of the amendments to section 24 of the Investment Company Act. All funds must use Form 24F–2, as revised by these amendments, for filings made on or after October 11, 1997. Funds with a fiscal year ending on or after July 13, 1997 (90 days before October 11, 1997) that file Form 24F–2 on or after October 11, 1997 may net redemptions against sales pursuant to section 24(f) as amended. Funds that file for fiscal years ended after April 14, 1997, but before July 13, 1997 may net redemptions against sales, but must pay interest from the due date of the filing.

Section 24(f), as revised, applies to any fund with an effective registration statement under the Securities Act. Accordingly, the Commission will consider any fund that has an effective registration statement on October 11, 1997 to have registered, by operation of law, an indefinite amount of shares. After October 11, 1997, when the fund next files its post-effective amendment(s), it should also revise the cover pages of its registration statement to delete statements regarding the indefinite registration of securities.

The October 11, 1997 effective date of the rule and form amendments is less than 30 days after publication in the **Federal Register**, pursuant to the ''good cause'' exception under the Administrative Procedure Act, 5 U.S.C. 553(d)(3). As discussed above, these rule and form amendments are needed to accommodate changes to the statute concerning the registration of securities and the payment of registration fees, and they clarify certain transitional issues that the statutory amendments do not address. In the absence of the amendments adopted today, the current rules and forms would continue to be in effect, even though they do not correspond to the amended statutory provisions. The potential confusion that could result concerning the applicable requirements for funds could be detrimental to investors and to market participants. In addition, because funds are currently required to file Form 24F–2 and the rule and form amendments simplify this process, the Commission does not believe that an accelerated effective date will cause hardship to affected funds. Accordingly, the Commission finds that there is good cause for effectiveness of the rule and form amendments on October 11, 1997.

III. Cost-Benefit Analysis

In the Proposing Release, the Commission provided a Cost-Benefit Analysis on the amendments and requested comments. No comments were received on these matters. The Commission is sensitive to the costs and benefits imposed by its rules. The Commission notes that the amendments implement the changes mandated by the Improvement Act to the system for registering fund securities under the Securities Act. The amendments reflect the requirements of amended section 24 of the Investment Company Act and do not impose any additional requirements. The amendments to Form 24F–2 should assist funds in calculating their registration fees and interest, if any, under amended section 24(f). Based on its experience with Form 24F–2, the Commission believes that the benefits to funds and the Commission of having a standardized format for registration fee filings and the guidance provided by the Form outweigh any burdens associated with filing the Form. In the past, Form 24F–2 has made it easier for funds to calculate registration fees and reduced errors in fee calculations. Amended Form 24F–2 would continue these benefits.

The principal economic effect of the amendments is to increase the number of filers of Form 24F–2. The Commission estimates that there will be approximately 500 new filers of the Form. The only new costs that will be imposed for these new filers will be the cost of filing the form annually, which is estimated to average $10 per filer. While in the aggregate there will be more filers of Form 24F–2, the reduction in the amount of time required to file the Form is expected to reduce the total filing costs by $60,120.

The other possible economic effect of the amendments is due to the requirement (also included in the changes made by Congress to section 24) that interest be paid on any registration fees that are paid more than 90 days after the end of the fiscal year. This economic effect also should be insignificant because, based on the Commission's past experience, very few (less than five) registrants annually file Form 24F–2 late.

The Commission estimates that there will be a nearly 50% reduction in the average time it takes filers to complete the Form. The additional guidance provided on the Form will make it easier and less time consuming for

converting a *number* of pre-paid shares into a *dollar amount*. The Commission believes that a fund may use any reasonable method that is applied consistently when converting a number of pre-paid shares into a dollar amount for purposes of determining the aggregate price of securities sold during the fiscal year pursuant to rule 24f–2.

[12] *See* Instruction C.2(a).

[13] *See* Instruction C.2(b).

[14] *See* Instruction C.3.

[15] *See* Registration Fees for Certain Investment Companies, Investment Company Act Release No. 21332 (Sept. 1, 1995) [60 FR 47041 (Sept. 11, 1995)] at nn.29–31 and accompanying text.

[16] *See* Instruction C.3. In both arrangements, a fund sells shares to a UIT that acts as a mere conduit for the investor's investment in the underlying fund. The Commission believes, therefore, that the rationale for relieving investors in variable insurance products from double payment of registration fees applies with equal force to investors in periodic payment plans. The Commission is not adopting, however, two commenters' suggestion that the instructions permit exclusion of the value of fund shares sold to a management investment company in a ''fund-of-funds'' arrangement. Unlike the UIT arrangements discussed above, a management company in a fund-of-funds arrangement does not act as a conduit for investments in the other funds.

[17] Rule 485 under the Securities Act; Form N–1A; Form N–3; Form N–4; Form S–6; Form N–14; rule 24e–1 under the Investment Company Act; rule 13 of Regulation S–T; and rule 3a of the Commission's Informal and Other Procedures.

investment companies to calculate the registration fees due and to avoid errors in fee calculations. Thus, the amendments will not result in a major increase in either costs or prices. In addition, the amendments should have no adverse effects on efficiency, competition, or capital formation.

IV. Paperwork Reduction Act

As set forth in the Proposing Release, Form 24F–2 contains ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[18] Accordingly, the collection of information requirements contained in the rule amendments were submitted to the Office of Management and Budget (''OMB'') for review pursuant to section 3507(d) of the PRA. No comments were received on the proposal with respect to the PRA submission.[19] The collection of information requirements are in accordance with section 3507 of the PRA. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the agency displays a valid OMB control number. OMB approved the PRA request and assigned a control number of 3235–0456, with an expiration date of August 31, 2000.

Form 24F–2 provides a standardized format for funds' annual registration fee filings and assists funds in calculating the fees. Form 24F–2 is required to be filed annually. It is estimated that approximately 6681 funds file Form 24F–2. The current average annual burden per respondent for Form 24F–2 is estimated to be 1.9 hours. The total annual burden for all respondents for Form 24F–2 is estimated to be 12,694 hours. The amendments would reduce the annual burden per respondent for Form 24F–2 from 1.9 hours to 1 hour.

The amendments to this collection of information are necessary to implement the changes to section 24 of the Investment Company Act made by the Improvement Act. The information collection requirements imposed by Form 24F–2 are mandatory. Responses to the collection of information will not be kept confidential.

V. Summary of Regulatory Flexibility Analysis

A summary of the Initial Regulatory Flexibility Analysis, which was prepared in accordance with 5 U.S.C. 603, was published in the Proposing Release. No comments were received on this analysis. The Commission has prepared a Final Regulatory Flexibility Analysis (''FRFA'') in accordance with 5 U.S.C. 604 regarding the rule and form amendments. The FRFA states that the amendments to rule 24F–2 and Form 24F–2 implement the provisions of the Improvement Act governing registration of fund securities under the Securities Act. The FRFA further states that the conforming amendments to rules and forms conform the relevant provisions to the requirements of amended section 24 of the Investment Company Act. The FRFA indicates that the amendments are designed to make it easier for funds to comply with the new statutory provisions and provide guidance on calculating registration fees on fund securities.

The FRFA sets forth the statutory authority for the amendments. The FRFA also discusses the effect of the amendments on funds that are small entities. For purposes of the amendments, small entities are funds with assets of $50 million or less at the end of their most recent fiscal year. Based on a review of data filed by funds with the Commission, it is estimated that approximately 948 funds may be considered small entities. The FRFA states that the amendments would assist small entities in complying with the new statutory requirements.

The FRFA states that the amendments would not impose any new reporting, recordkeeping or other compliance requirements, and that the Commission believes that there are no rules that duplicate, overlap or conflict with the amendments.

The FRFA discusses the various alternatives considered by the Commission in connection with the amendments that might minimize the effect on small entities, including: (a) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (b) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (c) the use of performance rather than design standards; and (d) an exemption from coverage of the rule, or any part of the rule, for small entities. Performance, rather than design, standards are incorporated in amended section 24(f) of the Investment Company Act, and are therefore incorporated into the rule and form amendments, to the extent that (i) registration fees on fund shares are based on sales less redemptions, and (ii) a fund is required to pay interest if the registration fee is paid late.

The Commission believes that it would be inconsistent with the purposes of amended section 24 of the Investment Company Act to exempt small entities from the amendments. The Commission considered not having a standardized form to accompany the funds' annual registration fee filings. Based on the Commission's and funds' experience prior to the adoption of Form 24F–2, and the comments received when Form 24F–2 was proposed, however, the Commission believes that Form 24F–2 has been beneficial. Form 24F–2 has made it easier for funds to calculate registration fees and reduced errors in fee calculations.

Different compliance or reporting requirements for small entities are not necessary because the amendments do not establish any new reporting, recordkeeping or compliance requirements. The Commission has determined that it is not feasible to further clarify, consolidate or simplify the amendments for small entities. Cost-benefit information reflected in the ''Cost-Benefit Analysis'' section of this Release also is reflected in the FRFA. A copy of the FRFA may be obtained by contacting Robin S. Gross, Mail Stop 10–2, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

VI. Statutory Authority

The Commission is rescinding rules 24e–2 and 24f–1, and amending rules 24e–1 and 24f–2 and Form 24F–2, pursuant to the authority set forth in sections 24 and 38(a) of the Investment Company Act [15 U.S.C. 80a–24, –37(a)]. The Commission is amending rule 485 pursuant to the authority set forth in sections 6, 7, 8, 10 and 19(a) of the Securities Act [15 U.S.C. 77f, 77g, 77h, 77j, 77s(a)] and section 38 of the Investment Company Act. The authority citations for the amendments to Forms N–1A, N–3, N–4, N–14 and S–6, and rule 13 of Regulation S–T and rule 3a of the Commission's Informal and Other Procedures precede the text of the amendments.

List of Subjects

17 CFR Part 202

Administrative practice and procedure, Securities.

17 CFR Parts 230, 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Part 232

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

[18] 44 U.S.C. 3501—3520.

[19] One commenter did refer to the Paperwork Reduction Act in connection with suggesting amendments not proposed by the Commission.

17 CFR Part 239

Reporting and recordkeeping requirements, Securities.

Text of Rule and Form Amendments

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 202—INFORMAL AND OTHER PROCEDURES

1. The authority citation for part 202 continues to read in part as follows:

Authority: 15 U.S.C. 77s, 77t, 78d–1, 78u, 78w, 78*ll*(d), 79r, 79t, 77sss, 77uuu, 80a–37, 80a–41, 80b–9, and 80b–11, unless otherwise noted.

* * * * *

§ 202.3a [Amended]

2. In § 202.3a, the seventh sentence of the introductory text is amended by adding the phrase ‘‘, including fees paid pursuant to Section 24(f) of the Investment Company Act of 1940 (15 U.S.C. 80a–24(f))’’ after the phrase ‘‘Section 6(b) of the Securities Act of 1933’’.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

3. The authority citation for Part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78d, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 78t, 80a–8, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

§ 230.485 [Amended]

4. Section 230.485 is amended by removing paragraphs (b)(1)(i) and (ii) and redesignating paragraphs (b)(1)(iii) through (ix) as paragraphs (b)(1)(i) through (vii), revising the reference to ‘‘paragraph (b)(1)(ix)’’ in the introductory text of paragraph (b)(2) to read ‘‘paragraph (b)(1)(vii)’’ and the references to ‘‘paragraph (b)(1)(v)’’ in paragraph (d)(2)(ii)(B) and the undesignated paragraph that follows to read ‘‘paragraph (b)(1)(iii)’’.

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

5. The authority citation for part 232 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79t(a), 80a–8, 80a–29, 80a–30 and 80a–37.

§ 232.13 [Amended]

6. Section 232.13 is amended in paragraph (a)(1)(iii) by adding after the words ‘‘Securities Act filings’’ the phrase ‘‘, including filings under section 24(f) of the Investment Company Act (15 U.S.C. 80a–24(f))’’.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

7. The authority citation for Part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79l, 79m, 79n, 79q, 79t, 80a–8, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

§ 239.16 [Form S–6 amended]

8. Form S–6 (referenced in § 239.16) is amended on the cover page by removing the words ‘‘and amount’’ in Item E, removing Items F and G, and redesignating Item H as Item F.

Note: Form S–6 does not, and the amendment will not, appear in the *Code of Federal Regulations.*

§ 239.23 [Form N–14 amended]

Note: Form N–14 does not, and the amendments will not, appear in the *Code of Federal Regulations.*

9. Form N–14 (referenced in § 239.23) is amended on the cover page by revising the Instruction to the table ‘‘Calculation of Registration Fee under the Securities Act of 1933’’ to read as follows:

FORM N–14

* * * * *

Calculation of Registration Fee under the Securities Act of 1933

* * * * *

Instruction

Registrants relying on section 24(f) of the Investment Company Act, which permits registration of an indefinite number of securities, need not include the Securities Act registration fee table, but must provide the ‘‘Title of Securities Being Registered’’ and state that no filing fee is due because of reliance on section 24(f).

* * * * *

10. Form N–14 (referenced in § 239.23) is amended by revising General Instruction B to read as follows:

FORM N–14

* * * * *

General Instructions

* * * * *

B. Registration Fee

Section 6(b) of the 1933 Act and Rule 457 [17 CFR 230.457] thereunder set forth the fee requirements under the 1933 Act. Registrants relying on section 24(f) of the 1940 Act, which permits registration of an indefinite number of shares, are directed to rule 24f–2 under the 1940 Act [17 CFR 270.24f–2] regarding payment of the registration fee. If, contemporaneous with a filing on Form N–14, an open-end management company is offering its securities to the public by means of a current prospectus under an effective registration statement, the prospectus included in a registration statement filed on Form N–14 may be used, under Rule 429(a) [17 CFR 230.429(a)], in connection with the securities covered by the earlier registration statement.

* * * * *

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

11. The authority citation for part 270 is amended by adding the following citation to read as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–37, 80a–39 unless otherwise noted;

* * * * *

Section 270.24f–2 also issued under 15 U.S.C. 80a–24(f)(4).

§ 270.24e–1 [Amended]

12. Section 270.24e–1 is amended by removing the reference ‘‘24(e)(3)’’ each time it appears and adding the reference ‘‘24(e)’’.

§ 270.24e–2 [Removed]

13. Section 270.24e–2 is removed.

§ 270.24f–1 [Removed]

14. Section 270.24f–1 is removed.

15. Section 270.24f–2 is revised to read as follows:

§ 270.24f–2 Registration under the Securities Act of 1933 of certain investment company securities.

(a) *General.* Any face-amount certificate company, open-end management company or unit investment trust (‘‘issuer’’) that is deemed to have registered an indefinite amount of securities pursuant to section 24(f) of the Act [15 U.S.C. 80a–24(f)] must, not later than 90 days after the end of any fiscal year during which it has publicly offered such securities, file Form 24F–2 (17 CFR 274.24) with the Commission. Form 24F–2 must be prepared in accordance with the requirements of that Form, and must be accompanied by the payment of a registration fee with respect to the securities sold during the fiscal year in reliance upon registration pursuant to section 24(f) of the Act calculated in the manner specified in section 24(f) of the Act and in the Form. An issuer that pays the registration fee more than 90 days after the end of its fiscal year must pay interest in the manner specified in section 24(f) of the Act and in Form 24F–2.

(b) *Issuer ceasing operations; mergers and other transactions.* For purposes of

this section, if an issuer ceases operations, the date the issuer ceases operations will be deemed to be the end of its fiscal year. In the case of a liquidation, merger, or sale of all or substantially all of the assets (''merger'') of the issuer, the issuer will be deemed to have ceased operations for purposes of this section on the date the merger is consummated; *provided, however,* that in the case of a merger of an issuer or a series of an issuer (''Predecessor Issuer'') with another issuer or a series of an issuer (''Successor Issuer''), the Predecessor Issuer will not be deemed to have ceased operations and the Successor Issuer will assume the obligations, fees, and redemption credits of the Predecessor Issuer incurred pursuant to section 24(f) of the Act and § 270.24e–2 (as in effect prior to October 11, 1997; see 17 CFR part 240 to end, revised as of April 1, 1997) if the Successor Issuer:

(1) Had no assets or liabilities, other than nominal assets or liabilities, and no operating history immediately prior to the merger;

(2) Acquired substantially all of the assets and assumed substantially all of the liabilities and obligations of the Predecessor Issuer; and

(3) The merger is not designed to result in the Predecessor Issuer merging with, or substantially all of its assets being acquired by, an issuer (or a series of an issuer) that would not meet the conditions of paragraph (b)(1) of this section.

(c) *Counting days.* To determine the date on which Form 24F–2 must be filed with the Commission under paragraph (a) of this section, the first day of the 90-day period is the first calendar day of the fiscal year following the fiscal year for which the Form is to be filed. If the last day of the 90-day period falls on a Saturday, Sunday or federal holiday, the period ends on the first business day thereafter.

Note to paragraph (c): For example, a Form 24F–2 for a fiscal year ending on June 30 must be filed no later than September 28. If September 28 falls on a Saturday or Sunday, the Form must be filed on the following Monday.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

16. The authority citation for part 274 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, and 80a–29, unless otherwise noted.

§§ 239.15A and 274.11A [Form N–1A Amended]

Note: Form N–1A does not, and the amendments will not, appear in the *Code of Federal Regulations*.

17. Form N–1A (referenced in § 239.15A and § 274.11A) is amended on the cover page by removing the words ''Calculation of Registration Fee Under the Securities Act of 1933'' and the accompanying chart and note, and adding the following:

''Title of Securities Being Registered.....

Omit from the facing sheet reference to the other Act if the Registration Statement or amendment is filed under only one of the Acts. Include the ''Approximate Date of Proposed Public Offering'' and ''Title of Securities Being Registered'' only where securities are being registered under the Securities Act of 1933.''

18. Form N–1A (referenced in § 239.15A and § 274.11A) is amended by revising General Instruction B to read as follows:

Form N–1A

* * * * *

General Instructions

* * * * *

B. Registration Fees

Registration fees should not be paid when filing this form. *See* section 24(f) of the Investment Company Act and rule 24f-2 thereunder.

* * * * *

19. Form N–1A (referenced in § 239.15A and § 274.11A) is amended by revising General Instruction F.2 to read as follows:

Form N–1A

* * * * *

General Instructions

* * * * *

F. Documents Comprising Registration Statement or Amendment

* * * * *

2. A registration statement or an amendment thereto which is filed under only the 1933 Act shall contain all the information and documents specified in paragraph 1 of this Instruction F.

* * * * *

20. Form N–1A (referenced in § 239.15A and § 274.11A) is amended by removing General Instruction F.3 and redesignating General Instruction F.4 as General Instruction F.3.

§§ 239.17a and 274.11b [Form N–3 Amended]

Note: Form N–3 does not, and the amendments will not, appear in the *Code of Federal Regulations.*

21. Form N–3 (referenced in § 239.17a and § 274.11b) is amended on the cover page by removing the words ''Calculation of Registration Fee Under the Securities Act of 1933'' and the accompanying chart and note, and adding the following:

''Title of Securities Being Registered.....

Omit from the facing sheet reference to the other Act if the Registration Statement or amendment is filed under only one of the Acts. Include the ''Approximate Date of Proposed Public Offering'' and ''Title of Securities Being Registered'' only where securities are being registered under the Securities Act of 1933.''

22. Form N–3 (referenced in § 239.17a and § 274.11b) is amended by revising General Instruction B to read as follows:

Form N–3

* * * * *

General Instructions

* * * * *

B. Registration Fees

Registration fees should not be paid when filing this form. *See* section 24(f) of the Investment Company Act and rule 24f–2 thereunder.

* * * * *

23. Form N–3 (referenced in § 239.17a and § 274.11b) is amended by revising General Instruction H.2 to read as follows:

Form N–3

* * * * *

General Instructions

* * * * *

H. Documents Comprising Registration Statement or Amendment

* * * * *

2. A registration statement or an amendment to it which is filed under only the 1933 Act shall contain all the information and documents specified in paragraph 1 of this Instruction H.

* * * * *

24. Form N–3 (referenced in § 239.17a and § 274.11b) is amended by removing General Instruction H.3 and redesignating General Instructions H.4 and H.5 as General Instructions H.3 and H.4.

§§ 239.17b and 274.11c [Form N–4 Amended]

Note: Form N–4 does not, and the amendments will not, appear in the *Code of Federal Regulations.*

25. Form N–4 (referenced in § 239.17b and § 274.11c) is amended on the cover page by removing the words ''Calculation of Registration Fee Under the Securities Act of 1933'' and the accompanying chart and note, and adding the following:

''Title of Securities Being Registered.....

Omit from the facing sheet reference to the other Act if the Registration Statement or amendment is filed under only one of the Acts. Include the ''Approximate Date of Proposed Public Offering'' and ''Title of Securities Being Registered'' only where securities are being registered under the Securities Act of 1933.''

26. Form N–4 (referenced in § 239.17b and § 274.11c) is amended by revising General Instruction B to read as follows:

Form N–4

* * * * *

General Instructions

* * * * *

B. Registration Fees

Registration fees should not be paid when filing this form. *See* section 24(f) of the Investment Company Act and rule 24f-2 thereunder.

* * * * *

27. Form N–4 (referenced in § 239.17b and § 274.11c) is amended by revising General Instruction H.2 to read as follows:

Form N–4

* * * * *

General Instructions

* * * * *

H. Documents Comprising Registration Statement or Amendment

* * * * *

2. A registration statement or an amendment to it which is filed under only the 1933 Act shall contain all the information and documents specified in paragraph 1 of this Instruction H.

* * * * *

28. Form N–4 (referenced in § 239.17b and § 274.11c) is amended by removing General Instruction H.3 and redesignating General Instructions H.4 and H.5 as General Instructions H.3 and H.4.

29. Section 274.24 and Form 24F–2 are revised to read as follows:

§ 274.24 Form 24F–2, annual filing of securities sold pursuant to registration of certain investment company securities.

Form 24F–2 shall be used as the annual report filed by face amount certificate companies, open-end management companies, and unit investment trusts pursuant to § 270.24f–2 of this chapter for reporting securities sold during the fiscal year.

Note: Form 24F–2 does not, and the amendments will not, appear in the Code of Federal Regulations. A copy of Form 24F–2 as revised is attached as Appendix I to this document.

By the Commission.

Dated: September 10, 1997.

Margaret H. McFarland,

Deputy Secretary.

BILLING CODE 8010–01–P

APPENDIX I

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

OMB APPROVAL	
OMB Number:	3235-0456
Expires:	August 31, 2000
Estimated average burden hours per response	1

FORM 24F-2
Annual Notice of Securities Sold
Pursuant to Rule 24f-2

Read instructions at end of Form before preparing Form. Please print or type.

1. Name and address of issuer:

2. The name of each series or class of securities for which this Form is filed (If the Form is being filed for all series and classes of securities of the issuer, check the box but do not list series or classes): ☐

3. Investment Company Act File Number:

   Securities Act File Number:

4(a). Last day of fiscal year for which this Form is filed:

4(b). ☐ Check box if this Form is being filed late (*i.e.*, more than 90 calendar days after the end of the issuer's fiscal year). (See Instruction A.2)

Note: If the Form is being filed late, interest must be paid on the registration fee due.

4(c). ☐ Check box if this is the last time the issuer will be filing this Form.

SEC 2393 (9-97)

5. Calculation of registration fee:

(i) Aggregate sale price of securities sold during the fiscal year pursuant to section 24(f): $_____

(ii) Aggregate price of securities redeemed or repurchased during the fiscal year: $_____

(iii) Aggregate price of securities redeemed or repurchased during any *prior* fiscal year ending no earlier than October 11, 1995 that were not previously used to reduce registration fees payable to the Commission: $_____

(iv) Total available redemption credits [add Items 5(ii) and 5(iii): -$_____

(v) Net sales -- if Item 5(i) is greater than Item 5(iv) [subtract Item 5(iv) from Item 5(i)]: $_____

(vi) Redemption credits available for use in future years — if Item 5(i) is less than Item 5(iv) [subtract Item 5(iv) from Item 5(i)]: $(_____)

(vii) Multiplier for determining registration fee (See Instruction C.9): x_____

(viii) Registration fee due [multiply Item 5(v) by Item 5(vii)] (enter "0" if no fee is due): =$_____

6. Prepaid Shares

If the response to item 5(i) was determined by deducting an amount of securities that were registered under the Securities Act of 1933 pursuant to rule 24e-2 as in effect before October 11, 1997, then report the amount of securities (number of shares or other units) deducted here: _____. If there is a number of shares or other units that were registered pursuant to rule 24e-2 remaining unsold at the end of the fiscal year for which this form is filed that are available for use by the issuer in future fiscal years, then state that number here: _____.

7. Interest due -- if this Form is being filed more than 90 days after the end of the issuer's fiscal year (see Instruction D):

+$_____

8. Total of the amount of the registration fee due plus any interest due [line 5(viii) plus line 7]:

=$_____

9. Date the registration fee and any interest payment was sent to the Commission's lockbox depository:

Method of Delivery:

☐ Wire Transfer
☐ Mail or other means

SIGNATURES

This report has been signed below by the following persons on behalf of the issuer and in the capacities and on the dates indicated.

By (Signature and Title)* _____

_____

Date _____

*Please print the name and title of the signing officer below the signature.

BILLING CODE 8010–01–C

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 24F–2

Annual Filing Under Rule 24f–2 of the Investment Company Act of 1940

Instructions

A. General

1. This Form should be used by an open-end management investment company, face amount certificate company, or unit investment trust (''issuer'') for annual filings required by rule 24f–2 under the Investment Company Act of 1940 [15 U.S.C. 80a] (''Investment Company Act''). If the issuer has registered more than one class or series of securities on the same registration statement under the Securities Act of 1933 [15 U.S.C. 77a–aa] (''Securities Act''), the issuer may file a single Form 24F–2 for those classes or series that have the same fiscal year end. Such an issuer may calculate its fees based on aggregate net sales of the series having the same fiscal year end. An issuer choosing to calculate registration fees on a class-by-class or series-by-series basis should make a single filing consisting of a separate Form 24F–2 for each class or series in a single EDGAR document.

2. This Form must be filed within 90 calendar days after the end of the issuer's fiscal year or, if the last day of the 90 day period falls on Saturday, Sunday or a federal holiday, the first business day thereafter. For example, a Form 24F–2 for a fiscal year ending on June 30 must be filed no later than September 28. If September 28 falls on a Saturday or Sunday, the Form must be filed on the following Monday. In these instructions, we refer to this as the ''Due Date.''

3. Pursuant to rule 101(a)(1)(i) of Regulation S–T [17 CFR 232.101(a)(1)(i)] this Form must be submitted in electronic format using the Commission's Electronic Data Gathering, Analysis, and Retrieval (''EDGAR'') system. Consult the EDGAR Filer Manual and Appendices for instructions on how to properly construct the submission header for an electronic Form 24F–2 EDGAR filing.

4. This Form must be accompanied by the appropriate registration fee. If the Form is being filed late, interest must be paid. See Instruction D.

5. This Form will be deemed filed with the Commission on the date on which it is received and accepted by the Commission. The Commission will not accept for filing any Form accompanied by insufficient payment of the registration fee. A Form accompanied by insufficient payment of the registration fee will not be deemed accepted and filed until receipt by the Commission of proper payment of the registration fee. No part of the registration fee is refundable. Issuers should refer to rule 0–8 under the Investment Company Act [17 CFR 270.0–8], rule 3a of the Commission's Rules of Informal and Other Procedures [17 CFR 202.3a], and rule 13(c) under Regulations S–T [17 CFR 232.13(c)] for instructions on payment of fees to the Commission.

B. Identifying Information

1. Item 1—Provide the name of the issuer as it appears on the cover of the issuer's most recent Securities Act registration statement or post-effective amendment.

2. Item 2—If the Form is being filed for all classes and series of securities of the issuer, the issuer should check the box and not list the names of the classes and series.

3. Item 3—The Investment Company Act file number should be the number assigned to the issuer's registration statement filed under the Investment Company Act (beginning with ''811–''). The Securities Act file number is the number of the registrant's most recent Securities Act registration statement (beginning with ''2–'', ''33–'' or ''333–'').

4. Item 4(a)—In the case of an issuer that ceases operations, the date it ceases operations is deemed the last day of its fiscal year for purposes of section 24(f) of the Investment Company Act.

5. Item 4(b)—Check the box if the Form is filed late. If the issuer files the Form late, the issuer is required under section 24(f) to pay interest on unpaid amounts at the rate applicable to Treasury and tax loan accounts. See Instruction D.

6. Item 4(c)—Check the box if this is the last time the issuer will be filing Form 24F–2 (i.e., if the issuer had ceased operations).

C. Computation of Registration Fee

1. Item 5 is a work sheet for calculating the registration fee due. An issuer must aggregate prices for all classes or series for which the Form is being filed. If the issuer charges a front-end sales load on its securities, the aggregate sale price must include the sales load.

2. Mergers—

(a) In the case of a liquidation, merger, or sale of all or substantially all of the assets of an issuer (''merger''), the securities of the fund ceasing operation (the ''Predecessor Fund'') that are exchanged for or converted into the other issuer (the ''Successor Fund'') should be treated as redemptions on the Predecessor Fund's final Form 24f–2 (not the Successor Fund's).

(b) In the case of a merger in which the Predecessor Fund is not deemed to cease operations (e.g. a reorganization), the Successor Fund inherits the sales and redemption credits of the Predecessor Fund, and the Successor Fund must report them as sales and redemptions on its next Form 24f–2 filing. The Predecessor fund in this type of merger need not file a final Form 24F–2. See Rule 24f–2(b) (1) and (2) [17 CFR 270.24f–2(b) (1) and (2)].

3. Special Rule for Unit Investment Trusts—The aggregate sale price of securities sold to a unit investment trust (''UIT'') that offers interests that offers interests that are registered under the Securities Act on which a registration fee has been or will be paid to the Commission, may be excluded from the aggregate sale price of securities reported in Item 5(i). If the issuer chooses to exclude the aggregate sale price of these securities from Item 5(i), the issuer may not use securities redeemed or repurchased from those UITs for purposes of determining the redemption of repurchase price of securities in Items 5(ii) and 5(iii).

4. EDGAR—Report responses for Item 5 under the following EDGAR header-tags:

Item 5(i)—<SALE-PROCEEDS>
Item 5(iv)—<REDEEMED-VALUE>
Item 5(viii)—<FEE-PAID>

The <SALE-PROCEEDS> and <REDEEMED-VALUE> tags are located immediately after the <SHARES> tag in the 24F–2 submission header.

5. Item 5(i)—Report the aggregate sale price of securities sold during the fiscal year in reliance upon registration under section 24(f). Include securities issued pursuant to divided reinvestment plans (''DRIP shares'') whether or not they are required to be registered under the Securities Act. Do not include the sale price of securities, if any, that were registered under the Securities Act other than pursuant to section 24(f), such as securities registered by post-effective amendment pursuant to rule 24e–2 under the Investment Company Act as in effect before October 11, 1997.

Example: An issuer sold 1,000,000 shares, and 250,000 shares had previously been registered pursuant to rule 24e–2. Item 5(i) should show the aggregate sale price of 750,000 shares.

6. Item 5(ii)—Report the aggregate redemption or repurchase price of securities redeemed or repurchased during the fiscal year. Do not include securities that have been redeemed or repurchased and previously applied as a reduction to registration fees pursuant to rule 24e–2 as in effect before October 11, 1997.

Example: An issuer with an August 30, 1997 fiscal year end registered shares pursuant to rule 24e–2 in September 1997. The issuer applied securities redeemed during its 1997 fiscal year to reduce its registration fees payable under rule 24e–2. The redemption price of these redeemed securities should not be included in Item 5(ii).

7. Item 5(iii)—Report the aggregate redemption or repurchase price of securities redeemed or repurchased during any prior fiscal year ending no earlier than October 11, 1995, that were not used previously to reduce registration fees payable to the Commission. Do not include securities that have been redeemed or repurchased and previously applied as a reduction to registration fees pursuant to rule 24e–2 as in effect before October 11, 1997. See the Example to Item 5(ii).

8. Items 5(iv) through 5(vi)—Report the sum of Items 5(ii) and 5(iii) in Item 5(iv). Subtract Item 5(iv) from Item 5(i). If Item 5(iv) is less than Item 5(i), report the result in Item 5(v) (net sales). If Item 5(iv) is greater than Item 5(i), report the resulting negative number in parentheses in Item 5(vi) (net redemptions or repurchases). The amount of redemptions or repurchases reported in Item 5(vi) may be used by the issuer in future years to offset sales (by including it in response to Item 5(iii) of Form 24F–2 filed for the next fiscal year).

9. Item 5(vii)—The multiplier for calculation of the registration fee is determined by the Commission in accordance with Section 6(b) of the Securities Act [15 U.S.C. 77f(b)]. As of October 1, 1996, the multiplier was 1/3300. Use of a decimal factor or some other method to calculate registration fees may result in payment of an incorrect amount. This multiplier is subject to change from time to time, without notice, by act of Congress through appropriations for the Commission or other laws. Issuers should determine the current fee rate prior to the time of filing by reference to Section 6(b) and any law or regulation affecting Section 6(b). The Commission generally makes available information concerning changes in the fee rate of its Internet site at http://www.sec.gov/news/press. Unless otherwise specified by act of Congress, the fee rate in effect at the time of filing applies to all securities sold during the fiscal year, regardless of whether the fee rate changed during the year.

10. Item 5(viii)—If the issuer reports net redemptions or repurchases in Item 5(vi), report ''0'' in Item 5(viii).

11. Item 6—If the issuer has sold securities during the fiscal year that were registered under rule 24e–2 as in effect prior to October 11, 1997 (and thus are pre-paid), the issuer should exclude the pre-paid securities from 5(i) and instead report them in item 6. If, after deducting the pre-paid securities from the aggregate sale price of securities sold during the fiscal year, there is a balance of pre-paid shares remaining, the issuer should report those pre-paid shares that remain.

Example: An issuer sold 1,000,000 shares, and had 1,250,000 shares which were pre-paid because they had previously been registered pursuant to rule 24e–2. Item 5(i) should show the aggregate sale price was 0, and Item 6 should show that 1,000,000 pre-paid shares were used and that 250,000 prepaid shares remain.

D. Computation of Interest Due if Form is Filed Late

1. Item 7—Section 24(f) requires any issuer that pays its registration fee after the Due Date (see Instruction A.2) to pay interest to the Commission on amounts not timely paid. The payment of interest does not preclude the Commission from bringing an action to enforce the requirements of section 24(f). Pursuant to section 11 of the Debt Collection Act [31 U.S.C. 3717(a)], that rate is published by the Secretary of the Treasury. The rate is computed each year for the 12-month period ending September 30 for applicability effective January 1 of the following year. The rate in effect for calendar year 1997 is 5 percent. In some circumstances the rate may be changed on a quarterly basis. Filers owing interest should verify the current interest rate.

2. The interest is assessed only on the amount of the registration fee due, and begins to accrue on the day after the Due Date. The amount of interest due should be calculated based on the interest rate in effect at the time the interest payment is made using the following formula:

I = (X), (Y), (Z/365)
where:

I = Amount of interest due
X = Amount of registration fee due
Y = Applicable interest rate, expressed as a fraction
Z = Number of days by which the registration fee payment is late

E. Payment and Signature

1. Item 9—Identify which SEC account number (payor's CIK number) was designated to receive the payment.

2. The Form must be signed on behalf of the issuer by an authorized officer of the issuer. See rule 302 of Regulation S–T [17 CFR 232.302] regarding signatures on forms filed electronically.

F. SEC's Collection of Information

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. Filing of this Form is mandatory. The principal purpose of this collection of information is to enable issuers to calculate the registration fee payable to the Commission. The Commission estimates that the burden for completing the Form will be approximately 1 hour per filing. Any member of the public may direct to the Commission any comments concerning the accuracy of the burden estimate of this Form, and any suggestions for reducing this burden. This collection of information has been reviewed by the Office of Management and Budget in accordance with the clearance requirements of 44 U.S.C. § 3507. The responses to the collection of information will not be kept confidential.

[FR Doc. 97–24344 Filed 9–11–97; 8:45 am]
BILLING CODE 8010–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.
ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that USS DECATUR (DDG 73) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: August 29, 1997.

FOR FURTHER INFORMATION CONTACT: Captain R.R. Pixa, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, telephone number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS DECATUR (DDG 73) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 2(f)(i) pertaining to placement of the masthead light or lights above and clear of all other lights and obstructions; Annex I, paragraph 2(f)(ii) pertaining to the vertical placement of task lights; Annex

I, paragraph 3(a) pertaining to the location of the forward masthead light in the forward quarter of the vessel, and the horizontal distance between the forward and after masthead lights; and, Annex I, paragraph 3(c) pertaining to placement of task lights not less than two meters from the fore and aft centerline of the ship in the athwartship direction. The Deputy Assistant Judge Advocate General (Admiralty) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

2. Table Four, Paragraph 15 of § 706.2 is amended by adding, in numerical order, the following entry for USS DECATUR:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Horizontal distance from the fore and aft centerline of the vessel in the athwartship direction
* * * * *	*	*
USS DECATUR	DDG 73	1.87 meters.
* * * * *	*	*

3. Table Four, Paragraph 16 of § 706.2 is amended by adding, in numerical order, the following entry for USS DECATUR:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Obstruction angle relative ship's headings
* * * * *	*	*
USS DECATUR	DDG 73	103.00 thru 112.50°.
* * * * *	*	*

4. Table Five of § 706.2 is amended by adding, in numerical order, the following entry for USS DECATUR:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	No.	Masthead lights not all other lights and obstructions. annex I, sec. 2(f).	Forward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. annex I, sec. 3(a)	Percentage horizontal separation attained
* * *	*	*	*	*	*
USS DECATUR	DDG 73	X	X	X	14.0
* * *	*	*	*	*	*

Dated: August 29, 1997.

R.R. Pixa,

Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty).

[FR Doc. 97–24297 Filed 9–11–97; 8:45 am]

BILLING CODE 3810–FF–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH106–1a; FRL–5890–9]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: On February 21, 1997 the Ohio Environmental Protection Agency (Ohio EPA) submitted a State Implementation Plan (SIP) revision request to USEPA under the Clean Air Act (CAA). This revision request contained a number of rules and rule paragraphs formerly contained in the Ohio Administrative Code (OAC) which had been incorporated in the Ohio SIP but which had been amended or removed from the OAC by the State. The State requested that these rules and rule paragraphs be removed from the Ohio SIP since they were no longer part of the OAC. In this action, USEPA is approving the State's SIP revision request through a ''direct final'' rulemaking; the rationale for this approval is set forth below. Elsewhere in this **Federal Register**, USEPA is proposing approval and soliciting comment on this direct final action; if appropriate comments are received, USEPA will withdraw the direct final rulemaking and address the comments received in a new final rule; otherwise, no further rulemaking will occur on this SIP revision request.

DATES: This action will be effective November 12, 1997 unless substantive adverse written comments not previously addressed by the State or USEPA are received by October 14, 1997. If the effective date of this action is delayed due to adverse comments, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Copies of the Ohio submittal are available for public review during normal business hours, between 8:00 a.m. and 4:30 p.m., at the above address.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604. Telephone: (312) 886–6036.

SUPPLEMENTARY INFORMATION:

I. Background

This is a list of the affected rules and paragraphs accompanied by an explanation of the action taken by the State as well as the reason for the State's request to remove it from the SIP.

1. OAC 3745–21–02 Ambient Air Quality Standards and Guidelines

An amendment to this rule deleted Paragraph (C) because Paragraph (C) was superseded by a revision to the National Ambient Air Quality Standards (NAAQS).

2. OAC 3745–21–03 Methods of Ambient Air Quality Measurement

An amendment to this rule deleted Paragraph (D) because it was superseded by a USEPA Reference Method.

3. OAC 3745–21–05 Non-Degradation Policy

This rule was rescinded because it has been superseded by Federal Prevention of Significant Deterioration (PSD) regulations.

4. OAC 3745–22–01 Applicability

OAC 3745–22–02 Definitions. OAC 3745–22–03 Fuel Quality Standards. OAC 3745–22–04 Registration. OAC 3745–22–05 Transfer Documentation and Labeling. OAC 3745–22–06 Compliance Averaging. OAC 3745–22–07 Sampling, Test Methods, and Compliance Calculations. OAC 3745–22–08 Recordkeeping, Reporting, and Auditing

This Chapter of Ohio's Regulations was rescinded because Cuyahoga County was redesignated as attaining the carbon monoxide NAAQS.

5. OAC 3745–23–03 Compliance Time Schedule

This rule was rescinded because it is outdated in that it requires sources to comply not later than April 15, 1977.

6. OAC 3745–23–04 Non-Degradation Policy

This rule was rescinded because it was superseded by Federal PSD regulations.

7. OAC 3745–23–05 Classification of Regions

This rule was rescinded because the State believes it to be outdated. On May 8, 1974 (39 FR 16344) the Administrator of USEPA promulgated regulations classifying all Ohio Air Quality Control Regions as Priority III. This subsequent Federal rule supplanted the State's classification of regions.

8. OAC 3745–102–07 Savings Provision

This rule was rescinded because Chapter 102 was approved by USEPA as a general conformity SIP revision on March 11, 1996 (61 FR 9644).

II. Rulemaking Action

The USEPA approves the deletion of the following rules from the Ohio SIP: OAC 3745–21–02(C), OAC 3745–21–03(D), OAC 3745–21–05, OAC 3745–22–01, OAC 3745–22–02, OAC 3745–22–03, OAC 3745–22–04, OAC 3745–22–05, OAC 3745–22–06, OAC 3745–22–07, OAC 3745–22–08, OAC 3745–23–03, OAC 3745–23–04, OAC 3745–23–05, and OAC 3745–102–07. Based on the information submitted by Ohio, the USEPA has determined that the deletions are approvable under the CAA. The USEPA is publishing this action without prior proposal because USEPA views this as a noncontroversial revision and anticipates no adverse comments.

However, in a separate document in this **Federal Register** publication, the USEPA is proposing to approve the SIP revision should adverse or critical written comments be filed. This action will be effective on November 12, 1997 unless, by October 14, 1997, written adverse or critical comments are received.

If the USEPA receives such written comments, this action will be withdrawn before the effective date by publishing a subsequent rulemaking that will withdraw the final action. Public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The USEPA does not plan to institute a second comment

period on this action. Any parties interested in commenting on this action should do so at this time. If no such written comments are received, the public is advised that this action will be effective on November 12, 1997.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

III. Administrative Requirements, Etc.

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility

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 CAA 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, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *EPA.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, USEPA must undertake various actions in association with any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. This Federal action approves the removal of pre-existing requirements which are no longer a part of State or local law. No new Federal requirements are imposed. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, USEPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a major rule as defined by section 804(2).

E. Audit Privilege and Immunity Law

Nothing in this action should be construed as making any determination or expressing any position regarding Ohio's audit privilege and immunity law (Sections 3745.70—3745.73 of the Ohio Revised Code). The USEPA will be reviewing the effect of the Ohio audit privilege and immunity law on various Ohio environmental programs, including those under the CAA, and taking appropriate action(s), if any, after thorough analysis and opportunity for Ohio to state and explain its views and positions on the issues raised by the law. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any Ohio CAA program resulting from the effect of the audit privilege and immunity law. As a consequence of the review process, the regulations subject to the action taken herein may be disapproved, Federal approval for the CAA program under which they are implemented may be withdrawn, or other appropriate action may be taken, as necessary.

F. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 12, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide and Hydrocarbons.

Dated: August 27, 1997.

Michelle D. Jordan,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671(q).

Subpart KK—Ohio

2. Subpart KK is amended by adding Section 52.1890 to read as follows:

§ 52.1890 Removed control measures.

On the dates listed below, Ohio requested that the indicated control measures be removed from the Ohio State Implementation Plan (SIP).

(a) On February 21, 1997, the State of Ohio requested that the following rules and rule paragraphs be removed from the SIP because they have been amended or revoked by the State subsequent to their incorporation in the SIP: OAC 3745–21–02(C), OAC 3745–21–03(D), OAC 3745–21–05, OAC 3745–22–01, OAC 3745–22–02, OAC 3745–22–03, OAC 3745–22–04, OAC 3745–22–05, OAC 3745–22–06, OAC 3745–22–07, OAC 3745–22–08, OAC 3745–23–03, OAC 3745–23–04, OAC 3745–23–05, and OAC 3745–102–07.

(b)[Reserved]

* * * * *

[FR Doc. 97–23977 Filed 9–11–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–5892–1]

Texas: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: The State of Texas has applied for final authorization to revise to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The EPA

reviewed Texas' application and determined that its hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Unless adverse written comments are received during the review and comment period provided for public participation in this process, EPA intends to approve Texas' hazardous waste program revision subject to the authority retained by EPA in accordance with the Hazardous and Solid Waste Amendments of 1984 (HSWA). Texas' application for the program revision is available for public review and comment.

DATES: This final authorization for Texas shall be effective November 26, 1997 unless EPA publishes a prior (FR) action withdrawing this immediate final rule. All comments on Texas' program revision application must be received by the close of business October 27, 1997.

ADDRESSES: Copies of the Texas program revision application and the materials which EPA used in evaluating the revision are available from 8:30 a.m. to 4 p.m., Monday through Friday at the following addresses for inspection and copying: Texas Natural Resource Conservation Commission, 1700 N. Congress Avenue, Austin, Texas 78711–3087, and EPA, Region 6 Library, 12th Floor, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 65202, phone (214) 655–6444. Written comments, referring to Docket Number TX–97–2, should be sent to Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, Phone number: (214) 655–8533.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6P–G), Multimedia Planning and Permitting Division, EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, Phone number: (214) 655–8533.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) RCRA 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 Code of Federal Regulations (CFR) 124, 260–262, 263, 265, 266, 268, 270 and 279.

B. Texas

Texas received final authorization to implement its hazardous waste management program on December 12, 1984, effective December 26, 1984 (49 FR 48300). This authorization was clarified in a notice published in the FR on March 26, 1985 (50 FR 11858). Texas received final authorization for revisions to its program in notices published in the FR on January 31, 1986, effective October 4, 1985 (51 FR 3952), on December 18, 1986, effective February 17, 1987 (51 FR 45320), on March 1, 1990, effective March 15, 1990 (55 FR 7318), on May 24, 1990, effective July 23, 1990 (55 FR 21383), on August 22, 1991, effective October 21, 1991 (56 FR 41626), on October 5, 1992, effective December 4, 1992 (57 FR 45719) and on April 12, 1994, effective June 27, 1994. On August 19, 1996, and March 20, 1997, the Texas Natural Resource Conservation Commission (TNRCC) submitted a final complete program revision application for additional program approvals.

In 1991, Texas Senate Bill 2 created the TNRCC which combined the functions of the former Texas Water Commission and the former Texas Air Control Board. The transfer of functions to the TNRCC from the two agencies became effective on September 1, 1993. Under Chapter 361 of the Texas Health and Safety Code, the TNRCC has sole responsibility for the administration of laws and regulations concerning hazardous waste. Today, Texas is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

TNRCC has authority to incorporate Federal rules by reference and to adopt hazardous waste rules in general pursuant to the following statutory provisions. See Texas Water Code Annotated section 5.103 (Vernon 1988 and Supplement 1996), effective September 1, 1995, as amended, which authorizes TNRCC to adopt any rules it deems necessary to carry out its powers and duties; (2) Texas Health and Safety Code section 361.024 (Vernon 1992 and Supplement 1996), effective September 1, 1995, as amended, which authorizes TNRCC to adopt rules to establish minimum standards of operation for the management and control of solid waste; and (3) Texas Health and Safety Code section 361.078 (Vernon 1992), effective September 1, 1989, which specifically recognizes the TNRCC's authority to adopt hazardous waste rules and to issue and enforce permits to the extent necessary to receive and maintain RCRA authorization. (As a result of the Texas reorganization presented above, TNRCC rules, once codified at Title 31 Texas Administrative Code, are now codified at Title 30 Texas Administrative Code).

The EPA reviewed TNRCC's application, and made an immediate final decision that TNRCC's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, the EPA intends to grant final authorization for the additional program modifications to Texas. The public may submit written comments on EPA's final decision until October 27, 1997. Copies of Texas' application for program revision are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice.

Approval of TNRCC's program revision shall become effective 75 days from the date this notice is published, unless an adverse written comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse written comment is received, EPA will publish either (1) A withdrawal of the immediate final decision or (2) a notice containing a response to the comment that either affirms that the immediate final decision takes effect or reverses the decision.

Texas' program revision application includes State regulatory changes that are equivalent to the rules promulgated in the Federal RCRA implementing regulations in 40 CFR parts 124, 260–263, 264, 265–266, 270 and 279 that were published in the FR from June 30, 1992 through June 30, 1994. This proposed approval includes the provisions that are listed in the chart below. This chart also lists the State analogs that are being recognized as equivalent to the appropriate Federal requirements.

Federal citation	State analog
1. Wood Preserving Listing; Technical Correction, July 1, 1991 (56 FR 30192). (Checklist 92).	Texas Solid Waste Disposal Act (TSWDA), and Texas Health and Safety Code (THSC) Annotate §§ 361.003(34), 361.024 (Vernon 1992 and Supplement 1996), effective September 1, 1995, as amended; TSWDA and THSC § 361.078 (Vernon 1992), Title 30 Texas Administrative Code (TAC) Chapter § 335.1, March 1, 1996, as amended, § 335.1 effective July 14, 1987, TSWDA and THSC § Title 30 TAC §§ 335.69(a)(1), 335.69(a)(1)(A), 335.69(a)(1)(B), 335.69(a)(1)(C), 335.69(a)(2), 335.69(a)(3), and 335.69(a)(4), effective February 26, 1996, Title 30 TAC §§ 335.152(a)(15) 335.112(a)(18), and TAC § 305.50(4)(A) effective November 23, 1993.
2. Burning of Hazardous Waste in Boilers and Industrial Furnaces; Corrections and Technical Amendments I, July 17, 1991 (56 FR 32688). (Checklist 94).	TSWDA, Chapter 361, §§ 361.003(12), 361.061, 361.064 THSC Ann., (Vernon 1992 and Supplement 1996), effective September 1, 1995, as amended; TSWDA and THSC § 361.032 (Vernon Supplement 1996), effective August 28, 1995, as amended, TSWDA and THSC §§ 361.036, 361.078 (Vernon 1992), effective September 1, 1989, Title 30 TAC § 305.50(4)(A), effective November 23, 1993, § 305.69(d)(1)(D), effective February 26, 1996, as amended, Title 30 TAC 305.69(h)(1), effective February 22, 1994, as amended, § 335.69(h)(1)(A), Title 30 TAC § 305.69(h)(1)(D), effective February 26, 1996, as amended, Title 30 TAC 305.69(i), L.5, effective July 29, 1992, as amended, Title 30 TAC §§ 305.572(1), 305.572(2), and 305.572(5), effective July 29, 1992, as amended, November 23, 1993, as amended, Title 30 TAC § 305.42(b), effective October 29, 1990, as amended and Title 30 TAC § 335.43(b), effective November 7, 1991, as amended, Title 30 TAC § 335.24(b), effective September 1, 1986, Title 30 TAC § 335.24(b)(2), effective September 1, 1986, Title 30 TAC § 335.112(a)(112)(a)(15), TAC §§ 335.221(b)(1), effective March 6, 1996, as amended, 335.221(b)(3), effective July 29, 1992, as amended, Title 30 TAC § 335.221(b)(2), effective March 1, 1996, and 1992, as amended, §§ 335.221(a)(3), 335.221(a)(5), 335.221(a)(6), 335.221(a)(7), 335.221(a)(10), 335.221(a)(11), 335.221(a)(15), 335.221(a)(17), 335.221(a)(13), 335.221(a)(18), 335.221(a)(19), 335.221(a)(20), 335.221(a)(21), 335.221(a)(23), effective March 1, 1996, as amended, Title 30 TAC § 335.224(5), effective February 26, 1996, Title 30 TAC § 335.24(b), effective September 1, 1996, as amended, Title 30 § 335.24(b)(2), effective September 1, 1986, Title 30 TAC § 335.112(a)(15), effective November 23, 1993, as amended, Title 30 TAC §§ 335.221(a), 335.221(a) (1) and (9) effective March 1, 1996, as amended, Title 30 TAC § 335.112(a)(6), effective February 26, 1996, as amended, Title 30 TAC §§ 335.224(5)(H), 335.224(5)(H)(i), and 335.224(5)(H)(ii), effective February 26, 1996, as amended, Title 30 TAC § 335.224(7), effective November 23, 1993, as amended, Title 30 TAC § 335.224(14), effective February 26, 1996, as amended, Title 30 TAC §§ 335.221(a)(4), and 335.221(a)(22), effective March 1, 1996, as amended, Title 30 TAC § 335.1, effective February 26, 1996, as amended, Title 30 TAC § 20.15, effective June 6, 1996, Title 30 TAC 335.41(g), effective March 6, 1996, as amended, Title 30 TAC § 335.222(c)(1), effective July 29, 1992, as amended, and Title 30 TAC § 335.222(c)(2), effective February 26, 1996, as amended.
3. Land Disposal Restrictions for Electric Arc Furnace Dust (K061), August 19, 1991 (56 FR 41164). (Checklist 95).	TSWDA Chapter 361 § 361.003(12), 361.024 (Vernon 1992 & Supp. 1996), effective September 1, 1995, as amended, TSWDA Chapter 361, THSC § 361.078(Vernon 1992), effective September 1, 1989, Title 30 TAC § 335.1 effective March 1, 1996, as amended, § 335.431(c)(1), effective March 22, 1995, as amended.
4. Burning of Hazardous Waste in Boilers and Industrial Furnaces; Technical Amendments II, August 27, 1991 (56 FR 42504). (Checklist 96).	TSDWA Chapter 361, THSC §§ 361.003(34), 361.024(Vernon 1992 & Supp. 1996) effective September 1, 1995, as amended, TSDWA, THSC § 361.078(Vernon 1992), effective September 1, 1989, Title 30 TAC § 335.1, effective March 1, 1996, as amended, TSWDA, THSC §§ 361.003(12), 361.024, 361.061(Vernon 1992 & Supp. 1996), effective September 1, 1995, as amended, TSWDA, THSC § 361.032(Vernon Supp 1996), effective August 28, 1995, as amended,TSWDA, THSC §§ 361.036, 361.078(Vernon 1992), effective September 1, 1989, TAC § 2001.021 Texas Government Code Ann.(Vernon Supp 1996) effective September 1, 1993, Title 30 TAC §§ 335.24(b), 335.24(b)(2), effective September 1, 1986, § 335.112(a)(15), effective November 23, 1993, as amended, § 335.221(b)(1), effective March 6, 1996, as amended, § 335.221(b)(3), effective July 29, 1992, as amended, § 335.221(b)(2), effective March 1, 1996, 1992, as amended, §§ 335.221(a) (3), (5), (6), (7), (10), (11), (13), (15), (17), (18), (19), (20), (21), (23), § 335.221(a) effective March 1, 1996, § 335.224(5), effective February 26, 1996, § 335.223(b), effective July 29, 1992, as amended, § 335.112(a)(6), effective February 26, 1996, § 335.112(a) (1), (9), effective March 1, 1996, §§ 335.224(5)(H), (i)–(ii), effective February 26, 1996, § 335.224(7), effective November 23, 1993, § 335,224(14), effective February 26, 1996, § 335.221(a)(22), effective March 1, 1996, § 335.1, effective February 26, 1996, § 20.15, effective June 6, 1996, § 335.41(g), effective March 6, 1996, § 335.222(c)(1), July 29, 1992, and § 335.222(c)(2), effective February 26, 1996 as amended.
5. Exports of Hazardous Waste; Technical Corrections, September 4, 1991 (56 FR 43704). (Checklist 97).	TSWDA, THSC § 361.024(Vernon 1992 & Supp. 1996), effective September 1, 1995, as amended, TSWDA, THSC §§ 361.036, 361.078(Vernon 1992), effective September 1, 1989; Title 30 TAC § 335.76(b)(1), effective July 27, 1988, as amended, § 335.9, effective March 1, 1996, as amended.
6. Amendments to Interim Status Standards for Downgradient Ground-Water Monitoring Well Locations at Hazardous Waste Facilities, (56 FR 66365–66369) December 23, 1991. (Checklist 99).	Tex. Water Code Ann. § 5.103(Vernon 1988 & Supp. 1996), effective September 1, 1995, as amended; TSWDA, THSC §§ 361.024 (Vernon 1992 & Supp.1996), effective September 1, 1995, as amended; TSWDA, THSC § 361.078(Vernon 1992), effective September 1, 1989; Title 30 TAC § 335.1, effective January 26, 1994, as amended, and § 335.112(a)(5), effective February 26, 1996, as amended.

Federal citation	State analog
7. Liners and Leak Detection Systems for Hazardous Waste Land Disposal Units, (57 FR 3462–3497) January 29, 1992. (Checklist 100).	Texas Water Code Ann. § 5.103 (Vernon 1988 & Supp. 1996), effective September 1, 1995, as amended; TSWDA Chapter 361, § 361.024, THSC (Vernon 1992 & Supp. 1996), effective September 1, 1995, as amended; TSWDA Chapter 361, § 361.078 THSC (Vernon 1992) effective September 1, 1989; Title 30 TAC §§ 305.122(a), 305.122(a)(1), 305.122(a)(2), § 305.50(4)(A), effective November 23, 1993; § 305.122(a)(3), § 305.69(i), B, H, J effective February 26, 1996; §§ 335.1, 335.152(a)(1), 335.152(a)(4), 335.168(c)–(f), 335.168(g)–(i), 335.152(a) (9), 335.169(b)(2)–(4), 335.170(c)–(d), (1)–(2), 335.170(e), 335.170(f), (1)–(2), 335.170(g)–(k), 335.152(a)(10), 335.173 (c)–(d), 335.173(d) (1)–(2), 335.173(f), (1)–(2), 335.173 (g)–(k), 335.152(a)(12), 335.174(b) (3)–(6), 335.112(a)(1), 335.112(a)(4), 335.112(a) (10)–(11), 335.112(a)(13), effective February 26, 1996; § 335.124 (a)–(d), effective May 28, 1986; The State rule provisions in 30 TAC § 335.124(a)–(d) are more stringent than their federal counterparts 40 CFR §§ 265.301(f)–(i) in two parts: (1) The owner or operator must design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portion of the landfill during peak discharge from a 100-year, rather, rather than a 25-year, storm; and (2) the owner or operator must design, construct, operate and maintain a run-off management system to collect and control at least the water volume resulting from a 24-hour, 100 year storm, rather than a 24-hour, 25 year-storm.
8. Second Correction to the Third Third Land Disposal Restrictions, March 6, 1992 (57 FR 8086). (Checklist 102).	TSWDA, THSC §§ 361.003(12), 361.024 (Vernon 1992 & Supp. 1996), effective September 1, 1995, as amended; TSWDA, THSC § 361.078 (Vernon 1992), effective September 1, 1989; Title 30 TAC §§ 335.152(a)(1), and 335.112(a)(1), effective February 26, 1996, as amended, and § 335.431(c)(1), effective March 22, 1995, as amended.
9. Hazardous Debris Case-by-Case Capacity Variance, (57 FR 20766–20770) May 15, 1992. (Checklist 103).	TSWDA, THSC § 361.024 (Vernon 1992 & Supp. 1996), effective September 1, 1995, as amended TSWDA, THSC § 361.078 (Vernon 1992), effective September 1, 1989, Title 30 TAC § 335.431(c)(1), effective March 22, 1995, as amended.
10. Used Oil Filter Exclusion, (57 FR 21524–21534) May 20, 1992. (Checklist 104).	TSWDA, THSC §§ 361.003(12), 361.024 (Vernon 1992 & Supp. 1996), effective September 1, 1995, as amended, TSWDA, THSC § 361.078 (Vernon 1992), effective September 1, 1989, THSC, § 371.028 (Vernon Supp. 1996), effective September 1, 1995, as amended, Title 30 TAC § 335.1, effective July 14, 1987, as amended.
11. Recycled Coke By-Product Exclusion, (57 FR 27880–27888) June 22, 1992. (Checklist 105).	TSWDA, THSC §§ 361.003(34), 361.024 (Vernon 1992 & Supp. 1996), effective September 1, 1995, as amended, TSWDA, THSC, § 361.078 (Vernon 1992), effective September 1, 1989, Title 30 TAC § 335.1, effective March 1, 1996, as amended, TSWDA, THSC, § 361.003(12), 361.024, 361.061 (Vernon 1992 & Supp. 1996), effective September 1, 1995, as amended, TSWDA, THSC, § 361.078 (Vernon 1992), effective September 1, 1989, Title 30 TAC § 335.221(a)(1), effective March 1, 1996, as amended.
12. Lead-bearing Hazardous Materials Case-by-Case Capacity Variance, (57 FR 28628–28632) June 26, 1992. (Checklist 106).	SWDA, THSC, § 361.024 (Vernon 1992 & Supp. 1996), effective September 1, 1995, as amended, TSWDA, THSC, § 361.078 (Vernon 1992), effective September 1, 1989, Title 30 TAC § 335.431(c)(1), effective March 22, 1995, as amended.
13. Used Oil Filter Exclusion; Technical Corrections, (57 FR 29220) July 1, 1992. (Checklist 107).	TSWDA, THSC §§ 361.003(12), 361.024 (Vernon 1992 & Supp. 1996), effective September 1, 1995, as amended,TSWDA, THSC § 361.078 (Vernon 1992), effective September 1, 1989, THSC, § 371.028 (Vernon Supp. 1996), effective September 1, 1995, as amended, Title 30 TAC § 335.1, effective July 14, 1987, as amended.
14. Toxicity Characteristic Revisions; Technical Corrections, (57 FR 30657-30658) July 10, 1992. (Checklist 108).	TSWDA, THSC §§ 361.003(12), 361.024, 361.061, (Vernon 1992 & Supp. 1996), effective September 1, 1995, as amended, TSWDA, THSC § 361.078 (Vernon 1992), effective September 1, 1989, THSC, § 371.078 (Vernon Supp. 1992), effective September 1, 1989, as amended, Title 30 TAC § 335.1, effective July 14, 1987, as amended, Title 30 TAC § 335.112(a)(13), effective February 26, 1996, as amended.
15. Land Disposal Restrictions for Newly Listed Wastes and Hazardous Debris, (57 FR 37194–37282) August 18, 1992. (Checklist 109).	TSWDA, THSC, §§ 361.003(12), 361.024, 361.064, (Vernon 1992 & Supp. 1996), effective September 1, 1995, as amended, TSWDA, THSC, § 361.078 (Vernon 1992), effective 1992 & Supp. 1996), effective September 1, 1995, as amended, TSWDA, THSC § 361.078 (Vernon 1992), effective September 1, 1989, Title 30 TAC § 355.1, effective July 14, 1987, as amended, Title 30 TAC § 335.431(c)(1), effective March 22, 1995, as amended, Title 30 TAC § 305.50(4)(A), effective November 23, 1993, as amended, TSWDA, THSC, §§ 361.024 (Vernon 1992 & Supp 1996), effective September 1, 1995, as amended, TSWDA, THSC § 361.078 (Vernon 1992), effective September 1, 1989, Title 30 TAC § 335.1, effective February 26, 1996, as amended, Title 30 TAC § 335.69(a)(1)(C), effective February 26, 1996, as amended, Title 30 TAC § 335.69(a)(1)(D), Title 30, TAC § 335.69(a)(1)(D)(i)-(ii), Title 30 TAC § 335.69(a)(2), Title 30 TAC § 335.152(a)(5)-(6), Title 30 TAC § 335.152(a)(19), Title 30 TAC § 335.112(a)(6), Title 30 TAC § 335.118(b), Title 30 TAC §§ 335.112(a)(10) and (21), effective February 26, 1996, as amended, Title 30 TAC § 335.431(c)(1), effective March 22, 1995, as amended, Title 30 TAC § 305.69(f)(5)(B)(ii), Title 30 TAC § 305.69(i), I.6, Title 30 TAC § 305.69(i),(N), Title 30 TAC § 305.51(c)(6), effective February 26, 1996.
16. Coke By-Products Listings, (57 FR 37284–37306) August 18, 1992. (Checklist 110).	TSWDA, THSC, §§ 361.003(12), 361.024 (Vernon 1992 * Supp. 1996), effective September 1, 1995, as amende, TSWDA, THSC § 361.078 (Vernon 1992), effective September 1, 1989, as amended, Title 30 TAC § 335.1, effective July 14, 1987, as amended, Title 30 TAC § 335.29(4), effective February 26, 1996, as amended.

Federal citation	State analog
17. Burning of Hazardous Waste in Boilers and Industrial Furnaces; Technical Amendment III, [57 FR 38558–38566] August 25, 1992. (Checklist 111).	TSDWA Chapter 361, THSC §§ 361.003(34), 361.024(Vernon 1992 & Supp. 1996) effective September 1, 1995, as amended, TSDWA, THSC § 361.078(Vernon 1992), effective September 1, 1989, Title 30 TAC § 335.1, effective March 1, 1996, as amended, TSWDA, THSC §§ 361.003(12), 361.024, 361.061(Vernon 1992 & Supp. 1996), effective September 1, 1995, as amended, TSWDA, THSC § 361.032(Vernon Supp 1996), effective August 28, 1995, as amended,TSWDA, THSC §§ 361.036, 361.078(Vernon 1992), effective September 1, 1989, TAC § 2001.021 Texas Government Code Ann.(Vernon Supp 1996) effective September 1, 1993, Title 30 TAC §§ 335.24(b), 335.24(b)(2), effective September 1, 1986, § 335.112(a)(15), § 335.221(b)(2), effective March 1, 1996, 1992, as amended, §§ 335.221(a)(3), (5), (6), (7), (10), (11), (13), (15), (17), (18), (19), (20), (21), (23), § 335.221(a) effective March 1, 1996, § 335.224(5), effective February 26,1996, § 335.223(b), effective July 29, 1992, as amended, § 335.112(a)(6), effective February 26, 1996, § 335.112(a)(1), (9), effective March 1, 1996, §§ 335.224(5)(H), (i)-(ii), effective February 26, 1996, § 335.224(7), effective November 23, 1993, § 335,224(14), effective February 26, 1996, § 335.221(a)(22), effective March 1, 1996, § 335.1, effective February 26, 1996, § 20.15, effective June 6, 1996, § 335.41(g), effective March 6,1996, § 335.222(c)(1), July 29, 1992, and § 335.222(c)(2), effective February 26, 1996 as amended.
18. Consolidated Liability Requirements, (53 FR 33938-33960) July 1, 1991, and [57 FR 42832–42844] September 16, 1992. (Checklists 113, 113.1, & 113.2).	TSWDA, THSC, §§ 361.024, 361.085 (Vernon 1992 Supp. 1996), effective September 1, 1995, as amended, TSWDA, THSC § 361.078(Vernon 1992), effective September 1, 1989; Title 30 TAC §§ 335.1(a)(7), 335.152(a)(6), 335.152(a)(6)(C), effective February 26, 1996, as amended, Title 30 TAC §§ 335.112(a)(7), 335.152(a)(6), effective February 26, 1996, as amended, Title 30 TAC §§ 335.112(a)(7), 335.152(a)(6), effective February 26, 1996, as amended.
19. Burning of Hazardous Waste in Boilers and Industrial Furnaces; Technical Amendment IV, (57 FR 44999-45001) September 30, 1992. (Checklist 114).	TSDWA Chapter 361, THSC §§ 361.003(34), 361.024(Vernon 1992 & Supp. 1996) effective September 1, 1995, as amended, TSDWA, THSC § 361.078(Vernon 1992), effective September 1, 1989, Title 30 TAC § 335.1, effective March 1, 1996, as amended, TSWDA, THSC §§ 361.003(12), 361.024, 361.061(Vernon 1992 & Supp. 1996), effective September 1, 1995, as amended, TSWDA, THSC § 361.032(Vernon Supp 1996), effective August 28, 1995, as amended,TSWDA, THSC §§ 361.036, 361.078(Vernon 1992), effective September 1, 1989, TAC § 2001.021 Texas Government Code Ann.(Vernon Supp 1996) effective September 1, 1993, Title 30 TAC §§ 335.24(b), 335.24(b)(2), effective September 1, 1986, § 335.112(a)(15), § 335.221(b)(2), effective March 1, 1996, 1992, as amended, §§ 335.221(a) (3), (5), (6), (7), (10), (11), (13), (15), (17), (18), (19), (20), (21), (23), § 335.221(a) effective March 1, 1996, § 335.224(5), effective February 26,1996, § 335.223(b), effective July 29, 1992, as amended, § 335.112(a)(6), effective February 26, 1996, § 335.112(a)(1), (9), effective March 1, 1996, §§ 335.224(5)(H), (i)-(ii), effective February 26, 1996, § 335.224(7), effective November 23, 1993, § 335,224(14), effective February 26, 1996,§ 335.221(a)(22), effective March 1, 1996, § 335.1, effective February 26, 1996, § 20.15, effective June 6, 1996, § 335.41(g), effective March 6,1996, § 335.222(c)(1), July 29, 1992, and § 335.222(c)(2), effective February 26, 1996 as amended.
20. Chlorinated Teluenes Production Waste Listing, (57 FR 47376–47386) October 15, 1992. (Checklist 115).	TSWDA, THSC, §§ 361.003(12), 361.024 (Vernon 1992 * Supp. 1996), effective September 1, 1995, as amende, TSWDA, THSC § 361.078 (Vernon 1992), effective September 1, 1989, as amended, Title 30 TAC § 335.1, effective July 14, 1987, as amended, Title 30 TAC § 335.29(4), effective February 26, 1996, as amended.
21. Hazardous Soil Case-By-Case Capacity Variance, (57 FR 47772–47776) October 20, 1992. (Checklist 116).	TSWDA, THSC § 361.024 (Vernon 1992 & Supp. 1996), effective September 1, 1995, as amended TSWDA, THSC § 361.078 (Vernon 1992), effective September 1, 1989, Title 30 TAC § 335.431(c)(1), effective March 22, 1995, as amended.
22. ''Mixture'' and ''Derived-From'' Rules; Response to court Remand, (57 FR 7628–7633) March 3, 1992. (Checklist 117A, 117A.1, 117A.2).	TSWDA, THSC §§ 361.003(12), 361.024, 361.061 (Vernon 1992 & Supp. 1996), effective September 1, 1995, as amended, TSWDA, THSC, § 361.078 (Vernon 1992), effective September 1, 1989; Title 30 TAC § 335.1, effective July 14, 1987, as amended.
23. Toxicity Characteristic Amendment, (57 FR 23062-23063) June 1, 1992. (Checklist 117B).	TSWDA, THSC, §§ 361.003(12), 361.024, 361.061 (Vernon 1992 & Supp. 1996), effective September 1, 1995, as amended, TSWDA, THSC, § 361.078 (Vernon 1992), effective September 1, 1989; Title 30 TAC § 335.1, effective July 14, 1987, as amended.
24. Liquids in Landfills II, (57 FR 54452–54461) November 18, 1992. (Checklist 118).	TSWDA, THSC, § 361.078 (Vernon 1992), effective September 1, 1989; Title 30 TAC §§ 335.1, 335.152(a)(1), 335.175 (a)–(b), 335.175, 335.175(d), 335.175(d)(1)-(2), 335.152(a)(12), 335.112(a)(1),335.125 (a)–(b), 335.125, effective February 26, 1996, as amended, 335.125(f), 335.125(f)(1)-(2), effective May 28, 1986, and 335.112(a)(13), effective February 26, 1996, as amended. The State law is more stringent than federal law in that state regulations do not permit disposal in landfills of free liquids even if a sorbent has been applied to the liquids.
25. Toxicity Characteristic Revision; TCLP Correction, (57 FR 55114–55117) November 24, 1992. (Checklist 119 & 119.1)).	TSDWA, THSC, §§ 361.003(12), 361.024 (Vernon 1992 & Supp. 1996), effective September 1, 1995, as amended, TSWDA, THSC, § 361.078 (Vernon 1992), effective September 1, 1989; Title 30 TAC § 335.29(2), effective February 26, 1996, as amended.
26. Wood Preserving; Revisions to Listings and Technical Requirements, (57 FR 61492-61505) December 24, 1992. (Checklist 120).	TSWDA, THSC, §§ 361.003(12), 361.024 (Vernon 1992 * Supp. 1996), effective September 1, 1995, as amended, TSWDA, THSC § 361.078 (Vernon 1992), effective September 1, 1989, as amended, Title 30 TAC § 335.1, effective July 14, 1987, as amended, Title 30 TAC § 335.29(4), effective February 26, 1996, as amended. Texas Solid Waste Disposal Act (TSWDA), and Texas Health and Safety Code (THSC) Annotated §§ 361.003(34), 361.024 (Vernon 1992 and Supplement 1996), effective September 1, 1995, as amended; TSWDA and THSC § 361.078 (Vernon 1992), Title 30 Texas Administrative Code (TAC) Chapter § 335.1, March 1, 1996, as amended, § 335.1 effective July 14, 1987, Title 30 TAC §§ 335.152(a)(15) 335.112(a)(18), effective November 23, 1993.

Federal citation	State analog
27. Corrective Action Management Units and Temporary Units, (58 FR 8658–8685) February 16, 1993. (Checklist 121).	TSWDA, THSC §§ 361.024, 361.061 (Vernon 1992 & Supp. 1996), effective September 1, 1995, as amended, TSWDA, THSC § 361.032 (Vernon Supp. 1996), effective August 28, 1995, as amended, Title 30 TAC §§ 335.1, 335.151(c), 335.167(b), 335.152(a)(14), 335.111(a), 305.2, 305.69(i), effective February 22, 1994, and § 335.431(c)(1), effective March 22, 1995.
28. Recycled Used Oil Management Standards, (57 FR 41566) September 10, 1992, (58 FR 26420) May 3, 1993, (58 FR 33341) June 17, 1993, (59 FR 10550) March 4, 1994. (Checklists 112, 122, 122.1 and 130).	Texas Used Oil Collection, Management, and Recycling Act, Chapter 371, THSC (Vernon Supp 1992), effective September 1, 1995, as amended (H&SC); Title 30 TAC Chapter 324, §§ 324.1, effective March 6, 1996, §§ 335.6(j), 335.24(b), 335.24(c), 335.41(g), 335.78(j), 335.221(b)(1), 335.504(1), 335.504(4), §§ 324.1, 324.2, 324.3, and 324.4, effective March 6, 1996. The Texas Used Oil Collection, Management, and Recycling Act in 30 TAC Chapter 324 Subchapter A are more stringent then the federal program for management of used oil. THSC § 371.041(b)(4) expressly prohibits the intentional application of used oil to roads or land for dust suppression without exception. The Code allows Do-it-Yourself Used Oil Collection center that is also a used oil generator to commingle household DIY oil with the used oil it generates. The code also requires a DIY used oil collection center to register biennially and report annually the amount of household used oil collected.
29. Land Disposal Restrictions; Renewal of the Hazardous Waste Debris Case-by-Case Capacity Variance, (58 FR 28506–28511) May 14, 1993. (Checklist 123).	TSWDA, THSC § 361.024 (Vernon 1992 & Supp. 1996), effective September 1, 1995, as amended TSWDA, THSC § 361.078 (Vernon 1992), effective September 1, 1989, Title 30 TAC § 335.431(c)(1), effective March 22, 1995, as amended.
30. Land Disposal Restrictions for Ignitable and Corrosive Characteristic Wastes Whose Treatment Standards Were Vacated, (58 FR 29860–29887) May 24, 1993. (Checklist 124).	TSWDA, THSC, §§ 361.024, 361.064 (Vernon 1992 & Supp. 1996), effective September 1, 1995, as amended, TSWDA, THSC, § 361.078 (Vernon 1992), effective September 1, 1989; Title 30 TAC §§ 335.41(d)(1), 335.431(c)(1) effective March 22, 1995, as amended, and Title 30 TAC § 305.69(i), B, effective February 26, 1996, as amended.
31. Requirements for Preparation, Adoption, and Submittal of Implementation Plans, (58 FR 38816–38884) July 20, 1993. (Checklist 125).	Tex. Water Code Ann. § 5.103 (Vernon 1988 & Supp. 1996), effective September 1, 1995, as amended; TSWDA Chapter 361, § 361.024, THSC (Vernon 1992) & Supp. 1996) effective September 1, 1989; Title 30 TAC §§ 335.31, 335.221(a)(15), 335.221(17), and 335.221(a), effective November 20, 1996, as amended.
32. Testing and Monitoring Activities, (58 FR 46040–46051), August 31, 1993. (Checklist 126).	Tex. Water Code Ann. § 5.103 (Vernon 1988 & Supp. 1996), effective September 1, 1995, as amended; TSWDA Chapter 361, § 361.024, THSC (Vernon 1992 & Supp. 1996), effective September 1, 1995, as amended, TSWDA Chapter 361 § 361.078 THSC (Vernon 1992), effective September 1, 1989; TSWDA Chapter 361, § 361.003, THSC (Vernon 1992), effective September 1, 1991, as amended; Title 30 TAC § 335.1 effective January 26, 1994, as amended; §§ 335.30, 335.29 (2)–(3), 335.152(a)(8), 335.175(c), 335.112(a)(9), 335.125(d), 335.431(c) (1),(3), 305.150, 305.172(2)(A) (iii)-(iv), 305.572(2), effective November 20, 1996, as amended, and 305.50(A), effective November 23, 1993.
33. Boilers and Industrial Furnaces; Administrative Stay and Interim Standards for Bevill Residues, (58 FR 59598–59603) November 9, 1993. (Checklist 127).	Tex. Water Code Ann. § 5.103 (Vernon 1988 & Supp. 1996), effective September 1, 1995, as amended; TSWDA Chapter 361, § 361.024, THSC (Vernon 1992 & Supp. 1996), effective September 1, 1995, as amended TSWDA Chapter 361, § 361.078 THSC (Vernon 1992), effective September 1, 1989; Title 30 TAC §§ 335.221(a)(23), and 335.221(a) effective November 20, 1996, as amended.
34. Wastes From the Use of Chlorophenolic Formulations in Wood Surface Protection, (59 FR 458–469) January 4, 1994. (Checklist 128).	Tex. Water Code Ann. § 5.103 (Vernon 1988 & Supp. 1996), effective September 1, 1995, as amended; TSWDA, Chapter 361, § 361.024, THSC (Vernon 1992 & Supp. 1996), effective September 1, 1995, as amended; TSWDA, Chapter 361, § 361.078 THSC (Vernon 1992) effective September 1, 1989; Title 30 TAC §§ 335.29(5) and 335.30, effective November 20, 1996.
35. Recordkeeping Instructions; Technical Amendment, (59 FR 13891–13893) March 24, 1994. (Checklist 131).	Tex. Water Code Ann. § 5.103 (Vernon 1988 & Supp. 1996), effective September 1, 1995, as amended; TSWDA, Chapter 361, § 361.024, THSC (Vernon 1992 & Supp. 1996), effective September 1, 1995, as amended; TSWDA Chapter 361, § 361.078, THSC (Vernon 1992), effective September 1, 1989; Title 30 TAC §§ 335.152(a)(19)(A), and 335.112(a)(21)(A), effective November 20, 1996.
36. Wood Surface Protection; Correction, (59 FR 28484) June 2, 1994. (Checklist 132).	Tex. Water Code Ann. § 5.103 (Vernon 1988 & Supp. 1996), effective September 1, 1995, as amended; TSWDA, Chapter 361, § 361.024, THSC (Vernon 1992 & Supp. 1996), effective September 1, 1995, as amended; TSWDA, Chapter 361, § 361.078 THSC (Vernon 1992) effective September 1, 1989; Title 30 TAC §§ 335.29(5) and 335.30, effective November 20, 1996.
37. Letter of Credit Revision, (59 FR 29958–29960) June 10, 1994. (Checklist 133).	Tex Water Code Ann. § 5.103 (Vernon 1988 & Supp. 1996), effective September 1, 1995, as amended; TSWDA Chapter 361, § 361.024 THSC (Vernon 1992 & Supp. 1996), effective September 1, 1995, as amended; TSWDA Chapter 361, § 361.078 THSC (Vernon 1992), effective September 1, 1989.
38. Correction of Beryllium Powder (P015) Listing, (59 FR 31551–31552) June 20, 1994. (Checklist 134).	Tex. Water Code Ann. § 5.103 (Vernon & Supp. 1996), effective September 1995, as amended; TSWDA, Chapter 36, § 361.024, THSC (Vernon 1992 & Supp. 1996), effective September 1995, amended; TSWDA, Chapter 361, § 361.0 THSC (Vernon 1992) effective September 1989; Title 30 TAC § 335.1, effective January 26, 1994, as amended; 335.431(c)(1), effective November 2, 1996, as amended.

Texas is not authorized to operate the Federal program on Indian lands. This authority remains with EPA.

C. Decision

I conclude that Texas' application for a program revision meets the statutory and regulatory requirements established by RCRA. Accordingly, Texas is granted final authorization to operate its hazardous waste program as revised. Texas now has responsibility for permitting treatment, storage, and disposal facilities within its borders and

for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. Texas also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA, and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

D. Codification in Part 272

EPA uses 40 CFR 272 for codification of the decision to authorize Texas' program and for incorporation by reference of those provisions of Texas' statutes and regulations that EPA will enforce under sections 3008, 3013, and 7003 of RCRA. Therefore, EPA is reserving amendment of 40 CFR 272, subpart E, until a later date.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12866.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of the EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The EPA does not anticipate that the approval of Texas's hazardous waste program referenced in today's notice will result in annual costs of $100 million or more.

Today's rule contains no Federal mandates for State, local or tribal governments or the private sector. The Act excludes from the definition of a ''Federal mandate'' duties that arise from participation in a voluntary Federal program, except in certain cases where a ''Federal intergovernmental mandate'' affects an annual federal entitlement program of $500 million or more that are not applicable here. Texas's request for approval of a hazardous waste program is voluntary; if a state chooses not to seek authorization for administration of a hazardous waste program under RCRA subtitle C, RCRA regulation is left to the EPA.

The EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments in the aggregate, or the private sector in any one year. The EPA does not anticipate that the approval of Texas' hazardous waste program referenced in today's document will result in annual costs of $100 million or more. The EPA's approval of state programs generally may reduce, not increase, compliance costs for the private sector since the State, by virtue of the approval, may now administer the program in lieu of the EPA and exercise primary enforcement. Hence, owners and operators of treatment, storage, or disposal facilities (TSDFs) generally no longer face dual federal and state compliance requirements, thereby reducing overall compliance costs. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

The EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. The Agency recognizes that small governments may own and/or operate TSDFs that will become subject to the requirements of an approved state hazardous waste program. However, such small governments which own and/or operate TSDFs are already subject to the requirements in 40 CFR parts 264, 265, and 270 and are not subject to any additional significant or unique requirements by virtue of this program approval. Once EPA authorizes a State to administer its own hazardous waste program and any revisions to that program, these same small governments will be able to own and operate their TSDFs and underground storage tanks under the approved State program, in lieu of the Federal program.

Certification Under the Regulatory Flexibility Act

The EPA has determined that this authorization will not have a significant economic impact on a substantial number of small entities. The EPA recognizes that small entities may own and/or operate TSDFs that will become subject to the requirements of an approved state hazardous waste program. However, since such small entities which own and/or operate TSDFs are already subject to the requirements in 40 CFR parts 264, 265 and 270, this authorization does not impose any additional burdens on these small entities. This is because EPA's authorization would result in an administrative change (i.e., whether the EPA or the state administers the RCRA subtitle C program in that state), rather than result in a change in the substantive requirements imposed on small entities. Once EPA authorizes a state to administer its own hazardous waste program and any revisions to that program, these same small entities will be able to own and operate their TSDFs under the approved state program, in lieu of the federal program. Moreover, this authorization, in approving a state program to operate in lieu of the federal program, eliminates duplicative requirements for owners and operators of TSDFs in that particular state.

Therefore, EPA provides the following certification under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act. Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Texas's program, thereby eliminating duplicative requirements for handlers of hazardous

waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, the EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by section 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, and Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: July 24, 1997.

Lynda F. Carroll,

Acting Regional Administrator.

[FR Doc. 97–24239 Filed 9–11–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–7229]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2796.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements. Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

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

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Connecticut: Fairfield	City of Stamford	May 17, 1996 ..... May 24, 1996 ..... *The Advocate*	The Honorable Dannel P. Malloy, Mayor of the City of Stamford, Stamford Government Center, 888 Washington Boulevard, Stamford, Connecticut 06904–2152.	May 9, 1996	090015 C

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

Dated: September 4, 1997.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 97–24209 Filed 9–11–97; 8:45 am]

BILLING CODE 6718–03–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2796.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

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

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	# Depth in feet above ground. * Elevation in feet (NGVD)
CONNECTICUT	
Trumbull (town), Fairfield County (FEMA Docket No. 7199)	
Tributary G:	
At a point approximately 35 feet upstream of the confluence with Pequonnock River	*238
Approximately 2,360 feet upstream of Newtown Turnpike	*388
Tributary H:	
At confluence with Tributary G	*366
Approximately 815 feet upstream of confluence with Tributary G	*366
Maps available for inspection at the Engineering Department, Trumbull Town Hall, 5866 Main Street, Trumbull, Connecticut.	

Source of flooding and location	# Depth in feet above ground. * Elevation in feet (NGVD)
Weston (town), Fairfield County (FEMA Docket No. 7211)	
West Branch Saugatuck River:	
At Westport/Weston corporate limit	*47
Approximately 170 feet upstream of Kramer Lane	*444
Beaver Brook:	
Approximately 40 feet upstream of confluence with Saugatuck River	*77
Approximately 840 feet upstream of Slumber Corners bridge	*81
Jenning's Brook:	
At the confluence with Saugatuck River	*125
Approximately 420 feet above the confluence with Saugatuck River	*130
Maps available for inspection at the Weston Building Office, 56 Norfield Road, Weston, Connecticut.	
Westport (town), Fairfield County (FEMA Docket No. 7211)	
West Branch Saugatuck River:	
At approximately 550 feet above confluence with Saugatuck River	*32
At approximately 1,400 feet upstream of Newton Turnpike	*93
Maps available for inspection at the Westport Town Hall, Office of the Town Planner, 110 Myrtle Avenue, Westport, Connecticut.	
GEORGIA	
Rockdale County (Unincorporated Areas) (FEMA Docket No. 7219)	
Yellow River:	
At confluence of Big Haynes Creek	*652
Approximately 200 feet downstream of Georgia Highway 138	*660
Big Haynes Creek:	
At confluence with Yellow River	*652
At confluence of Little Haynes Creek	*661
Little Haynes Creek:	
At confluence with Big Haynes Creek	*661
At county boundary	*697
Maps available for inspection at the Rockdale County Planning and Development Department, 2570 Old Covington Highway, Conyers, Georgia.	
Trion (town), Chattooga County (FEMA Docket No. 7219)	
Chattooga River:	
Approximately 1,400 feet downstream of U.S. 27	*656
Approximately 0.75 mile upstream of confluence of Cane Creek	*682
Cane Creek:	
At confluence with Chattooga River	*679
Approximately 0.7 mile upstream of Welcome Hill Road	*680
Spring Branch:	
At confluence with Chappel Creek	*659
Approximately 100 feet downstream of Central Avenue	*663
Chappel Creek:	
At confluence with Chattooga River	*659
Approximately 1,400 feet upstream of First Street	*659
Trion Branch:	
At confluence with Chattooga River	*661
Approximately 50 feet upstream of Allgood Street	*662
Maps available for inspection at the Trion Town Hall, 128 Park Avenue, Trion, Georgia.	
ILLINOIS	
Bannockburn (village), Lake County (FEMA Docket No. 7130)	
West Fork North Branch Chicago River:	
Approximately 1,225 feet downstream of Interstate 94	*662
Approximately 350 feet upstream of Duffy Lane	*666
Middle Fork North Branch Chicago River:	
Approximately 0.81 mile downstream of Half Day Road (State Route 22)	*659
Approximately 650 feet downstream of Half Day Road	*659
Maps available for inspection at the Municipal Building, 2275 Telegraph Road, Bannockburn, Illinois.	
Gurnee (village), Lake County (FEMA Docket No. 7130)	
South Fork Gurnee Tributary:	
Approximately 100 feet downstream of Washington Street	*685
Approximately 1,250 feet upstream of Washington Street	*691
Maps available for inspection at the Municipal Building, 325 North O'Plaine Road, Gurnee, Illinois.	
Highland Park (city), Lake County (FEMA Docket No. 7190)	
Lake Michigan:	
Entire shoreline within the community	*585
Skokie River:	
At the county boundary (Lake Cook Road)	*633
At downstream side of Old Elm Road	*650
Middle Fork North Branch Chicago River:	
At Lake Cook Road (county boundary)	*651
Approximately 1,100 feet upstream of Half Day Road	*659
Maps available for inspection at the Municipal Building, 1707 St. John Avenue, Highland Park, Illinois.	
Lake County (unincorporated Areas) (FEMA Docket No. 7130)	
Timber Lake Drain:	
Approximately 125 feet downstream of State Route 59	*750
At downstream side of State Route 59	*750
Lake Michigan:	
Entire shoreline within community	*585
Honey Lake Drain:	
Approximately 375 feet upstream of Pinewood Drive	*830
Approximately 650 feet upstream of Pinewood Drive	*831
North Flint Creek:	
Backwater area approximately 1,500 feet east of intersection of Miller Road and State Route 59	*768
Approximately 1,650 feet upstream of Echo Lake Road	*852
Diamond Lake:	
Entire shoreline within community	*744
Echo Lake:	
Entire shoreline within community	*844
Flint Creek Tributary:	
Approximately 100 feet downstream of Elgin, Joliet, and Eastern Railroad	*815
Approximately 200 feet downstream of North Lake Shore Drive	*816
West Fork North Branch Chicago River:	
Approximately 100 feet upstream of Montgomery Road	*660
At Everett Road	*672
Tributary A to Buffalo Creek:	
Approximately 800 feet upstream of confluence with Buffalo Creek	*697
Approximately 1,600 feet upstream of confluence with Buffalo Creek	*699
Middle Fork North Branch Chicago River:	
Approximately 1,350 feet downstream of Half Day Road (State Route 22)	*659
Approximately 100 feet downstream of Interstate 94	*711
Bruce Tributary:	
Approximately 500 feet north of North Bruce Circle	*837
Approximately 400 feet upstream of the upstream corporate limits	*837
Diamond Lake Drain:	

Source of flooding and location	# Depth in feet above ground. * Elevation in feet (NGVD)
Approximately 100 feet downstream of Elgin, Joliet & Eastern Railroad	*728
Approximately 1,100 feet upstream of Elgin, Joliet & Eastern Railroad	*729
Skokie River:	
Approximately 300 feet upstream of Elgin, Joliet & Eastern Railroad	*672
Approximately 1,450 feet upstream of 29th Street	*697
Unnamed Ponding Area:	
Approximately 500 feet northeast of the intersection of Belvidere Road and Darrell Road	*752
Tributary to Middle Fork North Branch Chicago River:	
Entire length within the county	*682
Maps available for inspection at the Lake County Planning and Zoning Department, 18 North County Street, Waukegan, Illinois.	
North Chicago (city), Lake County (FEMA Docket No. 7130)	
Lake Michigan:	
Entire shoreline within the community	*585
Skokie River:	
Approximately 100 feet downstream of Elgin, Joliet and Eastern Railroad	*670
Approximately 1,450 feet upstream of 29th Street	*697
Middle Fork North Branch Chicago River:	
Approximately 140 feet downstream of Atkinson Road	*679
Approximately 200 feet upstream of Atkinson Road	*681
Maps available for inspection at the Municipal Building, 1850 Lewis Avenue, North Chicago, Illinois.	
MAINE	
Richmond (town), Sagadahoc County (FEMA Docket No. 7199)	
Kennebec River:	
At downstream corporate limits	*12
At upstream corporate limits	*21
Abagadasset River:	
At downstream corporate limits	*115
At downstream side of Langdon Road	*143
Baker Brook:	
At downstream corporate limits	*32
Approximately 250 feet upstream of Route 197 (Main Street)	*67
Denham Stream:	
At downstream corporate limits	*110
At upstream corporate limits	*113
Mill Brook:	
At confluence with Kennebec River	*13
Approximately 80 feet downstream of North Front Street	*15
Maps available for inspection at the Richmond Town Office, 26 Gardiner Street, Richmond, Maine.	
MARYLAND	
Frederick County (unincorporated Areas) (FEMA Docket No. 7211)	
FISHING CREEK:	
Approximately 0.27 mile downstream of Devilbiss Bridge Road	*274
Approximately 0.84 mile upstream of Mountaindale Road	*665
Fishing Creek Diversion Channel:	
At confluence with Fishing Creek	*471
At divergence from Fishing Creek	*523
Maps available for inspection at the Winchester Hall, 12 East Church Street, Frederick, Maryland.	
MICHIGAN	
Broomfield (township), Isabella County (FEMA Docket No. 7211)	
Chippewa River:	
Approximately 300 feet downstream of the downstream corporate limits, approximately 0.4 mile upstream of River Road	*857
Approximately 500 feet upstream of the upstream corporate limits, approximately 1 mile downstream of School Road	*861
Chippewa River (Lake Isabella):	
For the entire shoreline within the community	*899
Maps available for inspection at the Broomfield Township Hall, 2915 South Rolland Road, Remus, Michigan.	
Chippewa (township), Isabella County (FEMA Docket No. 7211)	
Chippewa River:	
At downstream corporate limits (county boundary)	*685
Approximately 2.4 miles upstream of Leafon Road	*730
Maps available for inspection at the Chippewa Town Hall, 11050 East Pickard Road, Mount Pleasant, Michigan.	
Coldwater (township), Isabella County (FEMA Docket No. 7211)	
Chippewa River:	
At Vernon Road	*939
Approximately 0.47 mile upstream of Vernon Road	*941
Maps available for inspection at the Coldwater Township Hall, 7450 West Grass Lake Road, Lake, Michigan.	
Deerfield (township), Isabella County (FEMA Docket No. 7211)	
Chippewa River:	
Approximately 800 feet downstream of Meridian Road	*778
Approximately 200 feet upstream of upstream corporate limits	*861
Maps available for inspection at the Office of the Deerfield Township Clerk, 4385 West Pickard Road, Mt. Pleasant, Michigan.	
Mt. Pleasant (city), Isabella County (FEMA Docket No. 7211)	
Chippewa River:	
Approximately 1,200 feet upstream of Mission Road	*745
Approximately 1.1 miles downstream of Lincoln Road	*765
Maps available for inspection at the Mt. Pleasant City Hall, 401 North Main Street, Mt. Pleasant, Michigan.	
Nottawa (township), Isabella County (FEMA Docket No. 7211)	
Chippewa River:	
Approximately 200 feet downstream of the downstream corporate limits	*860
Approximately 1,100 feet upstream of the upstream corporate limits	*862
Maps available for inspection at the Nottawa Township Supervisor's Office, 4668 North LaPearl Road, Weidman, Michigan.	
Sherman (township), Isabella County (FEMA Docket No. 7211)	
Chippewa River:	
At the downstream corporate limits	*861
At Vernon Road	*939
Maps available for inspection at the Sherman Township Hall, 3550 North Rolland Road, Weidman, Michigan.	
Union (charter township), Isabella County (FEMA Docket No. 7211)	
Chippewa River:	
Approximately 2.3 miles upstream of Leaton Road	*730
At Meridian Road	*780

Source of flooding and location	# Depth in feet above ground. * Elevation in feet (NGVD)
Maps available for inspection at the Union Township Hall, 2010 South Lincoln Road, Mt. Pleasant, Michigan.	
MINNESOTA	
Winona (city), Winona County (FEMA Docket No. 7215)	
Gilmore Creek:	
Approximately 380 feet downstream of U.S. Highway 14	*667
Approximately 50 feet upstream of St. Mary's College Bridge	*687
County Ditch Number 3:	
At confluence with Lake Winona	*649
At upstream corporate limits	*658
Lake Winona:	
Approximately 30 feet upstream of Mankato Avenue Drive	*648
At confluence of County Ditch Number 3	*649
Maps available for inspection at the Winona City Hall, 207 Lafayette Street, P.O. Box 378, Winona, Minnesota.	
NORTH CAROLINA	
Raleigh (city), Wake County (FEMA Docket No. 7211)	
Neuse River:	
Approximately 1.13 miles upstream of State Route 2555	*172
Approximately 1,800 feet upstream of Milburn Dam	*182
Maps available for inspection at the Raleigh City Hall, Planning Department, 222 West Hargett, Room 307, Raleigh, North Carolina.	
Wake County (unincorporated Areas) (FEMA Docket No. 7211)	
Neuse River (Basin 15 Stream 1):	
Upstream side of State Route 2509	*164
Approximately 2,000 feet upstream of Milburn Dam	*182
Maps available for inspection at the Wake County Office Building, Engineering Department, 336 South Salisbury Street, Raleigh, North Carolina.	
PENNSYLVANIA	
Alsace (township), Berks County (FEMA Docket No. 7195)	
Bernhart Creek:	
Approximately 1,650 feet downstream of Pricetown Road	*472
Approximately 1,200 feet downstream of Pricetown Road	*482
Maps available for inspection at the Alsace Township Office, 65 Woodside Avenue, Temple, Pennsylvania.	
Bern (township), Berks County (FEMA Docket No. 7172)	
Schuylkill River:	
Approximately 900 feet upstream of Warren Street (U.S. Route 422)	*225
Approximately 1,200 feet upstream of East Wall Street	*285
Tulpehocken Creek:	
Approximately 1,250 feet upstream of U.S. Route 422	*214
Just downstream of Greyrock Road	*215
Maps available for inspection at the Bern Township Building, 1069 Old Bernville Road, Reading, Pennsylvania.	
Birdsboro (borough), Berks County (FEMA Docket No. 7172)	
Hay Creek:	
At confluence with Schuylkill River	*162
Approximately 425 feet downstream of Armorcast Road bridge	*166
Schuylkill River:	
Approximately 1,200 feet downstream of confluence of Hay Creek	*161
Approximately 3,300 feet upstream of State Route 82	*166
Maps available for inspection at the Birdsboro Borough Hall, 113 East Main Street, Birdsboro, Pennsylvania.	
Centre (township), Berks County (FEMA Docket No. 7172)	
Schuylkill River:	
Approximately 1,050 feet upstream of East Wall Street	*285
Approximately 1,200 feet downstream of confluence of Mill Creek No. 4	*325
Maps available for inspection at the Centre Township Building, 449 Bucks Hill Road, Morhsville, Pennsylvania.	
Colebrookdale (township), Berks County (FEMA Docket No. 7172)	
Swamp Creek:	
At a point approximately 175 feet downstream of State Route 100	*360
At a point approximately 325 feet upstream of State Route 100	*365
Maps available for inspection at Colebrookdale Township Building, 765 West Philadelphia Avenue, Boyertown, Pennsylvania.	
Cumru (township), Berks County (FEMA Docket No. 7172)	
Angelica Creek/Angelica Lake:	
Approximately 800 feet upstream of Morgantown Road	*222
Approximately 1,300 feet upstream of Morgantown Road	*222
Schuylkill River:	
Approximately 1,650 feet upstream of confluence of Trout Run	*178
Approximately 650 feet upstream of confluence of Wyomissing Creek	*208
Wyomissing Creek:	
At confluence with Schuylkill River	*208
Approximately 800 feet upstream of the confluence with the Schuylkill River	*208
Angelica Creek:	
At Angelica Lake	*222
At a point approximately 0.66 mile upstream of St. Bernadine Street	*248
Maps available for inspection at the Cumru Township Building, 1775 Welsh Road, Mohnton, Pennsylvania.	
Douglass (township), Berks County (FEMA Docket No. 7172)	
Schuylkill River:	
At downstream county boundary	*148
Approximately 1,300 feet downstream of Legislative Route 147 (Douglassville Road)	*150
Maps available for inspection at the Douglass Township Building, 1068 Douglass Drive, Boyertown, Pennsylvania.	
Hamburg (borough), Berks County (FEMA Docket No. 7172)	
Kaercher Creek:	
Approximately 400 feet upstream of confluence with Schuylkill River	*346
At State Route 61	*348
Mill Creek No. 1:	
Approximately 400 feet upstream of confluence with Schuylkill River	*351
Approximately 50 feet downstream of Front Street	*355
Unnamed Tributary to Schuylkill River:	
At confluence with Schuylkill River	*342
Approximately 340 feet upstream of confluence with Schuylkill River	*342
Schuylkill River:	
Approximately 200 feet downstream of confluence of Unnamed Tributary to Schuylkill River	*342

Source of flooding and location	# Depth in feet above ground. * Elevation in feet (NGVD)
Approximately 450 feet downstream of Kernsville Dam	*379
Maps available for inspection at the Hamburg Municipal Center, 61 North Third Street, Hamburg, Pennsylvania.	
Leesport (borough), Berks County (FEMA Docket No. 7172)	
Schuylkill River:	
Approximately 2,400 feet downstream of East Wall Street	*280
Approximately 1,050 feet downstream of confluence of Irish Creek	*288
Maps available for inspection at the Leesport Borough Municipal Building, 27 South Canal Street, Leesport, Pennsylvania.	
Longswamp (township), Berks County (FEMA Docket No. 7172)	
Toad Creek:	
Approximately 380 feet upstream of School Lane	*515
Approximately 900 feet upstream of School Lane	*527
Maps available for inspection at the Longswamp Township Municipal Building, 1112 State Street, Mertztown, Pennsylvania.	
Lower Alsace (township), Berks County (FEMA Docket No. 7172)	
Schuylkill River:	
Approximately 2,850 feet upstream of U.S. Route 422 in Township of Exeter	*181
Approximately 1 mile upstream of U.S. Route 422 in Township of Exeter	*184
Maps available for inspection at the Lower Alsace Township Building, 750 North 25th Street, Reading, Pennsylvania.	
Marion (township), Berks County (FEMA Docket Nos. 7172 and 7195)	
Tulpehocken Creek:	
Just upstream of Legislative Route 06050 (Water Street)	*345
Approximately 1,200 feet upstream of U.S. 422	*361
Maps available for inspection at the Marion Township Municipal Building, 20 South Water Street, Womelsdorf, Pennsylvania.	
Maxatawny (township), Berks County (FEMA Docket No. 7172)	
Sacony Creek:	
Approximately 300 feet west of Hartman Drive and State Route 737	*397
Maps available for inspection at the Maxatawny Township Building, 663 Noble Street, Kutztown, Pennsylvania.	
Muhlenburg (township), Berks County (FEMA Docket No. 7195)	
Bernhart Creek:	
Approximately 450 feet downstream of Kutztown Road	*283
Approximately 1,050 feet upstream of Crystal Rock Road	*480
Laurel Run:	
At confluence with Schuylkill River	*233
Approximately 250 feet downstream of Leizes Bridge Road	*233
Schuylkill River:	
Approximately 3,600 feet upstream of Warren Street (U.S. Route 422)	*227
Approximately 850 feet downstream of Cross Keys Road	*262
Maps available for inspection at the Muhlenburg Township Engineering Department, Muhlenburg Municipal Building, First Floor, 555 Raymond Street, Reading, Pennsylvania.	
Ontelaunee (township), Berks County (FEMA Docket No. 7172)	
Schuylkill River:	
Approximately 1,300 feet downstream of Cross Keys Road	*261
Approximately 2,150 feet downstream of Legislative Route 06031 (Tiny Road)	*295
Maps available for inspection at the Ontelaunee Township Municipal Building, Route 61, Leesport, Pennsylvania.	
Perry (township), Berks County (FEMA Docket No. 7172)	
Schuylkill River:	
Approximately 2,800 feet downstream of Legislative Route 06031 (Tiny Road)	*294
Approximately 1 mile upstream of Township Route 558 (Fisher Dam Road)	*338
Tributary No. 2 to Schuylkill River:	
At Water Street (T–952)	*329
Approximately 1,000 feet upstream of Water Street (T–952)	*334
Maiden Creek:	
Approximately 175 feet downstream of State Route 143	*327
Approximately 5,500 feet upstream of State Route 143	*334
Pigeon Creek:	
Approximately 500 feet downstream of State Route 61	*328
At State Route 61	*328
Maps available for inspection at the Perry Township Office, 680 Moselem Springs Road, Shoemakersville, Pennsylvania.	
Pike (township), Berks County (FEMA Docket No. 7219)	
Bieber Creek:	
At a point approximately 730 feet upstream of Keim Road	*398
At a point approximately 0.27 mile upstream of Keim Road	*407
Maps available for inspection at the Pike Township Building, Hill Church Road, Oley, Pennsylvania.	
Reading (city), Berks County (FEMA Docket Nos. 7172 and 7195)	
Wyomissing Creek:	
At confluence with Schuylkill River	*208
Approximately 2,150 feet upstream of Museum Road	*227
Schuylkill River:	
Approximately 4,300 feet downstream of confluence of Angelica Creek	*196
Approximately 3,600 feet upstream of Warren Street (U.S. Route 422)	*228
Bernhart Creek:	
Approximately 80 feet upstream of Richmond Street	*283
Approximately 250 feet upstream of Richmond Street	*286
Maps available for inspection at the Reading City Hall, 815 Washington Street, Reading, Pennsylvania.	
Richmond (township), Berks County (FEMA Docket No. 7195)	
Willow Creek:	
Approximately 450 feet upstream of Poplar Street	*474
Approximately 0.44 mile downstream of State Route 1010	*404
Maiden Creek:	
At State Route 143	*327
Unnamed Tributary to Willow Creek:	
Approximately 1,650 feet upstream of North Richmond Road	*376
Approximately 225 feet upstream of Farm Lane	*394
Maps available for inspection at the Richmond Township Building, Route 222 at Route 662, Moselem Springs, Pennsylvania.	

Source of flooding and location	# Depth in feet above ground. * Elevation in feet (NGVD)
Robeson (township), Berks County (FEMA Docket No. 7122)	
Allegheny Creek:	
At the confluence with Schuylkill River	*175
At downstream side of Schuylkill Canal	*175
Seidel Creek:	
At confluence with Schuylkill River	*173
Approximately 80 feet downstream of State Route 724	*173
Schuylkill River:	
Approximately 3,300 feet upstream of State Route 82	*166
Approximately 1,200 feet upstream of confluence of Trout Run	*177
Maps available for inspection at the Robeson Township Municipal Building, Route 724, Birdsboro, Pennsylvania.	
Spring (township), Berks County (FEMA Docket No. 7172)	
Tributary No. 2 to Lauers Run:	
Approximately 1,550 feet upstream of Logan Avenue	*291
Approximately 1,650 feet upstream of Logan Avenue	*292
Maps available for inspection at the Spring Township Municipal Building, 2800 Shillington Road, Sinking Spring, Pennsylvania.	
Tilden (township), Berks County (FEMA Docket No. 7172)	
Schuylkill River:	
Approximately 1,000 feet downstream of confluence of Mill Creek No. 4	*326
At upstream county boundary	*433
Maps available for inspection at the Tilden Township Office, 772 Hex Highway, Hamburg, Pennsylvania.	
Berks (township), Berks County (FEMA Docket No. 7172)	
Sixpenny Creek:	
At confluence with Schuylkill River	*157
Approximately 400 feet upstream of CONRAIL	*159
Schuylkill River:	
At downstream county boundary	*148
Approximately 1,200 feet downstream of confluence of Hay Creek	*161
Maps available for inspection at the Union Township Municipal Building, 177 Center Road, Douglassville, Pennsylvania.	
Washington (township), Berks County (FEMA Docket No. 7172)	
West Branch Perkiomen Creek:	
At a point approximately 0.7 mile downstream of Airport Road	*589
At a point approximately 0.5 mile downstream of Airport Road	*592
Maps available for inspection at the Washington Township Municipal Building, 128 Barto Road, Barto, Pennsylvania.	
West Reading (borough), Berks County (FEMA Docket No. 7172)	
Schuylkill River:	
Approximately 1,550 feet downstream of Penn Avenue	*209
Approximately 1,200 feet upstream of Buttonwood Street	*212
Wyomissing Creek:	
Approximately 150 feet upstream of CONRAIL	*208
Approximately 1,500 feet upstream of Museum Road	*223
Maps available for inspection at the West Reading Borough Hall, 500 Chestnut Street, West Reading, Pennsylvania.	
Windsor (township), Berks County (FEMA Docket No. 7172)	
Schuylkill River:	
Approximately 3,900 feet downstream of confluence of Kaercher Creek	*338
Approximately 3,550 feet upstream of Kernsville Dam	*392
Maiden Creek:	
Approximately 1 mile upstream of State Route 143	*334
At Township Route 745	*345
Maps available for inspection at the Windsor Township Building, 862 Haas Road, Hamburg, Pennsylvania.	
Womelsdorf (borough), Berks County (FEMA Docket No. 7195)	
Tulpehocken Creek:	
Approximately 150 feet downstream of U.S. 422 bridge	*359
Approximately 1,500 feet upstream of U.S. 422 bridge	*361
Maps available for inspection at the Womelsdorf Borough Hall, 101 West High Street, Womelsdorf, Pennsylvania.	
VIRGINIA	
Pulaski County (unincorporated Areas) (FEMA Docket No. 7211)	
Claytor Lake/New River:	
At downstream county boundary	*1,666
Approximately 6.8 miles upstream of confluence of Sloan Branch	*1,868
Little River:	
At confluence with New River	*1,759
At upstream county boundary	*1,836
Peak Creek:	*1,836
Approximately 0.6 mile downstream of the confluence of Thorne Springs Branch	*1,865
At Town of Pulaski upstream corporate limit	*1,887
Maps available for inspection at the Pulaski County Administration Building, 143 Third Street NW, Suite 1, Pulaski, Virginia.	

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

Dated: September 4, 1997.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 97–24208 Filed 9–11–97; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, 26 and 97

[ET Docket No. 93–62; FCC 97–303]

Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This *Second Memorandum Opinion and Order* amends the Commission's rules to refine and clarify the decisions adopted in the Report and Order, regarding the use of new guidelines and methods in the evaluation of the environmental effects of RF electromagnetic fields or emissions produced by FCC-regulated transmitters. The Commission believes its decisions provide a proper balance between the need to protect the public and workers from exposure to potentially harmful RF electromagnetic fields and the requirement that industry be allowed to provide telecommunications services to the public in the most efficient and practical manner possible.

EFFECTIVE DATE: October 15, 1997.

FOR FURTHER INFORMATION CONTACT: Robert F. Cleveland, Office of Engineering and Technology, Federal

Communications Commission, (202) 418–2464.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Second Memorandum Opinion and Order,* ET Docket 93–62, FCC 97–303, adopted August 25, 1997, and released August 25, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

Summary of the Memorandum Opinion and Order

1. In this *Second Memorandum Opinion and Order,* we are amending our rules to refine and clarify the decisions adopted August 1, 1996, in the *Report and Order,* 61 FR 41006, August 7, 1996, regarding the use of new guidelines and methods in the evaluation of the environmental effects of RF electromagnetic fields or emissions produced by FCC-regulated transmitters. This *Second Memorandum Opinion and Order* responds to petitions for reconsideration and/or clarification filed in this proceeding. In reaching our decisions, we have considered carefully the petitions and comments that were received in this proceeding. We believe our decisions provide a proper balance between the need to protect the public and workers from exposure to potentially harmful RF electromagnetic fields and the requirement that industry be allowed to provide telecommunications services to the public in the most efficient and practical manner possible. Specifically, we are: (1) Affirming the RF exposure limits that were previously adopted; (2) modifying in a few areas our policy that categorically excludes certain transmitters from routine environmental evaluation; and (3) revising and clarifying our guidelines regarding RF emissions involving multiple transmitter facilities. We are also adopting a number of minor changes and clarifications.

2. In the *Report and Order,* the Commission adopted limits for Maximum Permissible Exposure (MPE) and localized, partial-body exposure of humans based on criteria published by the National Council on Radiation Protection and Measurements (NCRP) and by the American National Standards Institute/Institute of Electrical and Electronics Engineers, Inc. (ANSI/IEEE). The *Report and Order* also modified the Commission's policy on categorical exclusions that exempts many radio services and transmitters from routine environmental evaluation for RF exposure. In accordance with Section 704 of the Telecommunications Act of 1996, the *Report and Order* followed Congressional direction with respect to completion of the docket in this proceeding. The new rules became effective immediately; however, a transition period (originally to January 1, 1997) was provided for implementation of the new requirements for transmitters other than portable and mobile devices.

3. A *First Memorandum Opinion and Order,* adopted on December 23, 1996, 62 FR 3232, January 22, 1997, addressed comments in those petitions requesting extension of the transition provisions of the *Report and Order* and extended the transition period to September 1, 1997 (January 1, 1998 for amateur stations). This *Second Memorandum Opinion and Order* addresses the other issues raised in the petitions, including whether we should: (1) Reconsider the RF exposure limits originally adopted; (2) reconsider our policy on categorical exclusion of certain transmitters from routine evaluation for compliance with our guidelines; (3) modify our policy with respect to evaluation of RF exposure at multiple transmitter sites; (4) revise our policy with respect to routine evaluation for SMR transmitters; and (5) broaden our authority to preempt state and local regulations concerning RF exposure.

4. Some petitioners ask that we reconsider our previous decision not to adopt ANSI/IEEE C95.1–1992 in its entirety. Several other petitioners claim that the limits we adopted were not protective enough. The staff believes that no new and compelling justifications have been provided that would warrant a modification of the limits adopted in the *Report and Order.* Those limits were crafted to address concerns about ANSI/IEEE C95.1–1992 that had been raised by several agencies of the Federal Government with responsibility for health and safety. Furthermore, all of these agencies have written letters to the Commission supporting our new guidelines. We believe that the limits adopted in the *Report and Order* provide a proper balance between the need to protect the public and workers from exposure to excessive RF electromagnetic fields and the need to allow communications services to readily address growing marketplace demands.

5. The Commission's environmental rules identify particular categories of existing or proposed transmitters or facilities for which licensees and applicants are required to conduct routine environmental evaluations to determine whether these transmitters or facilities comply with our RF guidelines. Other transmitting facilities are categorically excluded from these rules because we have judged them to offer little potential for causing exposures in excess of the applicable guidelines. In the *Report and Order,* we revised our rules related to this policy of categorical exclusion based on our own calculations and analyses of the implications of the new limits, along with information and data acquired during the proceeding. Whereas previously we had categorically excluded entire service categories, such as paging and cellular transmitters, the *Report and Order* concluded that some transmitting facilities, regardless of service, may offer the potential for causing exposures in excess of MPE limits.

6. Several petitioners ask that we return to our earlier policy of categorical exclusion for entire services. However, these petitioners present no new evidence that would lead us to change our basic premise for categorical exclusion. We continue to believe that it is desirable and appropriate to categorically exclude from routine environmental evaluation only those transmitting facilities that offer little or no potential for exposure in excess of our limits. However, some transmitting facilities, regardless of service, offer the potential for causing exposures in excess of MPE limits because of such factors as their relatively high operating power, location or relative accessibility, and these facilities should not be categorically excluded from routine evaluation.

7. Except in a few limited areas, we do not believe it is appropriate to modify the categorical exclusion policies adopted in the *Report and Order.* We are modifying our policy related to unlicensed millimeter-wave devices that do not meet the definition of a portable device and unlicensed and licensed PCS and other mobile devices operating above 1.5 GHz. Secondly, we are revising the 50-watt threshold for routine evaluation of amateur radio stations so that it reflects the manner in which the RF exposure limits change in the different amateur frequency bands. We are also revising categorical exclusions currently based on the height of the antenna radiation center above ground so that they are based on the height of the lowest portion of the antenna above ground. In addition to these areas, we are revising our policy

on categorical exclusions for SMR transmitters so that all SMR operations are covered, and we are changing our definition of ''rooftop'' so that antennas that are mounted on the sides of buildings or otherwise don't fit the previous definition will be considered, if appropriate.

8. Several petitioners argue that our policy regarding evaluation at sites with multiple FCC-regulated transmitters is overly burdensome. Our rules state that when the RF exposure limits are exceeded in an accessible area due to the RF fields of multiple fixed transmitters, actions necessary to bring the area into compliance are the shared responsibility of all licensees whose transmitters produce power densities in excess of 1% of the exposure limit applicable to their transmitter. After considering the various arguments, we conclude that the 1% level should be changed. We concur that a 1% level is difficult to measure or calculate. We believe that a 5% threshold represents a more reasonable and supportable compromise, by offering relief to relatively low-powered site occupants who do not contribute significantly to areas of non-compliance and, at the same time, by providing for the appropriate allocation of responsibility among major site emitters.

9. Some petitioners request that the Commission broaden its preemptive authority beyond the category of ''personal wireless services'' authorized in the Telecommunications Act of 1996. Based upon the current record in this proceeding, we find that there is insufficient evidence at this time to warrant our preempting state and local actions that are based on concerns over RF emissions for services other than those defined by Congress as ''personal wireless services.'' However, additional issues concerning preemption of state and local regulations involving advanced television facilities have been raised in a Petition for Further Rulemaking filed by the National Association of Broadcasters which will be considered in a separate proceeding.

10. Several additional petitions were received in response to our earlier *First Memorandum Opinion and Order* extending the transition period for fixed stations and transmitters. Some petitioners request that we end the transition period immediately because of the potential for large scale exposure of the public to harmful RF emissions. Others argue that additional time is needed to consider the Commission's response to earlier petitions relating to OET Bulletin 65 on RF compliance. This bulletin will be released simultaneously with this Order. In order to provide applicants and licensees with sufficient time to review the final version of the bulletin, we will extend the initial transition period to October 15, 1997. The transition period for the Amateur Radio Service, only, will remain the same, and will end on January 1, 1998.

11. Finally, we are revising our rules to require that existing sites and transmitters come into compliance with the new guidelines as of a date certain. Accordingly, we will require all existing facilities, operations and devices to comply with the new FCC RF guidelines no later than September 1, 2000.

Revised Final Regulatory Flexibility Analysis

Second Memorandum Opinion and Order

12. As required by section 603 of the Regulatory Flexibility Act, 5 U.S.C. § 603 (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rule Making (*NPRM*) in ET Docket 93–62. The Commission sought written public comments on the proposals in the *NPRM*, including on the IRFA. In the *Report and Order* in this proceeding, the Commission adopted a Final Regulatory Flexibility Analysis (FRFA). Petitions for reconsideration were filed in response to the *Report and Order* by seventeen parties. Several technical and legal issues have been raised in the petitions and subsequent comments. In addition, several petitions have raised questions about the original FRFA. The *First Memorandum Opinion and Order* in this proceeding, and the associated FRFA, addressed those petitions and comments requesting extension of the transition period specified in the *Report and Order* as well as the comments that were made on the original FRFA contained in the *Report and Order*. This *Second Memorandum Opinion and Order*, including this FRFA, addresses the other issues raised in the petitions. The FRFA conforms to the RFA, as amended by the Contract With America Advancement Act of 1996 (CWAAA), Public Law 104–121, 110 Stat. 847 (1996).

I. Need for and Purpose of This Action

13. The National Environmental Policy Act (NEPA) of 1969 requires agencies of the Federal Government to evaluate the effects of their actions on the quality of the human environment. To meet its responsibilities under NEPA, the Commission has adopted revised radiofrequency (RF) exposure guidelines for purposes of evaluating potential environmental effects of RF electromagnetic fields produced by FCC-regulated facilities. The new guidelines reflect more recent scientific studies of the biological effects of RF electromagnetic fields. Use of these new guidelines will ensure that the public and workers receive adequate protection from exposure to potentially harmful RF electromagnetic fields. This *Second Memorandum Opinion and Order* addresses a number of concerns that were raised in petitions and comments received in response to the *Report and Order*.

II. Summary of Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis (IFRA)

14. No comments were filed in direct response to the IRFA. In general comments on the *NPRM*, however, some commenters raised issues that might affect small entities. These issues were discussed in the FRFA contained in the *Report and Order* in this proceeding.

III. Summary of Issues Raised Regarding the Final Regulatory Flexibility Analysis (FRFA) by the Petitions, Motions, and Comments in Response to the Report and Order

15. The American Radio Relay League, Inc., Paging Network, Inc., and the Personal Communications Industry Association raised concerns in their petitions, motions and comments regarding the FRFA that was associated with the *Report and Order*. Those concerns were addressed in the revised FRFA contained in the *First Memorandum Opinion and Order* in this proceeding.

IV. Description and Estimate of the Small Entities Subject to the Rules

16. The rules being adopted in this *Second Memorandum Opinion and Order* apply to twelve industry categories and services. All but one of these industry categories and services was described in the FRFA accompanying the *First Memorandum Opinion and Order* in this proceeding. The RFA generally defines the term ''small business'' as having the same meaning as the term ''small business concern'' under the Small Business Act, 15 U.S.C. § 632. Based on that statutory provision, we will consider a small business concern one which (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). The RFA SBREFA provisions also apply to nonprofit organizations and to governmental organizations. Since the Regulatory Flexibility Act amendments

were not in effect until the record in this proceeding was closed, the Commission was unable to request information regarding the number of small businesses within each of these services or the number of small businesses that would be affected by this action. We have, however, made estimates based on our knowledge about applications that have been submitted in the past. To the extent that a government entity may be a licensee or an applicant, the impact on those entities is included in the estimates for small businesses below.

17. Under the new rules adopted in the *Report and Order* and in this *Second Memorandum Opinion and Order,* many radio services are categorically excluded from having to determine compliance with the new RF exposure limits. This exclusion is based on a determination that there is little potential for these services causing exposures in excess of the limits. Within the following services that are not categorically excluded in their entirety, many transmitting facilities are categorically excluded based on antenna location and power. These categorical exclusions significantly reduce the burden associated with these rules, and may reduce the impact of these rules on small businesses. Furthermore, the extension of the transition periods contained in the *First Memorandum Opinion and Order* will reduce the impact on applicants, particularly small businesses, by allowing them adequate time to understand the new requirements and ensure that their facilities are in compliance with them in a orderly and reasonable manner.

18. As noted above, descriptions and estimates of all of the categories and services for small entities subject to our rules, except one, were previously given in the FRFRA that accompanied the *First Memorandum Opinion and Order.* Therefore, that document should be consulted for this information. Information on the one additional category not included in the earlier FRFA, radiofrequency devices, is given below. Minor edits were also made in the section of the previous FRFA for satellite communications services, and the revised section is also given below.

A. Satellite Communications Services

19. The Commission has not developed a definition of small entities applicable to satellite communications licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to Communications Services, Not Elsewhere Classified. This definition provides that a small entity is expressed as one with $11.0 million or less in annual receipts.

20. Because the Regulatory Flexibility Act amendments were not in effect until the comment period for this proceeding was closed, the Commission was unable to request information regarding the number of licensees in the international services discussed below that meet this definition of a small business. Thus, we are providing an estimate of licensees that constitute a small business.

21. Fixed Satellite Earth Stations. Fixed satellite earth stations include international and domestic earth stations operating in the 4/6 GH_Z, 11/12/14 GH_Z and 20/30 GH_Z bands. There are approximately 4200 earth station authorizations, a portion of which are Fixed Satellite Earth Stations. Although we were unable to request the revenue information, we estimate that some of the licensees of these earth stations would constitute a small business under the SBA definition.

22. Fixed Satellite Small Earth Stations. Small transmit/receive earth stations operate in the 4/6 GH_Z frequency bands with antennas that are two meters or less in diameter. There are 4200 earth station authorizations, a portion of which are Fixed Satellite Small Earth Stations. Although we were unable to request the revenue information, we estimate that some of the fixed satellite small earth stations would constitute a small business under the SBA definition.

23. Fixed Satellite Very Small Aperture Terminal (VSAT) Systems. VSAT systems operate in the 12/14 GH_Z frequency bands. Although various size small aperture antenna earth-stations may be used, all stations of a particular size must be technically identical. Because these stations operate on a primary basis, frequency coordination with terrestrial microwave systems is not required. Thus, a single ''blanket'' application may be filed for a specified number of small antennas and one or more hub stations. The Commission has processed 377 applications for fixed satellite VSAT systems. At this time, we are unable to make a precise estimate of the number of small businesses that are VSAT system licensees and could be impacted by this action.

24. Mobile Satellite Earth Stations. Mobile satellite earth stations are intended to be used while in motion or during halts at unspecified points. These stations operate as part of a network that includes a fixed hub station or stations. The network may provide a variety of land, maritime and aeronautical voice and data services. There are 8 mobile satellite licensees. At this time, we are unable to make a precise estimate of the number of small businesses that are mobile satellite earth station licensees and could be impacted by this action.

25. Radio Determination Satellite Earth Stations. A radio determination satellite earth station is used in conjunction with a radio determination satellite service (rdss) system for the purpose of providing position location information. These stations operate as part of a network that includes a fixed hub station or stations and operate in the frequency bands (1610–1626.5 MH_Z and 2483.5–2500 MH_Z) allocated to rdss. At this time, we are unable to make a precise estimate of the number of small businesses that are radio determination satellite earth station licensees and could be impacted by the forfeiture guidelines.

26. It should be noted that in most of the satellite areas discussed above, the Commission issues one license to an entity but generally issues blanket license authority for thousands or even hundreds of thousands of earth stations or hand held transceivers. Overall, the Commission receives about 600 applications for satellite facilities per year. All applicants for satellite earth stations (except for receive-only stations) must make a determination of compliance with the RF exposure limits, based on calculations or measurements.

B. Radiofrequency Devices

27. The radiofrequency devices affected by this rulemaking are low power, unlicensed transmitters that will be used to provide, on millimeter wave frequencies, a variety of services, including vehicle collision avoidance and high data rate/short range wireless data communications. Unlicensed personal communications service (PCS) transmitters are also radiofrequency devices. Radiofrequency devices are subject to compliance with the new RF radiation requirements at the time of equipment authorization. Therefore, it will be the equipment manufacturers and importers who will be affected by this action.

28. We expect most of the firms that would be interested in producing millimeter wave and unlicensed PCS devices will be large businesses. We note that Ford Motor and Hewlett Packard have expressed interest in millimeter wave devices and filed comments in this proceeding. In addition, Motorola and Ericsson, both large equipment manufacturers, have expressed interest in manufacturing unlicensed PCS devices. Nevertheless, it is conceivable that small businesses will also want to manufacture these devices.

29. The Commission has not developed a definition of small entities applicable to radiofrequency devices. Therefore, the applicable definition of small entity is the definition under the SBA applicable to the ''Communications Services, Not Elsewhere'' category. A small millimeter wave device or unlicensed PCS entity under this definition is one with less than $11.0 million in annual receipts.

30. The Commission has not yet authorized any millimeter wave devices, and has authorized fewer than fifteen unlicensed PCS devices. Both these services are new, so we really don't know how many applications for equipment authorization we may receive, nor how many small manufacturers may be interested in producing these products. Since the Regulatory Flexibility Act amendments were not in effect until the record in this proceeding was closed, the Commission was unable to request information regarding the number of small businesses in this category. The Census Bureau estimates indicate that of the 848 firms in the ''Communications Services, Not Elsewhere'' category, 775 are small businesses. Based on this information, as well as our past experience in granting equipment authorization for other types of radiofrequency devices, we estimate that 50 percent of the applications for millimeter wave and unlicensed PCS devices will be from small businesses.

31. The Commission anticipates that approximately 30 applications will be filed annually for devices that operate in the millimeter band and unlicensed PCS spectrum. An initial determination of compliance with our new RF guidelines will be required for: (1) Applications for unlicensed PCS devices that do not meet our definition for a portable device contained in 47 CFR § 2.1093(b) and that operate with 1.5 watts effective radiated power (ERP) or more; (2) applications for portable unlicensed PCS devices; (3) applications for unlicensed millimeter wave devices that do not meet our definition for a portable device and that operate with 3 watts ERP or more; and (4) applications for portable unlicensed millimeter wave devices. We anticipate that 20 of the 30 applications filed will meet these requirements and need to undergo an initial determination of compliance. Of these devices, ten will require specific absorption rate (SAR) modeling or measurement, which adds cost to the authorization process.

V. Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements

32. No new reporting, recordkeeping, or other compliance requirements are contained in this *Second Memorandum Opinion and Order.*

VI. Steps Taken to Minimize the Economic Impact on Small Entities

33. We have made every effort to devise ways to minimize the impact of the new RF exposure requirements on small entities, while protecting the health and safety of the public. We have incorporated substantial flexibility in the procedures to make compliance as minimally burdensome as possible.

In particular, we took the following steps in the *Report and Order* to ease the impact on small businesses:

a. We created categorical exclusions that require only those transmitters that appear to have the highest potential to create a significant environmental effect to perform an environmental evaluation.

b. We indicated that we would revise OST Bulletin No. 65 in the near future to provide guidance for determining compliance with FCC-specified RF limits. This should be of particular assistance to small businesses since it will provide straightforward information that should allow a quick understanding of the requirements and a quick assessment of the potential for compliance problems without the need for an expensive consultant or measurement.

c. We allowed various methods for ensuring compliance with RF limits such as fencing, warning signs, labels, and markings, locked doors in roof-top areas, and the use of personal monitors and RF protective clothing in an occupational environment.

d. We rejected our initial proposal to adopt induced and contact currents limits due to the lack of reliable equipment available.

e. We specified a variety of acceptable testing methods and procedures that may be used to determine compliance. This will allow each small business to choose a procedure that best meets its needs in the manner that is least burdensome to it.

f. We have always allowed multiple transmitter sites, i.e., antenna farms, to pool their resources and have only one study done for the entire site. This is very common at sites that have multiple entities such as TV, FM, paging, cellular, etc. In most circumstances, rather than each licensee hiring a separate consultant and submitting a study showing their compliance with the guidelines, one consulting radio technician or radio engineer can be hired by the group of licensees. The consultant surveys the entire site for compliance and gives his recommendations and findings to each of the licensees at the site. The licensees can then use the findings to show their compliance with the guidelines. In this way the cost of compliance is minimized as no one licensee has to pay the entire consulting fee, rather just a portion of it.

34. In this *First Memorandum Opinion and Order,* we took the following additional steps to reduce the burden on small businesses and organizations:

a. We extended the transition period for station applicants to come into compliance with the new requirements. This will give licensees, and applicants for new stations many of which may be small businesses, more time to learn the nature of the new requirements, make studies to determine whether they comply, and take steps to come into compliance if necessary.

b. We decided to permit the required changes in the ARS examinations to be made as the examinations are being routinely revised. This ensures that a minimal burden is put on the small organizations acting as VECs.

35. In this *Second Memorandum Opinion and Order,* we have taken these additional steps to reduce the burden on small businesses and organizations:

a. We categorically excluded from routine environmental evaluation certain non-portable, unlicensed millimeter wave and PCS devices. This eliminates the need for these devices to undergo detailed evaluation before the devices undergo equipment authorization.

b. We increased the responsibility threshold, above which licensees at multiple transmitter locations must share responsibility for addressing RF exposure non-compliance problems, from 1% to 5%. We believe that a 5% responsibility threshold will offer relief to relatively low-powered site occupants who do not contribute significantly to the non-compliance and, at the same time, provide for the appropriate allocation of responsibility among major site emitters. Similarly, we are raising the filing thresholds, above which applicants must file an EA if emissions from the applicant's transmitter or facility would result in a field strength or power density in excess of our limits, from 1% to 5%. Report to Congress: The Commission shall send a copy of this Final Regulatory Flexibility Analysis, along with this *Report and Order,* in a report to Congress pursuant to the Small Business Regulatory Enforcement

Fairness Act of 1996, 5 U.S.C. § 801(a)(1)(A). A copy of this FRFA will also be published in the **Federal Register**.

(c) Before causing or allowing an amateur station to transmit from any place where the operation of the station could cause human exposure to RF electromagnetic field levels in excess of those allowed under § 1.1310 of this chapter, the licensee is required to take certain actions.

(1) The licensee must perform the routine RF environmental evaluation prescribed by § 1.1307(b) of this chapter, if the transmitter PEP exceeds the following limits:

List of Subjects

47 CFR Part 1

Radio, Reporting and recordkeeping requirements.

47 CFR Part 2

Radio, Reporting and recordkeeping requirements.

47 CFR Part 26

Radio.

47 CFR Part 97

Radio, Reporting and recordkeeping requirements.

Rule Changes

Title 47 of the Code of Federal Regulations, parts 1, 2, 26 and 97, are amended as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154, 303 and 309(j), unless otherwise noted, and Section 704 of the Telecommunications Act of 1996.

2. Section 1.1307 is amended by revising paragraphs (b)(1), (b)(2), (b)(3) and (b)(4) introductory text and by adding paragraph (b)(5) to read as follows:

§ 1.1307 Actions that may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared.

* * * * *

(b) * * *

(1) The appropriate exposure limits in § 1.1310 and § 2.1093 of this chapter are generally applicable to all facilities, operations and transmitters regulated by the Commission. However, a determination of compliance with the exposure limits in § 1.1310 or § 2.1093 of this chapter (routine environmental evaluation), and preparation of an EA if the limits are exceeded, is necessary only for facilities, operations and transmitters that fall into the categories listed in table 1, or those specified in paragraph (b)(2) of this section. All other facilities, operations and transmitters are categorically excluded from making such studies or preparing an EA, except as indicated in paragraphs (c) and (d) of this section. For purposes of table 1, ''building-mounted antennas'' means antennas mounted in or on a building structure that is occupied as a workplace or residence. The term ''power'' in column 2 of table 1 refers to total operating power of the transmitting operation in question in terms of effective radiated power (ERP), equivalent isotropically radiated power (EIRP), or peak envelope power (PEP), as defined in § 2.1 of this chapter. For the case of the Cellular Radiotelephone Service, subpart H of part 22 of this chapter; the Personal Communications Service, part 24 of this chapter and the Specialized Mobile Radio Service, part 90 of this chapter, the phrase ''total power of all channels'' in column 2 of table 1 means the sum of the ERP or EIRP of all co-located simultaneously operating transmitters owned and operated by a single licensee. When applying the criteria of table 1, radiation in all directions should be considered. For the case of transmitting facilities using sectorized transmitting antennas, applicants and licensees should apply the criteria to all transmitting channels in a given sector, noting that for a highly directional antenna there is relatively little contribution to ERP or EIRP summation for other directions.

TABLE 1.—TRANSMITTERS, FACILITIES AND OPERATIONS SUBJECT TO ROUTINE ENVIRONMENTAL EVALUATION

Service (title 47 CFR rule part)	Evaluation required if
Experimental Radio Services (part 5)	Power > 100 W ERP (164 W EIRP).
Multipoint Distribution Service (subpart K of part 21).	*Non-building-mounted antennas:* height above ground level to lowest point of antenna < 10 m *and* power > 1640 W EIRP. *Building-mounted antennas:* power > 1640 W EIRP.
Paging and Radiotelephone Service (subpart E of part 22).	*Non-building-mounted antennas:* height above ground level to lowest point of antenna < 10 m *and* power > 1000 W ERP (1640 W EIRP). *Building-mounted antennas:* power > 1000 W ERP (1640 W EIRP).
Cellular Radiotelephone Service (subpart H of part 22).	*Non-building-mounted antennas:* height above ground level to lowest point of antenna < 10 m *and* total power of all channels > 1000 W ERP (1640 W EIRP). *Building-mounted antennas:* total power of all channels > 1000 W ERP (1640 W EIRP).
Personal Communications Services (part 24)	(1) Narrowband PCS (subpart D): *non-building-mounted antennas:* height above ground level to lowest point of antenna < 10 m *and* total power of all channels > 1000 W ERP (1640 W EIRP). *Building-mounted antennas:* total power of all channels > 1000 W ERP (1640 W EIRP). (2) Broadband PCS (subpart E): *non-building-mounted antennas:* height above ground level to lowest point of antenna < 10 m *and* total power of all channels > 2000 W ERP (3280 W EIRP). *Building-mounted antennas:* total power of all channels > 2000 W ERP (3280 W EIRP).
Satellite Communications (part 25)	All included.
General Wireless Communications Service (part 26).	Total power of all channels > 1640 W EIRP.
Wireless Communications Service (part 27)	Total power of all channels > 1640 W EIRP.
Radio Broadcast Services (part 73)	All included.
Experimental, auxiliary, and special broadcast and other program distributional services (part 74).	Subparts A, G, L: power > 100 W ERP. Subpart I: *non-building-mounted antennas:* height above ground level to lowest point of antenna < 10 m *and* power > 1640 W EIRP. *Building-mounted antennas:* power > 1640 W EIRP.
Stations in the Maritime Services (part 80)	Ship earth stations only.

TABLE 1.—TRANSMITTERS, FACILITIES AND OPERATIONS SUBJECT TO ROUTINE ENVIRONMENTAL EVALUATION—Continued

Service (title 47 CFR rule part)	Evaluation required if
Private Land Mobile Radio Services Paging Operations (part 90).	*Non-building-mounted antennas:* height above ground level to lowest point of antenna < 10 m *and* power > 1000 W ERP (1640 W EIRP). *Building-mounted antennas:* power > 1000 W ERP (1640 W EIRP).
Private Land Mobile Radio Services Specialized Mobile Radio (part 90).	*Non-building-mounted antennas:* height above ground level to lowest point of antenna < 10 m *and* total power of all channels > 1000 W ERP (1640 W EIRP). *Building-mounted antennas:* Total power of all channels > 1000 W ERP (1640 W EIRP).
Amateur Radio Service (part 97)	Transmitter output power > levels specified in § 97.13(c)(1) of this chapter.
Local Multipoint Distribution Service (subpart L of part 101).	*Non-building-mounted antennas:* height above ground level to lowest point of antenna < 10 m *and* power > 1640 W EIRP. *Building-mounted antennas:* power > 1640 W EIRP. LMDS licensees are required to attach a label to subscriber transceiver antennas that: (1) provides adequate notice regarding potential radiofrequency safety hazards, *e.g.,* information regarding the safe minimum separation distance required between users and transceiver antennas; and (2) references the applicable FCC-adopted limits for radiofrequency exposure specified in § 1.1310 of this chapter.

(2) Mobile and portable transmitting devices that operate in the Cellular Radiotelephone Service, the Personal Communications Services (PCS), the Satellite Communications Services, the General Wireless Communications Service, the Wireless Communications Service, the Maritime Services (ship earth stations only) and the Specialized Mobile Radio Service authorized under subpart H of parts 22, 24, 25, 26, 27, 80, and 90 of this chapter are subject to routine environmental evaluation for RF exposure prior to equipment authorization or use, as specified in §§ 2.1091 and 2.1093 of this chapter. Unlicensed PCS, unlicensed NII and millimeter wave devices are also subject to routine environmental evaluation for RF exposure prior to equipment authorization or use, as specified in §§ 15.253(f), 15.255(g), and 15.319(i) and 15.407(f) of this chapter. All other mobile, portable, and unlicensed transmitting devices are categorically excluded from routine environmental evaluation for RF exposure under §§ 2.1091 and 2.1093 of this chapter except as specified in paragraphs (c) and (d) of this section.

(3) In general, when the guidelines specified in § 1.1310 are exceeded in an accessible area due to the emissions from multiple fixed transmitters, actions necessary to bring the area into compliance are the shared responsibility of all licensees whose transmitters produce, at the area in question, power density levels that exceed 5% of the power density exposure limit applicable to their particular transmitter or field strength levels that, when squared, exceed 5% of the square of the electric or magnetic field strength limit applicable to their particular transmitter. Owners of transmitter sites are expected to allow applicants and licensees to take reasonable steps to comply with the requirements contained in § 1.1307(b) and, where feasible, should encourage co-location of transmitters and common solutions for controlling access to areas where the RF exposure limits contained in § 1.1310 might be exceeded.

(i) Applicants for proposed (not otherwise excluded) transmitters, facilities or modifications that would cause non-compliance with the limits specified in § 1.1310 at an accessible area previously in compliance must submit an EA if emissions from the applicant's transmitter or facility would result, at the area in question, in a power density that exceeds 5% of the power density exposure limit applicable to that transmitter or facility or in a field strength that, when squared, exceeds 5% of the square of the electric or magnetic field strength limit applicable to that transmitter or facility.

(ii) Renewal applicants whose (not otherwise excluded) transmitters or facilities contribute to the field strength or power density at an accessible area not in compliance with the limits specified in § 1.1310 must submit an EA if emissions from the applicant's transmitter or facility results, at the area in question, in a power density that exceeds 5% of the power density exposure limit applicable to that transmitter or facility or in a field strength that, when squared, exceeds 5% of the square of the electric or magnetic field strength limit applicable to that transmitter of facility.

(4) *Transition Provisions.* For applications filed with the Commission prior to October 15, 1997, (or January 1, 1998, for the Amateur Radio Service only), Commission actions granting construction permits, licenses to transmit or renewals thereof, equipment authorizations, or modifications in existing facilities require the preparation of an Environmental Assessment if the particular facility, operation or transmitter would cause human exposure to levels of radiofrequency radiation that are in excess of the requirements contained in paragraphs (b)(4)(i) through (b)(4)(iii) of this section. These transition provisions do not apply to applications for equipment authorization or use of mobile, portable and unlicensed devices specified in paragraph (b)(2) of this section.

* * * * *

(5) *Existing transmitting facilities, devices and operations:* All existing transmitting facilities, operations and devices regulated by the Commission must be in compliance with the requirements of paragraphs (b)(1) through (b)(3) of this section by September 1, 2000, or, if not in compliance, file an Environmental Assessment as specified in § 1.1311.

* * * * *

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS GENERAL RULES AND REGULATIONS

1. The authority citation for part 2 continues to read as follows:

Authority: Sec. 4, 302, 303 and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154, 302, 303 and 307, unless otherwise noted.

2. Section 2.1091 is amended by revising the section heading, paragraphs (b), (c) and (d)(3) and adding new paragraph (d)(4) to read as follows:

§ 2.1091 Radiofrequency radiation exposure evaluation: mobile devices.

* * * * *

(b) For purposes of this section, a mobile device is defined as a transmitting device designed to be used in other than fixed locations and to generally be used in such a way that a separation distance of at least 20 centimeters is normally maintained between the transmitter's radiating structure(s) and the body of the user or nearby persons. In this context, the term ''fixed location'' means that the device is physically secured at one location and is not able to be easily moved to another location. Transmitting devices designed to be used by consumers or workers that can be easily re-located, such as wireless devices associated with a personal computer, are considered to be mobile devices if they meet the 20 centimeter separation requirement.

(c) Mobile devices that operate in the Cellular Radiotelephone Service, the Personal Communications Services, the Satellite Communications Services, the General Wireless Communications Service, the Wireless Communications Service, the Maritime Services and the Specialized Mobile Radio Service authorized under subpart H of part 22 of this chapter, part 24 of this chapter, part 25 of this chapter, part 26 of this chapter, part 27 of this chapter, part 80 of this chapter (ship earth stations devices only) and part 90 of this chapter are subject to routine environmental evaluation for RF exposure prior to equipment authorization or use if they operate at frequencies of 1.5 GHz or below and their effective radiated power (ERP) is 1.5 watts or more, or if they operate at frequencies above 1.5 GHz and their ERP is 3 watts or more. Unlicensed personal communications service devices, unlicensed millimeter wave devices and unlicensed NII devices authorized under § 15.253, § 15.255, and subparts D and E of part 15 of this chapter are also subject to routine environmental evaluation for RF exposure prior to equipment authorization or use if their ERP is 3 watts or more or if they meet the definition of a portable device as specified in § 2.1093 (b) requiring evaluation under the provisions of that section. All other mobile and unlicensed transmitting devices are categorically excluded from routine environmental evaluation for RF exposure prior to equipment authorization or use, except as specified in §§ 1.1307(c) and 1.1307(d) of this chapter. Applications for equipment authorization of mobile and unlicensed transmitting devices subject to routine environmental evaluation must contain a statement confirming compliance with the limits specified in paragraph (d) of this section as part of their application. Technical information showing the basis for this statement must be submitted to the Commission upon request.

(d) * * *

(3) If appropriate, compliance with exposure guidelines for devices in this section can be accomplished by the use of warning labels and by providing users with information concerning minimum separation distances from transmitting structures and proper installation of antennas.

(4) In some cases, e.g., modular or desktop transmitters, the potential conditions of use of a device may not allow easy classification of that device as either mobile or portable (also see § 2.1093). In such cases, applicants are responsible for determining minimum distances for compliance for the intended use and installation of the device based on evaluation of either specific absorption rate (SAR), field strength or power density, whichever is most appropriate.

3. Section 2.1093 is amended by revising paragraphs (b), (c) and (d) introductory text to read as follows:

§ 2.1093 Radiofrequency radiation exposure evaluation: portable devices.

* * * * *

(b) For purposes of this section, a portable device is defined as a transmitting device designed to be used so that the radiating structure(s) of the device is/are within 20 centimeters of the body of the user.

(c) Portable devices that operate in the Cellular Radiotelephone Service, the Personal Communications Services, the Satellite Communications services, the General Wireless Communications Service, the Wireless Communications Service, the Maritime Services and the Specialized Mobile Radio Service authorized under subpart H of part 22 of this chapter, part 24 of this chapter, part 25 of this chapter, part 26 of this chapter, part 27 of this chapter, part 80 of this chapter (ship earth station devices only), part 90 of this chapter, and portable unlicensed personal communication service, unlicensed NII devices and millimeter wave devices authorized under § 15.253, § 15.255 or subparts D and E of part 15 of this chapter are subject to routine environmental evaluation for RF exposure prior to equipment authorization or use. All other portable transmitting devices are categorically excluded from routine environmental evaluation for RF exposure prior to equipment authorization or use, except as specified in §§ 1.1307(c) and 1.1307(d) of this chapter. Applications for equipment authorization of portable transmitting devices subject to routine environmental evaluation must contain a statement confirming compliance with the limits specified in paragraph (d) of this section as part of their application. Technical information showing the basis for this statement must be submitted to the Commission upon request.

(d) The limits to be used for evaluation are based generally on criteria published by the American National Standards Institute (ANSI) for localized specific absorption rate (''SAR'') in Section 4.2 of ''IEEE Standard for Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3 kHz to 300 GHz,'' ANSI/IEEE C95.1–1992, Copyright 1992 by the Institute of Electrical and Electronics Engineers, Inc., New York, New York 10017. These criteria for SAR evaluation are similar to those recommended by the National Council on Radiation Protection and Measurements (NCRP) in ''Biological Effects and Exposure Criteria for Radiofrequency Electromagnetic Fields,'' NCRP Report No. 86, Section 17.4.5. Copyright NCRP, 1986, Bethesda, Maryland 20814. SAR is a measure of the rate of energy absorption due to exposure to an RF transmitting source. SAR values have been related to threshold levels for potential biological hazards. The criteria to be used are specified in paragraphs (d)(1) and (d)(2) of this section and shall apply for portable devices transmitting in the frequency range from 100 kHz to 6 GHz. Portable devices that transmit at frequencies above 6 GHz are to be evaluated in terms of the MPE limits specified in § 1.1310 of this chapter. Measurements and calculations to demonstrate compliance with MPE field strength or power density limits for devices operating above 6 GHz should be made at a minimum distance of 5 cm from the radiating source.

* * * * *

PART 26—GENERAL WIRELESS COMMUNICATIONS SERVICE

1. The authority citation for part 26 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 26.51 is amended by removing paragraph (d).

3. Section 26.52 is revised to read as follows:

§ 26.52 RF safety.

Licensees and manufacturers are subject to the radiofrequency radiation exposure requirements specified in § 1.1307(b), § 2.1091 and § 2.1093 of this chapter, as appropriate. Applications for equipment authorization of mobile or portable devices operating under this section must contain a statement confirming compliance with these requirements for both fundamental emissions and unwanted emissions. Technical information showing the basis for this statement must be submitted to the Commission upon request.

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 97.13 is amended by revising paragraph (c) to read as follows:

§ 97.13 Restrictions on station location.

* * * * *

Wavelength band	Transmitter power (watts)
MF	
160 m	500
HF	
80 m	500
75 m	500
40 m	500
30 m	425
20 m	225
17 m	125
15 m	100
12 m	75
10 m	50
VHF (all bands)	50
UHF	
70 cm	70
33 cm	150
23 cm	200
13 cm	250
SHF (all bands)	250
EHF (all bands)	250

(2) If the routine environmental evaluation indicates that the RF electromagnetic fields could exceed the limits contained in § 1.1310 of this chapter in accessible areas, the licensee must take action to prevent human exposure to such RF electromagnetic fields. Further information on evaluating compliance with these limits can be found in the FCC's OET Bulletin 65, ''Evaluating Compliance with FCC-Specified Guidelines for Human Exposure to Radio Frequency Electromagnetic Fields.''

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–24165 Filed 9–11–97; 8:45 am]

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Proposed Rules

Federal Register
Vol. 62, No. 177
Friday, September 12, 1997

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.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 303, 337 and 362

RIN 3064–AC12

Activities of Insured State Banks and Insured Savings Associations

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking.

SUMMARY: As part of the FDIC's systematic review of its regulations and written policies under section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI), the FDIC is seeking public comment on its proposal to revise and consolidate its rules and regulations governing activities and investments of insured state banks and insured savings associations. The FDIC proposes to combine its regulations governing the activities and investments of insured state banks with those governing insured savings associations. In addition, the proposal updates the FDIC's regulations governing the safety and soundness of securities activities of subsidiaries and affiliates of insured state nonmember banks. The FDIC's proposal modernizes this group of regulations and harmonizes the provisions governing activities that are not permissible for national banks with those governing the securities activities of state nonmember banks. The proposed regulation will make a number of substantive changes and will revise the regulations by deleting obsolete provisions, rewriting the regulatory text to make it more readable, conforming the treatment of state banks and savings associations to the extent possible given the underlying statutory and regulatory scheme governing the different charters. The proposal establishes a number of new exceptions and will allow institutions to conduct certain activities after providing the FDIC with notice rather than filing an application. The proposal also will revise these regulations by deleting obsolete provisions, rewriting the regulatory text to make it more readable, removing a number of the current restrictions on those activities and conforming the disclosures required under the current regulation to an existing interagency statement concerning the retail sales of nondeposit investment products.

DATES: Comments must be received by December 11, 1997.

ADDRESSES: Send written comments to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429. Comments may be hand delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. (Fax number (202) 898–3838; Internet Address: comments@fdic.gov). Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, N.W. Washington, D.C. 20429, between 9:00 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Curtis Vaughn, Examination Specialist, (202/898–6759) or John Jilovec, Examination Specialist, (202/898–8958) Division of Supervision; Linda L. Stamp, Counsel, (202/ 898–7310) or Jamey Basham, Counsel, (202/ 898–7265), Legal Division, FDIC, 550 17th Street, N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

I. Background

Section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA) requires that the FDIC review its regulations for the purpose of streamlining those regulations, reducing any unnecessary costs and eliminating unwarranted constraints on credit availability while faithfully implementing statutory requirements. Pursuant to that statutory direction the FDIC has reviewed part 362 ''Activities and Investments of Insured State Banks,'' § 303.13 ''Applications and Notices by Savings Associations,'' and § 337.4 ''Securities Activities of Subsidiaries of Insured State Banks: Bank Transactions with Affiliated Securities Companies' and proposes to make a number of changes to those regulations. The proposal is described in more detail below. In brief, however, the proposal would restructure existing part 362, placing the substance of the text of the current regulation into new subpart A. Subpart A would address the Activities of Insured State Banks which implements section 24 of the Federal Deposit Insurance Act (FDI Act). 12 U.S.C. 1831a. Section 24 restricts and prohibits insured state banks and their subsidiaries from engaging in activities and investments of a type that are not permissible for national banks and their subsidiaries. In addition, the proposal would move the FDIC's regulations governing the securities activities of subsidiaries of insured state nonmember banks (currently at 12 CFR 337.4) into subpart A of part 362 and revise those regulations by deleting obsolete provisions, rewriting the regulatory text to make it more readable, removing a number of the obsolete current restrictions on those activities, and removing the disclosures required under the current regulation to conform the required disclosures to the Interagency Statement on the Retail Sale of Nondeposit Investment Products (Interagency Statement).

Safety and Soundness Rules Governing Insured State Nonmember Banks would be set out in new subpart B. Subpart B would establish modern standards for insured state nonmember banks to conduct real estate investment activities through a subsidiary and for those insured state nonmember banks that are not affiliated with a bank holding company (nonbank banks) to conduct securities activities in an affiliated organization. The existing restrictions on these securities activities are found in § 337.4 of this chapter.

Existing § 303.13 of this chapter which relates to activities of state savings associations and filings by all savings associations would be revised in a number of ways and primarily placed in new subpart C of part 362. Procedures to be used by all savings associations when Acquiring, Establishing, or Conducting New Activities through a Subsidiary would be placed in new subpart D. Subpart E would contain the revised provisions concerning application and notice procedures as well as delegations for insured state banks. Subpart F would contain the revised provisions concerning application and notice procedures as well as delegations for insured savings associations.

In addition, the FDIC is processing a complete revision of part 303 of the FDIC's rules and regulations. Part 303 contains the FDIC's applications procedures and delegations of authority. As a part of that process and for ease of reference, the FDIC is proposing to remove the applications procedures relating to activities and investments of insured state banks from part 362 and place them in subpart G of part 303. The procedures applicable to insured savings associations will be consolidated in subpart H of part 303. We anticipate that the proposed changes to part 303 will be published for comment within 90 days of today's publication. At that time, subparts G and H of part 303 will be designated as the place where the text of subparts E and F of this proposed rule eventually will be located.

Part 362 of the FDIC's regulations implements the provisions of section 24 of the FDI Act (12 U.S.C. 1831a). Section 24 was added to the FDI Act by the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA). With certain exceptions, section 24 limits the direct equity investments of state chartered insured banks to equity investments of a type permissible for national banks. In addition, section 24 prohibits an insured state bank from directly, or indirectly through a subsidiary, engaging as principal in any activity that is not permissible for a national bank unless the bank meets its capital requirements and the FDIC determines that the activity will not pose a significant risk to the appropriate deposit insurance fund. The FDIC may make such determinations by regulation or order. The statute requires institutions that held equity investments not conforming to the new requirements to divest no later than December 19, 1996. The statute also requires that banks file certain notices with the FDIC concerning grandfathered investments.

Part 362 was adopted in two stages. The provisions of the current regulation concerning equity investments appeared in the **Federal Register** on November 9, 1992, at 57 FR 53234. The provisions of the current regulation concerning activities of insured state banks and their majority-owned subsidiaries appeared in the **Federal Register** on December 8, 1993, at 58 FR 64455.

Section 303.13 of the FDIC's regulations (12 CFR 303.13) implements sections 28 and 18(m) of the FDI Act. Both sections were added to the FDI Act by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). While section 28 of the FDI Act and section 24 of the FDI Act are similar, there are a number of fundamental differences in the two provisions which caused the implementing regulations to differ in some respects.

Section 18(m) of the FDI Act (12 U.S.C. 1828(m)) requires state and federal savings associations to provide the FDIC with notice 30 days before establishing or acquiring a subsidiary or engaging in any new activity through a subsidiary. Section 28 (12 U.S.C. 1831e) governs the activities and equity investments of state savings associations and provides that no state savings association may engage as principal in any activity of a type or in an amount that is impermissible for a federal savings association unless the FDIC determines that the activity will not pose a significant risk to the affected deposit insurance fund and the savings association is in compliance with the fully phased-in capital requirements prescribed under section 5(t) of the Home Owners' Loan Act (HOLA, 12 U.S.C. 1464(t)). Except for its investment in service corporations, a state savings association is prohibited from acquiring or retaining any equity investment that is not permissible for a federal savings association. A state savings association may acquire or retain an investment in a service corporation of a type or in an amount not permissible for a federal savings association if the FDIC determines that neither the amount invested in the service corporation nor the activities of the service corporation pose a significant risk to the affected deposit insurance fund and the savings association continues to meet the fully phased-in capital requirements. A savings association was required to divest itself of prohibited equity investments no later than July 1, 1994. Section 28 also prohibits state and federal savings associations from acquiring any corporate debt security that is not of investment grade (commonly known as ''junk bonds'').

Section 303.13 of the FDIC's regulations was adopted as an interim final rule on December 29, 1989 (54 FR 53548). The FDIC revised the rule after reviewing the comments and the regulation as adopted appeared in the **Federal Register** on September 17, 1990 (55 FR 38042). The regulation establishes application and notice procedures governing requests by a state savings association to directly, or through a service corporation, engage in activities that are not permissible for a federal savings association; the intent of a state savings association to engage in permissible activities in an amount exceeding that permissible for a federal savings association; or the intent of a state savings association to divest corporate debt securities not of investment grade. The regulation also establishes procedures to give prior notice for the establishment or acquisition of a subsidiary or the conduct of new activities through a subsidiary.

Section 337.4 of the FDIC's regulations (12 CFR 337.4) governs securities activities of subsidiaries of insured state nonmember banks as well as transactions between insured state nonmember banks and their securities subsidiaries and affiliates. The regulation was adopted in 1984 (49 FR 46723) and is designed to promote the safety and soundness of insured state nonmember banks that have subsidiaries which engage in securities activities that are impermissible for national banks under section 16 of the Banking Act of 1933 (12 U.S.C. section 24 seventh), commonly known as the Glass-Steagall Act. It requires that these subsidiaries qualify as bona fide subsidiaries, establishes transaction restrictions between a bank and its subsidiaries or other affiliates that engage in securities activities that are prohibited for national banks, requires that an insured state nonmember bank give prior notice to the FDIC before establishing or acquiring any securities subsidiary, requires that disclosures be provided to securities customers in certain instances, and requires that a bank's investment in a securities subsidiary engaging in activities that are impermissible for a national bank be deducted from the bank's capital.

On August 23, 1996, the FDIC published a notice of proposed rulemaking (61 FR 43486, August 23, 1996) (August proposed rule) to amend part 362. Under the proposed rule a notice procedure would have replaced the application currently required in the case of real estate investment, life insurance and annuity investment activities provided certain conditions and restrictions were met. The proposed rule set forth notice processing procedures for real estate, life insurance policies and annuity contract investments for well-capitalized, well-managed insured state banks. Under the proposal, all real estate activities would be required to be conducted in a majority-owned subsidiary, while life insurance policies and annuity contracts could be held directly or through a majority-owned subsidiary. Notices would have been filed with the appropriate FDIC regional office. The FDIC regional office would have had 60 days to process a notice under the proposal, with a possible extension of 30 days. If the FDIC did not object to the

notice prior to the expiration of the notice period (or any extension), the bank could have proceeded with the investment activity. In the event a bank fell out of compliance with any of the eligibility conditions after starting the activity, it would have been required to report the noncompliance to the appropriate FDIC regional office within 10 business days of the occurrence.

With respect to investments in real estate activities, the August proposed rule set forth 9 conditions which banks would have had to meet to be ''eligible'' for the notice procedure. These 9 conditions addressed the bank's capital levels and financial condition (must be well-capitalized after deducting investment in real estate and must have a Uniform Financial Institutions Rating System (UFIRS) rating of 1 or 2), how the real estate activity would be conducted (a ''bona fide'' subsidiary which only engages in real estate activities), management experience and independence of the real estate subsidiary (subsidiary must have management with real estate experience, a written business plan, and at least one director with real estate experience who is not an employee, officer or director of the bank), and placed limits on bank transactions with the subsidiary and customers (sections 23A and 23B of the Federal Reserve Act applied to transactions between the bank and its subsidiary and tying and insider transactions were prohibited). The August proposed rule also set forth the contents of the notice that was to be sent to the FDIC regional office. The required information included 7 items; information regarding the proposed activity (general description of proposed real estate activity, a copy of the written business plan, and a description of the subsidiary's operations including management's expertise), the amount of investment and impact on bank capital (aggregate amount of investment in activity and pro forma effect of deducting such investments on the bank's capital levels) and the bank's authority to engage in such activity (copy of the board of directors' resolution authorizing activity and identification of state law permitting the activity). Under the August proposal, the regional office could have requested additional information.

After considering the comments to the August proposed rule and reconsidering the issues underlying the current regulation, we have restructured the approach we are taking under part 362. As a result, the FDIC withdrew the August proposed rule, which is published elsewhere in today's **Federal Register** in favor of the more comprehensive approach presently proposed.

While the August proposed rule amended existing part 362, the current proposal would replace existing part 362. Unlike the rule proposed in August, the current proposal is not limited to considering the notice procedure used under part 362. In drafting the current proposal, we have deleted items that are either duplicative, unnecessary due to the passage of time, or have proven unwarranted given our experience in implementing section 24 over the last five years. In addition, we have refined the notice procedure that was proposed in August. We are no longer recommending a life insurance policy and annuity contract investment notice due to recent guidance provided by the Office of the Comptroller of the Currency (OCC). The OCC's guidance appears to eliminate the necessity for an application with respect to virtually all of the life insurance and annuity investments received by the FDIC in the past. While Section 24 and the part 362 application process would continue to apply to those life insurance and annuity investments which are impermissible for national banks, the FDIC has decided that there is no need to adopt a notice process that specifically addresses what we expect to be an extremely small number of situations. We invite comment on whether we are correct in concluding that there is no longer a need for a notice process for life insurance and annuity investments which are impermissible for national banks.

II. Description of Proposal

The FDIC proposes to divide part 362 into six subparts. Before describing the reorganization of part 362, we would like to make a few general comments concerning the proposal. First, we moved substantive aspects of the regulation that were formerly found in the definitions of terms like ''bona fide subsidiary'' to the applicable regulation text. This reorganization should assist the reader in understanding and applying the regulation. Second, current part 362 contains a number of provisions relating to divesture. We have deleted any divestiture provisions in the current proposal that we found to be unnecessary due to the passage of time. Third, we are proposing to combine the rules covering the equity investments of banks and savings associations into part 362 and to regulate these investments as consistently as possible given the limitations imposed by statute. Fourth, unlike the regulations promulgated by the Office of Thrift Supervision we do not distinguish between activities carried out by a first tier subsidiary of a savings association versus a lower-tier subsidiary. Finally, although the FDIC agrees with the principles applicable to transactions between insured depository institutions and its affiliates contained in sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c and 371c–1), our experience over the last five years in applying section 24 has led us to conclude that extending 23A and 23B by reference to bank subsidiaries is inadvisable. For that reason, the proposed regulation does not incorporate sections 23A and 23B of the Federal Reserve Act by cross-reference; rather, the proposal adapts the principles set forth in sections 23A and 23B to the bank/subsidiary relationship as appropriate. In drafting the proposed revision to part 362, we have considered each of the requirements contained in sections 23A and 23B in the context of transactions between an insured institution and its subsidiary and refined the restrictions appropriately. The FDIC requests comment on whether these proposals assist in the application of the principles of 23A and 23B to the subsidiaries of insured depository institutions. We also request comment on all aspects of these restrictions including whether this approach strikes a better balance between caution and commercial reality by harmonizing the capital deductions and the principles of 23A and 23B.

Subpart A of the proposed regulation would deal with the activities and investments of insured state banks. Except for those sections pertaining to the applications, notices and related delegations of authority (procedural provisions), existing part 362 would essentially become subpart A under the current proposal. The procedural provisions of existing part 362 have been transferred to subpart E. As proposed, subpart A addresses the activities of the insured state bank in § 362.3. The activities carried on in a subsidiary of the insured state bank are addressed in a separate section (see § 362.4 in the proposed regulation). We are soliciting comment on whether this reorganization of part 362 is helpful.

The ability of insured state banks to engage in activities as principal is directly linked to the ability of a national bank to engage in the same type of activity. National banks have a limited ability to hold equity investments in real estate. Even so, if a particular real estate investment has been determined to be permissible for a national bank, an insured state bank only needs to document that determination to undertake the

investment. Insured state banks that want to undertake a real estate investment which is impermissible for a national bank (or continue to hold the real estate investment in the case of investments acquired before enactment of section 24 of the FDI Act), must file an application with the FDIC for consent. The FDIC may approve such applications if the investment is made through a majority-owned subsidiary, the institution meets the applicable capital standards set by the appropriate Federal banking agency and the FDIC determines that the activity does not pose a significant risk to the appropriate deposit insurance fund.

The FDIC has determined that real estate investment activities may pose significant risks to the deposit insurance funds. For that reason, the FDIC is proposing to establish standards that an insured state nonmember bank must meet before engaging in real estate investment activities that are not permissible for a national bank. Under a safety and soundness standard, subpart B of the proposed regulation requires insured state nonmember banks to meet the standards established by the FDIC, even if the Comptroller of the Currency determines that those activities are permissible for a national bank subsidiary. Subpart B also would establish modern standards for insured state nonmember banks to govern transactions between those insured state nonmember banks that are not affiliated with a bank holding company (nonbank banks) and affiliated organizations conducting securities activities. The existing restrictions on these securities activities are found in § 337.4 of this chapter. The new rule will only cover those entities not covered by orders issued by the Board of Governors of the Federal Reserve System (FRB) governing the securities activities of those banks that are affiliated with a bank holding company or a member bank.

Subpart B prohibits an insured state nonmember bank not affiliated with a company that is treated as a bank holding company (see section 4(f) of the Bank Holding Company Act, 12 U.S.C. 1843(f)), from becoming affiliated with a company that directly engages in the underwriting of securities not permissible for a national bank unless the standards established under the proposed regulation are met.

Subpart C of the proposed regulation concerns the activities and investments of insured state savings associations. The provisions applicable to activities of savings associations currently appearing in § 303.13 would be revised in a number of ways and placed in new subpart C. To the extent possible, activities and investments of insured state savings associations would be treated consistently with the treatment provided insured state banks. Thus, we revised a number of definitions currently contained in § 303.13 to track the definitions used in subpart A. We request comment on whether the revisions made in subpart C contribute to the efficient operation of savings associations and their service corporations while continuing to implement the statutory requirements.

Subpart D of the proposal requires that an insured savings association provide a 30 day notice to the FDIC whenever the institution establishes or acquires a subsidiary or conducts a new activity through a subsidiary. This provision does not alter the notice required by statute. We moved this requirement to a new subpart to accommodate Federally chartered savings associations by limiting the amount of regulation text they would have to read to comply with this statutory notice. Comment is invited on whether this separation avoids confusion, enhances readability and simplifies compliance.

Subparts E and F of the proposal each contain the notice and application requirements and the delegations of authority for the substantive matters covered by the proposal for insured state banks and state savings associations, respectively.

The FDIC requests comments about all aspects of the proposed revision to part 362. In addition, the FDIC is raising specific questions for public comment as set out in connection with the analysis of the proposal below.

III. Section by Section Analysis

A. Subpart A—Activities of Insured State Banks

Section 362.1 Purpose and Scope

The purpose and scope of subpart A is to ensure that the activities and investments undertaken by insured state banks and their subsidiaries do not present a significant risk to the deposit insurance funds, are not unsafe and are not unsound, are consistent with the purposes of federal deposit insurance and are otherwise consistent with law. This subpart implements the provisions of section 24 of the FDI Act that restrict and prohibit insured state banks and their subsidiaries from engaging in activities and investments of a type that are not permissible for national banks and their subsidiaries. The phrase ''activity permissible for a national bank'' means any activity authorized for national banks under any statute including the National Bank Act (12 U.S.C. 21 *et seq.*), as well as activities recognized as permissible for a national bank in regulations, official circulars, bulletins, orders or written interpretations issued by the OCC. This subpart governs activities conducted ''as principal'' and therefore does not govern activities conducted as agent for a customer, conducted in a brokerage, custodial, advisory, or administrative capacity, or conducted as trustee. We moved this language from § 362.2(c) of the current version of part 362 where the term ''as principal'' is defined to mean acting other than as agent for a customer, acting as trustee, or conducting an activity in a brokerage, custodial or advisory capacity. The FDIC previously described this definition as not covering, for example, acting as agent for the sale of insurance, acting as agent for the sale of securities, acting as agent for the sale of real estate, or acting as agent in arranging for travel services. Likewise, providing safekeeping services, providing personal financial planning services, and acting as trustee were described as not being ''as principal'' activities within the meaning of this definition. In contrast, real estate development, insurance underwriting, issuing annuities, and securities underwriting would constitute ''as principal'' activities. Further, for example, travel agency activities have not been brought within the scope of part 362 and would not require prior consent from the FDIC even though a national bank is not permitted to act as travel agent. This result obtains from the fact that the state bank would not be acting ''as principal'' in providing those services. Thus, the fact that a national bank may not engage in travel agency activities would be of no consequence. Of course, state banks would have to be authorized to engage in travel agency activities under state law. We intend to continue to interpret section 24 and part 362 as excluding any coverage of activities being conducted as agent. To highlight this issue, provide clarity and alert the reader of this rule that activities being conducted as agent are not within the scope of section 24 and part 362, we have moved this language to the purpose and scope paragraph. We

request comment on whether moving this language to the purpose and scope paragraph assists users of this rule in interpreting its parameters. We also invite comment on whether the ''as principal'' definition still would be necessary.

Equity investments acquired in connection with debts previously contracted (DPC) that are held within the shorter of the time limits prescribed by state or federal law are not subject to the limitations of this subpart. The exclusion of equity investments acquired in connection with DPC has been moved from the definition of ''Equity investment'' to the purpose and scope paragraph to highlight this issue, provide clarity and alert the reader of this rule that these investments are not within the scope of section 24 and part 362. However, the intent of the insured state bank in holding equity investments acquired in connection with DPC continues to be relevant to the analysis of whether the equity investment is permitted. Interests taken as DPC are excluded from the scope of this regulation provided that the interests are not held for investment purposes and are not held longer than the shorter of any time limit on holding such interests (1) set by applicable state law or regulation or (2) the maximum time limit on holding such interests set by applicable statute for a national bank. The result of the modification would be to make it clear, for example, that real estate taken DPC may not be held for longer than 10 years (*see* 12 U.S.C. 29) or any shorter period of time set by the state. In the case of equity securities taken DPC, the bank must divest the equity securities ''within a reasonable time'' (i.e, as soon as possible consistent with obtaining a reasonable return) (see OCC Interpretive Letter No. 395, August 24, 1987, (1988–89 Transfer Binder) Fed Banking L. Rep. (CCH) p. 85,619, which interprets and applies the National Bank Act) or no later than the time permitted under state law if that time period is shorter.

In addition, any interest taken DPC may not be held for investment purposes. For example, while a bank may be able to expend monies in connection with DPC property and/or take other actions with regard to that property, if those expenditures and actions are speculative in nature or go beyond what is necessary and prudent in order for the bank to recover on the loan, the property will not fall within the DPC exclusion. The FDIC expects that bank management will document that DPC property is being actively marketed and current appraisals or other means of establishing fair market value may be used to support management's decision not to dispose of property if offers to purchase the property have been received and rejected by management.

Similarly to highlight this issue, provide clarity and alert the reader of this rule, we have moved to the purpose and scope paragraph the language governing any interest in real estate in which the real property is (a) used or intended in good faith to be used within a reasonable time by an insured state bank or its subsidiaries as offices or related facilities for the conduct of its business or future expansion of its business or (b) used as public welfare investments of a type permissible for national banks. In the case of real property held for use at some time in the future as premises, the holding of the property must reflect a bona fide intent on the part of the bank to use the property in the future as premises. We are not aware of any statutory time frame that applies in the case of a national bank which limits the holding of such property to a specific time period. Therefore, the issue of the precise time frame under which future premises may be held without implicating part 362 must be decided on a case-by-case basis. If the holding period allowed for under state law is longer than what the FDIC determines to be reasonable and consistent with a bona fide intent to use the property for future premises, the bank will be so informed and will be required to convert the property to use, divest the property, or apply for consent to hold the property through a majority-owned subsidiary of the bank. We note that the OCC's regulations indicate that real property held for future premises should ''normally'' be converted to use within five years after which time it will be considered other real estate owned and must be actively marketed and divested in no later than ten years. (12 CFR 34). We understand that the time periods set forth in the OCC's regulation reflect safety and soundness determinations by that agency. As such, and in keeping with what has been to date the FDIC's posture with regard to safety and soundness determinations of the OCC, the FDIC will substitute its own judgment to determine when a reasonable time has elapsed for holding the property.

A subsidiary of an insured state bank may not engage in real estate investment activities not permissible for a subsidiary of a national bank unless the bank is in compliance with applicable capital standards and the FDIC has determined that the activity poses no significant risk to the deposit insurance fund. Subpart A provides standards for real estate investment activities that are not permissible for a subsidiary of a national bank. Because of safety and soundness concerns relating to real estate investment activities, subpart B reflects special rules for subsidiaries of insured state nonmember banks that engage in real estate investment activities of a type that are not permissible for a national bank but may be otherwise permissible for a subsidiary of a national bank.

The FDIC intends to allow insured state banks and their subsidiaries to undertake safe and sound activities and investments that do not present a significant risk to the deposit insurance funds and that are consistent with the purposes of federal deposit insurance and other applicable law. This subpart does not authorize any insured state bank to make investments or to conduct activities that are not authorized or that are prohibited by either state or federal law.

Section 362.2 Definitions

Revised subpart A § 362.2 contains—definitions. We have left most of the definitions unchanged or edited them to enhance clarity or readability without changing the meaning.

To standardize as many definitions as possible, we have incorporated several definitions from section 3 of the FDI Act (12 U.S. C. 1813). These definitions are ''Bank,'' ''State bank,'' ''Savings association,'' ''State savings association,'' ''Depository institution,'' ''Insured depository institution,'' ''Insured state bank,'' ''Federal savings association,'' and ''Insured state nonmember bank.'' This standardization required that we delete the definitions of ''depository institution'' and ''insured state bank''currently found in part 362. No substantive change was intended by this change. The definitions that were added by this change are ''Bank,'' ''State bank,'' ''Savings association,'' ''State savings association,'' ''Insured depository institution,'' ''Federal savings association,'' and ''Insured state nonmember bank.'' These definitions were added to provide clarity throughout the proposed part 362 because we are incorporating so many definitions from subpart A into subpart B governing safety and soundness concerns of insured state nonmember banks, subpart C governing the activities of state savings associations, and subpart D governing subsidiaries of all savings associations. We invite comment on whether readers view these definitions as needing further changes to enhance clarity and readability. We also invite comment on whether any of

the changes we have made may have changed the substance of the regulation in ways that we may not have intended.

The definitions that have been left unchanged or edited to enhance clarity or readability without changing the meaning are the following: ''Control,'' ''Extension of credit,'' ''Executive officer,'' ''Director,'' ''Principal shareholder,'' ''Related interest,'' ''National Securities exchange,'' ''Residents of state,'' ''Subsidiary,'' and ''Tier one capital.'' We invite comment on whether readers view these definitions as needing further changes to enhance clarity and readability. We also invite comment on whether any of the changes we have made may have changed the substance of the regulation in ways that we may not have intended.

The name of one definition has been simplified without substantively changing the meaning of the definition. That definition is currently found in § 362.2(g) and is described as follows ''An insured state bank will be considered to convert its charter.'' We moved this definition to § 362.2(e) and call this definition, ''Convert its charter.'' The substance of the definition is intended to remain unchanged by this revised language. We invite comment on whether readers view the change in this definition as needing any further changes to enhance clarity and readability. We also invite comment on whether any of the changes we have made to this definition may have changed the substance of the regulation in ways that we may not have intended.

Although most of the definitions as set out in the proposal are the same or virtually unchanged, a few of the definitions in the proposal have been substantively revised. The proposed changes to these definitions are discussed below.

We deleted the definitions of ''Activity permissible for a national bank,'' ''An activity is considered to be conducted as principal,'' and ''Equity investment permissible for a national bank.'' We moved the substance of the information that was contained in these definitions into the scope paragraph in § 362.1. We thought that including the information that was in these definitions in the scope paragraph made the coverage of the rule clearer to the reader and was consistent with the purpose of the scope paragraph. We expect that some readers may save time by realizing sooner that the regulation may be inapplicable to conduct contemplated by a particular bank. We also thought that the reader might be more likely to consider the scope paragraph than to consider the definition section when reading the rule to determine its applicability. We concluded that it would be unnecessary to duplicate this same information in the definition section. We invite comment on whether readers prefer to see these concepts in the scope paragraph and whether readers also would prefer to see these concepts defined.

We deleted the definition of ''Equity interest in real estate'' and moved the recitation of the permissibility of owning real estate for bank premises and future premises, owning real estate for public welfare investments and owning real estate from DPC to the scope paragraph for the reasons stated in the preceding paragraph. These activities are permissible for national banks and we thought that it was unnecessary to continue to restate this information in the definition section of the regulation. No substantive change is intended by this simplification of the language. In addition, we determined that the remainder of the definition of ''Equity interest in real estate'' did little to enhance clarity or understanding; therefore, we are relying on the language defining ''Equity investment'' to cover real estate investments. We conformed the definition of ''Equity investment'' by deleting the reference to the deleted definition of ''Equity interest in real estate.'' No substantive change is intended by shortening this language. We invite comment on whether the readers view the definition of ''Equity interest in real estate'' as necessary to enhance clarity and readability on these issues as well as whether readers prefer seeing these concepts in the scope paragraph.

The remainder of the definition of ''Equity investment'' has been shortened and edited to enhance readability. We intend no substantive change by shortening this language. This concept is intended to encompass an investment in an equity security or real estate as it does in the current definition. We invite comment on the changes to this definition and whether any further changes are needed.

With regard to the definition of ''Equity security,'' we modified this definition by deleting the references to permissible national bank holdings such as equity securities being held as a result of a foreclosure or other arrangements concerning debt previously contracted. Language discussing the exclusion of DPC and other investments that are permissible for national banks has been relocated to the scope paragraph for the reasons stated above. Thus, the equity investment definitions no longer include these references. We intend no substantive change through the deletion of this redundant language. We invite comment on whether any ambiguity or unintended change in the meaning may be created by removing this language from the definition.

We added a shorter definition of ''Real estate investment activity'' meaning any interest in real estate held directly or indirectly that is not permissible for a national bank. This term is used in § 362.4(b)(5) of subpart A and in § 362.7 of subpart B which contains safety and soundness restrictions on real estate activities of subsidiaries of insured state nonmember banks that may be deemed to be permissible for operating subsidiaries of national banks that would not be permissible for a national bank, itself. We invite comment on this definition, including its meaning and clarity as well as the underlying safety and soundness proposal in subpart B. We specifically invite comment on the exclusion of real estate leasing from the definition of real estate investment activity. The proposal has eliminated real estate leasing from the definition of real estate investment activity in order to assure that banks using the notice procedure are not getting involved in a commercial business. The notice procedures are designed for institutions that wish to hold parcels of real estate for ultimate sale. If an institution wishes to hold the property to lease it for ongoing business purposes, we believe the proposal should be considered under the application process.

We deleted the definitions of ''Investment in department'' and ''Department'' because we thought they were no longer needed in the revised regulation text. The core standards applicable to a department of a bank are set out in detail in § 362.3(c) and defining the term ''Department'' no longer seems to be necessary. Regarding the definition of ''Investment in department,'' we also considered this definition unnecessary. We believe that if a calculation of ''Investment in department'' needs to be made, we will defer to state law on this issue. We invite comment on whether the readers view these definitions as necessary to enhance clarity and readability on these issues. We also request comment on whether deference to state law on this investment issue would cause any unintended consequences that we have not foreseen.

Similarly, we deleted the definition of ''Investment in subsidiary'' because the definition is no longer needed in the revised regulation text. The core standards applicable to an insured state bank and its subsidiary make a

definition of ''Investment in subsidiary'' superfluous. The core standards contained in § 362.4(c) set out the requirements in detail. Therefore, defining the term ''Investment in subsidiary'' no longer seems to be necessary. We invite comment on whether the readers view this definition or a similar definition as necessary to enhance clarity and readability on these issues.

We deleted the definition of ''bona fide subsidiary'' and chose to make similar characteristics part of the eligible subsidiary criteria in § 362.4(c)(2). We thought that including these criteria as a part of the substantive regulation text in that subsection, rather than as a definition, makes reading the rule easier and the meaning clearer. We invite comment on whether readers prefer to see this concept set forth in the substantive section of the rule or the definition section and whether readers believe any additional definition is necessary to enhance clarity and readability.

The proposal substitutes the current definition of ''Lower income'' with a cross reference in § 362.3(a)(2)(ii) to the definition of ''low income'' and ''moderate income'' as used for purposes of part 345 of the FDIC's regulations (12 CFR 345) which implements the Community Reinvestment Act (CRA). 12 U.S.C. 2901, *et seq.* Under part 345, ''low income'' means an individual income that is less than 50 percent of the area median income or a median family income that is less than 50 percent in the case of a census tract or a block numbering area delineated by the United States Census in the most recent decennial census. ''Moderate income'' means an individual income that is at least 50 percent but less than 80 percent of the area median or a median family income that is at least 50 but less than 80 percent in the case of a census tract or block numbering area.

The definition ''Lower income'' is relevant for purposes of applying the exception in the regulation which allows an insured state bank to be a partner in a limited partnership whose sole purpose is direct or indirect investment in the acquisition, rehabilitation, or new construction of qualified housing projects (housing for lower income persons). As we anticipate that insured state banks would seek to use such investments in meeting their community reinvestment obligations, the FDIC is of the opinion that conforming the definition of lower income to that used for CRA purposes will benefit banks. We note that the change will have the effect of expanding the housing projects that qualify for the exception. We invite comment on this change.

We have simplified the definition of the term ''Activity.'' As modified the definition includes all investments. Where equity investments are intended to be excluded, we expressly exclude those investments in the regulation text. We invite comment on whether the modification to the definition enhances clarity or whether the longer definition found in the current regulation should be reinstated. In particular, we invite comment on whether the definition should be modified to take into account in some fashion a recent interpretation by the agency under which it was determined that the act of making a political campaign contribution does not constitute an ''activity'' for purposes of part 362. The interpretation uses a three prong test to help determine whether particular conduct should be considered an activity and therefore subject to review under part 362 if the conduct is not permissible for a national bank. If at least two of the tests yield a conclusion that the conduct is part of the authorized conduct of business by the bank, the better conclusion is that the conduct is an activity. First, any conduct that is an integral part of the business of banking as well as any conduct which is closely related or incidental to banking should be considered an activity . In applying this test it is important to focus on what banks do that makes them different from other types of businesses. For example, lending money is clearly an ''activity'' for purposes of part 362. The second test asks whether the conduct is merely a corporate function as opposed to a banking function. For example, paying dividends to shareholders is primarily a general corporate function and not one associated with banking because of some unique characteristic of banking as a business. Generally, activities that are not general corporate functions will involve interaction between the bank and its customers rather than its employees or shareholders. The third test asks whether the conduct involves an attempt by the bank to generate a profit. For example, banks make loans and accept deposits in an effort to make money. However, contracting with another company to generate monthly customer statements should not be considered to be an activity unto itself as it simply is entered into in support of the ''activity'' of taking deposits. We also invite any other comments that would make this definition easier to understand and apply.

The proposal modifies the definition of ''Company'' to add limited liability companies to the list of entities that will be considered a company. This change in the definition is being proposed in recognition of the creation of limited liability companies and their growing prevalence in the market place. We invite comment on whether this addition to the list of forms of business enterprise is appropriate and whether we should add any more forms of business enterprise.

The FDIC has changed the definition of ''Significant risk to the fund'' by adding the second sentence that clarifies that this definition includes the risk that may be present either when an activity or an equity investment contributes or may contribute to the decline in condition of a particular state-chartered depository institution or when a type of activity or equity investment is found by the FDIC to contribute or potentially contribute to the deterioration of the overall condition of the banking system. We invite comment on whether the definition should be modified in some other manner and if so how. Our interpretation of the definition remains unchanged. Significant risk to the deposit insurance fund shall be understood to be present whenever there is a high probability that any insurance fund administered by the FDIC may suffer a loss. The preamble accompanying the adoption of this definition in final indicated that the FDIC recognized that no investment or activity may be said to be without risk under all circumstances and that such fact alone will not cause the agency to determine that a particular activity or investment poses a significant risk of loss to the fund. The emphasis rather is on whether there is a high degree of likelihood under all of the circumstances that an investment or activity by a particular bank, or by banks in general or in a given market or region, may ultimately produce a loss to either of the funds. The relative or absolute size of the loss that is projected in comparison to the fund will not be determinative of the issue. The preamble indicated that the definition is consistent with and derived from the legislative history of section 24 of the FDI Act. Previously, the FDIC rejected the suggestion that risk to the fund only be found if a particular activity or investment is expected to result in the imminent failure of a bank. The suggestion was rejected as the FDIC determined at that time that it was appropriate to approach the issue conservatively. We think that this conservatism is more clearly articulated in this modification to the definition. We invite comments on whether this

additional language is necessary and whether any other language should be added.

We re-defined the term ''Well-capitalized'' to incorporate the same meaning set forth in part 325 of this chapter for an insured state nonmember bank. For other state-chartered depository institutions, the term ''well-capitalized'' has the same meaning as set forth in the capital regulations adopted by the appropriate Federal banking agency. We decided that it would simplify the calculations for the various state-chartered depository institutions if the capital definition imported the definitions used by those institutions when they deal with their appropriate Federal banking agency. We deleted the other terms defined under § 362.2(x) as unnecessary due to the changes in the regulation text. We invite comment on whether we have missed an item that still needs to be included in this definition.

We added definitions of the following terms: ''Change in control,'' ''Institution,'' ''Majority-owned subsidiary,'' ''Security'' and ''State-chartered depository institution.''

Under section 24 of the FDI Act, the grandfather with respect to common or preferred stock listed on a national securities exchange and shares of registered investment companies ceases to apply if the bank undergoes a change in control. The phrase ''Change in control'' is defined for the purposes of part 362 in what is currently § 362.3(b)(4)(ii) of the regulation. Under the proposal, the definition is relocated into the definitions section and modified.

Under the current regulation a ''Change in control'' that will result in the loss of the grandfather is defined to mean a transaction in which the bank converts its charter, undergoes a transaction which requires a notice to be filed under section 7(j) of the FDI Act (12 U.S.C. 1817(j)) except a transaction which is presumed to be a change in control for the purposes of that section under FDIC's regulations implementing section 7(j), any transaction subject to section 3 of the Bank Holding Company Act (12 U.S.C. 1842) other than a one bank holding company formation, a transaction in which the bank is acquired by or merged into a bank that is not eligible for the grandfather, or a transaction in which control of the bank's parent company changes. The proposal would narrow the definition of ''Change in control'' by defining the phrase to only encompass transactions subject to section 7(j) of the FDI Act (except for transactions which trigger the presumptions under FDIC's regulations implementing section 7(j) or the FRB's regulations implementing section 7(j)) and transactions in which the bank is acquired by or merged into a bank that is not eligible for the grandfather. This definition change will narrow the instances in which a bank may lose its grandfathered ability to invest in common or preferred stock listed on a national securities exchange and shares of registered investment companies. It is our belief that the revised definition, if adopted, will more closely approximate when a true change in control has occurred.

We added a definition of ''Institution'' and defined it to mean the same as a ''state-chartered depository institution'' to shorten the drafting of the rule, particularly for those items that are applicable to both insured state banks and insured state savings associations. This definition is intended to enhance readability. We invite comment on whether this definition creates any confusion or ambiguity.

We added a definition of ''Majority-owned subsidiary'' and defined it to mean any corporation in which the parent insured state bank owns a majority of the outstanding voting stock. We added this definition to clarify our intention that the expedited notice procedures only be available when an insured state bank interposes an entity that gives limited liability to the parent institution. We interpret Congress's intention in imposing the majority-owned subsidiary requirement in section 24 of the FDI Act to generally require that such a subsidiary provide limited liability to the insured state bank. Thus, except in unusual circumstances, we have and will require majority-owned subsidiaries to adopt a form of business that provides limited liability to the parent bank. In assessing our experience with applications, we have determined that the notice procedure will be available only to banks that engage in activities through a majority-owned subsidiary that takes the corporate form of business. We welcome applications that may take a different form of business such as a limited partnership or limited liability company, but would like to develop more experience with appropriate separations to protect the bank from liability under these other forms of business enterprise through the application process before including these entities in a notice procedure. We have decided that there may have been an ambiguity in the notice provisions we proposed for comment and published August 23, 1996, in the **Federal Register** at 61 FR 43486. We intended that an entity eligible for the notice procedure be in corporate form and implied that requirement by incorporating the bona fide subsidiary requirements that included references to a board of directors. The addition of this definition should make our intention clear that the notice procedure requires a majority-owned subsidiary to take the corporate form. We invite comment on this definition, our substantive decision to require the corporate form for a majority-owned subsidiary of an insured state bank using the notice procedures, and our decision to exclude other limited liability business forms from the notice procedure. We also invite comment on any ambiguities or questions that this definition may create.

We adopted the definition of ''Security'' from part 344 of this chapter to eliminate any ambiguity over the coverage of this rule when securities activities and investments are contemplated. We invite comment on any ambiguities or questions that this definition may create.

We defined ''State-chartered depository institution'' to mean any state bank or state savings association insured by the FDIC to eliminate confusion and ambiguity. We invite comment on any ambiguities or questions that this definition may create.

We invite any general comment on the proposed definitions and invite any suggestions for additional definitions that would be helpful to the reader of the regulatory text.

Section 362.3 Activities of Insured State Banks

Equity Investment Prohibition

Section 362.3(a) of the proposal restates the statutory prohibition on insured state banks making or retaining any equity investment of a type that is not permissible for a national bank. The prohibition does not apply if one of the statutory exceptions contained in section 24 of the FDI Act (restated in the current regulation and carried forward in the proposal) applies. The provision is being retained. The proposal eliminates the reference to amount that is contained in the current version of § 362.3(a). We have reconsidered our interpretation of the language of section 24 where paragraph (c) prohibits an insured state bank from acquiring or retaining any equity investment of a type that is impermissible for a national bank and paragraph (f) prohibits an insured state bank from acquiring or retaining any equity investment of a type or in an amount that is impermissible for a national bank. We

previously interpreted the language of paragraph (f) as controlling and read that language into the entire statute. We reconsidered this approach, decided that it was not the most reasonable construction of this statute and determined that the language of paragraph (c) is controlling. Thus, the language of paragraph (c) controls when any other equity investment is being considered. Therefore, we deleted the amount language from prohibition in the regulation. We request comment on this change.

Exception for Majority-Owned Subsidiary

The FDIC proposes to retain the exception which allows investment in majority-owned subsidiaries as currently in effect without any substantive change. However, the FDIC has modified the language of this section to remove negative inferences and make the text clearer. Rather than stating that the bank may do what is not prohibited, the FDIC is affirmatively stating that an insured state chartered bank may acquire or retain investments through a majority-owned subsidiary. If an insured state bank holds less than a majority interest in the subsidiary, and that equity investment is of a type that would be prohibited to a national bank, the exception does not apply and the investment is subject to divestiture.

Majority ownership for the exception is understood to mean ownership of greater than 50 percent of the outstanding voting stock of the subsidiary. It is our understanding that national banks may own a minority interest in certain types of subsidiaries. (See 12 CFR 5.34(1997)). Therefore, an insured state bank may hold a minority interest in a subsidiary if a national bank could do so. Thus, the statute does not necessarily require a state bank to hold at least a majority of the stock of a company in order for the equity investment in the company to be permissible under the regulation. Only investments that would not be permissible for a national bank must be held through a majority-owned subsidiary.

The regulation defines the business form of a majority-owned subsidiary to be a corporation. There may be other forms of business organization that are suitable for the purposes of this exception such as partnerships or limited liability companies. The FDIC does not wish to give blanket authorization to a non-corporate form of organization since these forms may not provide for the same separations the FDIC believes to be necessary to protect the insured bank from assuming the liabilities of its subsidiary. The proposal anticipates that the Board will review alternate forms of organization to assure that appropriate separation between the insured depository institution and the subsidiary is in place. We are soliciting comment on other forms of business organization which the FDIC may allow. Please provide a discussion of the separations inherent in alternate forms of business organization.

To qualify for this exception, the majority-owned subsidiary must engage in activities that are described in § 362.4(b). The allowable activities include both statutory and regulatory exceptions to the general prohibitions of the regulation.

Investments in Qualified Housing Projects

The FDIC proposes to combine the language found in two paragraphs of the current regulation. The FDIC proposes to retain the combined paragraphs of the regulation with substantially the same language as currently in effect. The changes that have been made reflect practical clarifications resulting from the implications of the technical way the qualified housing rules work and are not intended to be substantive. In addition, the FDIC has modified the language of the text to remove negative inferences and make the text clearer. Section 362.3(a)(2)(ii) of the proposal provides an exception for qualified housing projects. Under the exception, an insured state bank is not prohibited from investing as a limited partner in a partnership, the sole purpose of which is direct or indirect investment in the acquisition, rehabilitation, or new construction of a residential housing project intended to primarily benefit lower income persons throughout the period of the bank's investment. The bank's investments, when aggregated with any existing investment in such a partnership or partnerships, may not exceed 2 percent of the bank's total assets. The FDIC expects that banks use the figure reported on the bank's most recent consolidated report of condition prior to making the investment as the measure of their total assets. If an investment in a qualified housing project does not exceed the limit at the time the investment was made, the investment shall be considered to be a legal investment even if the bank's total assets subsequently decline.

The current exception is limited to instances in which the bank invests as a limited partner in a partnership. Comment is invited on (1) whether the FDIC should expand the exception to include limited liability companies and (2) whether doing so is permissible under the statute. (Section 24(c)(3) of the FDI Act provides that a state bank may invest ''as a limited partner in a partnership.'')

Grandfathered Investments in Listed Common or Preferred Stock and Shares of Registered Investment Companies

The current regulation restates the statutory exception for investments in common or preferred stock listed on a national securities exchange and for shares of investment companies registered under the Investment Company Act of 1940 that is available to certain state banks if they meet the requirements to be eligible for the grandfather. The statute requires, among other things, that a state bank file a notice with the FDIC before relying on the exception and that the FDIC approve the notice. The notice requirement, content of notice, presumptions with respect to the notice, and the maximum permissible investment under the grandfather also are set out in the current regulation. The FDIC proposes to retain the regulatory language as currently in effect without any substantive change. The exception is found in § 362.3(a)(2)(iii) of the proposal. Although there would be no substantive change, the FDIC has modified the language of this section to remove negative inferences and make the text clearer.

We deleted the reference in the current regulation describing the notice content and procedure because we believe that most, if not all, of the banks eligible for the grandfather already have filed notices with the FDIC. Thus, we shortened the regulation by eliminating language governing the specific content and processing of the notices. Investment in common or preferred stock listed on a national securities exchange or shares of an investment company is governed by the language of the statute. Notices must conform to the statutory requirements whether filed previously or filed in the future. Any bank that has filed a notice need not file again. Comment is invited on whether the regulatory filing requirements should be retained and eventually moved into part 303 of this chapter.

Section 362.3(a)(2)(iii)(A) of the proposal implements the grandfathered listed stock and registered shares provision found in section 24(f)(2) of the FDI Act. Paragraph (B) of this section of the proposal provides that the exception for listed stock and registered shares ceases to apply in the event that the bank converts its charter or the bank or its parent holding company undergoes a change in control. This language restates the statutory language governing when

grandfather rights terminate. State banks should continue to be aware that, depending upon the circumstances, the exception may be considered lost after a merger transaction in which an eligible bank is the survivor. For example, if a state bank that is not eligible for the exception is merged into a much smaller state bank that is eligible for the exception, the FDIC may determine that in substance the eligible bank has been acquired by a bank that is not eligible for the exception.

The regulation continues to provide that in the event an eligible bank undergoes any transaction that results in the loss of the exception, the bank is not prohibited from retaining its existing investments unless the FDIC determines that retaining the investments will adversely affect the bank and the FDIC orders the bank to divest the stock and/or shares. This provision has been retained in the regulation without any change except for the deletion of the citation to specific authorities the FDIC may rely on to order divestiture. Rather than containing specific citations, the proposal merely references FDIC's ability to order divestiture under any applicable authority. State banks should continue to be aware that any inaction by the FDIC would not preclude a bank's appropriate banking agency (when that agency is an agency other than the FDIC) from taking steps to require divestiture of the stock and/or shares if in that agency's judgment divestiture is warranted.

Finally, the FDIC has moved, simplified and shortened the limit on the maximum permissible investment in listed stock and registered shares. The proposal limits the investment in grandfathered listed stock and registered shares to a maximum of one hundred percent (100 percent) of tier one capital as measured on the bank's most recent consolidated report of condition. The FDIC continues to use book value as the measure of compliance with this limitation. Language indicating that investments by well-capitalized banks in amounts up to 100 percent of tier one capital will be presumed not to present a significant risk to the fund is being deleted as is language indicating that it will be presumed to present a significant risk to the fund for an undercapitalized bank to invest in amounts that high. In addition, we deleted the language stating the presumption that, absent some mitigating factor, it will not be presumed to present a significant risk for an adequately capitalized bank to invest up to 100 percent of tier one capital. At this time we believe that it is not necessary to expressly state these presumptions in the regulation.

Language in the current regulation concerning the divestiture of stock and/or shares in excess of that permitted by the FDIC (as well as such investments in excess of 100 percent of the bank's tier one capital) is deleted under the proposal as no longer necessary due to the passage of time. In both instances the time allowed for such divestiture has passed.

Comment is invited on whether this grandfather exception for investment in listed stock and registered shares should be applied by the FDIC as an exception that is separate and distinct from any other exception under the regulation that would allow a subsidiary of an insured state bank to hold equity securities. In short, should we allow this exception in addition to the exception for stock discussed below or should the FDIC consider any listed stock held by a subsidiary of the bank pursuant to an exception in the regulation toward the 100 percent of tier one capital limit under this exception? We note that the statute does not itself impose any conditions or restrictions on a bank that enjoys the grandfather in terms of per issuer limits. Comment is sought on whether it is appropriate to impose restrictions under the regulation that would, for example, limit a bank to investing in less than a controlling interest in any given issuer. Is there some other limit or restriction the FDIC should consider imposing by regulation that is important to ensuring that the grandfathered investments do not pose a risk? Should this be done, if at all, solely through the notice and approval process?

Stock Investment in Insured Depository Institutions Owned Exclusively by Other Banks and Savings Associations

The content of the proposed regulation reflects the statutory exception that an insured state bank is not prohibited from acquiring or retaining the shares of depository institutions that engage only in activities permissible for national banks, are subject to examination and are regulated by a state bank supervisor, and are owned by 20 or more depository institutions not one of which owns more than 15 percent of the voting shares. In addition, the voting shares must be held only by depository institutions (other than directors' qualifying shares or shares held under or acquired through a plan established for the benefit of the officers and employees). Section 24(f)(3)(B) of the FDI Act does not limit the exception to voting stock. We are not proposing to eliminate the reference to ''voting'' in the current regulation when referencing control of the insured depository institution. Any other reference to voting stock has been eliminated in the exception to allow holding of non-voting stock. The FDIC seeks comment concerning retaining the reference to ''voting'' stock when calculating the 15 percent ownership limitation contained in the statute.

Stock Investments in Insurance Companies

Section 362.3(b)(2)(v) of the proposal contains exceptions that permit state banks to hold equity investments in insurance companies. The exceptions are provided by statute and implemented in the current version of part 362. For the most part, we brought the exceptions forward into this proposal with no substantive editing. The exceptions are discussed separately below.

Directors and Officers Liability Insurance Corporations

The first statutory exception permits insured state banks to own stock in corporations that solely underwrite or reinsure financial institution directors' and officers' liability insurance or blanket bond group insurance. A bank's investment in any one corporation is limited to 10 percent of the outstanding stock. We eliminated the present limitation of 10 percent of the ''voting'' stock and changed the present reference from ''company'' to ''corporation,'' conforming the language to the statutory exception.

While the statute and regulation provide a limit on a bank's investment in the stock of any one insurance company, there is no statutory or regulatory ''aggregate'' investment limit in all insurance companies nor does the statute combine this equity investment with any other exception under which a state bank may invest in equity securities. In the past, the FDIC has addressed investment concentration and diversification issues on a case-by-case basis. The FDIC is not at this time proposing to impose aggregate investment limits on equity investments which have specific statutory carve outs nor are we proposing to combine those investments with other equity investments made under the exceptions to the regulation for which aggregate investments are being proposed. The FDIC would like to receive comment, however, on whether there should be an ''aggregate'' investment limit for equity investments in insurance companies.

Stock of Savings Bank Life Insurance Company

The second statutory exception for equity investments in insurance companies permits any insured state bank located in the states of New York, Massachusetts and Connecticut to own stock in savings bank life insurance companies provided that consumer disclosures are made. Again, this regulatory provision mirrors the specific statutory carve out found in Section 24 and is contained in the present regulation. We have carried this provision forward into the proposal with some changes.

The savings bank life insurance investment exception is broader than the director and officer liability insurance company exception discussed above. There are no individual or aggregate investment limitations for investments in savings bank life insurance companies. The proposed language is shorter than the existing regulation and makes a substantive change by clarifying what the required disclosures are for insured banks selling these products. As was indicated above, insured banks located in New York, Massachusetts and Connecticut are permitted to invest in the stock of a savings bank life insurance company as long as certain disclosure requirements are met. The FDIC proposes to amend the regulatory language to specifically require compliance with the Interagency Statement in lieu of the disclosures presently set out in the regulation. Insured banks selling savings bank life insurance policies, other insurance products and annuities will be required to provide customers with written disclosures that are consistent with the Interagency Statement which include a statement that the products are not insured by the FDIC, are not guaranteed by the bank, and may involve risk of loss. The last disclosure—that such products may involve risk of loss—is not currently required under the regulation.

The FDIC would like to request comment regarding the disclosure obligations of insured banks. It is the FDIC's view that savings bank life insurance, other insurance products and annuities are ''nondeposit investment products'' as that term is used in the Interagency Statement. The FDIC is aware that insurance companies typically offer annuity products and that many states regulate annuities through their insurance departments. However, the FDIC agrees with the Comptroller of the Currency that annuities are financial products and not insurance. Nevertheless, annuities are nondeposit investment products and are therefore subject to the requirements found in the Interagency Statement when sold to retail customers on bank premises as well as in other instances. On this basis, all the requirements in the Interagency Statement should apply to the marketing and sale of annuities by a financial institution.

While the existing regulatory language is similar to the Interagency Statement in what it requires to be disclosed, it is not identical. The FDIC believes the proposed changes will clarify the standards which are to be followed by insured state banks.

It could be argued that the regulatory language in this part repeats existing guidance and is unnecessary. We note, however, that the statute requires that disclosures be made in order for the exception to be available. While the Interagency Statement is enforceable in the sense that noncompliance may constitute an unsafe or unsound banking practice that may give rise to a cease and desist action, the Interagency Statement is not itself a regulation with the force and effect of law.

We seek comments on whether it would be preferable for the regulation to fully set out the disclosure requirements rather than cross referencing the Interagency Statement. Commenters should address these points, as well as discuss the differences between enforcing specific regulatory language versus enforcing a policy statement. We invite comments on the applicability of the Interagency Statement in the absence of the language referencing it in this regulation. We invite comment on whether using the Interagency Statement makes compliance easier for banks as it provides uniform standards applicable to multiple products. We also invite comment on any other issues that are of concern to the industry or the public in using these particular disclosures when selling insurance and annuity products.

Other Activities Prohibition

Section 362.3(b) of the proposal restates the statutory prohibition on insured state banks directly or indirectly engaging as principal in any activity that is not permissible for a national bank. Activity is defined in this proposal as the conduct of business by a state-chartered depository institution, including acquiring or retaining any investment. Because acquiring or retaining an investment is an activity by definition, language has been added to make clear that this prohibition does not supersede the equity investment exception of § 362.3(b). The prohibition does not apply if one of the statutory exceptions contained in section 24 of the FDI Act (restated in the current regulation and carried forward in the proposal) applies. The FDIC has provided two regulatory exceptions to the prohibition on other activities.

Consent Through Application

The limitation on activities contained in the statute states that an insured state bank may not engage as principal in any type of activity that is not permissible for a national bank unless the FDIC has determined that the activity would pose no significant risk to the appropriate deposit insurance fund, and the bank is and continues to be in compliance with applicable capital standards prescribed by the appropriate federal banking agency. Section 362.3(b)(2)(i) establishes an application process for the FDIC to make the determination concerning risk to the funds. The substance of this process is unchanged from the current regulation.

Insurance Underwriting

This exception tracks the statutory exception in section 24 of the FDI Act which grandfathers (1) an insured state bank engaged in the underwriting of savings bank life insurance through a department of the bank; (2) any insured state bank that engaged in underwriting of insurance on or before September 30, 1991, which was reinsured in whole or in part by the Federal Crop Insurance Corporation; and (3) well-capitalized banks engaged in insurance underwriting through a department of a bank. The exception is carried over from the current regulation with a number of proposed modifications.

To use the savings bank life insurance exception, an insured state bank located in Massachusetts, New York or Connecticut must engage in the activity through a department of the bank that meets core standards discussed below. The standards for conducting this activity are taken from the current regulation with the exception of disclosure standards which are discussed below. We have moved the requirements for a department from the definitions to the substantive portion of the regulation text.

The exception for underwriting federal crop insurance reflects the statutory exception. This exception is unchanged from the current regulation, and there are no regulatory limitations on the conduct of the activity.

An insured state bank that wishes to use the grandfathered insurance underwriting exception may do so only if the insured state bank was lawfully providing insurance, as principal, as of November 21, 1991. Further, an insured

state bank must be well-capitalized if it is to engage in insurance underwriting, and the bank must conduct the insurance underwriting in a department that meets the core standards described below.

Banks taking advantage of this grandfather provision only may underwrite the same type of insurance that was underwritten as of November 21, 1991 and only may operate and have customers in the same states in which it was underwriting policies on November 21, 1991. The grandfather authority for this activity does not terminate upon a change in control of the bank or its parent holding company.

Both savings bank life insurance activities and grandfathered insurance underwriting must take place in a department of the bank which meets certain core standards. The core operating standards for the department require the department to provide customers with written disclosures that are consistent with those in the Interagency Statement. Consistent with the disclosure requirements of the current regulation, the proposed rule requires the department to inform its customers that only the assets of the department may be used to satisfy the obligations of the department. Note that this language does not require the bank to say that the bank is not obligated for the obligations of the department. The bank and the department constitute one corporate entity. In the event of insolvency, the insurance underwriting department's assets and liabilities would be segregated from the bank's assets and liabilities due to the requirements of state law.

The FDIC views any financial product that is not a deposit and entails some investment component to be a ''nondeposit investment product'' subject to the Interagency Statement. Part 362 was promulgated in 1992 before the Interagency Statement was issued in February of 1994. While the disclosures currently required by part 362 are similar to the disclosures set out in the Interagency Statement, they are not identical. Banks that engage in insurance underwriting are thus covered by the Interagency Statement and part 362 and must comply with similar but somewhat different requirements. We are proposing to cross reference the Interagency Statement in part 362 to make compliance clearer. We believe that using the uniform standards set forth in the Interagency Statement will make compliance easier.

In the case of insurance underwriting activities conducted by a department of the bank, the disclosure required by the Interagency Statement that the product is not an obligation of the bank is not correct as noted above, and the suggested language in the regulation does not require this disclosure. This clarification is consistent with other interpretations of the Interagency Statement which stated that disclosures should be consistent with the types of products offered. The FDIC would like to receive comment on whether such clarification is necessary or whether the regulation language is seen as duplicating other guidance.

The FDIC notes that the consumer disclosures are statutorily required for savings bank life insurance. The Interagency Statement is joint supervisory guidance issued by the Federal Banking Agencies, not a regulation. The FDIC requests comment regarding the enforceability of the Interagency Statement versus a regulation promulgated under the rulemaking requirements of the Administrative Procedures Act.

The core separation standards restate the requirements currently found in the definition of department. These standards require that the department (1) be physically distinct from the remainder of the bank, (2) maintain separate accounting and other records, (3) have assets, liabilities, obligations and expenses that are separate and distinct from those of the remainder of the bank; and (4) be subject to state statutes that require the obligations, liabilities and expenses be satisfied only with the assets of the department. The standards in the proposed regulation are not changed from the current regulation, but have been moved from the definitions section of the regulation to ensure that requirements of the rule are shown in connection with the appropriate regulatory exception.

Acquiring and Retaining Adjustable Rate and Money Market Preferred Stock by the Bank

The proposal provides an exception that allows a state bank to invest in up to 15 percent of the bank's tier one capital in adjustable rate preferred stock and money market (auction rate) preferred stock without filing an application with the FDIC. The exception was adopted when the 1992 version of the regulation was adopted in final form. At that time after reviewing comments, the FDIC found that adjustable rate preferred stock and money market (auction rate) preferred stock were essentially substitutes for money market investments such as commercial paper and that their characteristics are closer to debt than to equity securities. Therefore, money market preferred stock and adjustable rate preferred stock were excluded from the definition of equity security. As a result, these investments are not subject to the equity investment prohibitions of the statute and of the regulation and are considered to be an ''other activity'' for the purposes of this regulation.

This exception focuses on two categories of preferred stock. This first category, adjustable rate preferred stock refers to shares where dividends are established by contract through the use of a formula based on Treasury rates or some other readily available interest rate levels. Money market preferred stock refers to those issues where dividends are established through a periodic auction process that establishes yields in relation to short term rates paid on commercial paper issued by the same or a similar company. The credit quality of the issuer determines the value of the security, and money market preferred shares are sold at auction.

We have modified the exception under the proposal by limiting the 15 percent measurement to tier one capital, rather than total capital. Throughout the current proposal, we have measured capital-based limitations against tier one capital. We changed the base in this provision to increase uniformity within the regulation. We recognize that this change may lower the permitted amount of these investments held by institutions already engaged in the activity. An insured state bank that has investments exceeding the proposed limit, but within the total capital limit, may continue holding those investments until they are redeemed or repurchased by the issuer. The 15 percent of tier one capital limitation should be used in determining the allowable amount of new purchases of money market preferred and adjustable rate preferred stock. Of course, any institution that wants to increase its holding of these securities may submit an application to the FDIC.

The FDIC seeks comment on whether this treatment of money market preferred stock and adjustable rate preferred stock is still appropriate. Comment is requested concerning whether other similar types of investments should be given similar treatment. Comments also are requested on whether the reduced capital base affects any institution currently holding these investments or is likely to affect the investment plans of any institution.

Activities That Are Closely Related to Banking Conducted by Bank or Its Subsidiary

The proposed regulation continues the language found in the current regulation titled, ''Activities that are

closely related to banking.'' This section permits an insured state bank to engage as principal in any activity that is not permissible for a national bank provided that the FRB by regulation or order has found the activity to be closely related to banking for the purposes of section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)). This exception is subject to the statutory prohibition that does not allow the FDIC to permit the bank to directly hold equity securities that a national bank may not hold and which are not otherwise permissible investments for insured state banks pursuant to § 362.3(b).

Additional language has been added to clarify that this subsection does not authorize an insured state bank engaged in real estate leasing to hold the leased property for more than two years at the end of the lease unless the property is re-leased. This language is added to ensure that this provision does not allow an insured state bank to hold an equity interest in real estate after the end of the lease period. The FDIC has decided to provide a two-year period for the bank to divest the property if the bank cannot lease the property again. Comment is invited on the reasonableness of this approach. Should the FDIC consider an alternative approach that a bank may not enter a non-operating lease unless title reverts to the lessee at the end of the lease period? Are there other standards that the FDIC should consider in this matter?

As does the current regulation, these provisions allow a state bank to directly engage in any ''as principal'' activity included on the FRB's list of activities that are closely related to banking (found at 12 CFR 225.28) and ''as principal'' in any activity with respect to which the FRB has issued an order finding that the activity is closely related to banking.

However, the consent to engage in real estate leasing directly by an insured state bank has been modified. Comment is requested on whether there are any additional activities permitted under the proposed language that should be modified. Comment is requested on the effect of the proposed treatment of real estate leasing activities on banks that may want to engage in this activity in the future. Comment also is requested on the perceived risks of leasing activities and whether we should impose standards to address those risks. Comment is requested on whether we should consider any other approach, including returning to the language in the current regulation or deleting the references to the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and the activities that the FRB by regulation or order has found to be closely related to banking for the purposes of section 4(c)(8).

Guarantee Activities by Banks

The current regulation contains a provision that permits a state bank with a foreign branch to directly guarantee the obligations of its customers as set out in § 347.3(c)(1) of the FDIC's regulations without filing any application under part 362. It also permits a state bank to offer customer-sponsored credit card programs in which the bank guarantees the obligations of its retail banking deposit customers. This provision has been deleted as unnecessary since we understand that these activities are permissible for a national bank. In its current rule, the FDIC added this provision to clarify that part 362 does not prohibit these activities; however to shorten the regulation, such clarifying language has been deleted since the activity is permissible for a national bank. The FDIC seeks comment as to whether the deletion of this language has an adverse impact on insured state depository institutions and if there are specific activities that this provision allowed that are not permissible for a national bank.

In the FDIC's proposal regarding the consolidation and simplification of its international banking regulations found in the **Federal Register** on July 15, 1997, at 62 FR 37748, a technical amendment to the current version of part 362 is found. This amendment updates the reference to § 347.103(a)(1) of this chapter in § 362.4(c)(3)(I)(A). This amendment may become final as a part of the consolidation and simplification of the FDIC's international banking regulations to reflect the correct citation in the current version of part 362. Nevertheless, we propose to eliminate the references to guarantee activities in this proposal because we consider them unnecessary as they duplicate powers granted to national banks. As previously stated, we invite comment on the necessity of including specific language dealing with the power to guarantee customer obligations in the regulatory text of part 362.

Section 362.4 Subsidiaries of Insured State Banks

General Prohibition

The regulatory language implementing the statutory prohibition on ''as principal'' activities that are not permissible for a subsidiary of a national bank has been separated from the prohibition on activities which are not permissible for a national bank conducted in the bank. By separating bank and subsidiary activities, § 362.4 now deals exclusively with activities that may be conducted in a subsidiary of an insured state bank. We believe that separating the activities that may be conducted at the bank level from the activities that must be conducted by a subsidiary makes it easier for the reader to understand the intent of the regulation. We invite comment on whether this structure is more useful to the reader. We also invite comment on whether any additional changes would make it easier for the reader to interpret the regulation text.

Exceptions

Prohibited activities may not be conducted unless one of the exceptions in the regulation applies. This language is similar to the current part 362 and results in no substantive change to the prohibition.

Consent Obtained Through Application

The proposal continues to allow approval by individual application provided that the insured state bank meets and continues to meet the applicable capital standards and the FDIC finds there is no significant risk to the fund. The proposal would delete the language expressly providing that approval is necessary for each subsidiary even if the bank received approval to engage in the same activity through another subsidiary. Deleting this language will not automatically permit a state bank to establish a second subsidiary to conduct the same activity that was approved for another subsidiary of the same bank. Deleting the language leaves the issue to be handled on a case-by-case basis by the FDIC pursuant to order. For example, if the FDIC approves an application by a state bank to establish a majority-owned subsidiary to engage in real estate investment activities, the order may (in the FDIC's discretion) be written to allow additional such subsidiaries or to require that any additional real estate subsidiaries must be individually approved.

The notice procedures described herein requires that the subsidiary must take the corporate organizational form. Insured state banks that organize subsidiaries in a form other than a corporation may make application under this section. Any bank that does not meet the notice criteria or that desires relief from a limit or restriction included in the notice criteria may also file an application under this section and are encouraged to do so.

Application instructions have been moved to subpart E.

Language has been eliminated that prohibited an insured state bank from engaging in insurance underwriting through a subsidiary except to the extent that such activities are permissible for a national bank. Eliminating this language does not result in any substantive change as section 24 of the FDI Act clearly provides that the FDIC may not approve an application for a state bank to directly or indirectly conduct insurance underwriting activities that are not permissible for a national bank. We invite comment on whether the language should be retained in the regulation to make it clear to state banks that applications to conduct such activities will not be approved.

The current part 362 allows state banks that do not meet their minimum capital requirements to gradually phase out otherwise impermissible activities that were being conducted as of December 19, 1992. These provisions are eliminated under the proposal due to the passage of time. The relevant outside dates to complete the phase out of those activities have passed (December 19, 1996, for real estate activities and December 8, 1994, for all other activities).

Grandfathered Insurance Underwriting

The proposed regulation provides for three statutory exceptions that allow subsidiaries to engage in insurance underwriting. Subsidiaries may engage in the same grandfathered insurance underwriting as the bank if the bank or subsidiary was lawfully providing insurance as principal on November 21, 1991.

The limitations under which this subsidiary may operate have been changed. Under the current regulation, the bank must be well-capitalized. Under the proposal, the bank must be well-capitalized after deducting its investment in the insurance subsidiary. The FDIC believes that the capital deduction is an important element in separating the operations of the bank and the subsidiary. This deduction clearly delineates the capital that is available to support the bank and the capital that is available to support the subsidiary. Capital standards for insurance companies are based on different criteria from bank capital requirements. Most states have minimum capital requirements for insurance companies. The FDIC believes that a bank's investment in an insurance underwriting subsidiary is not actually ''available'' to the bank in the event the bank experiences losses and needs a cash infusion. As a result, the bank's investment in the insurance subsidiary should not be considered when determining whether the bank has sufficient capital to meet its needs. Comment is invited on whether the capital deduction is appropriate or necessary. If the FDIC requires a capital deduction, should it be required in the case of any insurance underwriting subsidiary that is given a statutory grandfather, e.g., should title insurance subsidiaries also be subject to the capital deduction? Should the capital deduction treatment depend upon what type of insurance is underwritten (if there is a greater risk associated with the insurance, should the capital deduction be required)? Is the phase-in period appropriate and clearly written?

The proposed regulation requires a subsidiary engaging in grandfathered insurance underwriting to meet the standards for an ''eligible subsidiary'' discussed below. This standard replaces the ''bona fide'' subsidiary standard in the current regulation. The ''eligible subsidiary'' standard generally contains the same requirements for corporate separateness as the ''bona fide'' subsidiary definition but adds the following provisions: (1) the subsidiary has only one business purpose; (2) the subsidiary has a current written business plan that is appropriate to its type and scope of business; (3) the subsidiary has adequate management for the type of activity contemplated, including appropriate licenses and memberships, and complies with industry standards; and (4) the subsidiary establishes policies and procedures to ensure adequate computer, audit and accounting systems, internal risk management controls, and the subsidiary has the necessary operational and managerial infrastructure to implement the business plan. The FDIC requests comment on the effect of these additional requirements on banks engaged in insurance underwriting. We invite comment on whether these requirements appropriately separate the subsidiary from the bank. We request comment on whether the restrictions are appropriate to the identified risks being undertaken by these banks.

In lieu of the prescribed disclosures contained in the current regulation, the proposal prescribes that disclosures consistent with the Interagency Statement be made. The proposal also eliminates the acceptance of disclosures that are required by state law. While the current regulation requires disclosures, those disclosures are similar but not identical to the disclosures required by the Interagency Statement. Again, this proposed change is intended to make compliance with the Interagency Statement and the regulation easier. Comment is sought on whether the disclosure requirements in the regulation are necessary now that the Interagency Statement has been adopted. Any retail sale of nondeposit investment products to bank customers is subject to the Interagency Statement. The FDIC recognizes that some grandfathered insurance underwriting subsidiaries may have a line of business and customer base which is completely separate from the bank's operations. The Interagency Statement would not normally apply as the Statement does not technically apply unless there is a ''retail sale'' to a ''bank customer.'' If the FDIC were to rely wholly upon the Interagency Statement there would be a gap from the current coverage of the disclosure requirements. Should that be of concern to the FDIC?

Banks with subsidiaries engaged in grandfathered insurance underwriting activities are expected to meet the new requirements of this proposal. Banks which are not in compliance with the requirements should provide a notice to the FDIC pursuant to § 362.5(b). The FDIC will consider the notices on a case-by-case basis.

The regulation provides that a subsidiary may continue to underwrite title insurance based on the specific statutory authority from section 24. This provision is currently in part 362 and is carried forward into the proposal with no substantive change. The insured state bank is only permitted to retain the investment if the insured state bank was required, before June 1, 1991, to provide title insurance as a condition of the bank's initial chartering under state law. The authority to retain the investment terminates if a change in control of the grandfathered bank or its holding company occurs after June 1, 1991. There are no statutory or regulatory investment limits on banks holding these types of grandfathered investments.

The exception for subsidiaries engaged in underwriting crop insurance is continued. Under section 24, insured state banks and their subsidiaries are permitted to continue underwriting crop insurance under two conditions: (1) they were engaged in the business on or before September 30, 1991, and (2) the crop insurance was reinsured in whole or in part by the Federal Crop Insurance Corporation. While this grandfathered insurance underwriting authority requires that the bank or its subsidiary had to be engaged in the activity as of a certain date, the authority does not

terminate upon a change in control of the bank or its parent holding company.

Majority-owned Subsidiaries Which Own a Control Interest in Companies Engaged in Permissible Activities

The FDIC has found that it is not a significant risk to the deposit insurance funds if a majority-owned subsidiary holds stock of a company that engages in (1) any activity permissible for a national bank; (2) any activity permissible for the bank itself (except engaging in insurance underwriting and holding grandfathered equity investments); (3) activities that are not conducted ''as principal;'' or (4) activity that is not permissible for a national bank provided the Federal Reserve Board by regulation or order has found the activity to be closely related to banking, if the majority-owned subsidiary exercises control over the issuer of the stock purchased by the subsidiary. These exceptions are found in the current regulation but do not contain the provision that the majority-owned subsidiary must exercise control.[1] This change clarifies that this exception is intended only for subsidiaries that are operating a business that is either permissible for the bank itself or is considered to be operated other than ''as principal.'' As rewritten, the proposal differentiates between the types of stock held by a majority-owned subsidiary—having a controlling interest and simply investing in the shares of a company. The FDIC intends that this provision cover lower level subsidiaries that are engaged in activities that the FDIC has found present no significant risk to the fund. The FDIC expects lower level subsidiaries that engage in other activities to conform to the application or notice procedures of this regulation. The FDIC recognizes that changing the level of ownership permissible for these activities may adversely affect some insured state bank. We invite comment on the effect of this change. The FDIC invites comment on whether this language change was necessary, whether it should be concerned about lower level subsidiaries, whether this approach is appropriate to the risks inherent in the activities and whether any other approach, including returning to the language in the current regulation should be considered.

We deleted one other form of stock ownership at the majority subsidiary level from the current regulation by deleting the language now found in § 362.4(c)(3)(iv)(C) of the current regulation titled, ''Stock of a corporation that engages in activities permissible for a bank service corporation.'' Through a majority-owned subsidiary, this section of the current regulation allows an insured state bank to invest in 50% or less of the stock of a corporation which engages solely in any activity that is permissible for a bank service corporation. Since bank service corporations may engage in any activity that is closely related to banking, this exception also allowed majority-owned subsidiaries to own stock in those entities that solely engaged in activities that were closely related to banking. This exception has been deleted in this proposal because the coverage of the proposed exceptions in § 362.4(b)(3) would duplicate the coverage of the existing exception.

Comment is requested on whether the proposed language clearly sets forth the coverage of these exceptions. Comment is requested on whether the proposed language clearly allows the same activities that the current exception allows by permitting majority-owned subsidiaries to hold stock of a company engaged in activities permissible for a bank service corporation. The FDIC seeks comment on whether any inadvertent substantive change has been made by eliminating the specific references permitting the ownership of bank service company stock. We seek comment on the use of the control test for defining activities for lower level subsidiaries. We invite comment on whether any other approach, including returning to the language in the current regulation should be reconsidered. Should the FDIC use a majority-owned test for defining when a lower level subsidiary exists?

We added clarifying language to the exception governing activities closely related to banking. The first exception states that this section does not authorize a subsidiary engaged in real estate leasing to hold the leased property for more than two years at the end of the lease unless the property is re-leased. This provision is the same at the bank level. The second provision is that this section does not authorize a subsidiary to acquire or hold the stock of a savings association other than as allowed in § 362.4(b)(4). As is discussed below, this subsection does not allow a majority-owned subsidiary to have a control interest in a savings association. Comment is requested concerning the effect of this change.

Majority-Owned Subsidiaries Ownership of Equity Securities That Do Not Represent a Control Interest

The proposed regulation significantly changes the exception in the current regulation involving the holding of equity securities that do not represent a control interest. The FDIC has determined that the activity of holding the equity securities at the majority-owned subsidiary level, subject to certain limitations, does not present a significant risk to the deposit insurance funds.

This provision replaces two exceptions contained in the current regulation: (1) grandfathered investments in common or preferred stock and shares of investment companies, and (2) stock of insured depository institutions. The proposed regulation adds an expanded exception allowing the holding of other corporate stock.

The current regulation provides that an insured state bank that has obtained approval to hold listed common or preferred stock and/or shares of registered investment companies under the statutory grandfather (discussed above) may hold the stock and/or shares through a majority-owned subsidiary provided that any conditions imposed in connection with the approval are met. The FDIC previously determined that a majority-owned subsidiary could be accorded the same treatment under the grandfather provided for by section 24(f) of the FDI Act without risk to the fund. Thus, the bank should be permitted to invest in those securities and investment company shares through a majority-owned subsidiary.

The current regulation requires that each bank file a notice with the FDIC of the bank's intent to make such investments and that the FDIC determine that such investments will not pose a significant risk to the deposit insurance fund before any insured state bank may take advantage of the ''grandfather'' allowing investments in common or preferred stock listed on a national securities exchange and shares of an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1, *et seq.*). In no event may the bank's investments in such securities and/or investment company shares, plus those of the subsidiary, exceed one hundred percent of the bank's tier one capital. The FDIC may condition its finding of no risk upon whatever conditions or restrictions it finds appropriate. The

[1] The current regulatory exception for activities conducted not as principal provides for a test of 50% or less of the stock of a corporation which engages solely in activities which are not considered to be as principal. The term ''corporation'' is being changed to ''company'' to accommodate the other forms of business enterprise listed in the definition. The reference to 50% or less is being deleted in order to avoid the confusion generated by that limitation.

''grandfather'' will be lost if the events occur that are discussed above.

The proposed regulation eliminates the notice for these activities and the specific reference to grandfathered activity and allows similar activity for all insured state banks provided that the bank's investment in the majority-owned subsidiary is deducted from capital and the activity is subject to the eligibility requirements and transaction limitations discussed below. Comment is invited on whether this exception is more appropriately applied by the FDIC as an exception that is separate and distinct from any other exception under the regulation that would allow a subsidiary of an insured state bank to hold equity securities. In short, should this exception be in addition to any other exception for holding stock?

The FDIC proposes to expand the current regulatory exception from the acquisition of stock in another insured bank through a majority-owned subsidiary to an exception for the acquisition of stock of insured banks, insured savings associations, bank holding companies, and savings and loan holding companies. The exception would continue to be limited to the acquisition of no more than 10 percent of the outstanding voting stock of any one issuer. The acquisition would be through a majority-owned subsidiary which was organized for the purpose of holding such stock.

This exception is being expanded to cover savings association stock, bank holding company stock and savings and loan holding company stock in response to the FDIC's experience with applications that have been presented to the FDIC in which insured state banks have sought approval for these kinds of investments. In acting upon those applications it has been the opinion of the FDIC to date that investments in bank holding company stock should not present a risk to the fund given the fact that bank holding companies are subject to a very strong regulatory and supervisory scheme and are limited, for the most part, to engaging in activities that are closely related to banking. The FDIC proposes to allow investment in savings association stock for similar reasons. Comment is invited on whether the exception should allow investments in savings and loan holding company stock in view of the broad range of activities in which savings and loan holding companies may engage.

The FDIC has become aware that some insured state banks own a sufficient interest in the stock of other insured state banks to cause the bank which is so owned to be considered a majority-owned subsidiary under part 362. It is the FDIC's position that such an owner bank does not need to file a request under part 362 seeking approval for its majority-owned subsidiary that is an insured state bank to conduct as principal activities that are not permissible for a national bank. As the majority-owned subsidiary is itself an insured state bank, that bank is required under part 362 and section 24 of the FDI Act to request consent on its own behalf for permission to engage in any as principal activity that is not permissible for a national bank.

The proposal encompasses the exceptions contained in the previous regulation and expands the exception to a majority-owned subsidiary of other insured state bank to acquire corporate stock. In order for an insured state bank to use the exception, the bank must be well-capitalized exclusive of the bank's investment in the subsidiary and must make the capital deduction for purposes of reporting capital on the bank's Call Report. For insured state banks that are using the current exception for grandfathered equities and holding bank stock, the capital deduction requirement is new. This requirement is similar to that found in the proposed notice procedures for state nonmember banks to engage in activities not permissible for national banks and recognizes the level of risk present in securities investment activities. Insured state banks that are currently engaging in these activities but are not in compliance with the requirements contained in the proposal should provide notice under § 362.5(b).

The subsidiary may only invest in corporate equity securities if the bank and subsidiary meet the eligibility requirements. Those requirements are: (1) the state-chartered depository institution may have only one majority-owned subsidiary engaging in this activity; (2) the majority-owned subsidiary's investment in equity securities (except stock of an insured depository institution, a bank holding company or a savings and loan holding company) must be limited to equity securities listed on a national securities exchange; (3) the state-chartered depository institution and majority-owned subsidiary may not have control over any issuer of stock purchased; and (4) the majority-owned subsidiary's equity investments (except stock of an insured depository institution, a bank holding company or a savings and loan holding company) must be limited to equity securities listed on a national securities exchange.

The requirement that the subsidiary's investment be limited to 10 percent of the outstanding voting stock of any company. This limitation reflects the FDIC's intent that this exception be used only as a vehicle for investment in equity securities. The 10 percent limitation was chosen because it reflects a level of investment that is generally recognized as not involving control of the business. This requirement is to be read together with the eligibility requirement that the depository institution may not exercise control over any issuer of stock purchased by the subsidiary. These requirements reflect the FDIC's intent that the depository institution is not operating a business through investments in equity securities. Comment is requested as to the appropriateness of the 10 percent limitation.

The FDIC believes that only listed securities should be allowed under this exception. Listed securities are more liquid than nonlisted securities and companies whose stock is listed must meet capital and other requirements of the exchange. These requirements provide some assurances as to the quality of the investment. The requirement that securities be listed is not extended to bank and savings association stock, bank holding company stock, or stock of a savings association holding company. These companies are part of a highly regulated industry which provides some investment quality assurance. Banks that may want to invest in unlisted securities in other industries should be subject to the scrutiny of the application process.

To qualify for this exception, the state-chartered depository institution may not extend credit to the majority-owned subsidiary, purchase any debt instruments from the majority-owned subsidiary, or originate any other transaction that is used to benefit the majority-owned subsidiary which invests in stock under this subpart. As noted above, the depository institution may have only one subsidiary engaged in this activity. These requirements reflect the FDIC's desire that the scope of the exception be limited. Institutions that wish to have multiple subsidiaries engaged in holding equity securities and wish to extend credit to finance these transactions should use the applications procedures to request consent.

We added a provision relating to portfolio management. The FDIC is concerned that a majority-owned subsidiary not engage in activities which the FDIC has identified as speculative. Therefore for the purposes of this subsection, investment in the equity securities of any company does not include pursuing short-term trading activities. The exception has been

created to facilitate holding of corporate equity securities that are within the overall investment strategies of the state-chartered depository institution and its subsidiaries. It is expected that these investment strategies take account of such factors as quality, diversification and marketability as well as income. Short term trading that emphasizes income over other investment factors is speculative and may not be pursued through this exception.

In addition to requesting comment on the particular exception as proposed, the FDIC requests comment on whether it is appropriate for the regulation to contain any exception that would allow an insured state bank to hold equity securities at the subsidiary level. The FDIC also requests comment on the adequacy of the restrictions and constraints that it has proposed for the banks and subsidiaries that would hold these investments. What additional constraints, if any, should we consider adding for the banks and subsidiaries that would hold these investments? We note that the statute does not itself impose any conditions or restrictions on a bank that enjoys the grandfather for investment in equity securities in terms of per issuer limits. Comment is sought on whether it is appropriate to impose the restriction that limits a bank and its subsidiary to investing in less than a controlling interest in any given issuer. Is there some other limit or restriction the FDIC should consider imposing by regulation that is important to ensuring that the grandfathered investments do not pose a risk?

Majority-owned Subsidiaries Conducting Real Estate Investment Activities and Securities Underwriting

The FDIC has determined that real estate investment and securities underwriting activities do not represent a significant risk to the deposit insurance funds, provided that the activities are conducted by a majority-owned subsidiary in compliance with the requirements set forth. These activities require the insured state banks to file a notice. Then, as long as the FDIC does not object to the notice, the bank may conduct the activity in compliance with the requirement. The fact that prior consent is not required by this subpart does not preclude the FDIC from taking any appropriate action with respect to the activities if the facts and circumstances warrant such action.

Engage in Real Estate Investment Activities

Under section 24 of the FDI Act and the current version of part 362, an insured state bank may not directly or indirectly engage in real estate investment activities not permissible for a national bank. Section 24 does not grant FDIC authority to permit an insured state bank to directly engage in real estate investment activities not permissible for a national bank. The circumstances under which national banks may hold equity investments in real estate are limited. If a particular real estate investment is permissible for a national bank, an insured state bank only needs to document that determination. If a particular real estate investment is not permissible for a national bank and an insured state bank wants to engage in real estate investment activities (or continue to hold the real estate investment in the case of investments acquired before enactment of section 24 of the FDI Act), the insured state bank must file an application with FDIC for consent. The FDIC may approve such applications if the investment is made through a majority-owned subsidiary, the institution is well capitalized and the FDIC determines that the activity does not pose a significant risk to the deposit insurance fund.

The FDIC approved 92 of 95 applications from December 1992 through June 30, 1997, involving real estate investment activities. The FDIC denied one application, approved one in part, and one bank withdrew its application. The real estate investment applications generally have fallen into three categories: (1) requests for consent to hold real estate at the subsidiary level while liquidating the property where the bank expects that liquidation will be completed later than December 19, 1996; (2) requests for consent to continue to engage in real estate investment activity in a subsidiary, where such activities were initiated prior to enactment of section 24 of the FDI Act; and (3) requests for consent to initiate for the first time real estate investment activities through a majority-owned subsidiary.

The approved applications have involved investments which have ranged from less than 1 percent to over 70 percent of the bank's tier one capital. The majority of the investments, however, involved investments of less than 10 percent of tier one capital with only seven applications involving investments exceeding 25 percent of tier one capital. The applications filed with the FDIC have involved a range of real estate investments including holding residential properties, commercial properties, raw land, the development of both residential and commercial properties, and leasing of previously improved property. The applications approved by the FDIC include 33 residential properties, 39 commercial properties and 20 applications covering a mix of commercial and residential properties. The assets of the institutions that submitted approved applications ranged from $1 million to $6.7 billion. The institutions which have been approved to continue or commence new real estate investment activity primarily have had composite ratings of 1 or 2 ratings under the UFIRS. However, 6 institutions were rated 3, and 3 institutions were rated 4. The 4-rated institutions submitted applications to continue an orderly divestiture of real estate investments after December 19, 1996. Of the approved applications, 9 were to conduct new real estate investment activities, while 80 were submitted to continue holding existing real estate or to hold existing real estate after December 19, 1996, to pursue an orderly liquidation. The remaining 3 approved applications asked for consent to continue existing holdings and conduct new real estate activities. One application was partially approved and partially denied. This application involved a bank that applied for consent to continue direct real estate activities and consent to continue indirect real estate investment activities through a subsidiary. The FDIC approved the application to continue the real estate investment activity through the subsidiary and denied the application for the bank to engage directly in real estate investment activities.

To date, the FDIC has evaluated a number of factors when acting on applications for consent to engage in real estate investment activities. Where appropriate, the FDIC has fashioned conditions designed to address potential risks that have been identified in the context of a given application. In evaluating an application to conduct equity real estate investment activity, the FDIC considers the type of proposed real estate investment activity to determine if the activity is unsuitable for an insured depository institution. The FDIC also reviews the proposed subsidiary structure and its management policies and practices to determine if the insured state bank is adequately protected and analyzes capital adequacy to ensure that the insured institution has sufficient capital to support its more traditional banking activities.

In every instance in which the FDIC has approved an application to conduct a real estate investment activity, we have determined that it was necessary to impose a number of conditions in granting the approval. In short, the FDIC has determined on a case-by-case basis that the conduct of certain real estate

investment activities by a majority-owned corporate subsidiary of an insured state bank will not present a significant risk to the deposit insurance fund provided certain conditions are observed. In drafting this proposed regulation, we have evaluated the conditions usually imposed when granting such approval to insured state banks and incorporated these conditions within the proposal where appropriate. The FDIC requests general comment on whether the conditions imposed under the proposed regulation are appropriate. Comments are invited on each condition, especially on the requirements that the subsidiary have an independent chief executive officer and that a majority of its board be composed of individuals who are not directors, officers, or employees of the insured institution.

The proposed rule would allow majority-owned subsidiaries to invest in and/or retain equity interests in real estate not permissible for a national bank provided that the insured state bank qualifies as an ''eligible depository institution,'' as that term is defined within the proposed regulation, and the majority-owned subsidiary qualifies as an ''eligible subsidiary,'' which is also defined within the proposed rule. The insured state bank must also abide by the investment and transaction limitations set forth in the proposed regulation. Under the proposed regulation, the insured state bank may not invest more than 10 percent of the bank's tier one capital in any one majority-owned real estate subsidiary. In addition, the total of the insured state bank's investment in all of its majority-owned subsidiaries which are conducting real estate activities may not exceed 20 percent of its tier one capital under the proposed regulation. Under the proposed rule, the 20 percent aggregate investment limit applies to subsidiaries engaged in the same activity.

For the purpose of calculating the dollar amount of the investment limitations, the bank would calculate 10 percent and 20 percent of its tier one capital after deducting all amounts required by the proposed regulation or any FDIC order. We request comment on all aspects and any implications of this proposal.

Under the proposed regulation, the insured state bank must file a notice with the FDIC providing a description of the proposed activity and the manner in which it will be conducted. A description of the other items required to be contained in the notice under this proposal are contained in subpart E of the proposed regulation.

The FDIC recognizes that some real estate investments or activities are more time, management and capital intensive than others. Our experience in reviewing the applications filed under section 24 has led us to conclude that extremely small equity investments in real estate—held under certain conditions—do not pose a significant risk to the deposit insurance fund. As a result, the proposed regulation provides relief to insured state banks having such small investments in a majority-owned subsidiary engaging in real estate investment activities. The FDIC is attempting to strike a reasonable balance between prudential safeguards and regulatory burden in its proposed regulation. As a result, the proposed regulation establishes certain exceptions from the requirements necessary to establish an eligible subsidiary whenever the insured state bank's investment is of a de minimis nature and meets certain other criteria. Under the proposal, whenever the bank's investment in its majority-owned subsidiary conducting real estate activities does not exceed 2 percent of the bank's tier one capital and the bank's investment in the subsidiary does not include extensions of credit from the bank to the subsidiary, a debt instrument purchased from the subsidiary or any other transaction originated from the bank to the benefit of the subsidiary, the subsidiary is relieved of certain of the requirements that must be met to establish an eligible subsidiary under the regulation. Under the proposed regulation, an insured state bank with a limited investment in a majority-owned subsidiary need not adhere to the requirements that the subsidiary be physically separate from the insured state bank; the chief executive officer of the subsidiary is not required to be an employee separate from the bank; a majority of the board of directors of the subsidiary need not be separate from the directors or officers of the bank; and the subsidiary need not establish separate policies and procedures as described in the proposed regulation in § 362.4(c)(2)(xi). The FDIC requests comment on the exceptions being proposed for establishing an eligible subsidiary whenever the bank's investment is of such a limited nature. Are there any of the other requirements necessary to establish an ''eligible subsidiary'' that should be excepted for banks with such limited investments? Commenters should keep in mind that the FDIC's goal is to reduce regulatory burden while maintaining adequate protection of the deposit insurance funds. Comment is requested on all aspects of this real estate investment activity authority.

Under current law, an insured state bank must apply to the FDIC prior to engaging in real estate investment activities that are impermissible for a national bank. The proposed regulation contains a procedure under which certain insured state banks may participate in real estate investment activity under specific circumstances by filing a notice with the FDIC. To qualify for the notice procedure proposed under § 362.4(b)(5), the real estate investment activities must be conducted by a majority-owned subsidiary that further qualifies as an ''eligible subsidiary'' under the proposal. The characteristics of an eligible subsidiary are set forth in § 362.4(c)(2) of the regulation and further described below. If the institution or its investment does not meet the criteria established under the proposed regulation for using the notice procedure, an application may be filed with the FDIC under § 362.4(b)(1). The FDIC encourages institutions to file an application if the institution wishes to request relief from any of the requirements necessary to be considered an eligible depository institution or an eligible subsidiary. The FDIC recognizes that not all real estate investment requires a subsidiary to be established exactly as outlined under the eligible subsidiary definition.

Section 362.4(b)(5) of the proposal permits certain highly rated banks (defined in § 362.4(c)(1) of the proposal as eligible depository institutions) to engage, through a majority-owned subsidiary, in real estate investment activities not otherwise permissible for a national bank by filing a notice according to the procedures set forth in subpart E of the proposed regulation.

Comment is requested on all aspects of this proposal to allow real estate activities through a notice procedure.

Engage in the Public Sale, Distribution or Underwriting of Securities That Are Not Permissible for a National Bank Under Section 16 of the Banking Act of 1933

The current regulation provides that an insured state nonmember bank may establish a majority-owned subsidiary that engages in the underwriting and distribution of securities without filing an application with the FDIC if the requirements and restrictions of § 337.4 of the FDIC's regulations are met. Section 337.4 governs the manner in which subsidiaries of insured state nonmember banks must operate if the subsidiaries engage in securities activities that would not be permissible for the bank itself under section 16 of

the Banking Act of 1933, commonly known as the Glass-Steagall Act. In short, the regulation lists securities underwriting and distribution as an activity that will not pose a significant risk to the fund if conducted through a majority-owned subsidiary that operates in accordance with § 337.4. The proposed regulation makes significant changes to that exception.

Due to the existing cross reference to § 337.4, FDIC reviewed § 337.4 as a part of its review of part 362 for CDRI. The purpose of the review was to streamline and clarify the regulation, update the regulation as necessary given any changes in the law, regulatory practice, and the marketplace since its adoption, and remove any redundant or unnecessary provisions. As a result of that review, the FDIC proposes making a number of substantive changes to the rules which govern securities sales, distribution, or underwriting by subsidiaries of insured state nonmember banks and eliminating § 337.4 as a separate regulation. The revised language would be relocated to part 362 and would become what is proposed § 362.4(b)(5)(ii). Although the FDIC has chosen to place the exception in the part of the regulation governing activities by insured state banks, by law, only subsidiaries of state nonmember banks may engage in securities underwriting activities that are not permissible for national banks. As we have previously stated, subpart A of this regulation does not grant authority to conduct activities or make investments, subpart A only gives relief from the prohibitions of section 24 of the FDI Act. We placed the exception for securities underwriting with the real estate exception in the structure of the regulation to promote uniform standards across activities, even though it is possible that a state member bank could qualify for the real estate exception and not the securities exception. We request comment on whether this placement causes any confusion. Of course, as the appropriate Federal banking agency for state member banks, the FRB may impose more stringent restrictions on any activity conducted by a state member bank.

The following discussion describes the purpose and background of § 337.4, the conditions and restrictions imposed by that rule on securities activities, the language of the exception in proposed part 362 and the proposed revisions to the conditions and restrictions governing this activity.

History of Section 337.4

On August 23, 1982, the FDIC adopted a policy statement on the applicability of the Glass-Steagall Act to securities activities of insured state nonmember banks (47 FR 38984). That policy statement expressed the opinion of the FDIC that under the Glass-Steagall Act: (1) Insured state nonmember banks may be affiliated with companies that engage in securities activities, and (2) securities activities of bona fide subsidiaries of insured state nonmember banks are not prohibited by section 21 of the Glass-Steagall Act (12 U.S.C. 378) which prohibits deposit taking institutions from engaging in the business of issuing, underwriting, selling, or distributing stocks, bonds, debentures, notes, or other securities.

The policy statement applies solely to insured state nonmember banks. As noted in the policy statement, the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et. seq.) places certain restrictions on non-banking activities. Insured state nonmember banks that are members of a bank holding company system need to take into consideration sections 4(a) and 4(c)(8) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843 (a) and (c)) and applicable Federal Reserve Board regulations before entering into securities activities through subsidiaries.

The policy statement also expressed the opinion of the Board of Directors of the FDIC that there may be a need to restrict or prohibit certain securities activities of subsidiaries of state nonmember banks. As the policy statement noted, ''the FDIC * * * recognizes its ongoing responsibility to ensure the safe and sound operation of insured state nonmember banks, and depending upon the facts, the potential risks inherent in a bank subsidiary's involvement in certain securities activities.''[2]

In November 1984, after notice and comment proceedings, the FDIC adopted a final rule regulating the securities activities of affiliates and subsidiaries of insured state nonmember banks under the FDI Act. 49 FR 46709 (Nov. 28, 1984), regulations codified at 12 CFR 337.4 (1986).[3] Although the rule does not prohibit such securities activities outright, it does restrict that activity in a number of ways and only permits the activities if authorized under state law. Banks only could maintain ''bona fide'' subsidiaries that engaged in securities work. The rule defined ''bona fide subsidiary'' so as to limit the extent to which banks and their securities affiliates and subsidiaries could share company names or logos, as well as places of business. 12 CFR 337.4(a)(2)(ii), (iii); 49 FR 46710. The definition required banks and subsidiaries to maintain separate accounting records and to observe separate corporate formalities. 12 CFR 337.4(a)(2)(iv), (v). The two entities were required not to share officers and to conduct business pursuant to independent policies and procedures, including the maintenance of separate employees and payrolls. *Id.* § 337.4(a)(2)(vi), (vii), (viii); 49 FR 46711–12. Finally, and perhaps most importantly, the rule required a subsidiary to be ''adequately capitalized.'' 12 CFR 337.4(a)(2)(i).

The rule has been amended several times since its adoption.[4] The last amendment to this rule was in 1988. When the FDIC initially implemented

[2] Representatives of mutual fund companies and investment bankers brought action challenging the Federal Deposit Insurance Corporation Policy Statement. Their suit was dismissed without prejudice, pending the outcome of FDIC's rulemaking process. *Investment Company Institute v. United States,* D.D.C. Civil Action No. 82–2532, filed September 8, 1982.

[3] After the regulations were adopted, the representatives of mutual fund companies and investment bankers brought another action challenging the regulations allowing insured banks, which are not members of the Federal Reserve System, to have subsidiary or affiliate relationships with firms engaged in securities work. The United States District Court for the District of Columbia, Gerhard A. Gesell, J., 606 F.Supp. 683, upheld the regulations, and representatives appealed and also petitioned for review. The Court of Appeals held that: (1) representatives had standing to challenge regulations under both the Glass-Steagall Act and the FDI Act, but (2) regulations did not violate either Act. *Investment Company Institute, v. Federal Deposit Insurance Corporation,* 815 F.2d 1540 (U.S.C.A. D.C.1987).

A trade association representing Federal Deposit Insurance Corporation-insured savings banks also brought suit challenging FDIC regulations respecting proper relationship between FDIC-insured banks and their securities-dealing ''subsidiaries'' or ''affiliates.'' On cross motions for summary judgment, the District Court, Jackson, J., held that: (1) trade association had standing, and (2) regulations were within authority of FDIC. *National Council of Savings Institutions v. Federal Deposit Insurance Corporation,* 664 F.Supp. 572 (D.C. 1987).

[4] 50 FR 2274, Jan. 16, 1985; 51 FR 880, Jan. 9, 1986; 51 FR 23406, June 27, 1986; 51 FR 45756, Dec. 22, 1986; 52 FR 23544, June 23, 1987; 52 FR 39216, Oct. 21, 1987; 52 FR 47386, Dec. 14, 1987; 53 FR 597, Jan. 8, 1988; 53 FR 2223, Jan. 27, 1988. The FDIC amended the regulations governing the securities activities of certain subsidiaries of insured state nonmember banks and the affiliate relationships of insured state nonmember banks with certain securities companies to make technical corrections, delete the requirement that the offices of securities subsidiaries and affiliates must be accessed through a separate entrance from that used by the bank (the existing requirement for physically separate offices was retained), delete the prohibition against securities subsidiaries and affiliates sharing a common name or logo with the bank, and to establish a number of affirmative disclosure requirements regarding securities recommended, offered, or sold by or through a securities subsidiary or affiliate are not FDIC insured deposits unless otherwise indicated and that such securities are not obligations of, nor are guaranteed by the bank.

its regulation on securities activities of subsidiaries of insured state nonmember banks and bank transactions with affiliated securities companies, the FDIC determined that some risk may be associated with those activities. To address that risk, the FDIC regulation: (1) Defined bona fide subsidiary, (2) required notice of intent to acquire or establish a securities subsidiary, (3) limited the permissible securities activities of insured state nonmember bank subsidiaries, and (4) placed certain other restrictions on loans, extensions of credit, and other transactions between insured state nonmember banks and their subsidiaries or affiliates that engage in securities activities.

As defined in § 337.4, the term ''bona fide'' subsidiary means a subsidiary of an insured state nonmember bank that at a minimum: (1) Is adequately capitalized, (2) is physically separate and distinct in its operations from the operations of the bank, (3) maintains separate accounting and other corporate records, (4) observes separate corporate formalities such as separate board of directors' meetings, (5) maintains separate employees who are compensated by the subsidiary, (6) shares no common officers with the bank, (7) a majority of the board of directors is composed of persons who are neither directors nor officers of the bank, and (8) conducts business pursuant to independent policies and procedures designed to inform customers and prospective customers of the subsidiary that the subsidiary is a separate organization from the bank and that investments recommended, offered or sold by the subsidiary are not bank deposits, are not insured by the FDIC, and are not guaranteed by the bank nor are otherwise obligations of the bank.

This definition was imposed to ensure the separateness of the subsidiary and the bank. This separation is necessary as the bank would be prohibited by the Glass-Steagall Act from engaging in many activities the subsidiary might undertake and the separation safeguards the soundness of the parent bank.

The regulation provides that the insured state nonmember bank must give the FDIC written notice of intent to establish or acquire a subsidiary that engages in any securities activity at least 60 days prior to consummating the acquisition or commencement of the operation of the subsidiary. These notices serve as a supervisory mechanism to apprise the FDIC that insured state nonmember banks are conducting securities activities through their subsidiaries that may expose the banks to potential risks.

The regulation adopted a tiered approach to the activities of the subsidiary and limited the underwriting of securities that would otherwise be prohibited to the bank itself under the Glass-Steagall Act unless the subsidiary met the bona fide definition and the activities were limited to underwriting of investment quality securities. A subsidiary may engage in additional underwriting if it meets the definition of bona fide and the following additional conditions are met:

(a) The subsidiary is a member in good standing of the National Association of Securities Dealers (NASD);

(b) The subsidiary has been in continuous operation for a five-year period preceding the notice to the FDIC;

(c) No director, officer, general partner, employee or 10 percent shareholder has been convicted within five years of any felony or misdemeanor in connection with the purchase or sale of any security;

(d) Neither the subsidiary nor any of its directors, officers, general partners, employees, or 10 percent shareholders is subject to any state or federal administrative order or court order, judgment or decree arising out of the conduct of the securities business;

(e) None of the subsidiary's directors, officers, general partners, employees or 10 percent shareholders are subject to an order entered within five years issued by the Securities and Exchange Commission (SEC) pursuant to certain provisions of the Securities Exchange Act of 1934 or the Investment Advisors Act of 1940; and

(f) All officers of the subsidiary who have supervisory responsibility for underwriting activities have at least five years experience in similar activities at NASD member securities firms.

A bona fide subsidiary is required to be adequately capitalized, and therefore, these subsidiaries are required to meet the capital standards of the NASD and SEC. As a protection to the insurance fund, a bank's investment in these subsidiaries engaged in securities activities that would be prohibited to the bank under the Glass-Steagall Act is not counted toward the bank's capital, that is, the investment in the subsidiary is deducted before compliance with capital requirements is measured.

An insured state nonmember bank that has a subsidiary or affiliate engaging in the sale, distribution, or underwriting of stocks, bonds, debentures or notes, or other securities, or acting as an investment advisor to any investment company is prohibited under § 337.4 from engaging in any of the following transactions:

(1) Purchasing in its discretion as fiduciary any security currently distributed, underwritten or issued by the subsidiary unless the purchase is authorized by a trust instrument or is permissible under applicable law;

(2) Transacting business through the trust department with the securities firm unless the transactions are at least comparable to transactions with an unaffiliated company;

(3) Extending credit or making any loan directly or indirectly to any company whose obligations are underwritten or distributed by the securities firm unless the securities are of investment quality;

(4) Extending credit or making any loan directly or indirectly to any investment company whose shares are underwritten or distributed by the securities company;

(5) Extending credit or making any loan where the purpose of the loan is to acquire securities underwritten or distributed by the securities company;

(6) Making any loans or extensions of credit to a subsidiary or affiliate of the bank that distributes or underwrites securities or advises an investment company in excess of the limits and restrictions set by section 23A of the Federal Reserve Act;

(7) Making any loan or extension of credit to any investment company for which the securities company acts as an investment advisor in excess of the limits and restrictions set by section 23A of the Federal Reserve Act; and

(8) Directly or indirectly conditioning any loan or extension of credit to any company on the requirement that the company contract with the bank's securities company to underwrite or distribute the company's securities or condition a loan to a person on the requirement that the person purchase any security underwritten or distributed by the bank's securities company.

An insured state nonmember bank is prohibited under § 337.4 from becoming affiliated with any company that directly engages in the sale, distribution, or underwriting of stocks, bonds, debentures, notes, or other securities unless: (1) The securities business of the affiliate is physically separate and distinct from the operation of the bank; (2) the bank and the affiliate share no common officers; (3) a majority of the board of directors of the bank is composed of persons who are neither directors nor officers of the affiliate; (4) any employee of the affiliate who is also an employee of the bank does not conduct any securities activities of the affiliate on the premises of the bank that involve customer contact; and (5) the affiliate conducts business pursuant to

independent policies and procedures designed to inform customers and prospective customers of the affiliate that the affiliate is a separate organization from the bank and that investments recommended, offered or sold by the affiliate are not bank deposits, are not insured by the FDIC, and are not guaranteed by the bank nor are otherwise obligations of the bank. The FDIC chose not to require notices relative to affiliates because it would normally find out about the affiliation in a deposit insurance application or a change of bank control notice.

The FDIC created an atmosphere where bank affiliation with entities engaged in securities activities is very controlled. The FDIC has examination authority over bank subsidiaries. Under section 10(b) of the FDI Act, the FDIC has the authority to examine affiliates to determine the effect of that relationship on the insured institution. Nevertheless, the FDIC generally has allowed these entities to be functionally regulated, that is FDIC usually examines the insured state nonmember bank and primarily relies on SEC and NASD oversight of the securities subsidiary or affiliate.

The FDIC views its established separations for banks and securities firms as creating an environment in which the FDIC's responsibility to protect the insurance fund has been met without creating too much overlapping regulation for the securities firms. The FDIC maintains an open dialogue with the NASD and the SEC concerning matters of mutual interest. To that end, the FDIC entered into an agreement in principle with the NASD concerning examination of securities companies affiliated with insured institutions and has begun a dialogue with the SEC concerning the exchange of information which may be pertinent to the mission of the FDIC.

The number of banks which have subsidiaries engaging in securities activities that can not be conducted in the bank itself is very small. These subsidiaries engage in the underwriting of debt and equity securities and distribution and management of mutual funds. The FDIC has received notices from 444 banks that have subsidiaries that engage in activities that do not require the subsidiary to meet the definition of bona fide such as investment advisory activities, sale of securities, and management of the bank's securities portfolio.

Since implementation of the FDIC's § 337.4 regulation, the relationships between banks and securities firms have not been a matter of supervisory concern due to the protections FDIC has in place. However, the FDIC realizes that in a time of financial turmoil these protections may not be adequate and a program of direct examination could be necessary to protect the insurance fund. Thus, the continuation of the FDIC's examination authority in that area is important.

The FRB permits a nonbank subsidiary of a bank holding company to underwrite and deal in securities through its orders under the Bank Holding Company Act and section 20 of the Glass-Steagall Act. The FDIC has reviewed its securities underwriting activity regulations in light of the FRB recently adopted operating standards that modify the FRB's section 20 orders.[5] The FDIC also reviewed the comments received by the FRB. The FRB conducted a comprehensive review of the prudential limitations established in its decisions. The FRB sought comment on modifying these limitations to allow section 20 subsidiaries to operate more efficiently and serve their customers more effectively.[6] The FDIC found the analysis of the FRB instructive and has determined that its regulation already incorporates many of the same modifications that the FRB has made. The FDIC is proposing other changes consistent with the FRB approach and will endeavor to explain the differences in the approach taken by the FDIC. Consistent with the approach adopted by the FRB, the FDIC proposes to have the securities underwriting subsidiaries and the insured state nonmember banks use the disclosures adopted in the Interagency Statement where applicable. Thus, the Interagency Statement will be applicable when sales of these products occur on bank premises. The FDIC agrees with the FRB that using these interagency disclosure standards promotes uniformity, makes it easier for banks to train their employees, and enhances compliance.

In contrast, FDIC will be taking a different approach on some of these safeguards because it is not proposing a separate statement of operating standards. Thus, the FDIC will retain safeguards in its rule that FRB is shifting to or handling in a different way through the FRB's still to be released statement of operating standards. With respect to other safeguards that the FDIC is proposing to continue to apply to the securities underwriting activities conducted by insured state nonmember banks through their ''eligible subsidiaries,'' FDIC has determined that each of these safeguards provides appropriate protections for bank subsidiaries engaged in underwriting activities.

For these purposes, the FDIC has modified the safeguard requiring that banks and their securities underwriting subsidiaries maintain separate officers and employees. As discussed below, that modification would be consistent with the Interagency Statement. However, the chief executive officer of the subsidiary may not be an employee of the bank and a majority of its board of directors must not be directors or officers of the bank. This standard is the same as the operating standard on interlocks adopted by the FRB to govern its section 20 orders.

One of the reasons for these safeguards involves the FDIC's continuing concerns that the bank should be protected from liability for the securities underwriting activities of the subsidiary. Under the securities laws, a parent company may have liability as a ''controlling person.''[7] The FDIC views management and board of director separation as enhanced protection from controlling person liability as well as protection from disclosures of material nonpublic information. Protection from disclosures of material nonpublic information also may be enhanced by the use of appropriate policies and procedures.[8]

[5] August 21, 1997.

[6] 61 FR 57679, November 7, 1996, and 62 FR 2622, January 17, 1997.

[7] Liability of ''controlling persons'' for securities law violations by the persons or entities they ''control'' is found in section 15 of the Securities Act of 1933, 15 U.S.C. § 77o and section 20 of the Securities and Exchange Act of 1934, 15 U.S.C. § 78t(a). Although the tests of liability under these statutes vary slightly, the FDIC is concerned that liability may be imposed on a parent entity that is a bank under the most stringent of these authorities in the securities underwriting setting. Under the Tenth Circuit's permissive test for controlling person liability, any appearance of an ability to exercise influence, whether directly or indirectly, and even if such influence cannot amount to control, is sufficient to cause a person to be a controlling person within the meaning of § 77o or § 78t(a). Although liability may be avoided by proving no knowledge or good faith, proving no knowledge requires no knowledge of the general operations or actions of the primary violator and good faith requires both good faith and nonparticipation. *See First Interstate Bank of Denver, N.A. v. Pring,* 969 F.2d 891 (10th Cir. 1992), *rev'd on other grounds,* 511 U.S. 164 (1994); *Arena Land & Inv. Co. Inc.* v. *Petty,* 906 F.Supp. 1470 (D. Utah 1994); *San Francisco-Oklahoma Petroleum Exploration Corp.* v. *Carstan Oil Co., Inc.* 765 F.2d 962 (10th Cir. 1985); and *Seattle-First National Bank v. Carlstedt,* 978 F.Supp. 1543 (W.D. Okla. 1987). However, to the extent that any securities underwriting liability may have been reduced due to the enactment of The Private Securities Litigation Reform Act of 1995, P.L. 104–67, then the FDIC's concerns regarding controlling person liability may be reduced. It is likely that the FDIC will want to await the development of the standards under this new law before taking actions that could risk liability on a parent bank that has an underwriting subsidiary.

[8] *See* ''Anti-manipulation Rules Concerning Securities Offerings,'' Regulation M, 17 CFR 200

Continued

The FDIC requests comment on the retention of these safeguards, the utility of management and board separations to limit controlling person liability and the inappropriate disclosure of material nonpublic information, the extent that any securities underwriting liability may have been reduced due to the enactment of The Private Securities Litigation Reform Act of 1995, P.L. 104–67, the efficacy of more limited restrictions on officer and director interlocks to prevent both liability and information sharing and any related issues.

Substantive Changes to the Subsidiary Underwriting Activities

Generally, the regulations governing the securities underwriting activity of state nonmember banks have been streamlined to make compliance easier. In addition, state nonmember banks that deem any particular constraint to be burdensome may file an application with the FDIC to have the constraint removed for that bank and its majority-owned subsidiary. The FDIC has eliminated those constraints that were deemed to overlap other requirements or that could be eliminated while maintaining safety and soundness standards. For example, the FDIC proposes to eliminate the notice requirement for all state nonmember banks subsidiaries that engage in any securities activities that are permissible for a national bank. Under the proposal, a notice would be required only of state nonmember bank subsidiaries that engage in securities activities that would be impermissible for a national bank. The FDIC has determined that it can adequately monitor the other securities activities through its regular reporting and examination processes. We invite comment on whether the elimination of these notices is appropriate.

As indicated in the following discussion on core eligibility requirements, the proposed regulation establishes new criteria which must be met to qualify for the notice procedures to conduct, as principal, activities through a subsidiary that are not permissible for a national bank. The insured state bank must be an ''eligible depository institution'' and the subsidiary must be an ''eligible subsidiary.'' The terms are defined below but to summarize briefly, an ''eligible depository institution'' must be chartered and operating for at least three years, have satisfactory composite and management ratings under the Uniform Financial Institution Rating System (UFIRS) as well as satisfactory compliance and CRA ratings, and not be subject to any formal or informal corrective or supervisory order or agreement. These requirements would be uniform with other part 362 notice procedures for insured state banks to engage in activities not permissible for national banks and recognize the level of risk present in securities underwriting activities. These requirements are not presently found in § 337.4 but the FDIC believes that only banks that are well-run and well-managed should be given the opportunity to engage in securities activities that are not permissible for a national bank under the streamlined notice procedures. Other banks that want to enter these activities should be subject to the scrutiny of the application process. Although management and operations not permissible for a national bank are conducted by a separate majority-owned subsidiary, such activities are part of the analysis of the consolidated financial institution. The condition of the institution and the ability of its management are an important component in determining if the risks of the securities activities will have a negative impact on the insured institution.

One of the other notable differences in the proposed regulation is the substitution of the ''eligible subsidiary'' criteria for that of the ''bona fide subsidiary'' definition contained in § 337.4(a)(2). The definitions are similar, but changes have been made to the existing capital and physical separation requirements. Also, new requirements have been added to ensure that the subsidiary's business is conducted according to independent policies and procedures. With regard to those subsidiaries which engage in the public sale, distribution or underwriting of securities that are not permissible for a national bank, additional conditions must also be met. The conditions are that (1) the state-chartered depository institution must adopt policies and procedures, including appropriate limits on exposure, to govern the institution's participation in financing transactions underwritten or arranged by an underwriting majority-owned subsidiary; (2) the state-chartered depository institution may not express an opinion on the value or the advisability of the purchase or sale of securities underwritten or dealt in by a majority-owned subsidiary unless the state-chartered depository institution notifies the customer that the majority-owned subsidiary is underwriting, making a market, distributing or dealing in the security; (3) the majority-owned corporate subsidiary is registered and is a member in good standing with the appropriate SROs, and promptly informs the appropriate regional director of the Division of Supervision (DOS) in writing of any material actions taken against the majority-owned subsidiary or any of its employees by the state, the appropriate SROs or the SEC; and (4) the state-chartered depository institution does not knowingly purchase as principal or fiduciary during the existence of any underwriting or selling syndicate any securities underwritten by the majority-owned subsidiary unless the purchase is approved by the state-chartered depository institution's board of directors before the securities are initially offered for sale to the public. These requirements are also similar to but simplify the requirements currently contained in § 337.4.

In addition, the FDIC proposes to eliminate the five-year period limiting the securities activities of a state nonmember bank's underwriting subsidiary's business operations. Rather, with notice and compliance with the safeguards, a state nonmember bank's securities subsidiary may conduct any securities business set forth in its business plan after the notice period has expired without an objection by the FDIC. The reasons the FDIC initially chose the more conservative posture are rooted in the time they were adopted. When the FDIC approved establishment of the initial underwriting subsidiaries, it had no experience supervising investment banking operations in the United States. Because affiliation between banks and securities underwriters and dealers was long considered impractical or illegal, banks had not operated such entities since enactment of the Glass-Steagall Act in

(1997) where the SEC grapples with limiting trading advantages that might otherwise accrue to affiliates by limiting trading in prohibited securities by affiliates. The SEC is attempting to prevent trading on material nonpublic information. To reduce the danger of such trading, the SEC has a broad ban on affiliated purchasers. To narrow that exception while continuing to limit access to the nonpublic information that might otherwise occur, the SEC has limited access to material nonpublic information through restraints on common officers. Alternatively, the SEC could prohibit trading by affiliates that shared any common officers or employees. In narrowing this exception to ''those officers or employees that direct, effect or recommend transactions in securities,'' the SEC stated that it ''believes that this modification will resolve substantially commenters'' concerns that sharing one or more senior executives with a distribution participant, issuer, or selling security holder would preclude an affiliate from availing itself of the exclusion.'' 62 FR 520 at 523, fn. 22 (January 3, 1997). As the SEC also stated, the requirement would not preclude the affiliates from sharing common executives charged with risk management, compliance or general oversight responsibilities.

1933. Moreover, pre-Glass-Steagall affiliations were considered, rightly or wrongly, to have caused losses to the banking industry and investors, although some modern research questions this view.[9] Thus, the affiliation of banks and investment banks presented unknown risks that were considered substantial in 1983. In addition, although the FDIC recognized that supervision and regulation of broker-dealers by the SEC provided significant protections, the FDIC had little experience with how these protections operated. The FDIC has now gained experience with supervising the securities activities of banks and is better able to assess the appropriate safeguards to impose on these operations to protect the bank and the deposit insurance funds. For those reasons, the limitations and restrictions contained in § 337.4 on underwriting other than ''investment quality debt securities'' or ''investment quality equity securities'' have been eliminated from the proposed regulation. It should also be noted that certain safeguards have been added to the system since § 337.4 was adopted. These safeguards include risk-based capital standards and the Interagency Statement. The FDIC proposes the removal of the disclosures currently contained in § 337.4. Instead, the FDIC will be relying on the Interagency Statement for the appropriate disclosures on bank premises. The FDIC requests comment on whether the Interagency Statement provides adequate disclosures for retail sales in a securities subsidiary and whether required compliance with that policy statement needs to be specifically mentioned in the regulatory text. Comment is invited on whether any other disclosures currently in § 337.4 should be retained or if any additional disclosures would be appropriate.

Finally, the FDIC proposes to continue to impose many of the safeguards found in section 23A of the Federal Reserve Act (12 U.S.C. 371c) and to impose the safeguards of section 23B of the Federal Reserve Act (12 U.S.C. 371c–1). Although section 23B did not exist until 1987[10] and only covers transactions where banks and their subsidiaries are on one side and other affiliates are on the other side, the FDIC had included some similar constraints in the original version of § 337.4. Now, most of the transaction restrictions imposed by section 23B are being added to promote consistency with the restrictions imposed by other banking agencies on similar activities. Briefly, section 23B requires inter-affiliate transactions to be on arm's length terms, prohibits representing that a bank is responsible for the affiliate's (in this case subsidiary's) obligations, and prohibits a bank from purchasing certain products from an affiliate. While imposing the 23B-like transaction restrictions, the FDIC is eliminating any overlapping safeguards. The FDIC requests comment on the restrictions that have been removed, including whether any of these restrictions should be reimposed for securities activities. The FDIC invites comment on the restrictions it has modeled on 23A and 23B. Specifically, the FDIC would like to know if the restrictions it has proposed address the identified risks without overburdening the industry with duplicative or ambiguous requirements. The FDIC invites suggestions for further improvements.

In contrast to the section 23B transaction restrictions, section 23A did exist and was incorporated into § 337.4 by reference. To simplify compliance for transactions between state nonmember banks and their own subsidiaries, the FDIC has restated the constraints of both sections 23A and 23B in the regulatory text language and only included the restrictions that are relevant to a particular activity. The FDIC hopes that this restatement will clarify the standards being imposed on state nonmember banks and their subsidiaries without requiring banks to undertake extensive analysis of the provisions of sections 23A and 23B that are inapplicable to the direct bank-subsidiary relationship or to particular activities. In addition, the FDIC has sought to eliminate transaction restrictions that would duplicate the restrictions on information flow or transactions imposed by the SROs and/or by the SEC.[11] The FDIC does not seek to eliminate the obligation to protect material nonpublic information nor does it seek to undercut or minimize the importance of the restrictions imposed by the SROs and SEC. Rather, the FDIC seeks to avoid imposing burdensome overlapping restrictions merely because a securities underwriting entity is owned by a bank. Further, the FDIC seeks to avoid restrictions where the risk of loss or manipulation is small or the costs of compliance are disproportionate to the purposes the restrictions serve. In addition, the FDIC defers to the expertise of the SEC which has found that greater flexibility for market activities during public offerings is appropriate due to greater securities market transparency, the surveillance capabilities of the SROs, and the continuing application of the anti-fraud and anti-manipulation provisions of the federal securities laws.[12]

The FDIC requests comment on whether the restrictions that the FDIC has restated from sections 23A and 23B provide adequate restrictions for a securities underwriting subsidiary of a bank, whether any other restrictions currently in § 337.4 should be retained, whether any additional restrictions would be appropriate, and any other issues of concern regarding the appropriate restrictions that should be applicable to a bank's securities underwriting subsidiary. In addition, the FDIC requests comment on the adequacy of the best practices requirements that would be imposed by the SROs and, indirectly, by the SEC on transactions and information flow. The FDIC also requests comment on the adequacy of the ethical walls that would prevent the flow of information from a securities underwriting subsidiary of a bank to its parent, thus eliminating the necessity of additional transaction restrictions. To the extent that these ethical walls may be insufficient barriers to the flow of nonpublic information due to management and/or employee interlocks or other issues that may not be readily apparent, the FDIC requests comment on any weaknesses that might be noted in the more limited transaction restrictions imposed under this proposal.

Consistent with the current notice procedure found in § 337.4, an insured state nonmember bank may indirectly through a majority-owned subsidiary engage in the public sale, distribution or underwriting of securities that would be impermissible for a national bank provided that the bank files notice prior to initiating the activities, the FDIC does not object prior to the expiration of the notice period and certain conditions are, and continue to be, met. The FDIC proposes that the notice period be shortened from the existing 60 days to 30 days and that required filing procedures be contained in subpart E of part 362. Previously, specific instructions and guidelines on the form

[9] *See, e.g.*, George J. Benston, The Separation of Commercial and Investment Banking: The Glass-Steagall Act Revisited and Reconsidered 41 (1990).

[10] Aug. 10, 1987, Pub. L. 100–86, Title I, s 102(a), 101 Stat. 564.

[11] *See* ''Anti-manipulation Rules Concerning Securities Offerings,'' 62 FR 520 (January 3, 1997); 15 U.S.C. 78o(f), requiring registered brokers or dealers to maintain and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information; and ''Broker-Dealer Policies and Procedures Designed to Segment the Flow and Prevent the Misuse of Material Nonpublic Information,'' A Report by the Division of Market Regulation, U.S. SEC, (March 1990).

[12] *Id.* at 520.

and content of any applications or notices required under § 337.4 were found within that section. With regard to those insured state nonmember banks that have been engaging in a securities activity under a notice filed and in compliance with § 337.4, § 362.5(b) of the proposed regulation would allow those activities to continue as long as the bank and its majority-owned subsidiaries meet the core eligibility requirements, the investment and transaction limitations, and capital requirements contained in § 362.4(c), (d), and (e). We will require these securities subsidiaries to meet the additional conditions specified in § 362.4(b)(5)(ii) that require securities subsidiaries to adopt appropriate policies and procedures, register with the SEC and take steps to avoid conflicts of interest. We also require the state nonmember bank to adopt policies concerning the financing of issues underwritten or distributed by the subsidiary. The state nonmember bank and its securities subsidiary would have one year from the effective date of the regulation to meet these restrictions and would be expected to be working toward full compliance over that time period. Failure to meet the restrictions within a year after the adoption of a final rule would necessitate an application for the FDIC's consent to continue those activities to avoid supervisory concern.

To qualify for the streamlined notice procedure, a bank must be well-capitalized after deducting from its tier one capital the equity investment in the subsidiary as well as the bank's pro rata share of any retained earnings of the subsidiary. The deduction must be reflected on the bank's consolidated report of income and condition and the resulting capital will be used for assessment risk classification purposes under part 327 and for prompt corrective action purposes under part 325. However, the capital deduction will not be used to determine whether the bank is ''critically undercapitalized'' under part 325. Since the risk-based capital requirements had not been adopted when the current version of § 337.4 was adopted, no similar capital level was required of banks to establish an underwriting subsidiary, although the capital deduction has always been required. This requirement is uniform with the requirements found in the other part 362 notice procedures for insured state banks to engage in activities not permissible for national banks. We believe the well-capitalized standard and the capital deduction recognize the level of risk present in securities underwriting activities by a subsidiary of a state nonmember bank. This risk includes the potential that a bank could reallocate capital from the insured depository institution to the underwriting subsidiary. Thus, it is appropriate for the FDIC to retain the capital deduction even though the FRB eliminated the requirement that a holding company deduct its investment in a section 20 subsidiary on August 21, 1997.

Additional Requests for Comments

With regard to securities activities, the FDIC is specifically requesting comments that address the following:

(1) Whether it is inherently unsafe or unsound for insured state nonmember banks to establish or acquire subsidiaries that will engage in securities activities or for insured state nonmember banks to be affiliated with a business engaged in securities activities;

(2) Whether certain securities activities when engaged in by subsidiaries of insured state nonmember banks pose safety and soundness problems whereas others do not;

(3) Whether, and in what circumstances, securities activities of insured state nonmember banks should be considered unsafe or unsound;

(4) Whether securities activities of subsidiaries present conflicts of interest that warrant restricting the manner in which the bank may deal with its securities subsidiary (or its securities affiliate), or the manner in which common officers or employees may function, etc.;

(5) Should securities activities be limited to subsidiaries of insured state banks of a certain asset size, with a certain composite rating, etc.;

(6) Should insured state nonmember banks obtain the FDIC's prior approval before establishing or acquiring subsidiaries that will engage in securities activities in all cases, in some cases, or not at all;

(7) Should revenue limits similar to those that the FRB has established for section 20 subsidiaries be imposed on securities subsidiaries of insured state nonmember banks;

(8) Do the potential benefits, if any that would be available to insured state nonmember banks as a result of competing in the securities area through subsidiaries offset potential disadvantages to the institutions;

(9) Why haven't more banks availed themselves of the powers available under 337.4 and will the proposed regulation result in increased activity in the securities area;

(10) Alternately, are there other approaches or methods which would facilitate access without compromising traditional safety and soundness concerns;

(11) Are there any perceived public harms in insured state nonmember banks embarking on such activities; and

(12) The FDIC is also requesting comment on how to determine if a securities subsidiary is in fact a true subsidiary and not the alter ego of the parent bank.

Comments addressing these issues and any other aspects of the general subject of permitting subsidiaries and affiliates of insured state nonmember banks to engage in securities activities will be welcomed.

Notice for Change in Circumstances

The proposal requires the bank to provide written notice to the appropriate Regional Office of the FDIC within 10 business days of a change in circumstances. Under the proposal, a change in circumstances is described as a material change in subsidiary's business plan or management. The FDIC believes that it can address a bank's falling out of compliance with any of the other conditions of approval through the normal supervision and examination process. We request comment on whether specific language should be included in the regulation text that a bank must continue to meet all eligibility, capital, and investment and transaction criteria.

The FDIC is concerned about changes in circumstances which result from changes in management or changes in a subsidiary's business plan. If material changes to either condition occur, the rule requires the institution to submit a notice of such changes to the appropriate FDIC regional director (DOS) within 10 days of the material change. The standard of material change would indicate such events as a change in chief executive officer of the subsidiary or a change in investment strategy or type of business or activity engaged in by the subsidiary. The regional director also may address other changes that come to the attention of the FDIC during the normal supervisory process.

In the case of a state member bank, the FDIC will communicate our concerns with the appropriate persons in the Federal Reserve System regarding the continued conduct of an activity after a change in circumstances. The FDIC will work with the identified persons within the Federal Reserve System to develop the appropriate response to the new circumstances.

It is not the FDIC's intention to require any bank which falls out of compliance with eligibility conditions to immediately cease any activity in which the bank had been engaged subject to a notice to the FDIC. The FDIC will deal with such eventuality rather on a case-by-case basis through the supervision and examination process. In short, the FDIC intends to utilize the supervisory and regulatory tools available to it in dealing with the bank's failure to meet eligibility requirements on a continuing basis. The issue of the bank's ongoing activities will be dealt with in the context of that effort. The FDIC is of the opinion that the case-by-case approach to whether a bank will be permitted to continue an activity is preferable to forcing a bank to, in all instances, immediately cease the activity in question. Such an inflexible approach could exacerbate an already poor situation.

Core Eligibility Requirements

The proposed regulation has been organized much differently from the current regulation where separation standards between an insured state bank and its subsidiary are contained in the regulation's definition of ''bona fide'' subsidiary. The proposed regulation introduces the concept of core eligibility requirements. These requirements are used to determine those institutions that qualify to use the notice processes introduced in this regulation and to establish general criteria that the Board will be reviewing in considering applications. These requirements are defined in two parts. The first part defines the eligible depository institution criteria and the second part defines the eligible subsidiary standards.

An ''eligible depository institution'' is a depository institution that has been chartered and operating for at least three years; received an FDIC-assigned composite UFIRS rating of 1 or 2 at its most recent examination; received a rating of 1 or 2 under the ''management'' component of the UFIRS at its most recent examination; received at least a satisfactory CRA rating from its primary federal regulator at its last examination; received a compliance rating of 1 or 2 from its primary federal regulator at its last examination; and is not subject to any corrective or supervisory order or agreement. The FDIC believes that this criteria is appropriate to ensure that the notice procedures are available only to well-managed institutions that do not present any supervisory, compliance or CRA concerns.

The standards for an ''eligible depository institution'' are being standardized with similar requirements for other types of notices and applications made to the FDIC. In developing the eligibility standards, several items have been added that previously were not a stated standard for banks wishing to engage in activities not permissible for a national bank.

The requirement that the institution has been chartered and operated for three or more years reflects the experience of the FDIC that newly formed depository institutions need closer scrutiny. Therefore, a request by this type of institution to become involved in activities not permissible for a national bank should receive consideration under the application process rather than being eligible for a notice process.

The FDIC's existing standard is that only well-managed, well-capitalized banks should be eligible for engaging in activities not permissible for national banks through a notice procedure. Banks which have composite ratings of 1 or 2 have shown that they have the requisite financial and managerial resources to run a financial institution without presenting a significant risk to the deposit insurance fund. While lower-rated financial institutions may have the requisite financial and managerial resources and skills to undertake such activities, the FDIC believes that those institutions should be subject to the formal part 362 application process as opposed to the streamlined notice process described herein. Such institutions are not on their face as sound on an overall basis as those rated 1 or 2. For that reason, the FDIC feels that it is more prudent to require institutions rated 3 or below to utilize the application process.

In addition, the FDIC is adding to the proposed rule a requirement that the management component of the bank's most recent rating be a 1 or 2 also. The FDIC believes that both capital and management are extremely important to the safety and soundness of a financial institution. As noted above, a bank with a composite rating of 1 or 2 has shown that it is strong when taking into account all components of the uniform financial institutions rating system. While there are few financial institutions with 1 or 2 composite ratings with weak management, we believe that only those institutions that are well-managed should be eligible for the notice processes.

Banks which wish to become involved in activities not permissible for a national bank through the notice process should be exemplary in all areas of its operations. Therefore, the proposal requires that the institution have a satisfactory or better CRA rating, a 1 or 2 compliance rating, and not be subject to any formal or informal enforcement action.

A filing may be removed from notice processing if: (1) A CRA protest is received that warrants additional investigation or review, or the appropriate regional director of the Division of Consumer Affairs (DCA) determines that the filing presents a significant CRA or compliance concern; (2) the appropriate regional director (DOS) determines that the filing presents a significant supervisory concern, or raises a significant legal or policy issue; or (3) the appropriate regional director (DOS) determines that other good cause exists for removal. If a filing is removed from notice processing procedures, the applicant will be promptly informed in writing of the reason.

The FDIC specifically requests comment on whether the standards for eligibility are appropriate.

Eligible Subsidiary

The FDIC's support of the concepts of expansion of bank powers is based in part on establishing a corporate separateness between the insured depository institution and the entity conducting activities that are not permissible for the depository institution directly. The proposal establishes these separations as well as standards for operations through the concept of ''eligible subsidiary.'' An entity is an ''eligible subsidiary'' if it: (1) Meets applicable statutory or regulatory capital requirements and has sufficient operating capital in light of the normal obligations that are reasonably foreseeable for a business of its size and character; (2) is physically separate and distinct in its operations from the operations of the state-chartered depository institution, provided that this requirement shall not be construed to prohibit the state-chartered depository institution and its subsidiary from sharing the same facility if the area where the subsidiary conducts business with the public is clearly distinct from the area where customers of the state-chartered depository institution conduct business with the institution—the extent of the separation will vary according to the type and frequency of customer contact; (3) maintains separate accounting and other business records; (4) observes separate business formalities such as separate board of directors' meetings; (5) has a chief executive officer who is not an employee of the bank; (6) has a majority of its board of directors who are neither directors nor officers of the state-

chartered depository institution; (7) conducts business pursuant to independent policies and procedures designed to inform customers and prospective customers of the subsidiary that the subsidiary is a separate organization from the state-chartered depository institution and that the state-chartered depository institution is not responsible for and does not guarantee the obligations of the subsidiary; (8) has only one business purpose; (9) has a current written business plan that is appropriate to the type and scope of business conducted by the subsidiary; (10) has adequate management for the type of activity contemplated, including appropriate licenses and memberships, and complies with industry standards; and (11) establishes policies and procedures to ensure adequate computer, audit and accounting systems, internal risk management controls, and has the necessary operational and managerial infrastructure to implement the business plan.

The separations are currently outlined in the definitions of ''bona fide'' subsidiary contained in § 337.4 and part 362. The broad principles of separtion upon which the ''bona fide'' subsidiary definition and the ''eligible subsidiary'' definition are based include: (1) Adequate capitalization of the subsidiary; (2) separate corporate functions; (3) separation of facilities; (4) separation of personnel; and (5) advertising the bank and the subsidiary as separate entities.

While the ''bona fide'' subsidiary definitions currently used are substantially similar, there is one substantial difference. Each regulation has a different approach to the issue of common officers between the bank and the subsidiary. The language in the current part 362 allows the subsidiary and the parent bank to share officers so long as a majority of the subsidiary's executive officers were neither officers nor directors of the bank. Section 337.4 contains a requirement that there be no shared officers. The ''eligible subsidiary'' concept adopts a more limited standard. The eligible subsidiary requirements loosen the separations among employees and officers from those in place under the bona fide subsidiary definitions in both § 337.4 and part 362 and in Board orders authorizing most real estate activities. The eligible subsidiary only requires that the chief executive officer not be an employee of the institution. We consider officers to be employees of the institution. This limitation would allow the chief executive officer to be an employee of an affiliated entity or be on the board of directors of the institution. Are there other methods of achieving the concept of separation without requiring different public contact employees and officers for the bank and the subsidiary?

In deciding the standards to become an ''eligible subsidiary,'' the FDIC not only has reconciled the differing standards on shared officers, but also has modified some of the previous standards used in the definition of ''bona fide'' subsidiary. The changes are found in the capital requirement, the physical separation requirement, the separate employee standard, and the requirement that the subsidiary's business be conducted pursuant to independent policies and procedures.

The requirement that the subsidiary be adequately capitalized was revised to provide that the subsidiary must meet any applicable statutory or regulatory capital requirements, that the subsidiary have sufficient operating capital in light of the normal obligations that are reasonably foreseeable for a business of its size and character, and that the subsidiary's capital meet any commonly accepted industry standard for a business of its size and character. This definition clarifies that the FDIC expects the subsidiary to meet the capital requirements of its primary regulator, particularly those subsidiaries involved in securities and insurance.

The physical separation requirement was clarified by the addition of a sentence which indicates that the extent to which the bank and the subsidiary must carry on operations in physically distinct areas will vary according to the type and frequency of public contacts. It is not the intent of the FDIC to require physical separation where such a standard adds little value. For instance, a subsidiary engaged in developing commercial real estate would not require the same physical separation from the bank as a subsidiary engaged in retail securities activities. The possibility of customer confusion should be the determining factor in deciding the separation requirements for the subsidiary.

The proposal has eliminated the provision contained in the bona fide subsidiary definition that required the bank and subsidiary to have separately compensated employees who have contact with the public. This provision was imposed to reduce confusion relating to whether customers were dealing with the bank or the subsidiary. Since the adoption of the bona fide subsidiary definition, the Interagency Statement was issued. This interagency statement recognizes the concept of employees who work both for a registered broker-dealer and the bank. Because of the disclosures required in the Interagency Statement informing the customer of the nature of the product being sold and the physical separation requirements, the need for separate public contact employees is diminished. Comment is requested concerning the need for separate public contact employees. Specifically, is there a need for separate employees when an insured depository institution sells a financial instrument underwritten by a subsidiary or real estate developed by a subsidiary? Are the disclosures concerning the affiliation between the bank and the underwriter required by the Interagency Statement sufficient to protect customers from confusion about who is responsible for the product?

Language was added that the subsidiary must conduct business so as to inform customers that the bank is not responsible for and does not guarantee the obligations of the subsidiary. This language is taken from section 23B of the Federal Reserve Act which prohibits banks from entering into any agreement to guarantee the obligations of their affiliates and prohibits banks and well as their affiliates from advertising that the bank is responsible for the obligations of its affiliates. This type of disclosure is intended to reduce customer confusion concerning who is responsible for the products purchased.

After issuing its proposal last August, the FDIC received comment concerning the requirement that a majority of the board of the subsidiary be neither directors nor officers of the bank. The comment questioned if this restriction extended to directors and officers of the holding company. The FDIC is primarily concerned about risk to the deposit insurance funds and is therefore looking to establish separation between the insured bank and its subsidiary. The eligible subsidiary requirement is designed to assure that the subsidiary is in fact a separate and distinct entity from the bank. This requirement should prevent ''piercing of the corporate veil'' and insulate the bank, and the deposit insurance fund, from any liabilities of the subsidiary.

We recognize that a director or officer employed by the bank's parent holding company or sister affiliate is not as ''independent'' as a totally disinterested third party. The FDIC is, however, attempting to strike a reasonable balance between prudential safeguards and regulatory burden. The requirement that a majority of the board not be directors or officers of the bank will provide certain benefits that the FDIC thinks are very important in the context of subsidiary operation. The FDIC expects

these persons to act as a safeguard against conflicts of interest and be independent voices on the board of directors. While the presence of ''independent'' directors may not, in and of itself, prevent piercing of the corporate veil, it will add incremental protection and in some circumstances may be key to preserving the separation of the bank and its subsidiary in terms of liability. In view of the other standards of separateness that have been established under the eligible subsidiary standard as well as the imposition of investment and transaction limits, we do not believe that a connection between the bank's parent or affiliate will pose undue risk to the insured bank.

The FDIC requests comment on the appropriateness of the proposed separation standards. In particular, comment is requested concerning the provision requiring that a majority of the board of the subsidiary not be directors or officers of the state chartered depository institution. What impact does this requirement have on finding qualified directors? Should the standard be the same for different types of activities?

In addition to the separation standards, the ''eligible subsidiary'' concept introduces operational standards that were not part of the ''bona fide'' subsidiary definition. These standards provide guidance concerning the organization of the subsidiary that the FDIC believes are important to the independent operation of the subsidiary.

The proposed regulation requires that a subsidiary engaged in insurance, real estate or securities have only one business purpose among those categories. Because the FDIC is limiting a bank's transactions with subsidiaries engaged in insurance, real estate, or securities activities that are not permissible for a subsidiary of a national bank, and the aggregate limitations only extend to subsidiaries engaged in the same type of business, the FDIC is limiting the scope of the subsidiary's activities. The FDIC is seeking comment on the effect of limiting the subsidiary's activities to one business purpose. Should the term ''one business purpose'' be defined more broadly? For instance, should a subsidiary engaged in real estate investment activities also be allowed to be engaged in real estate brokerage in the same subsidiary?

The proposal requires that the subsidiary have a current written business plan that is appropriate to its type and scope of business. The FDIC believes that an institution that is contemplating involvement with activities that are not permissible for a national bank or a subsidiary of a national bank should have a carefully conceived plan for how it will operate the business. We recognize that certain activities do not require elaborate business plans; however, every activity should be given board consideration to determine the scope of the activity allowed and how profitability is to be attained.

The requirement for adequate management of the subsidiary establishes the FDIC's desire that the insured depository institution consider the importance of management in the success of an operation. The requirement to obtain appropriate licenses and memberships and to comply with industry standards indicates the FDIC's support of securities and insurance industry standards in determining adequacy of subsidiary management.

An important factor in controlling the spread of liabilites from the subsidiary to the insured depository institution is that the subsidiary establishes necessary internal controls, accounting systems, and audit standards. The FDIC does not expect to supplement this requirement with specific guidance since the systems must be tailored to specific activities, some of which are otherwise regulated.

The FDIC seeks comments on the appropriateness of the restrictions contained in the ''eligible subsidiary'' standard. Are there other restrictions that should be considered? Are there standards that are unnecessary to achieve separation between the insured depository institution and the subsidiary?

Investment and Transaction Limits

The proposal contains investment limits and other requirements that apply to an insured state bank and its subsidiaries that engage as principal in activities that are not permissible for a national bank *if* the requirements are imposed by order or expressly imposed by regulation. The provision is not contained in the current regulation; however, § 337.4 imposes by reference the limitations of section 23A of the Federal Reserve Act (§ 337.4 was adopted prior to the adoption of section 23B of the Federal Reserve Act), and both section 23A and section 23B restrictions have been imposed by the Board on insured state banks seeking the FDIC's consent to engage in activities not permissible for a national bank.

On August 23, 1996, the FDIC issued a proposed revision to part 362. The proposed rule would have imposed sections 23A and 23B on bank investments and transactions with subsidiaries that hold equity investments in real estate not permissible for a national bank. The FDIC received a significant number of negative comments regarding the imposition of sections 23A and 23B on real estate subsidiaries. After a thorough review, the FDIC has determined that several of the major points in this area have merit. Some of the provisions of section 23A and 23B are inapplicable while others duplicate existing legal requirements. The FDIC believes that merely incorporating sections 23A and 23B by reference raises significant interpretative issues, as pointed out by the commenters, and only promotes confusion in an already complex area.

For these reasons, in this proposal the FDIC is proposing a separate subsection which sets forth the specific investment limits and arm's length transaction requirements which the FDIC believes are necessary. In general, the provisions impose investment limits on any one subsidiary and an aggregate investment on all subsidiaries that engage in the same activity, requires that extensions of credit from a bank to its subsidiaries be fully-collateralized when made, prohibits the bank from taking a low quality asset as collateral on such loans, and requires that transactions between the bank and its subsidiaries be on an arm's length basis.

The proposal expands the definition of bank for the purposes of the investment and transaction limitations. A bank includes not only the insured entity but also any subsidiary that is engaged in activities that are not subject to these investment and transaction limits.

Sections 23A and 23B of the Federal Reserve Act combine the bank and all of its subsidiaries in imposing investment limitations on all affiliates. The FDIC is using the same concept in separating subsidiaries conducting activities that are subject to investment and transaction limits from the bank and any other subsidiary that engages in activities not subject to the investment and transaction limits.

This rule will prohibit a bank from funding a subsidiary subject to the investment and transaction limits through a subsidiary that is not subject to the limits. The FDIC invites comment on the appropriateness of this restriction on subsidiary to subsidiary transactions.

Investment Limit

Under the proposal, a bank may be restricted in its investments in certain of its subsidiaries. Those limits are basically the same as would apply

between a bank and its affiliates under section 23A. As is the case with covered transactions under section 23A, extensions of credit and other transactions that benefit the bank's subsidiary would be considered part of the bank's investment. The only exception would be for arm's length extensions of credit made by the bank to finance sales of assets by the subsidiary to third parties. These transactions would not need to comply with the collateral requirements and investment limitations of section 23A, provided that they met certain arm's length standards. The imposition of section 23A-type restrictions is intended to make sure that adequate safeguards are in place for the dealings between the bank and its subsidiary.

When the August proposal was published for comment, the FDIC invited comment on whether all provisions of sections 23A should be imposed or whether just certain restrictions are necessary. For instance, should the regulation simply provide that the bank's investment in the subsidiary is limited to 10 percent of capital and that there is an aggregate investment limit of 20 percent for all subsidiaries rather than, in effect, subjecting transactions between the bank and its subsidiary to all of the restrictions of section 23A. Eight of the seventeen commenters addressed this issue. Two commenters supported the incorporation of all the limits and restrictions in sections 23A stating that it encourages uniformity in approach for structuring transactions between the bank and its subsidiary. The remaining commenters generally considered the imposition of section 23A requirements to be unduly restrictive. One comment challenged that the wholesale incorporation of section 23A limitations is inappropriate since Congress has already determined that transactions with subsidiaries present little risk to banks. In fact, in the words of the commenter, if the subsidiary is wholly-owned, the bank is really dealing with itself.

In contrast to the bank-affiliate relationship being governed by the statutory limits of sections 23A and 23B, inherent in the idea of a subsidiary is the subsidiary's value to the bank as an asset. That value increases as the subsidiary earns profits and decreases as the subsidiary loses money. The increases are reflected in the subsidiary's retained earnings and the consolidated retained earnings of the bank as a whole. The FDIC wants to dissociate the bank's equity investment in the subsidiary from any lending to or covered transactions with the subsidiary. Thus, the FDIC proposes to treat the bank's equity investment as a deduction from capital, while treating any lending to or covered transactions with the subsidiary as transactions subject to 10% and 20% limits that are similar to those that govern the bank-affiliate relationship. Then, the question arises as to how to properly treat retained earnings at the subsidiary level. If retained earnings at the subsidiary level were treated as subject to the 10% and 20% limits, the bank could be forced to take the retained earnings out of the subsidiary to stay under the applicable limits. If retained earnings are allowed to accumulate without limit, then the bank could declare dividends to its shareholders based on the retained earnings at the subsidiary. Later, in the event that the subsidiary incurred losses, the bank's capital could become inadequate based on the subsidiary's losses. Thus, the FDIC requires that retained earnings be deducted from capital in the same way as the equity investment is deducted.

The definition of ''investment'' under this provision has four components. The first component is any extension of credit by the bank to the subsidiary. The term ''extension of credit'' is defined in part 362 to have the same meaning as that under section 22(h) of the Federal Reserve Act and would therefore apply not only to loans but also to commitments of credit. The second component is ''any debt securities of the subsidiary'' held by the bank. This component recognizes that debt securities are very similar to extensions of credit. The third component is the acceptance of securities issued by the subsidiary as collateral for extensions of credit to any person or company. The fourth and final component addresses any extensions or commitments of credit to a third party for investment in the subsidiary, investment in a project in which the subsidiary has an interest, or extensions of credit or commitments of credit which are used for the benefit of, or transferred to, the subsidiary.

Two of the components of the definition of ''investment'' are borrowed from and consistent with sections 23A and 23B. It is the FDIC's intent to include the types of investments or extensions of credit which would normally be subject to the 23A and 23B investment limits. We note in particular that the fourth component of the definition of ''investment'' includes language similar to the ''attribution rule.'' Indirect investments and extensions of credit by a bank to its subsidiaries will be included in the calculation of the 10%/20% investment limits.

In addition to the differences in coverage created by the proposed definition of investment versus the section 23A covered transactions, the percentage restrictions are calculated differently from section 23A. The proposal calulates the 10%/20% limits based on tier one capital while section 23A uses total capital. As was discussed earler, the FDIC is using tier one capital as its measure to create consistency throughout the regulation.

Also, the proposal limits the aggregate investment to all subsidiaries conducting the same activity. There is not a ''same activity'' standard in section 23A. The FDIC believes that the aggregate limitations should reflect a restriction on concentrations in a particular activity and not a general limitation on activities that are not permissible for a national bank. For the purposes of this paragraph, the FDIC intends to interpret the ''same activity'' standard to mean broad categories of activities such as real estate investment activities or securities underwriting. The FDIC specifically requests comments on this provision of the proposal. The FDIC has consistently maintained that it applies section 23A and 23B-like standards. It believes that its proposal continues to do so, but would like comment on the effect of the proposed change.

Arm's Length Transaction Requirement

A major provision of 23B of the Federal Reserve Act is that any transaction between a bank and its affiliates must be on terms and conditions that are substantially the same as those prevailing at the time for comparable transactions with unaffiliated parties. This type of requirement, which is generally referred to as an ''arm's length transaction'' requirement, is intended to make sure that an affiliate does not take advantage of the bank. The proposal requires transactions between the bank and its real estate subsidiaries to meet this requirement. The arm's length transaction requirement found in the proposal is modeled on the statutory provisions of section 23B. The types of transactions covered by the requirement include: (1) Investments in the subsidiary, (2) the purchase from or sale to the subsidiary of any assets, including securities, (3) entering into any contract, lease or other agreement with the subsidiary, and (4) paying compensation to the subsidiary or any person who has an interest in the subsidiary. The proposal indicates, however, that the restrictions do not apply to an insured state bank giving immediate credit to a subsidiary for

uncollected items received in the ordinary course of business.

The arm's length transaction requirement is meant to protect the bank from abusive practices. To the extent that the subsidiary offers the parent bank a transaction which is at or better than market terms and conditions, the bank may accept such transaction since the bank is receiving a benefit, as opposed to being harmed. It may be the case, however, that a bank will be unable to meet the regulatory standard because there are no known comparable transactions between unaffiliated parties. In these situations, the FDIC will review the transactions and expect the bank to meet the ''good faith'' standard found in section 23B.

When engaging in transactions with a subsidiary, banks and bank counsel should be aware of the FDIC's separate corporate existence concerns. Bank subsidiaries should be organized and operated as separate corporate entities. Subsidiaries should be adequately capitalized for the business they are engaged in and separate corporate formalities should be observed. Frequent transactions between the bank and its subsidiary which are not on an arm's length basis may lead to questions as to whether the subsidiary is actually a separate corporate entity or merely the alter ego of the bank. One of the primary reasons for the FDIC requiring that certain activities be conducted through an eligible subsidiary is to provide the bank, and the deposit insurance funds, with liability protection. To the extent a bank ignores the separate corporate existence of the subsidiary, this liability protection is jeopardized.

This section and the language therein is not a substantive change from the proposal. The FDIC is merely setting forth the substantive requirements of sections 23A and 23B which were proposed to be incorporated by reference. We believe setting forth the exact requirements will reduce regulatory burden and confusion as banks and bank counsel will more readily know what requirements are to be followed.

Banks will be prohibited from buying low quality assets from their subsidiaries. The FDIC has taken the definition of ''low quality asset'' from section 23A without modification.

The proposal deviates from the section 23B standards in that it contains provisions addressing insider transactions and product tying. The proposal's arm's length standard addresses transactions between an insured depository institution and its subsidiaries. The FDIC is adding a provision that an arm's length standard for transactions between the subsidiary and insiders of the insured depository institution. The proposal requires that any transactions with insiders must meet the section 23B requirements that transactions be on substantially the same terms and conditions as available generally to unaffiliated parties.

Rather than requiring an application and approval by the FDIC for transactions with insiders as we had proposed last August, the FDIC has decided to set forth the legal standard to be applied to such transactions and let banks and their legal advisors determine whether the transactions meet the arm's length requirement. Banks engaging in such transactions should retain proper documentation showing that the transactions meet the arm's length requirement. The FDIC will review transactions with insiders in the normal course of the examination process and take such actions as may be necessary and appropriate if problems arise. Questionable transactions will have to be justified under the 23B standard.

The proposal also contains a requirement that neither the insured state bank nor the majority-owned subsidiary may require a customer to either buy a product or use a service from the other as a condition of entering into a transaction. While the condition may duplicate existing standards for banks, it is not clear that all circumstances are adequately covered by the existing statutory and regulatory restrictions. The FDIC wishes to confirm that we consider tying to be unacceptable when there are no alternative financial services available. However, we recognize that a complete prohibition may be too rigid.

Banks are subject to statutory anti-tying restrictions. (12 U.S.C. 1972). In 1970 when these restrictions were enacted, Congress was concerned that the unique role banks played in the economy, particularly in providing financial services, would allow them to gain a competitive advantage in other markets. The FRB extended the anti-tying restrictions to bank holding companies and their non-banking subsidiaries by regulation in 1971. The FRB's experience since extending the anti-tying provisions has shown that non-banking companies generally operate in competitive markets. As a result, the FRB eliminated the extension of the anti-tying rules to bank holding companies and their non-bank subsidiaries this year (12 CFR 225), leaving restriction of any anti-competitive behavior to the general antitrust laws which govern the competitors of the bank holding companies and their non-bank subsidiaries. The extension of the tying restrictions to savings and loan holding companies is statutory. Consequently, the Office of Thrift Supervision is not authorized to except savings and loan holding companies and their non-bank affiliates entirely from all tying restrictions. 62 FR 15819. The Office of the Comptroller of the Currency extends anti-tying provisions to subsidiaries. See OCC Bulletin 95–20.

Based on the competitive marketplace in which nonbanking subsidiaries operate and the applicability of general antitrust laws, the FDIC is seeking comment as to whether the anti-tying language contained in the proposed regulation is appropriate. If the proposed rule is thought to be unnecessary, should we consider adopting a rule that would be applicable only in situations where there are no options for financial services?

The proposal does not contain the advertising restrictions contained in section 23B which prohibit a bank from publishing advertisements which suggest, state or infer that the bank is or shall be responsible for the obligations of an affiliate. Instead, the proposal incorporates the advertising prohibition from 23B as part of the definition of the eligible subsidiary. An eligible subsidiary is required to have policies and procedures which are designed to inform customers and potential customers that the subsidiary is a separate organization from the bank and to inform customers that the bank is not responsible for, nor guarantees, the obligations of the subsidiary.

Collateralization Requirements

Section 23A requires that loans, extensions of credit, guarantees or letters of credit issued by the bank to or on behalf of an affiliate be fully-collateralized at the time the bank makes the loan or extension of credit. This requirement is intended to protect the bank in the event of a loan default. ''Fully collateralized'' under the proposal means extensions of credit secured by collateral with a market value at the time the extension of credit is entered into of at least 100 percent of the extension of credit amount for government securities or a segregated deposit in a bank; 110 percent of the extension of credit amount for municipal securities; 120 percent of the extension of credit amount for other debt securities; and 130 percent of the extension of credit amount for other securities, leases or other real or personal property. The FDIC intends to look to the collateralization schedule as minimum guidance, but wants to retain flexibility in making the determination

if additional collateral is necessary. Therefore, this proposal differs from the section 23A requirements in that the proposal uses the collateral schedule as a minumum requirement.

The FDIC is seeking comment as to whether the proposal gives the industry enough certainty to make decisions concerning collateral adequacy? Are the collateral requirements appropriate or should some other measure of collateral adequacy be used?

Capital Requirements

Under the proposed rule, a bank using the notice process to invest in a subsidiary engaging in certain activities not permissible for a national bank would be required to deduct its equity investment in the subsidiary as well as its pro rata share of retained earnings of the subsidiary when reporting its capital position on the bank's consolidated report of income and condition, in assessment risk classification and for prompt corrective action purposes (except for the purposes of determining if an institution is critically undercapitalized). This capital deduction may be required as a condition of an Order issued by the FDIC, is required to use the notice procedure to request consent for real estate investment activities and securities underwriting and distribution, and is required to engage in grandfathered insurance underwriting. The purpose of the restriciton is to ensure that the bank has sufficient capital devoted to its banking operations and to ensure that the bank would not be adversely impacted even if its entire investment in the subsidiary is lost.

This treatment of the bank's investment in subsidiaries engaged in activities not permissible for a national bank creates a regulatory capital standard. After issuing its proposal last August, the FDIC received comment that this capital treatment is inconsistent with generally accepted accounting principles. Although section 37 of the FDI Act generally requires that accounting principles applicable to depository institutions for regulatory reporting purposes must be consistent with, or not less stringent than, GAAP, the FDIC believes that the requirements of section 37 do not extend to the Federal banking agencies' definitions of regulatory capital. It is well established that the calculation of regulatory capital for supervisory purposes may differ from the measurement of equity capital for financial reporting purposes. For example, statutory restrictions against the recognition of goodwill for regulatory capital purposes may lead to differences between the reported amount of equity capital and the regulatory capital calculation for tier one capital. Other types of intangible assets are also subject to limitations under the agencies' regulatory capital rules. In addition, subordinated debt and the allowance for loan and lease losses are examples of items where the regulatory reporting and the regulatory capital treatments differ.

We note that the capital deduction as contained in the proposal is not a new concept for the federal banking regulators. The FDIC has required capital deduction for investments by state nonmember banks in securities underwriting subsidiaries for years. See 12 CFR 325.5(c). The FRB has required bank holding companies to deduct from capital their investment in section 20 subsidiaries, although the FRB eliminated that requirement on August 21, 1997, by adopting new operating standards. In addition, the Comptroller of the Currency recently endorsed the idea of deducting from capital a national bank's investments in certain types of operating subsidiaries. See 12 CFR 5.34(f)(3)(i), 61 FR 60342, 60377 (Nov. 27, 1996).

The calculation of the amount deducted from capital in this proposal includes the bank's equity investment in the subsidiary as well as the bank's share of retained earnings. The calculation does not require the deduction of any loans from the bank to the subsidiary or the bank's investment in the debt securities of the subsidiary. The FDIC requests comment on this method of calculating the capital deduction. Should there be a differentiation in the treatment of the bank's equity investment in the subsidiary and loans made to or debt purchased from the subsidiary?

Notice of Grandfathered Insurance Underwriting Activities

Section 362.5 of the current regulation provides that insured state banks that are permitted to engage in insurance underwriting under the grandfather found in section 24(d)(2)(B) of section 24 of the FDI Act must file a notice with the FDIC by February 9, 1992. That notice requirement is deleted under the proposal as no longer necessary given the passage of time.

Other Underwriting Activities

The proposed regulatory text does not directly address the underwriting of annuities. The FDIC has opined that annuities are not an insurance product and are not subject to the insurance underwriting prohibitions of section 24. The FDIC has approved one request from an insured state bank to engage in annuity underwriting activities through a majority-owned subsidiary. The proposed regulation does not provide a notice procedure to engage in such activities. Comment is requested as to whether such a notice procedure would be beneficial. What types of restrictions should the Board consider if it determines that annuities underwriting may be conducted after submission of a notice?

Section 362.5 Approvals Previously Granted

As is discussed above, there are a number of areas in which this proposal differs in approach from the current part 362. Because of these differing approaches, the proposal contains a section dealing with approvals previously granted. The FDIC proposes that insured state banks that have previously received consent by order or notice from this agency should not be required to reapply to continue the activity, including real estate investment activities, provided the bank and subsidiary, as applicable, continue to comply with the conditions of the order of approval. It is not the intent of the FDIC to require insured state banks to request consent to engage in an activity which has already been approved previously by this agency.

Because previously granted approvals may contain conditions that are different from the standards that are established in this proposal, in certain circumstances, the bank may elect to operate under the restrictions of this proposal. Specifically, the bank may comply with the investment and transaction limitations between the bank and its subsidiaries contained in § 362.4(d), the capital requirement limitations detailed in § 362.4(e), and the subsidiary restrictions as outlined in the term ''eligible subsidiary'' and contained in § 362.4(c)(2) in lieu of similar requirements in its approval order. Any conditions that are specific to a bank's situation and do not fall within the above limitations will continue to be effective. The FDIC intends that once a bank elects to follow these proposed restrictions instead of those in the approval order, it may not elect to revert to the applicable conditions of the order.

An insured state bank that qualifies for the exception in proposed § 362.4(b)(4)(i) relating to real estate investment activities that do not exceed 2 percent of the bank's tier one capital may take advantage of the exceptions contained in that section. A bank which uses this exception must limit its real estate investment activities to one

subsidiary and may engage in additional real estate investment activities without fully complying with the application or notice requirements contained in the proposal. The FDIC requests comment on the appropriateness of allowing banks which have previously received approval from the FDIC to operate under the guidelines of this proposal. Should banks which have been previously approved be allowed to use the 2% of capital exception?

The FDIC has also approved certain activities through its current regulations. Specifically, the FDIC has incorporated and modified the restrictions of § 337.4 in this proposal. The proposed rule will allow an insured state nonmember bank engaging in a securities activity in accordance with § 337.4 to continue those activities if the bank and its subsidiary meet the restrictions of § 362.4 (b)(5)(ii), (c), (d), and (e). The FDIC intends that these requirements replace the restrictions contained in § 337.4.

The FDIC recognizes that the requirements of this proposal differ from the requirements of § 337.4. Because the transition from the current § 337.4 requirements to the new regulatory requirements may have unforeseen implementation problems, the bank and its subsidiary will have one year from the effective date to comply with new restrictions and conditions without further application or notice to the FDIC. If the bank and its subsidiary are unable to comply within the one-year time period, the bank must apply in accordance with § 362.4(b)(1) and subpart E of the proposed regulation to continue with the securities underwriting activity. Comment is requested concerning the reasonableness of this transition requirement.

The proposed restrictions for engaging in grandfathered insurance underwriting through a subsidiary have also been changed. The current regulation prescribes disclosures, requires that the subsidiary be a bona fide subsidiary, and requires that the bank be adequately capitalized after deducting the bank's investment in the grandfathered insurance subsidiary. The proposal requires that disclosures are consistent with, but not the same as, those in the current regulation, that the subsidiary meet the requirements of an eligible subsidiary, and that the bank be well-capitalized after deducting its investment in the grandfathered insurance subsidiary. The FDIC recognizes that these requirements are not the same as previous standards, and the capital requirement in particular is more stringent. An insured state bank which is engaged in providing insurance as principal may continue that activity if it complies with the proposed provisions within 90 days of the effective date of the regulation.

Similarly, banks which have subsidiaries that have been operating under the bank stock and grandfathered equity securities exemption of the current regulation are subject to additional requirements in the proposal. In particular, insured state banks continuing with these exemptions must now deduct their investment in the subsidiary from capital. An insured state nonmember bank that is engaging in securities underwriting activities under notice filed pursuant to § 337.4 may continue those activities if the bank and its majority-owned subsidiary comply with the proposed restrictions within one year of the effective date of the regulation.

The FDIC also proposes that an insured state bank that converts from a savings association charter and which engages in activities through a subsidiary, even if such activity was permissible for a subsidiary of a federal savings association, shall make application or provide notice, whichever applies, to the FDIC to continue the activity unless the activity and manner and amount in which the activity is operated is one that the FDIC has determined by regulation does not pose a significant risk to the deposit insurance fund. Since the statutory and regulatory systems developed for savings associations are different from the bank systems, the FDIC believes that any institution that converts its charter should be subject to the same regulatory requirements as other institutions with a like charter.

If, prior to conversion, the savings association had received approval from the FDIC to continue through a subsidiary the activity of a type or in an amount that was not permissible for a federal savings association, the converted insured state bank need not reapply for consent provided the bank and subsidiary continue to comply with the terms of the approval order, meet all the conditions and restrictions for being an eligible subsidiary contained in § 362.4(c)(2), comply with the investment and transactions limits of § 362.4(d), and meet the capital requirement of § 362.4(e). If the converted bank or its subsidiary, as applicable, does not comply with all these requirements, the bank must obtain the FDIC's consent to continue the activity. The FDIC has imposed these conditions to fill a regulatory gap that would otherwise be present. Savings associations and their service corporations are subject to regulatory standards of separation, the savings association is limited in the amount it may invest in the service corporation, and the savings association must deduct its investment in the service corporation from its capital if the service corporation engages in activities that are not permissible for a national bank. The eligible subsidiary standard, the investment and transaction limits, and the capital requirements replace these standards once the savings association has converted its charter to a bank.

If the bank does not receive the FDIC's consent for its subsidiary to continue an activity, the bank must divest its nonconforming investment in the subsidiary within two years of the date of conversion either by divesting itself of its subsidiary or by the subsidiary divesting itself of the impermissible activity.

B. Subpart B—Safety and Soundness Rules Governing State Nonmember Banks

Section 362.6 Purpose and Scope

This subpart, along with the notice and application provisions of subpart E of this chapter, applies to certain banking practices that may have adverse effects on the safety and soundness of insured state nonmember banks. The FDIC intends to allow insured state nonmember banks and their subsidiaries to undertake only safe and sound activities and investments that would not present a significant risk to the deposit insurance fund and that are consistent with the purposes of federal deposit insurance and other law. The safety and soundness standards of this subpart apply to activities undertaken by insured state nonmember banks when conducting real estate investment activities through a subsidiary if those activities that are permissible for a national bank subsidiary. Neither a national bank nor a state bank would not be permitted to engage in these real estate investment activities directly. The FDIC has a long history of considering the risks from real estate investment activities to be unsafe and unsound for a bank to undertake without appropriate safeguards to address that risk.

Additionally, this subpart sets forth the standards that apply when affiliated organizations of insured state nonmember banks that are not affiliated with a bank holding company conduct securities activities. The collective business enterprises of these entities are commonly described as nonbank bank holding company affiliates. The FDIC has a long history of considering the risks from the conduct of securities

activities by affiliates of insured state nonmember banks to be unsafe and unsound without appropriate safeguards to address those risks. This rule incorporates many of the standards currently applicable to these entities through § 337.4 of the FDIC's regulations. The scope of this regulation is narrower than § 337.4 due to intervening regulations by other appropriate Federal banking agencies that render more comprehensive rules superfluous. In addition, the FDIC has updated the restrictions and brought them into line with modern views of appropriate securities safeguards between affiliates and insured banks.

Section 362.7 Restrictions on Activities of Insured State Nonmember Banks

Real Estate

Since national banks are generally prohibited from owning and developing real estate, insured state banks have been required to apply to the FDIC before undertaking or continuing such real estate activities. The FDIC has reviewed 95 applications under part 362 since December 1992 in which insured state banks have requested permission to undertake some type of real estate investment activity. The FDIC has concluded as a result of its experience in reviewing these applications that while real estate investments generally possess many risks that are not readily comparable to other equity investments, institutions may contain these risks by undertaking real estate investments within certain parameters. The FDIC has considered the manner under which an insured state nonmember bank may undertake real estate investment activities and determined that insured state nonmember banks and their subsidiaries should generally meet certain standards before engaging in real estate investment activities that are not permissible for national banks. As a result, the FDIC is proposing to establish standards under which insured state nonmember banks may participate in real estate investment activities. Providing notice of such standards will allow insured state nonmember banks to initiate investment activities with knowledge of what the FDIC considers when evaluating the safety and soundness of the operations of the institution and its subsidiaries. The FDIC believes its proposal simplifies and clarifies the standards under which insured state nonmember banks may conduct their investment activities while providing comprehensive and flexible regulation of the dealings between a bank and its subsidiaries.

This proposal is consistent with the views expressed by the FDIC's then Chairman Ricki Helfer in her letter of May 30, 1997, to Eugene Ludwig, Comptroller of the Currency, in regard to the NationsBank operating subsidiary notices. In that letter, the FDIC's Chairman stated her view ''that real estate development activities present risks to the deposit insurance funds and therefore should be permitted for bank subsidiaries only where there is a clear legal separation from the insured bank, stringent firewalls and limited exposure of the capital of the consolidated organization.''

Under the FDIC's proposal, if an institution and its real estate investment operations meet the standards established, the institution need only file notice with the FDIC as outlined in subpart E. However, if the institution and its operations do not meet the general standards set forth in this rule, or if the institution so chooses, it may file application with the FDIC under § 362.4(b)(1) and subpart E. We request comment on the overall goal of the proposed regulation, particularly in light of the application filed with the Office of the Comptroller of the Currency by NationsBank, National Association, Charlotte, North Carolina to engage in limited real estate development activities and the proposal of the Board of Governors of the Federal Reserve System to apply sections 23A and 23B of the Federal Reserve Act to transactions between an insured depository institution and its subsidiary.

The following discussion summarizes some of the developments that have taken place in the area of real estate investment that the FDIC considered in establishing the general standards under which an insured state nonmember bank may undertake real estate investment activities. We request comment on all facets of this proposal.

The cyclical downturn in the real estate market in the late 1980s and early 1990s, and the impact of that downturn on financial institutions, provides an illustration of the market risk presented by real estate investment activities. In addition to the high degree of variability, real estate markets are, for the most part, localized; investments are normally not securitized; financial information flow is often poor; and the market is generally not very liquid.

A financial institution—like any other investor—faces substantial risks when it takes an equity position in a real estate venture. The function of an equity investor is to bear the economic risks of the venture. Economic risk is traditionally defined as the variability of returns on an investment. If a single investor undertakes a project alone, all the risk is borne by the investor. An investor typically will have a required rate of return based on the historical track record of a particular company and/or type of investment project. Market participants face a general trade-off: the riskier the project, the higher the required rate of return. A key aspect of that trade-off is the notion that a riskier project will entail a higher probability of significant losses for the investor. Assessments of the degree of risk will depend on factors affecting future returns such as cyclical economic developments, technological advances, structural market changes, and the project's sensitivity to financial market changes.

The actual return on an investment, however, will depend on developments beyond the investor's control. If the actual return is higher than the expected rate, the investor benefits. If the project falls short of expected returns, the investor suffers. At the extreme, an investor may lose all or some of the original investment. Investments in real estate ventures follow this pattern. In fact, equity investments in commercial real estate have long been considered fairly risky because of the uncertainties in the income stream they generate.

It is possible for the investor to deflect some of the risk of the project. When a project is partially financed by debt, the risks are shared with the lender. Nonetheless, the equity investor typically still bears the bulk of the variation in the risk and rewards of an investment. As a rule, the lender is compensated at an agreed amount (or formula in the case of a variable rate loan). The lender is paid—both interest and principal—before the equity investor/borrower receives any rewards or return of investment. Thus, any downside outcome is borne first by the equity investor. In properly underwritten loan arrangements, the lender bears the economic risk of significant losses only in the case of extremely negative outcomes. Since the legal priority of the debt holder is higher in a liquidation or bankruptcy than that of the equity holder, the debt holders are hurt if the investment entity has very limited resources. Of course, the borrower/equity investor receives all of the up-side potential returns from the investment.

While a leveraged investor has less of his/her own funds at stake, the use of borrowed funds to finance an investment greatly magnifies the variability of the returns to the equity investor. That is to say, leverage increases the risks involved. For

instance, a small decline in income in an unleveraged investment may only mean less positive returns; to the leveraged investor, it may mean out of pocket losses, as debt service may have already absorbed any income generated by the project. Conversely, a small increase in generated income may just moderately increase the rate of return on an all equity investment but have a major positive effect on the highly leveraged investor.

The fact that most commercial real estate investments are highly leveraged also affects overall market volatility. For instance, high interest rates will lower the expected rate of return for highly leveraged investments which will, in turn, lower effective demand. Thus, prices offered for commercial real estate during periods of high interest rates typically are lowered. For example, to the extent that there was a ''credit crunch'' for commercial real estate in the early 1990s and lenders were unwilling to extend credit, diminished effective demand for a property could have resulted in the elimination of a broad class of potential investors, rather than simply a lower price being bid.

The economic viability of any investment in real estate ultimately depends on the economic demand for the services it provides. Thus, fluctuations in the economy in general are translated into uncertainties in the underlying economics of most real estate investments. National economic trends, regional developments, and even local economic developments will affect the volatility of returns. A traditional problem for real estate investors in that regard is that when the economy as a whole reaches capacity during an economic expansion, they are one of the sectors seriously affected by the resulting run-up in interest rates.

Much of the uncertainty associated with real estate investment, however, comes from the nature of the production itself—how new supply is brought to market. Investments in the construction of real estate typically have a long gestation period; this long planning period is especially characteristic of large commercial development projects. Given the cyclical nature of the economy and financial markets, the economic prospects for an investment may change radically during that period, altering timing and terms of transactions.

Moreover, real estate investors also typically have trouble getting full information on current market conditions. Unlike highly organized markets where participants may easily obtain data on market developments such as price and supply considerations, information in the commercial real estate market is often difficult, or impossible, to obtain. Also inherent in the investment process for commercial real estate is the fact that the market is relatively illiquid—particularly for very large projects. Thus, instead of having numerous frequent transactions that incorporate the latest market information and ensure that prices reflect true economic value, markets may be thin and the timing of a sale or rental contract may affect the value of the underlying investments.

In addition to the inherent illiquidity of commercial real estate markets, transactions often are ''private deals'' in which the major parameters of the investment are not available to the public in general and, in particular, to rival developers. For instance, the costs of construction are a private transaction between the developer and his contractor. Likewise, evaluating selling prices or rental income is difficult since: (1) There are no statistical data on transaction prices available as there are for single-family structures and (2) even if there were data available, it is impossible to account for the many creative financing techniques involved in commercial sales and in rental agreements (e.g., tenant improvements and rent discounting).

Because of imperfect market information and the length of the production process, prices of existing structures are often artificially bid up in market upswings. That is, short-term shortages fuel speculative price increases. Speculative price increases (whether it be for raw land, developed construction sites, or completed buildings) typically encourage even more construction to take place, leading to additional future overbuilding relative to underlying demand.

In addition to the inherent cyclicality of real estate markets, several underlying factors create additional uncertainties in the investment process. Changes in tax laws will affect the profitability of real estate investments. For example, tax changes were a major consideration in the 1980s, but changes in depreciation allowances and in tax rates have been commonplace in the post-World War II era.

Another uncertainty is the effect of other governmental actions, especially in the area of regulations. A prime example is Federal mandates requiring clean-up of existing environmental hazards that imposed unexpected costs on investors at the time they were passed. Similar uncertainties result from state and local laws that effect real estate and how it may be developed. For instance, changes in environmental restrictions of new construction may add unexpected costs to a project or even bar its intended use. Similarly, a zoning change may positively or negatively affect investment prospects unexpectedly. All of these factors add to the uncertainty of returns and thereby increase the risk of the investment.

Two other considerations often play into increasing risks in real estate investment. First, the efficient execution of a real estate investment usually requires a ''hands on'' approach by an experienced manager. This level of involvement is especially true of a construction project where developers have to deal with a wide variety of problems ranging from governmental approvals to sub-contractors and changing commodity markets. For an investment in developed real estate, maintenance problems, replacing lost tenants, and adjusting rents to retain tenants all must be addressed in an environment of ever changing market conditions.

Many equity investors solve these problems by ''hiring'' someone else to manage the investment. The experience of the 1980s shows that there are specific risks involved in separating ownership from management. For instance, many tax-oriented investors in the early 1980s arguably knew little about the basic economics of the investments they were undertaking. In a perfect world, ''passive'' investment would work just as efficiently as direct, active investment. In reality, investment outcomes are likely to be more uncertain for equity investors when someone else is making decisions that affect the ultimate return. The experience and expertise of management is a critical factor, and there is much anecdotal evidence to suggest that the lack of adequate management creates a significant level of risk of loss.

The FDIC recognizes its ongoing responsibility to ensure the safe and sound operation of insured state nonmember banks and their subsidiaries. Thus, the Board of Directors of the FDIC has determined that there may be a need to restrict or prohibit certain real estate investment activities of subsidiaries of insured state nonmember banks. Therefore, the FDIC will not automatically follow the safety and soundness restrictions of an interpretation, order, circular or official bulletin issued by the OCC regarding real estate investment activities that are permissible for the subsidiary of a national bank when these activities are not permissible for a national bank.

Section 362.7(a) of the proposal is intended to address the FDIC's ongoing

supervisory concerns regarding real estate investment activities and to impose adequate limitations to address the FDIC's concerns about the safety and soundness of these activities. Depending upon the facts, the potential risks inherent in a bank subsidiary's involvement in real estate investment activities may make these restrictions and limitations necessary to protect the bank and ultimately the deposit insurance funds from losses associated with the significant risks inherent in real estate investment activities.

To address its safety and soundness concerns about real estate investment activities not permissible for a national bank, the FDIC has adopted the same standards when insured state banks conduct those real estate investment activities regardless of whether those real estate investment activities are permissible for a national bank subsidiary. This subpart is intended to address the impact on insured state nonmember banks if the OCC were to approve recent applications submitted by national banks to conduct real estate investment activities through operating subsidiaries. The FDIC invites comment on its approach to its safety and soundness concerns about real estate investment activities.

Unless the FDIC has previously approved the real estate investment activity that is not permissible for a national bank, an insured state nonmember bank must file a notice or application with the FDIC in order to directly or indirectly undertake a real estate investment activity, even if the real estate investment activity is permissible for the subsidiary of a national bank. To qualify for the notice provision proposed under this new regulation, the insured state nonmember bank and its subsidiary must meet the standards established in § 362.4(b)(5)(i). After filing a notice as provided for in subpart E to which the FDIC does not object, the institution may then proceed with its investment activities. If the insured state nonmember bank and its subsidiary do not meet the standards established under the proposed rule, or if the institution so chooses, an application may be filed as described in § 362.4(b)(1) and subpart E.

Affiliation With Securities Companies

Section 362.7(b) reflects the FDIC Board's longstanding view that an unrestricted affiliation with a securities company may have adverse effects on the safety and soundness of insured state nonmembers banks. This section reiterates the § 337.4 prohibition against any affiliation by an insured state nonmember bank with any company that directly engages in the underwriting of stocks, bonds, debentures, notes, or other securities which is not permissible for a national bank unless certain conditions are met. As proposed, the affiliation is only allowed if:

(1) The securities business of the affiliate is physically separate and distinct in its operations from the operations of the bank, provided that this requirement shall not be construed to prohibit the bank and its affiliate from sharing the same facility if the area where the affiliate conducts retail sales activity with the public is physically distinct from the routine deposit taking area of the bank;

(2) Has a chief executive officer of the affiliate who is not an employee of the bank;

(3) A majority of the affiliate's board of directors are not directors, officers, or employees of the bank;

(4) The affiliate conducts business pursuant to independent policies and procedures designed to inform customers and prospective customers of the affiliate that the affiliate is a separate organization from the bank;

(5) The bank adopts policies and procedures, including appropriate limits on exposure, to govern their participation in financing transactions underwritten by an underwriting affiliate;

(6) The bank does not express an opinion on the value or the advisability of the purchase or sale of securities underwritten or dealt in by an affiliate unless it notifies the customer that the entity underwriting, making a market, distributing or dealing in the securities is an affiliate of the bank;

(7) The bank does not purchase as principal or fiduciary during the existence of any underwriting or selling syndicate any securities underwritten by the affiliate unless the purchase is approved by the bank's board of directors before the securities are initially offered for sale to the public;

(8) The bank does not condition any extension of credit to any company on the requirement that the company contract with, or agree to contract with, the bank's affiliate to underwrite or distribute the company's securities;

(9) The bank does not condition any extension of credit or the offering of any service to any person or company on the requirement that the person or company purchase any security underwritten or distributed by the affiliate; and

(10) The bank complies with the investment and transaction limitations of § 362.4(d).

Many of the restrictions and prohibitions listed above are currently contained in § 337. 4. Additionally, the conditions that will be imposed on subsidiaries which engage in the public sale, distribution, or underwriting securities such as adopting independent policies and procedures governing participation in financing transactions underwritten by an affiliate, expressing opinions on the advisability of the purchase or sale of particular securities, and purchasing securities as principal or fiduciary only with prior board approval have been added. As indicated earlier, the prohibition against shared officers has been eased and now only refers to the chief executive officer. Comments on the appropriateness of the restrictions and prohibitions are solicited. As written, the proposal only applies these restrictions to an insured state nonmember bank affiliated with a company not treated as a bank holding company pursuant to section 4(f) of the Bank Holding Company Act (12 U.S.C. 1843(f)), that directly engages in the underwriting of stocks, bonds, debentures, notes, or other securities which are not permissible for a national bank. Other affiliates now covered by the safeguards of § 337.4 would no longer be covered under the FDIC's regulations. We believe that these other affiliates are adequately separated from the banks by the restrictions imposed by the FRB. We invite comment on whether we should include more entities in the coverage of these restrictions and whether these restrictions appropriately address the risks being undertaken by the affiliate and through the affiliate relationship.

C. Subpart C—Activities of Insured State Savings Associations

Section 362.8 Purpose and Scope

This subpart, together with the notice and application procedures of subpart F, implements the provisions of section 28 of the FDI Act (12 U.S.C. 1831e) that restrict and prohibit insured state savings associations and their service corporations from engaging in activities and investments of a type that are not permissible for federal savings associations and their service corporations. The phrase ''activity permissible for a federal savings association'' means any activity authorized for federal savings associations under any statute including the Home Owners Loan Act (HOLA) (12 U.S.C. 1464 *et seq.*), as well as activities recognized as permissible for a federal savings association in regulations, official thrift bulletins, orders or written interpretations issued by the Office of Thrift Supervision (OTS), or its predecessor, the Federal Home Loan

Bank Board. Regarding insured state savings associations, this subpart governs only activities conducted ''as principal'' and therefore does not govern activities conducted as agent for a customer, conducted in a brokerage, custodial, advisory, or administrative capacity, or conducted as trustee. This subpart does not restrict any interest in real estate in which the real property is (a) used or intended in good faith to be used within a reasonable time by an insured savings association or its service corporations as offices or related facilities for the conduct of its business or future expansion of its business or (b) used as public welfare investments of a type and in an amount permissible for federal savings associations. Equity investments acquired in connection with debts previously contracted that are held within the shorter of the time limits prescribed by state or federal law are not subject to the limitations of this subpart.

The FDIC intends to allow insured state savings associations and their service corporations to undertake only safe and sound activities and investments that do not present a significant risk to the deposit insurance funds and that are consistent with the purposes of federal deposit insurance and other applicable law. This subpart does not authorize any insured state savings association to make investments or conduct activities that are not authorized or that are prohibited by either federal or state law.

Section 362.9 Definitions

Section 362.9 of the proposal contains definitions used in this subpart. Rather than repeating terms defined in subpart A, the definitions contained in § 362.2 are incorporated into subpart C by reference. Included in the proposed definitions are most of the terms currently defined in § 303.13(a) of the FDIC's regulations. Editing changes are primarily intended enhance clarity without changing the meaning. However, certain deliberate changes are intended to alter the meaning of these terms and are identified in this discussion.

The terms ''Corporate debt securities not of investment grade'' and ''Qualified affiliate'' have been directly imported into subpart C from § 303.13(a) without substantive change. Substantially the same ''Control'' and ''Equity security'' definitions are incorporated by reference to subpart A. The last sentence of the current ''Equity security'' definition, which excludes equity securities acquired through foreclosure or settlement in lieu of foreclosure, would be deleted for the same reason that similar language has been deleted from several definitions in subpart A. Similar language is now included in the purpose and scope paragraph explaining that equity investments acquired through such actions are not subject to the regulation. No substantive change was intended by this modification.

Modified versions of ''Activity,'' ''Equity investment,'' ''Significant risk to the fund,'' and ''Subsidiary'' are also carried forward by reference to subpart A. The definition of activity has been broadened to encompass all activities including acquiring or retaining equity investments. Sections of this part governing activities *other than* acquiring or retaining equity investments include statements specifically excluding the activity of acquiring or retaining equity investments. This change was made to conform the ''Activity'' definition used in the regulation to that provided in the governing statutes. Both sections 24 and 28 of the FDI Act define activity to include acquiring or retaining any investment. We invite comment on whether this change enhances clarity or whether the longer definition found in the current regulation should be reinstated.

The ''Equity investment'' definition was also modified to better identify its components. The proposed definition includes any ownership interest in any company. This change was made to clarify that ownership interests in limited liability companies, business trusts, associations, joint ventures and other entities separately defined as a ''company'' are considered equity investments. The definition was likewise expanded to include any membership interest that includes a voting right in any company. Finally, a sentence was added excluding from the definition any of the identified items when taken as security for a loan. The intended effect of these changes is not to broaden the scope of the regulation, but instead to clarify the FDIC's position that such investments are all considered equity investments notwithstanding the form of business organization. We invite comment on whether these changes are helpful in defining equity investments. Comments are also requested on whether additional changes to this definition are needed.

The definition of ''Significant risk'' is effectively retitled ''Significant risk to the fund'' by the reference to subpart A. Additionally, a second sentence has been added to the definition explaining that a significant risk to the fund may be present either when an activity or an equity investment contributes or may contribute to the decline in condition of a particular state-chartered depository institution or when a type of activity or equity investment is found by the FDIC to contribute or potentially contribute to the deterioration of the overall condition of the banking system. This sentence is intended to elaborate on the FDIC Board's position that the absolute size of a projected loss in comparison to the deposit insurance funds is not determinative of the issue. Additionally, it clarifies the FDIC's position that risk to the fund may be present even if a particular activity or investment may not result in the imminent failure of a bank. Additional comments are included in the discussion of the relevant definition in subpart A. We invite comments on whether this language is appropriate or whether is should be further expanded.

With the exception of substituting the separately defined term ''company'' for the list of entities such as corporations, business trusts, associations, and joint ventures currently in the ''Subsidiary'' definition, the ''Subsidiary'' definition would be mostly unchanged. It is noted that limited liability companies are now included in the company definition and, by extension, are included in the subsidiary definition. The only other change is that the exclusion of ''Insured depository institutions'' for purposes of current § 303.13(f) has been moved to the purpose and scope section of proposed subpart D. No substantive changes are intended by these modifications. Comments are requested regarding whether the FDIC has inadvertently changed the intended meaning through these modifications.

While proposed subpart C retains substantially the same ''Service corporation'' definition, the word ''only'' has been deleted from the phrase ''available for purchase only by savings associations.'' This change is intended to make it clear that a service corporation of an insured state savings association may invest in lower-tier service corporations if allowed by this part or FDIC order, and it is consistent with the recently amended part 559 of the Office of Thrift Supervision's regulations (12 CFR 559). The change is not intended to alter the nature of the requirements governing the savings association's equity investment in the first-tier service corporation. Comments are requested regarding whether the FDIC has inadvertently altered the intended meaning through these changes.

As in subpart A, the definition of ''Equity investment in real estate'' is deleted in the proposal. The descriptions of real estate investments permissible for federal savings associations that were excepted from the

current definition provided by § 303.13(a)(5) were moved to the purpose and scope paragraph. As a result, readers are now informed that these excepted real estate investments are not subject to the regulation. Additionally, the FDIC believes that the remaining content of the current definition fails to provide any meaningful clarity or understanding. Therefore, the FDIC would instead rely on the ''equity investment'' definition to include relevant real estate investments. A related change was made to the ''equity investment'' definition by deleting the reference to ''equity interest in real estate'' and replacing it with language to include any interest in real estate (excluding real estate that is not within the scope of this part). No substantive changes were intended by these modifications. The FDIC invites comments on whether these changes have clarified the subject definitions. Comments are also requested concerning whether the FDIC has inadvertently changed the meaning of these definitions through these actions.

The only new definition specifically added to subpart C is the term ''Insured state savings association.'' Because this term is not explicitly defined in section 3 of the FDI Act, the proposal has added this term to ensure that readers clearly understand that an insured state savings association means any state chartered savings association insured by the FDIC. Comments are invited on whether this definition eliminates any ambiguity or whether it is actually needed. Additionally, applicable terms that were previously undefined but are added by the general incorporation of the definitions in subpart A should not result in any substantive changes to the meanings of those terms as currently used in § 303.13 of the FDIC's regulations.

Section 362.10 Activities of Insured State Savings Associations

Equity Investment Prohibition

Section 362.10(a)(1) of the proposal replaces the provisions of § 303.13(d) of the FDIC's regulations and restates the statutory prohibition preventing insured state savings associations from making or retaining any equity investment of a type, or in an amount, not permissible for a federal savings association. The prohibition does not apply if the statutory exception (restated in the current regulation and carried forward in the proposal) contained in section 28 of the FDI Act applies. With the exception of deleting items no longer applicable due to the passage of time, this provision is retained as currently in effect without any substantive changes.

Exception for Service Corporations

The FDIC proposes to retain the exception now in § 303.13(d)(2) which allows investments in service corporations as currently in effect without any substantive change. However, the FDIC has modified the language of this section using a structure paralleling that found in proposed subpart A permitting insured state banks to invest in majority-owned subsidiaries. Similar to the treatment accorded insured state banks, an insured state savings association must meet and continue to be in compliance with the capital requirements prescribed by the appropriate federal banking agency, and the FDIC must determine that neither the amount of the investment nor the activities to be conducted by the service corporation present a significant risk to the relevant deposit insurance fund. The criteria identified in the preceding sentence is derived directly from the underlying statutory language. In order for the insured state savings association to qualify for this exception, the service corporation must be engaging in activities or acquiring and retaining investments that are described in proposed § 362.11(b) as regulatory exceptions to the general prohibition.

Language currently in § 303.13(d) concerning the filing of applications to acquire an equity investment in a service corporation would be deleted and moved to subpart F of this regulation.

Divesting Impermissible Equity Investments

Section 303.13(d)(1) of the FDIC's current regulations requires savings associations to file divestiture plans with the FDIC concerning any equity investments held as of August 9, 1989, that were no longer permissible. Because divestiture was required by statute to occur no later than July 1, 1994, the proposal omits this provision as it is no longer necessary due to the passage of time.

Other Activities

Section 362.10(b) of the proposal replaces what are now §§ 303.13(b), 303.13(c), and 303.13(e) of the FDIC's regulations. Some portions of the existing sections would be eliminated because they are no longer necessary due to the passage of time, and other portions have been edited and reformatted in a manner consistent with the corresponding sections of subpart A. Language currently in the referenced sections of § 303.13 concerning notices and applications has likewise been edited, reformatted, and moved to subpart F of this regulation.

Other Activities Prohibition

Section 362.10(b)(1) of the proposal restates the statutory prohibition that insured state savings associations may not directly engage as principal in any activity of a type, or in an amount, that is not permissible for a federal savings association unless the activity meets a statutory or regulatory exception. Like subpart A for insured state banks, language has been added to clarify that this prohibition does not supercede the equity investment exception of § 362.10(a)(2). We added this language because acquiring or retaining any investment is defined as an activity.

The statutory prohibition preventing state and federal savings associations from directly, or indirectly through a subsidiary (other than a subsidiary that is a qualified affiliate), acquiring or retaining any corporate debt that is not of investment grade after August 9, 1989, is also carried forward from what is now § 303.13(e) of the FDIC's regulations. However, the proposal deletes the § 303.13(e) requirement that savings institutions file divestiture plans concerning corporate debt that is not of investment grade and that is held in a capacity other than through a qualified affililate. Divestiture was required by no later than July 1, 1994, rendering that provision unnecessary due to the passage of time.

Exceptions to the Other Activities Prohibition

We left the statutory exception to the other activities prohibition contained in section 28 of the FDI Act to function in a manner similar to that now in the relevant provisions of § 303.13; we intend no substantive change from the current regulation through any language changes we have made. The regulation continues to permit an insured state savings association to retain any asset (including a nonresidential real estate loan) acquired prior to August 9, 1989. However, corporate debt securities that are not of investment grade may only be purchased or held by a qualified affiliate. Whether or not the security is of investment grade is measured only at the time of acquisition.

Additionally, the FDIC has provided regulatory exceptions to the other activities prohibition. The first exception retains the application process currently in § 303.13(b)(1) and provides insured state savings associations with the option of applying to the FDIC for approval to engage in an

activity of a type that is not permissible for a federal savings association. The notice process from § 303.13(c)(1) has been retained for insured state savings associations that want to engage in activities of a type permissible for a federal savings association, but in an amount exceeding that permissible for federal savings associations. The proposal adds a regulatory exception enabling insured state savings associations to acquire and retain adjustable rate and money market preferred stock without submitting an application to the FDIC if the acquisition is done within the prescribed limitations. We added an exception to allow insured state savings associations to engage as principal in any activity that is not permissible for a federal savings association provided that the Federal Reserve has found the activity to be closely related to banking. This provision is similar to the exception for insured state banks and, similarly, this provision does not allow an insured state savings association to hold equity securities that a federal savings association may not hold.

Consent Obtained Through Application

Insured state savings associations are prohibited from directly engaging in activities of a type or in an amount not permissible for a federal savings association unless: (1) The association meets and continues to meet the capital standards prescribed by the appropriate federal financial institution regulator; and (2) the FDIC determines that conducting the activity in the additional amount will not present a significant risk to the relevant deposit insurance fund. Section 362.10(b)(2)(i) establishes an application option for savings associations that meet the relevant capital standards and that seek the FDIC's consent to engage in activities that are otherwise prohibited. The substance of this process is unchanged from the relevant sections of § 303.13 of the FDIC's current regulations.

Nonresidential Realty Loans Permissible for a Federal Savings Association Conducted in an Amount Not Permissible

The proposal carries forward and modifies the provision now in § 303.13(b)(1) of this chapter requiring an insured state savings association wishing to hold nonresidential real estate loans in amounts exceeding the limits described in section 5(c)(2)(B) of HOLA (12 U.S.C. 1464 (c)(2)(B)) to apply for the FDIC's consent. The proposal enables the insured state savings association to submit a notice instead of an application. This change is nonsubstantive and is made simply to expedite the process for insured state savings associations wanting to exceed the referenced limits.

Acquiring and Retaining Adjustable Rate and Money Market Preferred Stock

The proposal extends to insured state savings associations a revised version of the regulatory exception allowing an insured state bank to invest in up to 15 percent of its tier one capital in adjustable rate preferred stock and money market (auction rate) preferred stock without filing an application with the FDIC. By statute, however, insured savings associations are restricted in their ability to purchase debt that is not of investment grade. This regulatory exception does not override that statutory prohibition and any instruments purchased must comply with that statutory constraint. Additionally, this exception is only extended to savings associations meeting and continuing to meet the applicable capital standards prescribed by the appropriate federal financial institution regulator.

When this regulatory exception was adopted for insured state banks in 1992, the FDIC found that adjustable rate preferred stock and money market (auction rate) preferred stock were essentially substitutes for money market investments such as commercial paper and that their characteristics are closer to debt than to equity securities. Therefore, money market preferred stock and adjustable rate preferred stock were excluded from the definition of equity security. As a result, these investments are not subject to the equity investment prohibitions of the statute and the regulation and are considered an ''other activity'' for the purposes of this regulation.

This exception focuses on two categories of preferred stock. This first category, adjustable rate preferred stock refers to shares where dividends are established by contract through the use of a formula in based on Treasury rates or some other readily available interest rate levels. Money market preferred stock refers to those issues where dividends are established through a periodic auction process that establishes yields in relation to short term rates paid on commercial paper issued by the same or a similar company. The credit quality of the issuer determines the value of the security, and money market preferred shares are sold at auction.

The FDIC continues to believe that the activity of investing up to 15 percent of an institution's tier one capital does not represent a significant risk to the deposit insurance funds. Furthermore, the FDIC believes the same funding option should be available to insured state savings associations and proposes extending a like exception subject to the same revised limitation. The fact that prior consent is not required by this subpart does not preclude the FDIC from taking any appropriate action with respect to the activities if the facts and circumstances warrant such action.

The FDIC seeks comment on whether this treatment of money market preferred stock and adjustable rate preferred stock is appropriate and whether this exception should be extended to insured state savings associations. Is this exception useful and it is needed? Comment is requested on the proposed limit, particulary whether the limit is either too restrictive or overly generous. Comment is also requested concerning whether other, similar types of investments should be given similar treatment.

Activities That Are Closely Related to Banking Conducted by the Savings Association or a Service Corporation of an Insured Savings Association

The FDIC added an exception allowing an insured state savings association to engage in any activity ''as principal'' included on the FRB's list of activities (found at 12 CFR 225.28) or where the FRB has issued an order finding that the activity is closely related to banking. This exception is similar to that provided for insured state banks in subpart A. The FDIC believes that insured federal savings associations are permitted to do most of the activities covered by this exception and determined that the remaining activities do not present any substantially different risk when conducted by an insured savings association than when conducted by an insured state bank. The FDIC seeks comment on whether adding this express exception is helpful, redundant, or expands the powers of insured savings associations. We note that we did not propose a reference to activities found by OTS regulation or order to be reasonably related to the operation of financial institutions. Comment is invited on whether we should include this exception and, if so, how it should be incorporated into the regulation. Comment is requested concerning the appropriateness of the FRB's closely related to banking standard for savings associations. Is there another standard which would be more meaningful for state-chartered savings associations?

Guarantee Activities

The FDIC considered adding an exception for guarantee activities

including credit card guarantee programs and comparable arrangements that would have been similar to that deleted from subpart A in this proposal. These programs typically involve a situation where an institution guarantees the credit obligations of its retail customers. While we continue to believe that these activities present no significant risk to the deposit insurance funds, this provision has been deleted from subpart A of this proposal because the FDIC has determined that national banks, and therefore insured state banks, may already engage in the activities. We determined that federal savings associations, and by extension insured state savings associations, may engage in these activities as well. Nonetheless, the FDIC seeks comment on whether adding this language would be helpful to make it clear that insured state savings association may engage in these activities. Commenters advocating that the FDIC retain this exception in the final rule are asked to address how the exception might be incorporated into the regulation.

Section 362.11 Service Corporations of Insured State Savings Associations

Section 362.11 of the proposal governs the activities of service corporations of insured state savings associations and generally replaces what is now § 303.13(d)(2) of the FDIC's regulations. As proposed, the section reorganizes the substance of the current regulation and consolidates all provisions concerning the activities of service corporations into the same section of the regulation. Language currently in § 303.13(d) concerning applications would be revised and moved to subpart F of this regulation. Additionally, the FDIC proposes extending several regulatory exceptions that closely resemble similar exceptions provided to subsidiaries of insured state banks in subpart A of this proposed regulation. We note that if the service corporation is a new subsidiary or is a subsidiary conducting a new activity, all of the exceptions in § 362.11 remain subject to the notice provisions contained in section 18(m) of the FDI Act which would now be implemented in subpart D of this proposal.

General Prohibition

A service corporation of an insured state savings association may not engage in any activity that is not permissible for a service corporation of a federal savings association unless the savings association submits an application and receives the FDIC's consent or the activity qualifies for a regulatory exception. This provision does not represent a substantive change from the current regulation. The regulatory language implementing this prohibition has been separated from the restrictions in § 362.10 prohibiting an insured state savings association from directly engaging in activities which are not permissible for federal savings association. By separating the savings association's activities and those of a service corporation, § 362.11 deals exclusively with activities that may be conducted by a service corporation of an insured state savings association.

Consent Obtained Through Application

The proposal continues to allow insured state savings associations to submit applications seeking the FDIC's consent to engage in activities that are otherwise prohibited. Section 362.11(b)(1) carries forward the substance of the application option in § 303.13(d)(2)(ii) of the FDIC's current regulations. Approval will be granted only if: (1) The savings association meets and continues to meet the applicable capital standards prescribed by the appropriate federal banking agency, and (2) the FDIC determines that conducting the activity in the corresponding amount will not present a significant risk to the relevant deposit insurance fund.

Service Corporations Conducting Unrestricted Activities

The FDIC has found that it is not a significant risk to the deposit insurance fund if a service corporation engages in certain activities. One of these activities is holding the stock of a company that engages in: (1) Any activity permissible for a federal savings association; (2) any activity permissible for the savings association itself under § 362.10(b)(2)(iii) or (iv); (3) activities that are not conducted ''as principal;'' or (4) activities that are not permissible for a federal savings association provided that the FRB by regulation or order has found the activity to be closely related to banking and the service corporation exercises control over the issuer of the purchased stock. We provided similar exceptions to majority-owned subsidiaries of insured state banks in subpart A. We note that we revised the language in subpart A from that currently found in part 362 to clarify the intent of this provision. The proposal differentiates between a service corporation holding stock that is a control interest and investing in the shares of a company. The FDIC intends that this provision cover a service corporation's investment in lower level subsidiaries engaged in activities that the FDIC has found to present no significant risk to the fund. To comply with this exception, the service corporation must excercise control over the lower level entity. We expect savings associations that have lower level subsidiaries engaging in other activities to conform to the application or notice procedures set forth in this regulation.

The FDIC seeks comments on whether it is appropriate to extend this exception to insured state savings associations. Comments are requested on whether the proposed exception is overly broad, should be further restricted and, if so, how it should be narrowed.

Section 28 of the FDI Act requires the FDIC's consent before a service corporation may engage in *any* activity that is not permissible for a service corporation of a federal savings association. While the language of section 28 governs only activities conducted ''as principal'' by insured state savings associations, the ''as principal'' language was not extended to service corporations in the governing statute. This means that even if the activity is not conducted ''as principal,'' subpart C applies if the activity is not permissible for a service corporation of a federal savings asociation.

Because the FDIC believes that activities conducted other than ''as principal'' present no significant risk to the relevant deposit insurance fund, we provided an exception in § 362.11(b)(2)(ii) allowing a service corporation of an insured state savings association to act other than ''as principal,'' if the savings association meets and continues to meet the applicable capital standards prescribed by its appropriate federal banking agency. Examples of such activities are serving as a real estate agent or travel agent. The FDIC seeks comment on whether it is appropriate to extend this exception to service corporations of insured state savings associations. Comments are also requested on whether this exception is necessary.

Owning Equity Securities That Do Not Represent a Control Interest

Subject to the eligibility requirements and transaction limitations discussed below, the FDIC has determined that the activity of owning equity securities by a service corporation does not present a significant risk to the relevant deposit insurance fund. Section 362.11(b)(3) enables service corporations of insured state savings associations to purchase certain equity securities by incorporating substantially the same exception as that proposed in § 362.4(b)(4) of subpart A. This exception permits service corporations

of eligible insured state savings association to acquire and retain stock of insured banks, insured savings associations, bank holding companies, savings and loan holding companies. The FDIC is of the opinion that investments in such entities should not present significant risk to the relevant deposit insurance fund because these companies are subject to close regulatory and supervisory oversight. Furthermore, these entities mostly engage in activities closely related to banking.

The exception provided by this section also allows the subject service corporations to acquire and retain equity stock of companies listed on a national securities exchange. Listed securities are more liquid than nonlisted securities and companies whose stock is listed must meet capital and other requirements of the national securities exchanges. These requirements provide some assurances as to the quality of the investment. Insured state savings associations wanting to have their service corporations invest in other securities should be subject to the scrutiny of the application process.

Service corporations engaging in this activity must limit their investment to 10 percent of the voting stock of any company. This limitation reflects the FDIC's intent that this exception be used only as a vehicle to invest in equity securities. The 10 percent limitation was chosen because it reflects an investment level that is generally recognized as not involving control of the business. Additionally, the service corporation is not permitted to control any issuer of investment stock. These requirements reflect the FDIC's intent that the depository institution is not operating a business through investments in equity securities. Comment is requested concerning the appropriateness of the 10 percent limitation.

To be eligible for this exception, the insured state savings association must be well-capitalized exclusive of its investment in the service corporation. Additionally, the insured state savings association may not extend credit to the service corporation, purchase any debt instruments from the service corporation, or originate any other transaction that is used to benefit the corporation which invests in stock under this subpart. Finally, the savings association may have only one service corporation engaged in this activity. These requirements reflect the FDIC's desire that the scope of the exception should be limited. Institutions that wish to have multiple service corporations engaged in purchasing and retaining equity securities and that wish to extend credit to finance the transactions should use the applications procedures to request consent.

In addition to requesting comment on the particular exception as proposed, the FDIC requests comment on whether it is appropriate for the regulation to extend this exception to insured state savings associations in the same manner extended to insured state banks in subpart A. The FDIC also requests comment on the adequacy of the restrictions and constraints that it has proposed for the savings associations and service corporations that would hold these investments. What additional constraints, if any, should we consider adding for the savings associations and service corporations that would hold these investments?

Securities Underwriting

Section 362.11(b)(4) of the proposal allows an insured state savings association to acquire or retain an investment in a service corporation that underwrites or distributes securities that would not be permissible for a federal savings association to underwrite or distribute if notice is filed with the FDIC, the FDIC does not object to the notice before the end of the notice period, and a number of conditions are and continue to be met.

The proposed exception enabling service corporations to underwrite or distribute securities is patterned on the exception found in subpart A (see proposed § 362.4(b)(5)(ii)). In both cases, the state-chartered depository institution must conduct the securities activity in compliance with the core eligibility requirements, the same additional requirements listed for this activity in subpart A, and the investment and transaction limits. The savings association also must meet the capital requirements and the service corporation must meet the ''eligible subsidiary'' requirements as an ''eligible service corporation.'' Since the requirements are the same as those imposed in subpart A and the risks of the activity also are identical, the discussion in subpart A will not be repeated here.

Notice of Change in Circumstance

Like subpart A, the proposal requires the insured state savings association to provide written notice to the appropriate Regional Office of the FDIC within 10 business days of a change in circumstances. Under the proposal, a change in circumstances is described as a material change in the service corporation's business plan or management. Together with the insured state savings association's primiary federal financial institution regulator, the FDIC believes that it may address a savings association's falling out of compliance with any of the other conditions of approval through the normal supervision and examination process.

The FDIC is concerned about changes in circumstances which result from changes in management or changes in an service corporation's business plan. If material changes to either condition occur, the rule requires the association to submit a notice of such changes to the appropriate FDIC regional director (DOS) within 10 days of the material change. The standard of material change would indicate such events as a change in chief executive officer of the service corporation or a change in investment strategy or type of business or activity engaged in by the service corporation.

The FDIC will communicate its concerns regarding the continued conduct of an activity after a change in circumstances with the appropriate persons from the insured state savings association's primary federal banking agency. The FDIC will work with the identified persons from the primary federal banking agency to develop the appropriate response to the new circumstances.

It is not the FDIC's intention to require any savings association which falls out of compliance with eligibility conditions to immediately cease any activity in which the savings association had been engaged subject to a notice to the FDIC. The FDIC will instead deal with such eventuality on a case-by-case basis through the supervision and examination process. In short, the FDIC intends to utilize the supervisory and regulatory tools available to it in dealing with the savings association's failure to meet eligibility requirements on a continuing basis. The issue of the savings association's ongoing activities will be dealt with in the context of that effort. The FDIC is of the opinion that the case-by-case approach to whether a savings association will be permitted to continue an activity is preferable to forcing a savings association to, in all instances, immediately cease the activity in question. Such an inflexible approach could exacerbate an already unfortunate situation that probably is receiving supervisory attention.

Core Eligibility Requirements

The proposed regulation imports by reference the core eligibility requirements listed in subpart A. Refer to the discussion on this topic provided under subpart A for additional information. When reading the

referenced discussion, ''Subsidiary'' and ''Majority-owned subsidiary'' should be replaced with ''Service corporation.'' Additionally, ''eligible subsidiary'' should be replaced with ''Eligible service corporation.'' Finally, ''Insured state savings association'' shall be read to replace ''Bank'' or ''Insured state bank.'' Comments are requested concerning whether these standards are appropriate for insured state savings associations and their service corporations. Should other restrictions be considered? Have standards been imposed that are unnecessary to achieve separation between an insured state savings association and its service corporation?

Investment and Transaction Limits

The proposal contains investment limits and other requirements that apply to an insured state savings association and its service corporations engaging in activities that are not permissible for a federal savings association if the requirements are imposed by FDIC order or expressly imposed by regulation. In general, the provisions impose limits on a savings association's investment in any one service corporation, impose an aggregate limit on a savings association's investment in all service corporations that engage in the same activity, require extensions of credit from a savings association to its service corporations to be fully-collateralized when made, prohibit low quality assets from being taken as collateral on such loans, and require that transactions between the savings association and its service corporations be on an arm's length basis.

The proposal expands the definition of insured state savings association for the purposes of the investment and transaction limitations. A savings association includes not only the insured entity, but also any service corporation or subsidiary that is engaged in activities that are not subject to these investment and transaction limits.

Sections 23A and 23B of the Federal Reserve Act combine the bank and all of its subsidiaries in imposing investment limitations on all affiliates. The FDIC is using the same concept in separating subsidiaries and service corporations conducting activities that are subject to investment and transaction limits from the insured state savings association and any other service corporations and subsidiaries engaging in activities not subject to the investment and transaction limits.

Investment Limits

Under the proposal, a savings association's investment in certain service corporations may be restricted. Those limits are basically the same as would apply between a bank and its affiliates under section 23A: 10 percent of tier one capital for each service corporation and 20 percent for each activity. As is the case with covered transactions under section 23A, extensions of credit and other transactions with third parties that benefit the savings association's service corporation would be considered as being part of the savings association's investment. The only exception would be for arm's length extensions of credit made by the savings association to finance sales of assets by the service to third parties. These transactions would not need to comply with the collateral requirements and investment limitations, provided that they met certain arm's-length standards. The imposition of section 23A-type restrictions is intended to make sure that adequate safeguards are in place for the dealings between the insured state savings association and its service corporations.

The ''investment'' definition resembles that used in the relevant section of proposed subpart A, but it differs somewhat due to underlying statutory differences. The definition of investment for insured state savings associations includes only: (1) Extensions of credit to any person or company for which an insured state savings association accepts securities issued by the service corporation as collateral; and (2) any extensions or commitments of credit to a third party for investment in the subsidiary, investment in a project in which the subsidiary has an interest, or extensions of credit or commitments of credit which are used for the benefit of, or transferred to, the subsidiary.

The investment definition differs from that used in subpart A in that it excludes extensions of credit provided to the service corporation and any debt securities owned by the savings association that were issued by the service corporation. While these items are included in the investment definition in subpart A, insured state banks are not required to deduct the corresponding amounts from regulatory capital. The investment definition coverage in subpart C has been limited because an insured state savings association is required by the Home Owners' Loan Act to deduct from its regulatory capital any extensions of credit provided to a service corporation and any debt securities owned by the savings association that were issued by a service corporation engaging in activities that are not permissible for a national bank. Since the regulatory exceptions provided in subpart C that invoke the investment limits are not permissible for a national bank, insured state savings associations are required by the referenced statute to deduct these items from regulatory capital. The FDIC finds no reason to impose investment limits on amounts completely deducted from capital and therefore imposes the investment limitation only on items that are not deducted from regulatory capital.

The FDIC seeks comment on whether this definition of investment is appropriate. Commenters are asked to address whether this treatment is equitable given the underlying statutory differences and the FDIC welcomes suggested alternatives.

Like subpart A, the proposal calulates the 10 percent and 20 percent limits based on tier one capital while section 23A uses total capital. As was discussed earlier, the FDIC is using tier one capital as its measure to create consistency throughout the regulation. The proposal also limits the aggregate investment to all service corporations conducting the same activity. There is not a ''same activity'' standard in section 23A. The FDIC believes that the aggregate limitations should restrict concentrations in a particular activity and not impose a general limitation on activities that are not permissible for a service corporation of a federal savings association. For the purposes of this paragraph, the FDIC intends to interpret the ''same activity'' standard to mean broad categories of activities such as securities underwriting.

Transaction Requirements

The arm's length transaction requirement, prohibition on purchasing low quality assets, anti-tying restriction, and insider transaction restriction are applicable between an insured state savings association and a service corporation to the same extent and in the same manner as that described in subpart A between an insured state bank and certain majority-owned subsidiaries. Refer to the discussion of this topic in subpart A for comments.

Collateralization Requirement

The collateralization requirement in proposed § 362.4(d)(4) is also applicable between an insured state savings association and a service corporation to the same extent and in the same manner as that described in subpart A. Refer to

the discussion of this topic in subpart A for comments.

Capital Requirements

Under the proposed rule, an insured state savings association using the notice process to invest in a service corporation engaging in certain activities not permissible for a federal savings association must be ''well-capitalized'' after deducting from its regulatory capital any amount required by section 5(t) of the Home Owners Loan Act. The bank's risk classification assessment under part 327 is also determined after making the same deduction. This standard reflects the FDIC's belief that only well-capitalized institutions should be allowed, either without notice or by using the notice process, to engage through service corporations in activities that are not permissible for service corporations of federal savings associations. All savings associations failing to meet this standard and wanting to engage in such activities should be subject to the scrutiny of the application process. The FDIC seeks comments on whether this requirement is too restrictive.

Approvals Previously Granted

The FDIC proposes that insured state savings associations that have previously received consent by order or notice from this agency should not be required to reapply to continue the activity, provided the savings association and service corporation, as applicable, continue to comply with the conditions of the order of approval. It is not the intent of the FDIC to require insured state savings associations to request consent to engage in an activity which has already been approved previously by this agency.

Because previously granted approvals may contain conditions that are different from the standards that are established in this proposal, in certain circumstances, the insured state savings association may elect to operate under the restrictions of this proposal. Specifically, the insured state savings association bank may comply with the investment and transaction limitations between the savings association and its service corporations contained in § 362.11(c), the capital requirement limitations detailed in § 362.4(d), and the service corporation restrictions as outlined in the term ''eligible service corporation'' (by substitution) and contained in § 362.4(c)(2) in lieu of similar requirements in its approval order. Any conditions that are specific to a savings association's situation and do not fall within the above limitations will continue to be effective. The FDIC intends that once a savings association elects to follow these proposed restrictions instead of those in the approval order, it may not elect to revert to the applicable conditions of the order. The FDIC requests comment on this approach to approvals previously granted by this agency.

Other Matters on Which the FDIC Requests Comments

Comments describing the contents of subpart A include an extensive discussion of the FDIC's concerns with real estate investment activities. It is also noted that subpart A of the proposed regulation contains significant provisions regarding the real estate investment activities of majority-owned subsidiaries of insured state banks. Additionally, proposed subpart B in part addresses real estate activities of majority-owned subsidiaries that may become permissible for national bank subsidiaries.

The FDIC believes real estate investment activities present similar risks when conducted by a service corporation of an insured state savings association. However, subpart C of this proposal does not incorporate any of the requirements imposed in subparts A and B on real estate activities conducted by bank subsidiaries. While the FDIC has attempted to conform the treatment of insured state banks and their subsidiaries and that of insured state savings associations and their service corporation, differences in the governing statutes result in some variances.

Service corporations of federal savings associations may engage in numerous real estate investment activities and, therefore, the activities are permissible for service corporations of insured state savings associations. However, because real estate investment activities are not permissible for a national bank, insured state savings associations are required by the Home Owners' Loan Act to deduct from their regulatory capital any investment in a service corporation engaging in these activities. This deduction includes both the savings association's investments in (debt and equity) and extensions of credit to the service corporation. There are also statutory limitations on the amount of a savings association's investments in and credit extensions to service corporations.

Given the fact that: (1) Real estate investment activities are permissible for service corporations of federal savings associations; (2) there are statutory requirements regarding the capital deduction; and (3) there are statutory limitations on investments and credit extensions, this proposal does not contain any provisions concerning the real estate investment activities of service corporations of insured savings associations. As a result, the arm's length transaction requirements, prohibition on purchasing low quality assets, anti-tying restriction, insider transaction restriction, and the collateralization requirements are not applicable between an insured savings association and a service corporation engaging in real estate investment activities. Additionally, neither the insured savings association nor the service corporation are required to meet the eligibility standards; nor is a notice required to be submitted to the FDIC (unless a notice is needed pursuant to proposed subpart D).

Comment is invited on whether provisions should be added to part 362 subjecting service corporations of insured savings associations to the eligibility requirements and various restrictions that the FDIC has found necessary to implement in the proposed subparts A and B. Comments are requested regarding how the FDIC should implement any such provisions. If provisions are added, they would implement section 18(m) of the FDI Act which provides the FDIC with authority to adopt regulations prohibiting any specific activity that poses a serious threat to the Savings Association Insurance Fund.

Notice That a Federal Savings Association is Conducting Activities Grandfathered Under Section 5(I)(4) of HOLA

Section 303.13(g) of the FDIC's current regulations requires any federal savings association that is authorized by section 5(I)(4) of HOLA to conduct activities that are not normally permitted for federal savings associations to file a notice of that fact with the FDIC. Section 5(I)(4) of HOLA provides that any federal savings bank chartered as such prior to October 15, 1982, may continue to make investments and continue to conduct activities it was permitted to conduct prior October 15, 1982. It also provides that any federal savings bank organized prior to October 15, 1982, that was formerly a state mutual savings bank may continue to make investments and engage in activities that were authorized to it under state law. Finally, the provision confers this grandfather on any federal savings association that acquires by merger or consolidation any federal savings bank that enjoys the grandfather.

The notice requirement contained in § 303.13(g) is deleted under the

proposal. The notice is not required by law and is currently imposed by the FDIC as an information gathering tool. The FDIC has determined that eliminating the notice will reduce burden and will not materially affect the FDIC's supervisory responsibilities.

D. Subpart D of Part 362 Acquiring, Establishing, or Conducting New Activities Through a Subsidiary by an Insured Savings Association

Section 362.13 Purpose and Scope

Subpart D implements the statutory requirement of section 18(m) of the FDI Act. Section 18(m) requires that prior notice be given to the FDIC when an insured savings association, both federal and state, establishes or acquires a subsidiary or engages in any new activity in a subsidiary. This requirement is based on the FDIC's role of ensuring that activities and investments of insured savings associations do not represent a significant risk to the affected deposit insurance fund. In fulfilling that role, the FDIC needs to be aware of the activities contemplated by subsidiaries of insured savings associations. It is noted that for purposes of this subpart, a service corporation is a subsidiary, but the term subsidiary does not include any insured depository institution as that term is defined in the FDI Act. Because this requirement applies to both federal and state savings associations, the proposal would segregate the implementing requirements of the FDIC's regulations into a separate subpart D. In that manner, the requirement is highlighted for both federal and state savings associations.

Notice of the Acquisition or Establishment of a Subsidiary, or Notice That an Existing Subsidiary Will Conduct New Activities

Section 303.13(f) of the FDIC's current regulations (1) requires savings associations to file a notice with the FDIC by January 29, 1990, listing subsidiaries held by the association at that time (essentially a ''catch up'' notice), (2) establishes an abbreviated notice procedure concerning subsidiaries created to hold real estate acquired pursuant to DPC (after the first notice, additional real estate subsidiaries created to hold real estate acquired through DPC could be established after providing the FDIC with 14 days prior notice), and (3) lists the content of the notice. The proposed section would delete the first item because it no longer necessary due to the passage of time. The second item is also deleted because the FDIC seeks to conform all notice periods used in this regulation. While proposed § 362.14 continues to require a prior notice, the required content of the notice would be revised in a manner consistent with that required for other notices under this regulation and moved to subpart F of this regulation. The FDIC wants to make it clear that any notice or application submitted to the FDIC pursuant to a provision of subpart C of this regulation will satisfy the notice requirement of this subpart D.

The FDIC seeks comment on whether deleting the abreviated notice period currently in § 303.13(f) imposes a substantial burden, or if the benefits gained by applying the concept of uniform notice periods exceed any potential burden. Comment is also requested on whether explicit references are needed in the regulation to clarify that the notice required under this subpart also applies to newly acquired or established service corporations and service corporations conducting new activitities.

E. Subpart E—Applications and Notices; Activities and Investments of Insured State Banks

Overview

This proposed rule includes a separate subpart E containing application procedures and delegations of authority for the substantive matters covered by the proposal for insured state banks.[13] As discussed above, the FDIC is currently preparing a complete revision of part 303 of the FDIC's rules and regulations containing the FDIC's applications procedures and delegations of authority. As part of these revisions to part 303, subpart G of part 303 will address application requirements relating to the activities of insured state nonmember banks. It is the FDIC's intent that at such time as part 362 and part 303 are both final, the application procedures proposed in subpart E of this proposal will be relocated to subpart G of part 303 to centralize all banking application and notice procedures in one convenient place.

Section 362.15 Scope

This subpart contains the procedural and other information for any application or notice that must be submitted under the requirements specified for activities and investments of insured state banks and their subsidiaries under subparts A and B, including the format, information requirements, FDIC processing deadlines, and other pertinent guidelines or instructions. The proposal also contains delegations of authority from the Board of Directors to the director and deputy director of the Division of Supervision.

Section 362.16 Definitions

This subpart contains practical, procedural definitions of the following terms: ''Appropriate regional director,'' ''Appropriate deputy regional director,'' ''Appropriate regional office,'' ''Associate director,'' ''Deputy Director,'' ''Deputy regional director,'' ''DOS,'' ''Director,'' and ''Regional director.'' These definitions should be self-explanatory. When this subpart is moved to part 303 as subpart G, most, if not all, of these definitions should be contained in the general definitions to that part and will no longer be necessary in the subpart. Comments are requested on the clarity of these definitions.

Section 362.17 Filing Procedures

This section explains to insured state banks where they should file, how they should file and the contents of any filing, including any copies of any application or notice filed with another agency. This section also explains that the appropriate regional director may request additional information. Comments are requested on the clarity of these explanations.

Section 362.18 Processing

This section explains the procedures for the expedited processing of notices and the regular processing of applications and notices that have been removed from expedited processing. This section also explains how a notice is removed from expedited processing. The expedited processing period for notices will normally be 30 days, subject to extension for an additional 15 days upon written notice to the bank. The FDIC will normally review and act on applications within 60 days after receipt of a completed application, subject to extension for an additional 30 days upon written notice to the bank. Comments are requested on the clarity of these explanations of the processing procedures.

Section 362.19 Delegations of Authority

The authority to review and act upon applications and notices is delegated in this section. The only substantive change to the existing delegation is the addition of the deputy director of the Division of Supervision.

[13] Under the FDIC's current rules, these application requirements are located in various sections of three different regulations: 12 CFR 303, 12 CFR 337.4 and 12 CFR 362.

F. Subpart F—Applications and Notices; Activities and Investments of Insured Savings Associations

Overview

This proposed rule includes a separate subpart F containing application procedures and delegations of authority for the substantive matters covered by the proposal for savings associations. As discussed above, the FDIC is currently preparing a complete revision of part 303 of the FDIC's rules and regulations containing the FDIC's applications procedures and delegations of authority. As part of these revisions to part 303, subpart H of part 303 will address application requirements relating to the activities of savings associations. It is the FDIC's intent that at such time as part 362 and part 303 are both final, the application procedures proposed in subpart F of this proposal will be relocated to subpart H of part 303 to centralize application and notice procedures governing all savings associations in one convenient place.

Section 362.20 Scope

This subpart contains the procedural and other information for any application or notice that must be submitted under the requirements specified for activities and investments of insured savings associations and their subsidiaries under subparts C and D, including the format, information requirements, FDIC processing deadlines, and other pertinent guidelines or instructions. The proposal also contains delegations of authority from the Board of Directors to the director and deputy director of the Division of Supervision.

Section 362.21 Definitions

This subpart contains practical, procedural definitions of the following terms: ''Appropriate regional director,'' ''Appropriate deputy regional director,'' ''Appropriate regional office,'' ''Associate director,'' ''Deputy Director,'' ''Deputy regional director,'' ''DOS,'' ''Director,'' and ''Regional director.'' These definitions should be self-explanatory. When this subpart is moved to part 303 as subpart H, most, if not all, of these definitions should be contained in the general definitions to that part and will no longer be necessary in the subpart. Comments are requested on the clarity of these definitions.

Section 362.22 Filing Procedures

This section explains to insured savings associations where they should file, how they should file and the contents of any filing, including any copies of any application or notice filed with another agency. This section also explains that the appropriate regional director may request additional information. Comments are requested on the clarity of these explanations.

Section 362.23 Processing

This section explains the procedures for the expedited processing of notices and the regular processing of applications and notices that have been removed from expedited processing. This section also explains how a notice is removed from expedited processing. The expedited processing period for notices will normally be 30 days, subject to extension for an additional 15 days upon written notice to the bank. The FDIC will normally review and act on applications within 60 days after receipt of a completed application, subject to extension for an additional 30 days upon written notice to the bank. Comments are requested on the clarity of these explanations of the processing procedures.

Section 362.24 Delegations of Authority

The authority to review and act upon applications and notices is delegated in this section. The only substantive change to the existing delegation is the addition of the deputy director of the Division of Supervision.

The FDIC requests public comments about all aspects of the proposal. In addition, the FDIC is raising specific questions for public comment throughout the preamble discussion.

IV. Paperwork Reduction Act

The collection of information contained in this proposed rule and identified below have been submitted to the Office Of Management and Budget (OMB) for review and approval in accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et. seq.*). Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments should be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer Alexander Hunt, New Executive Office Building, Room 3208, Washington, D.C. 20503, with copies of such comments to Steven F. Hanft, Assistant Executive Secretary (Regulatory Analysis), Federal Deposit Insurance Corporation, room F–400, 550 17th Street, NW, Washington, D.C. 20429. All comments should refer to ''Part 362.'' OMB is required to make a decision concerning the collections of information contained in the proposed regulations between 30 and 60 days after the publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of this publication. This does not affect the deadline for the public to comment to the FDIC on the proposed regulation.

Title of the collection of information: Activities and Investments of Insured State Banks, OMB Control number 3064–0111.

Summary of the collection: A description of the activity in which an insured state bank or its subsidiary proposes to engage that would be impermissible absent the FDIC's consent or nonobjection, and information about the relationship of the proposed activity to the bank's and/or subsidiary's operation and compliance with applicable laws and regulations, as detailed at § 362.17.

Need and use of the information: The FDIC uses the information to determine whether to grant consent or provide a nonobjection for the insured state bank or its subsidiary to engage in the proposed activity that otherwise would be impermissible pursuant to § 24 of the FDI Act and proposed Part 362.

Respondents: Banks or their subsidiaries desiring to engage in activities that would be impermissible absent the FDIC's consent or nonobjection.

Estimated annual burden:

Frequency of response: Occasional
Number of responses: 18
Average number of hours to prepare an application or notice: 7 hours
Total annual burden: 126 hours

Title of the collection of information: Activities and Investments of Insured Savings Associations, OMB Control number 3064–0104.

Summary of the collection: A description of the activity in which an insured state savings association or its service corporation proposes to engage that would be impermissible absent notification to the FDIC or absent the FDIC's consent or nonobjection and information about the relationship of the proposed activity to the savings association's and/or service

corporation's operation and compliance with applicable laws and regulations, as detailed at § 362.22 and § 362.23(c). Also, a notice of the new activities to be conducted by a subsidiary or the activities to be conducted by a newly formed or acquired subsidiary of insured state and federal savings associations in accordance with § 362.23(c).

Need and use of the information: The FDIC uses the information to determine whether to grant consent or provide a nonobjection for the insured state savings association or its service corporation to engage in the proposed activity that otherwise would be impermissible for the savings association or service corporation under § 28 of the FDI Act and proposed Part 362. The FDIC also collects information under § 18(m) of the FDI Act regarding activities of existing or acquired subsidiaries to monitor the types of activities being conducted by subsidiaries of savings associations.

Respondents: Insured state savings associations or their subsidiaries desiring to engage in activities that would be impermissible absent notification or the FDIC's consent or nonobjection. All insured savings associations must give notice prior to acquiring or establishing a new subsidiary or initiating a new activity through a subsidiary.

Estimated annual burden:

Frequency of response: Occasional
Number of responses: 24
Average number of hours to prepare an application or notice: 5 hours
Total annual burden: 120 hours

V. Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the FDIC certifies that this proposed rule will not have a significant impact on a substantial number of small entities. The proposed rule streamlines requirements for all insured state banks and insured state savings associations. The requirements for insured federal savings associations are statutory and remain unchanged by this rule. It simplifies the requirements that apply when insured state banks and insured state savings associations create, invest in, or conduct new activities through majority-owned corporate subsidiaries and service corporations, respectively, by eliminating requirements for any filing or reducing the burden from filing an application to filing a notice in other instances. The rule also simplifies the information required for both notices and applications. Whenever possible, the rule clarifies the expectations of the FDIC when it requires notices or applications to consent to activities by insured state banks and insured state savings associations. The proposed rule will make it easier for small insured state banks and insured state savings associations to locate the rules that apply to their investments.

List of Subjects

12 CFR Part 303

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

12 CFR Part 337

Banks, banking, reporting and recordkeeping requirements, securities.

12 CFR Part 362

Administrative practice and procedure, Authority delegations (Government agencies), Bank deposit insurance, Banks, banking, Insured depository institutions, Investments, Reporting and recordkeeping requirements.

For the reasons set forth above and under the authority of 12 U.S.C. 1819(a)(Tenth), the FDIC Board of Directors hereby proposes to amend 12 CFR chapter III as follows:

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

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

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

§ 303.13 [Removed]

2. § 303.13 is removed.

PART 337—UNSAFE AND UNSOUND BANKING PRACTICES

3. The authority citation for part 337 continues to read as follows:

Authority: 12 U.S.C. 375a(4), 375b, 1816, 1818(a), 1818(b), 1819, 1819, 1820(d)(10), 1821(f), 1828(j)(2), 1831f, 1831f–1.

§ 337.4 [Removed and Reserved]

4. § 337.4 is removed and reserved.

5. Part 362 is revised to read as follows:

PART 362—ACTIVITIES OF INSURED STATE BANKS AND INSURED SAVINGS ASSOCIATIONS

Subpart A—Activities of Insured State Banks

Sec.
362.1 Purpose and scope.
362.2 Definitions.
362.3 Activities of insured state banks.
362.4 Subsidiaries of insured state banks.
362.5 Approvals previously granted.

Subpart B—Safety and Soundness Rules Governing Insured State Nonmember Banks

362.6 Purpose and scope.
362.7 Restrictions on activities of insured state nonmember banks.

Subpart C—Activities of Insured State Savings Associations

362.8 Purpose and scope.
362.9 Definitions.
362.10 Activities of insured state savings associations.
362.11 Service corporations of insured state savings associations.
362.12 Approvals previously granted.

Subpart D—Acquiring, Establishing, or Conducting New Activities through a Subsidiary by an Insured Savings Association

362.13 Purpose and scope.
362.14 Acquiring or establishing a subsidiary; conducting new activities through a subsidiary.

Subpart E—Applications and Notices; Activities of Insured State Banks

362.15 Scope.
362.16 Definitions.
362.17 Filing procedures.
362.18 Processing.
362.19 Delegations of authority.

Subpart F—Applications and Notices; Activities of Insured Savings Associations

362.20 Scope.
362.21 Definitions.
362.22 Filing procedures.
362.23 Processing.
362.24 Delegations of authority.

Authority: 12 U.S.C. 1816, 1818, 1819 (Tenth), 1828(m), 1831a, 1831(e).

Subpart A—Activities of Insured State Banks

§ 362.1 Purpose and scope.

(a) This subpart, along with the notice and application procedures in subpart E, implements the provisions of section 24 of the Federal Deposit Insurance Act (12 U.S.C. 1831a) that restrict and prohibit insured state banks and their subsidiaries from engaging in activities and investments that are not permissible for national banks and their subsidiaries. The phrase ''activity permissible for a national bank'' means any activity authorized for national banks under any statute including the National Bank Act (12 U.S.C. 21 *et seq.*),

as well as activities recognized as permissible for a national bank in regulations, official circulars, bulletins, orders or written interpretations issued by the Office of the Comptroller of the Currency (OCC).

(b) This subpart does not cover the following activities:

(1) Activities conducted other than ''as principal.'' Therefore, this subpart does not restrict activities conducted as agent for a customer, conducted in a brokerage, custodial, advisory, or administrative capacity, or conducted as trustee;

(2) Interests in real estate in which the real property is used or intended in good faith to be used within a reasonable time by an insured state bank or its subsidiaries as offices or related facilities for the conduct of its business or future expansion of its business or used as public welfare investments of a type permissible for national banks; and

(3) Equity investments acquired in connection with debts previously contracted that are held within the shorter of the time limits prescribed by state or federal law.

(c) A majority-owned subsidiary of an insured state bank may not engage in real estate investment activities that are not permissible for a subsidiary of a national bank unless the bank does so through a majority-owned subsidiary, is in compliance with applicable capital standards, and the FDIC has determined that the activity poses no significant risk to the appropriate deposit insurance fund. Subpart A provides standards for insured state banks engaging in real estate investment activities that are not permissible for a subsidiary of a national bank. Because of safety and soundness concerns relating to real estate investment activities, subpart B reflects special rules for subsidiaries of insured state nonmember banks that engage in real estate investment activities of a type that are not permissible for a national bank, but may be otherwise permissible for a subsidiary of a national bank.

(d) The FDIC intends to allow insured state banks and their subsidiaries to undertake only safe and sound activities and investments that do not present significant risks to the deposit insurance funds and that are consistent with the purposes of federal deposit insurance and other applicable law. This subpart does not authorize any insured state bank to make investments or to conduct activities that are not authorized or that are prohibited by either state or federal law.

§ 362.2 Definitions.

(a) For the purposes of this subpart, the terms ''bank,'' ''state bank,'' ''savings association,'' ''state savings association,'' ''depository institution,'' ''insured depository institution,'' ''insured state bank,'' ''federal savings association,'' and ''insured state nonmember bank'' shall each have the same respective meaning contained in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813), and the following definitions shall apply:

(b) *Activity* means the conduct of business by a state-chartered depository institution, including acquiring or retaining an equity investment or other investment.

(c) *As principal* means any activity conducted other than as agent for a customer, is conducted other than in a brokerage, custodial, advisory, or administrative capacity, or is conducted other than as trustee.

(d) *Change in control* means (1) any transaction for which a notice is required to be filed with the FDIC, or the Board of Governors of the Federal Reserve System (FRB), pursuant to section 7(j) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)) except a transaction that is presumed to be an acquisition of control under the FDIC's or FRB's regulations implementing section 7(j), or (2) any transaction as a result of which a depository institution eligible for the exception described in § 362.3(b)(2)(B) is acquired by or merged into a depository institution that is not eligible for the exception.

(e) *Company* means any corporation, partnership, limited liability company, business trust, association, joint venture, pool, syndicate or other similar business organization.

(f) *Control* means the power to vote, directly or indirectly, 25 per cent or more of any class of the voting securities of a company, the ability to control in any manner the election of a majority of a company's directors or trustees, or the ability to exercise a controlling influence over the management and policies of a company.

(g) *Convert its charter* means an insured state bank undergoes any transaction that causes the bank to operate under a different form of charter than it had as of December 19, 1991, except a change from mutual to stock form shall not be considered a charter conversion.

(h) *Equity investment* means an ownership interest in any company; any membership interest that includes a voting right in any company; any interest in real estate; any transaction which in substance falls into any of these categories even though it may be structured as some other form of business transaction; and includes an equity security. The term ''equity investment'' does not include any of the foregoing if the interest is taken as security for a loan.

(i) *Equity security* means any stock (other than adjustable rate preferred stock and money market (auction rate) preferred stock) certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, or voting-trust certificate; any security immediately convertible at the option of the holder without payment of substantial additional consideration into such a security; any security carrying any warrant or right to subscribe to or purchase any such security; and any certificate of interest or participation in, temporary or interim certificate for, or receipt for any of the foregoing.

(j) *Extension of credit, executive officer, director, principal shareholder,* and *related interest* each has the same respective meaning as is applicable for the purposes of section 22(h) of the Federal Reserve Act (12 U.S.C. 375) and § 337.3 of this chapter.

(k) *Institution* shall have the same meaning as ''state-chartered depository institution.''

(l) *Majority-owned subsidiary* means any corporation in which the parent insured state bank owns a majority of the outstanding voting stock.

(m) *National securities exchange* means a securities exchange that is registered as a national securities exchange by the Securities and Exchange Commission pursuant to section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) and the National Market System, i.e., the top tier of the National Association of Securities Dealers Automated Quotation System.

(n) *Real estate investment activity* means any interest in real estate (other than as security for a loan) held directly or indirectly that is not permissible for a national bank and is not real estate leasing.

(o) *Residents of the state* includes individuals living in the state, individuals employed in the state, any person to whom the company provided insurance as principal without interruption since such person resided in or was employed in the state, and companies or partnerships incorporated in, organized under the laws of, licensed to do business in, or having an office in the state.

(p) *Security* has the same meaning as it has in part 344 of this chapter.

(q) *Significant risk to the deposit insurance fund* shall be understood to be present whenever the FDIC determines there is a high probability that any insurance fund administered by the FDIC may suffer a loss. Such risk may be present either when an activity contributes or may contribute to the decline in condition of a particular state-chartered depository institution or when a type of activity is found by the FDIC to contribute or potentially contribute to the deterioration of the overall condition of the banking system.

(r) *State-chartered depository institution* means any state bank or state savings association insured by the FDIC.

(s) *Subsidiary* means any company controlled by an insured depository institution.

(t) *Tier one capital* has the same meaning as set forth in part 325 of this chapter for an insured state nonmember bank. For other state-chartered depository institutions, the term ''tier one capital'' has the same meaning as set forth in the capital regulations adopted by the appropriate Federal banking agency.

(u) *Well-capitalized* has the same meaning set forth in part 325 of this chapter for an insured state nonmember bank. For other state-chartered depository institutions, the term ''well-capitalized'' has the same meaning as set forth in the capital regulations adopted by the appropriate Federal banking agency.

§ 362.3 Activities of insured state banks.

(a) *Equity investments.* (1) Prohibited equity investments. No insured state bank may directly or indirectly acquire or retain as principal any equity investment of a type that is not permissible for a national bank unless one of the exceptions in § 362.3(a)(2) applies.

(2) *Exceptions.* (i) *Equity investment in majority-owned subsidiaries.* An insured state bank may acquire or retain an equity investment in a majority-owned subsidiary, provided that the majority-owned subsidiary is engaging in activities that are allowed pursuant to the provisions of or application under § 362.4(b).

(ii) *Investments in qualified housing projects.* An insured state bank may invest as a limited partner in a partnership the sole purpose of which is to invest in the acquisition, rehabilitation, or new construction of a qualified housing project, provided that the bank's aggregate investment (including legally binding commitments) does not exceed, when made, 2 percent of total assets as of the date of the bank's most recent consolidated report of condition prior to making the investment. For the purposes of this paragraph, *Aggregate investment* means the total book value of the bank's investment in the real estate calculated in accordance with the instructions for the preparation of the consolidated report of condition. *Qualified housing project* means residential real estate intended to primarily benefit lower income persons throughout the period of the bank's investment including any project that has received an award of low income housing tax credits under section 42 of the Internal Revenue Code (26 U.S.C. 42) (such as a reservation or allocation of credits) from a state or local housing credit agency. A residential real estate project that does not qualify for the tax credit under section 42 of the Internal Revenue Code will qualify under this exception if 50 percent or more of the housing units are to be occupied by lower income persons. A project will be considered residential despite the fact that some portion of the total square footage of the project is utilized for commercial purposes, provided that such commercial use is not the primary purpose of the project. *Lower income* has the same meaning as ''low income'' and ''moderate income'' as defined for the purposes of § 345.12(n) (1) and (2) of this chapter.

(iii) *Grandfathered investments in common or preferred stock; shares of investment companies.* (A) *General.* An insured state bank that is located in a state which as of September 30, 1991, authorized investment in:

(*1*)(*i*) Common or preferred stock listed on a national securities exchange (listed stock); or

(*ii*) Shares of an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (registered shares); and

(*2*) Which during the period beginning on September 30, 1990, and ending on November 26, 1991, made or maintained an investment in listed stock or registered shares, may retain whatever lawfully acquired listed stock or registered shares it held and may continue to acquire listed stock and/or registered shares, provided that the bank files a notice in accordance with section 24(f)(6) of the Federal Deposit Insurance Act and the FDIC does not object. The content of the notice and procedures to process the notice shall conform to the requirements of § 362.18(a). Approval will not be granted unless the FDIC determines that acquiring or retaining the stock or shares does not pose a significant risk to the fund. Approval may be subject to whatever conditions or restrictions the FDIC determines are necessary or appropriate.

(B) *Loss of grandfather exception.* The exception for grandfathered investments under paragraph (a)(2)(iii)(A) of this section shall no longer apply if the bank converts its charter or the bank or its parent holding company undergoes a change in control. If any of these events occur, the bank may retain its existing investments unless directed by the FDIC or other applicable authority to divest the listed stock or registered shares.

(C) *Maximum permissible investment.* A bank's aggregate investment in listed stock and registered shares under paragraph (a)(2)(iii)(A) of this section shall in no event exceed, when made, 100 percent of the bank's tier one capital as measured on the bank's most recent consolidated report of condition prior to making any such investment. Book value of the investment shall be used to determine compliance. The total book value of the bank's investment in the listed stock and registered shares is calculated in accordance with the instructions for the preparation of the consolidated report of condition. The FDIC may determine when acting upon a notice filed in accordance with § 362.18(a) that the permissible limit for any particular insured state bank is something less than 100 percent of tier one capital.

(iv) *Stock investment in insured depository institutions owned exclusively by other banks and savings associations.* An insured state bank may acquire or retain the stock of an insured depository institution if the insured depository institution engages only in activities permissible for national banks; the insured depository institution is subject to examination and regulation by a state bank supervisor; the voting stock is owned by 20 or more insured depository institutions, but no one institution owns more than 15 percent of the voting stock; and the insured depository institution's stock (other than directors' qualifying shares or shares held under or acquired through a plan established for the benefit of the officers and employees) is owned only by insured depository institutions.

(v) *Stock investment in insurance companies.* (A) *Stock of director and officer liability insurance company.* An insured state bank may acquire and retain up to 10 percent of the outstanding stock of a corporation that solely provides or reinsures directors'', trustees'', and officers' liability insurance coverage or bankers' blanket bond group insurance coverage for insured depository institutions.

(B) *Stock of savings bank life insurance company.* An insured state

bank located in Massachusetts, New York, or Connecticut may own stock in a savings bank life insurance company, provided that the savings bank life insurance company provides written disclosures to purchasers or potential purchasers of life insurance policies, other insurance products, and annuities that are consistent with the disclosures described in the Interagency Statement on the Retail Sale of Nondeposit Investment Products (FIL–9–94,[1] February 17, 1994) or any successor statement which indicate that the policies, products, and annuities are not FDIC insured deposits, are not guaranteed by the bank and may involve risk of loss.

(b) *Activities other than equity investments*—(1) *Prohibited activities.* An insured state bank may not directly or indirectly engage as principal in any activity that is not an equity investment and is of a type not permissible for a national bank unless one of the exceptions in paragraph (b)(2) of this section applies.

(2) *Exceptions.* (i) Consent obtained through application. An insured state bank that meets and continues to meet the applicable capital standards set by the appropriate Federal banking agency may conduct activities prohibited by § 362.3(b)(1) if the bank obtains the FDIC's prior consent. Consent will be given only if the FDIC determines that the activity poses no significant risk to the affected deposit insurance fund. Applications for consent should be filed in accordance with § 362.18(b). Approvals granted under § 362.18(b) may be made subject to any conditions or restrictions found by the FDIC to be necessary to protect the deposit insurance funds from risk, to prevent unsafe or unsound banking practices, and/or to ensure that the activity is consistent with the purposes of federal deposit insurance and other applicable law.

(ii) *Insurance underwriting*—(A) *Savings bank life insurance.* An insured state bank that is located in Massachusetts, New York or Connecticut may provide as principal savings bank life insurance through a department of the bank, provided that the department meets the core standards of paragraph (c) of this section.

(B) *Federal crop insurance.* Any insured state bank that was providing insurance as principal on or before September 30, 1991, which was reinsured in whole or in part by the Federal Crop Insurance Corporation, may continue to do so.

(C) *Grandfathered insurance underwriting.* A well-capitalized insured state bank that on November 21, 1991, was lawfully providing insurance as principal through a department of the bank may continue to provide insurance as principal to the residents of the state or states in which the bank did so on such date provided that the bank's department meets the core standards of paragraph (c) of this section.

(iii) *Acquiring and retaining adjustable rate and money market preferred stock.* An insured state bank's investment of up to 15 percent of the bank's tier one capital in adjustable rate preferred stock or money market (auction rate) preferred stock does not represent a significant risk to the deposit insurance funds. An insured state bank may conduct this activity without first obtaining the FDIC's consent, provided that the bank meets and continues to meet the applicable capital standards as prescribed by the appropriate Federal banking agency. The fact that prior consent is not required by this subpart does not preclude the FDIC from taking any appropriate action with respect to the activities if the facts and circumstances warrant such action.

(iv) *Activities that are closely related to banking.* An insured state bank may engage as principal in any activity that is not permissible for a national bank provided that the Federal Reserve Board by regulation or order has found the activity to be closely related to banking for the purposes of section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) provided that this exception:

(A) Shall not be construed to permit an insured state bank to directly hold equity securities of a type that a national bank may not hold;

(B) Does not authorize an insured state bank engaged in real estate leasing to hold the leased property for more than two years at the end of the lease unless the property is re-leased; and

(C) Does not authorize an insured state bank to directly hold equity debt investments in corporations or projects designed primarily to promote community welfare if such investments are of a type that a national bank may not hold.

(c) *Core standards.* For any insured state bank to be eligible to conduct insurance activities listed in paragraph (b)(2)(ii)(A) or (C) of this section, the bank must conduct the activities in a department that meets the following ''core operating standards'' and ''core separation standards'.

(1) The ''core operating standards'' for a department are:

(i) The department provides purchasers or potential purchasers of life insurance policies, other insurance products and annuities written disclosures that are consistent with the disclosures described in the Interagency Statement on the Retail Sale of Nondeposit Investment Products (FIL–9–94, February 17, 1994) and any successor statement which indicate that the policies, products and annuities are not FDIC insured deposits, are not guaranteed by the bank, and may involve risk of loss; and

(ii) The department informs its customers that only the assets of the department may be used to satisfy the obligations of the department.

(2) The ''core separation standards'' for a department are:

(i) The department is physically distinct from the remainder of the bank;

(ii) The department maintains separate accounting and other records;

(iii) The department has assets, liabilities, obligations and expenses that are separate and distinct from those of the remainder of the bank; and

(iv) The department is subject to state statute that requires its obligations, liabilities and expenses be satisfied only with the assets of the department.

§ 362.4 Subsidiaries of insured state banks.

(a) *Prohibition.* A subsidiary of an insured state bank may not engage as principal in any activity that is not of a type permissible for a subsidiary of a national bank, unless it meets one of the exceptions in paragraph (b) of this section.

(b) *Exceptions*—(1) *Consent obtained through application.* A subsidiary of an insured state bank may conduct otherwise prohibited activities if the bank obtains the FDIC's prior written consent and the insured state bank meets and continues to meet the applicable capital standards set by the appropriate Federal banking agency. Consent will be given only if the FDIC determines that the activity poses no significant risk to the affected deposit insurance fund. Applications for consent should be filed in accordance with § 362.18(b). Approvals granted under § 362.18(b) may be made subject to any conditions or restrictions found by the FDIC to be necessary to protect the deposit insurance funds from risk, to prevent unsafe or unsound banking practices, and/or to ensure that the activity is consistent with the purposes of federal deposit insurance and other applicable law.

[1] Financial institution letters (FILs) are available in the FDIC Public Information Center, room 100, 801 17th Street, N.W., Washington, D.C. 20429.

(2) *Grandfathered insurance underwriting subsidiaries.* A subsidiary of an insured state bank may:

(i) Engage in grandfathered insurance underwriting if the insured state bank or its subsidiary on November 21, 1991, was lawfully providing insurance as principal. The subsidiary may continue to provide the same types of insurance as principal to the residents of the state or states in which the bank or subsidiary did so on such date provided that:

(A) The bank meets the capital requirements of paragraph (e) of this section;

(B) The subsidiary is an ''eligible subsidiary'' as described in paragraph (c)(2) of this section; and

(C) The subsidiary provides purchasers or potential purchasers of life insurance policies, other insurance products and annuities written disclosures that are consistent with the disclosures described in the Interagency Statement on the Retail Sale of Nondeposit Investment Products (FIL–9–94, February 17, 1994) or any successor statement which indicate that the policies, products and annuities are not FDIC insured deposits, are not guaranteed by the bank, and may involve risk of loss.

(ii) Continue to provide as principal title insurance, provided the bank was required before June 1, 1991, to provide title insurance as a condition of the bank's initial chartering under state law and neither the bank or its parent holding company undergoes a change in control.

(iii) May continue to provide as principal insurance which is reinsured in whole or in part by the Federal Crop Insurance Corporation if the subsidiary was engaged in the activity on or before September 30, 1991.

(3) Majority-owned subsidiaries which own a control interest in companies engaged in permissible activities. The FDIC has determined that the following investment activities do not represent a significant risk to the deposit insurance funds. The following listed activities may be conducted by a majority-owned subsidiary of an insured state bank without first obtaining the FDIC's consent, provided that the bank meets and continues to meet the applicable capital standards as prescribed by the appropriate Federal banking agency, and the majority-owned subsidiary controls the issuer of the stock purchased by the subsidiary. The fact that prior consent is not required by this subpart does not preclude the FDIC from taking any appropriate action with respect to the activities if the facts and circumstances warrant such action.

(i) *Stock of a company that engages in authorized activities.* A majority-owned subsidiary may own the stock of a company that engages in any activity permissible for an insured state bank under § 362.3(b)(2)(iii).

(ii) *Stock of a company that engages in activities closely related to banking.* A majority-owned subsidiary may own the stock of a company that engages as principal in any activity that is not permissible for a national bank provided that the Federal Reserve Board by regulation or order has found the activity to be closely related to banking for the purposes of section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) provided that this exception:

(A) Does not authorize a subsidiary engaged in real estate leasing to hold the leased property for more than two years at the end of the lease unless the property is re-leased; and

(B) Does not authorize a subsidiary to acquire or hold the stock of a savings association other than as allowed by paragraph (b)(4) of this section.

(4) *Majority-owned subsidiaries ownership of equity securities that do not represent a control interest.* The FDIC has determined that a majority-owned subsidiary's investment in the equity securities of any company, including an insured depository institution, a bank holding company (as that term is defined for purposes of the Bank Holding Company Act, 12 U.S.C. 1841 et seq.), or a savings and loan holding company (as that term is defined in 12 U.S.C. 1467a), does not represent a significant risk to the deposit insurance funds and may be conducted by a majority-owned subsidiary of an insured state bank without first obtaining the FDIC's consent, provided that the insured state bank and its majority-owned subsidiary meet the eligibility requirements of paragraph (b)(4)(i) of this section and transaction limitation of paragraph (b)(4)(ii) of this section; and the insured state bank meets the capital requirements of paragraph (e) of this section. The fact that prior consent is not required by this subpart does not preclude the FDIC from taking any appropriate action with respect to the activities if the facts and circumstances warrant such action.

(i) *Eligibility requirements.* (A) The state-chartered depository institution may have only one majority-owned subsidiary engaging in this activity;

(B) The majority-owned subsidiary's investment in equity securities (except stock of an insured depository institution, a bank holding company or a savings and loan holding company) must be limited to equity securities listed on a national securities exchange.

(C) The state-chartered depository institution and/or the majority-owned subsidiary do not control any issuer of equity securities purchased by the subsidiary.

(D) The majority-owned subsidiary may not purchase equity securities representing more than 10% of the outstanding voting stock of any one issuer.

(ii) *Transaction limitation.* A state-chartered depository institution and any of its subsidiaries may not extend credit to the majority-owned subsidiary, purchase any debt instruments issued by the majority-owned subsidiary, or originate any other transaction that is used to benefit the majority-owned subsidiary which invests in stock under paragraph (b)(4) of this section.

(iii) *Portfolio management.* For the purposes of this section, investment in the equity securities of any company does not include pursuing active short-term trading strategies.

(5) *Majority-owned subsidiaries conducting real estate investment activities and securities underwriting.* The FDIC has determined that the following activities do not represent a significant risk to the deposit insurance funds, provided that the activities are conducted by a majority-owned subsidiary in compliance with the core eligibility requirements listed in paragraph (c) of this section; any additional requirements listed in paragraph (b)(5) (i) or (ii) of this section; the bank complies with the investment and transaction limitations of paragraph (d) of this section; and the bank meets the capital requirements of paragraph (e) of this section. Subject to the stated requirements and limitations, the FDIC consents that these listed activities may be conducted by a majority-owned subsidiary of an insured state bank if the bank files a notice in compliance with § 362.18(a) and the FDIC does not object to the notice. The FDIC is not precluded from taking any appropriate action or imposing additional requirements with respect to the activities if the facts and circumstances warrant such action. If changes to the management or business plan of the majority-owned subsidiary at any time result in material changes to the nature of the majority-owned subsidiary's business or the manner in which its business is conducted, the insured state bank shall advise the appropriate regional director (Supervision) in writing within 10 business days after such change. Such a majority-owned subsidiary may:

(i) Engage in real estate investment activities. However, the requirements of

paragraph (c)(2) (ii), (v), (vi), and (xi) of this section need not be met if the bank's investment in the equity securities of the subsidiary does not exceed 2 percent of the bank's tier one capital; the bank has only one subsidiary engaging in real estate investment activities; and the bank's total investment in the subsidiary does not include any extensions of credit from the bank to the subsidiary, any debt instruments issued by the subsidiary, or any other transaction originated by the bank that is used to benefit the subsidiary.

(ii) Engage in the public sale, distribution or underwriting of securities that are not permissible for a national bank under section 16 of the Banking Act of 1933 (12 U.S.C. 24 Seventh), provided that the following additional conditions are, and continue to be, met:

(A) The state-chartered depository institution adopts policies and procedures, including appropriate limits on exposure, to govern the institution's participation in financing transactions underwritten or arranged by an underwriting majority-owned subsidiary;

(B) The state-chartered depository institution may not express an opinion on the value or the advisability of the purchase or sale of securities underwritten or dealt in by a majority-owned subsidiary unless the state-chartered depository institution notifies the customer that the majority-owned subsidiary is underwriting or distributing the security;

(C) The majority-owned subsidiary is registered with the Securities and Exchange Commission, is a member in good standing with the appropriate self-regulatory organization, and promply informs the appropriate regional director (Supervision) in writing of any material actions taken against the majority-owned subsidiary or any of its employees by the state, the appropriate self-regulatory organizations or the Securities and Exchange Commission; and

(D) The state-chartered depository institution does not knowingly purchase as principal or fiduciary during the existence of any underwriting or selling syndicate any securities underwritten by the majority-owned subsidiary unless the purchase is approved by the state-chartered depository institution's board of directors before the securities are initially offered for sale to the public.

(6) *Subsidiaries may engage in authorized activities.* A subsidiary of an insured state bank may engage in any activity permissible for an insured state bank under § 362.3(b)(2)(iii) or § 362.3(b)(2)(iv), provided that this exception does not authorize a subsidiary to acquire or hold the stock of a savings association other than as allowed by paragraph (b)(4) of this section.

(c) *Core eligibility requirements.* If specifically required by this part or by FDIC order, any state-chartered depository institution that wishes to be eligible and continue to be eligible to conduct as principal activities through a subsidiary that are not permissible for a subsidiary of a national bank must be an ''eligible depository institution'' and the subsidiary must be an ''eligible subsidiary''.

(1) A state-chartered depository institution is an ''eligible depository institution'' if it:

(i) Has been chartered and operating for 3 or more years;

(ii) Has a composite rating of 1 or 2 assigned under the Uniform Financial Institutions Rating System (UFIRS) or such other comparable rating system as may be adopted in the future by the institution's appropriate Federal banking agency;

(iii) Received a rating of 1 or 2 under the ''management'' component of the UFIRS as assigned by the institution's appropriate Federal banking agency;

(iv) Has a satisfactory or better Community Reinvestment Act rating at its most recent examination conducted by the institution's appropriate Federal banking agency;

(v) Has a compliance rating of 1 or 2 at its most recent examination conducted by the institution's appropriate Federal banking agency; and

(vi) Is not subject to a cease and desist order, consent order, prompt corrective action directive, formal or informal written agreement, or other administrative agreement with its appropriate Federal banking agency or chartering authority.

(2) A subsidiary of a state-chartered depository institution is an ''eligible subsidiary'' if it:

(i) Meets applicable statutory or regulatory capital requirements and has sufficient operating capital in light of the normal obligations that are reasonably foreseeable for a business of its size and character within the industry;

(ii) Is physically separate and distinct in its operations from the operations of the state-chartered depository institution, provided that this requirement shall not be construed to prohibit the state-chartered depository institution and its subsidiary from sharing the same facility if the area where the subsidiary conducts business with the public is clearly distinct from the area where customers of the state-chartered depository institution conduct business with the institution. The extent of the separation will vary according to the type and frequency of customer contact;

(iii) Maintains separate accounting and other business records;

(iv) Observes separate business entity formalities such as separate board of directors' meetings;

(v) Has a chief executive officer of the subsidiary who is not an employee of the institution;

(vi) Has a majority of its board of directors who are neither directors nor officers of the state-chartered depository institution;

(vii) Conducts business pursuant to independent policies and procedures designed to inform customers and prospective customers of the subsidiary that the subsidiary is a separate organization from the state-chartered depository institution and that the state-chartered depository institution is not responsible for and does not guarantee the obligations of the subsidiary;

(viii) Has only one business purpose within the types described in paragraphs (b)(2) and (b)(5) of this section;

(ix) Has a current written business plan that is appropriate to the type and scope of business conducted by the subsidiary;

(x) Has qualified management and employees for the type of activity contemplated, including all required licenses and memberships, and complies with industry standards; and

(xi) Establishes policies and procedures to ensure adequate computer, audit and accounting systems, internal risk management controls, and has necessary operational and managerial infrastructure to implement the business plan.

(d) *Investment and transaction limits.*—(1) *General.* If specifically required by this part or FDIC order, the following conditions and restrictions apply to an insured state bank and its majority-owned subsidiaries that engage in and wish to continue to engage in activities which are not permissible for a national bank subsidiary.

(2) *Investment limits*—(i) *Investment in one subsidiary.* An insured state bank may not invest more than 10 percent of the insured state bank's tier one capital in any majority-owned subsidiary subject to this paragraph (d).

(ii) *Aggregate investment in subsidiaries.* An insured state bank's investments in majority-owned subsidiaries conducting the same activity subject to this paragraph (d)

shall not exceed, in the aggregate, 20 percent of the insured state bank's tier one capital.

(iii) *Definition of investment.* (A) For purposes of this subsection, the term *investment* means:

(*1*) Any extension of credit to the majority-owned subsidiary by the insured state bank;

(*2*) Any debt securities, as such term is defined in part 344 of this chapter, issued by the majority-owned subsidiary held by the insured state bank;

(*3*) The acceptance by the insured state bank of securities issued by the majority-owned subsidiary as collateral for an extension of credit to any person or company; and

(*4*) Any extensions of credit by the insured state bank to any third party for the purpose of making a direct investment in the majority-owned subsidiary, making any investment in which the majority-owned subsidiary has an interest, or which is used for the benefit of, or transferred to, the majority-owned subsidiary.

(B) For the purposes of paragraph (d)(2) of this section, the term ''investment'' does not include:

(*1*) Extensions of credit by the insured state bank to finance sales of assets by the majority-owned subsidiary which do not involve more than the normal degree of risk of repayment and are extended on terms that are substantially similar to those prevailing at the time for comparable transactions with or involving unaffiliated persons or companies;

(*2*) An extension of credit by the insured state bank to a majority-owned subsidiary that is fully collateralized by government securities, as such term is defined in § 344.3 of this chapter; or

(*3*) An extension of credit by the insured state bank to a majority-owned subsidiary that is fully collateralized by a segregated deposit in the insured state bank.

(3) *Transaction requirements*—(i) *Arm's length transaction requirement.* An insured state bank may not:

(A) Make an investment in a majority-owned subsidiary;

(B) Purchase from or sell to a majority-owned subsidiary any assets (including securities);

(C) Enter into a contract, lease, or other type of agreement with a majority-owned subsidiary; or

(D) Pay compensation to a majority-owned subsidiary or any person or company who has an interest in the majority-owned subsidiary unless the transaction is on terms and conditions that are substantially the same as those prevailing at the time for comparable transactions with unaffiliated parties, provided that an insured state bank may give immediate credit to a majority-owned subsidiary for uncollected items received in the ordinary course of business. This requirement also shall apply in the case of any transaction the proceeds of which are used for the benefit of, or that are transferred to, the majority-owned subsidiary.

(ii) *Prohibition on purchase of low quality assets.* An insured state bank is prohibited from purchasing a low quality asset from a majority-owned subsidiary. For purposes of this subsection, low quality asset means:

(A) An asset classified as ''substandard'', ''doubtful'', or ''loss'' or treated as ''other loans especially mentioned'' in the most recent report of examination of the bank;

(B) An asset in a nonaccrual status;

(C) An asset on which principal or interest payments are more than 30 days past due; or

(D) An asset whose terms have been renegotiated or compromised due to the deteriorating financial condition of the obligor.

(iii) *Anti-tying restriction.* Neither the insured state bank nor the majority-owned subsidiary may require a customer to either buy any product or use any service from the other as a condition of entering into a transaction.

(iv) *Insider transaction restriction.* Neither the insured state bank nor the majority-owned subsidiary may enter into any transaction (exclusive of those covered by § 337.3 of this chapter) with the bank's executive officers, directors, principal shareholders or related interests of such persons which relate to the majority-owned subsidiary's activities unless the transactions are on terms and conditions that are substantially the same as those prevailing at the time for comparable transaction with persons not affiliated with the insured state bank.

(4) *Collateralization requirements.* (i) An insured state bank is prohibited from making an extension of credit to or on behalf of a majority-owned subsidiary unless such transaction is fully-collateralized at the time the transaction is entered into. No insured state bank may accept a low quality asset as collateral. An extension of credit is fully collateralized if it is secured at the time of the transaction by collateral having a market value equal to at least:

(A) 100 percent of the amount of the transaction if the collateral is composed of:

(*1*) Obligations of the United States or its agencies;

(*2*) Obligations fully guaranteed by the United States or its agencies as to principal and interest;

(*3*) Notes, drafts, bills of exchange or bankers acceptances that are eligible for rediscount or purchase by the Federal Reserve Bank; or

(*4*) A segregated, earmarked deposit account with the member bank;

(B) 110 percent of the amount of the transaction if the collateral is composed of obligations of any State or political subdivision of any State;

(C) 120 percent of the amount of the transaction if the collateral is composed of other debt instruments, including receivables; or

(D) 130 percent of the amount of the transaction if the collateral is composed of stock, leases, or other real or personal property.

(ii) An insured state bank may not release collateral prior to proportional payment of the extension of credit; however, collateral may be substituted if there is no dimunition of collateral coverage.

(5) *Investment and transaction limits extended to insured state bank subsidiaries.* For purposes of applying paragraphs (d)(2) through (d)(4) of this section, any reference to ''insured state bank'' means the insured state bank and any subsidiaries of the insured state bank which are not themselves subject under this part or FDIC order to the restrictions of this paragraph (d).

(e) *Capital requirements.* If specifically required by this part or by FDIC order, any insured state bank that wishes to conduct or continue to conduct as principal activities through a subsidiary that are not permissible for a subsidiary of a national bank must:

(1) Be well-capitalized after deducting from its tier one capital the investment in equity securities of the subsidiary as well as the bank's pro rata share of any retained earnings of the subsidiary;

(2) Reflect this deduction on the appropriate schedule of the bank's consolidated report of income and condition; and

(3) Use such regulatory capital amount for the purposes of the bank's assessment risk classification under part 327 and its categorization as a ''well-capitalized'', an ''adequately capitalized'', an ''undercapitalized'', or a ''significantly undercapitalized'' institution as defined in § 325.103(b) of this chapter, provided that the capital deduction shall not be used for purposes of determining whether the bank is ''critically undercapitalized'' under part 325.

§ 362.5 Approvals previously granted.

(a) *FDIC consent by order or notice.* An insured state bank that previously filed an application or notice and obtained the FDIC's consent to engage in

an activity or to acquire or retain a majority-owned subsidiary engaging as principal in an activity or acquiring and retaining any investment that is prohibited under this subpart may continue that activity or retain that investment without seeking the FDIC's consent, provided that the insured state bank and its subsidiary, if applicable, continue to meet the conditions and restrictions of the approval. An insured state bank which was granted approval based on conditions which differ from the requirements of § 362.4(c)(2), (d) and (e) will be considered to meet the conditions and restrictions of the approval relating to being an eligible subsidiary, meeting investment and transactions limits, and meeting capital requirements if the insured state bank and subsidiary meet the requirements of § 362.4(c)(2), (d) and (e).

(b) *Approvals by regulation—(1) Securities underwriting.* An insured state nonmember bank engaging in securities activities under a notice filed under and in compliance with the restrictions of former § 337.4 of this chapter may continue those activities if the bank and its majority-owned subsidiaries comply with the restrictions set forth in §§ 362.4(b)(5)(ii) and 362.4 (c), (d), and (e) by [*insert date one year after the effective date of the final rule*]. During the one-year period of transition between the effective date of this regulation and [*insert date one year after the effective date of the final rule*], the bank and its majority-owned subsidiary must meet the restrictions set forth in the former § 337.4 of this chapter until §§ 362.4(b)(5)(ii) and 362.4 (c), (d) and (e) are met. If the banks fails to meet these restrictions, the bank must apply for the FDIC's consent to continue those activities under §§ 362.4(b)(1) and 362.18(b).

(2) *Grandfathered insurance underwriting.* An insured state bank which is directly providing insurance as principal pursuant to former § 362.4(c)(2)(i) may continue that activity if it complies with the provisions of § 362.3(b)(2)(ii)(C) by [*insert date ninety days after the effective date of the final rule*]. An insured state bank indirectly providing insurance as principal through a subsidiary pursuant to former § 362.3(b)(7) may continue that activity if it complies with the provisions of § 362.4(b)(2)(i). During the ninety-day period of transition between [*insert the effective date of the final rule*] and [*insert date ninety days after the effective date of the final rule*], the bank and its majority-owned subsidiary must meet the restrictions set forth in former § 362.4(c)(2)(i) or § 362.3(b)(7), as applicable, of this chapter until the requirements of §§ 362.3(b)(2)(ii)(C) or 362.4(b)(2)(i) are met. If the insured state bank or its subsidiary fails to comply with the restrictions, as applicable, the insured state bank must apply for the FDIC's consent under §§ 362.4(b)(1) and 362.18(b).

(3) *Equity securities.* An insured state bank, indirectly through a subsidiary, owning equity securities pursuant to former § 362.4(c)(3)(iv) (A) and (B) may continue that activity if it complies with the provisions of § 362.4(b)(4) by [*insert date one year after the effective date of the final rule*]. During the one-year period of transition between the effective date of this regulation and [*insert date one year after the effective date of the final rule*], the bank and its majority-owned subsidiary must meet the restrictions set forth in former § 362.4(c)(3)(iv)(A) and (B) of this chapter until § 362.4(b)(4) is met. If the insured state bank or its subsidiary fails to meet these restrictions, the insured state bank must apply for the FDIC's consent under §§ 362.4(b)(1) and 362.18(b).

(c) *Charter conversions.* (1) An insured state bank that has converted its charter from an insured state savings association may continue activities through a majority-owned subsidiary that were permissible prior to the time it converted its charter only if the insured state bank receives the FDIC's consent. Except as provided in paragraph (c)(2) of this section, the insured state bank should apply under § 362.4(b)(1), submit a notice required under § 362.4(b)(5), or comply with the provisions of § 362.4(b) (3), (4), or (6), if applicable, to continue the activity.

(2) *Exception for prior consent.* If the FDIC had granted consent to the savings association under section 28 of the Federal Deposit Insurance Act (12 U.S.C. 1831(e)) prior to the time it converted its charter, the insured state bank may continue the activities without providing notice or making application to the FDIC, provided that the bank is in compliance with:

(i) The terms of the FDIC approval order and

(ii) The provisions of § 362.4(c)(2), (d), and (e) regarding operating as an ''eligible subsidiary'', ''investment and transaction limits'', and ''capital requirements''.

(3) *Divestiture.* An insured state bank that does not receive FDIC consent shall divest of the nonconforming investment as soon as practical but in any event no later than two years from the date of charter conversion.

Subpart B—Safety and Soundness Rules Governing Insured State Nonmember Banks

§ 362.6 Purpose and scope.

This subpart, along with the notice and application procedures in subpart E apply to certain banking practices that may have adverse effects on the safety and soundness of insured state nonmember banks. The FDIC intends to allow insured state nonmember banks and their subsidiaries to undertake only safe and sound activities and investments that would not present a significant risk to the deposit insurance fund and that are consistent with the purposes of federal deposit insurance and other law. The following standards shall apply for insured state nonmember banks to conduct real estate investment activities through a subsidiary if those activities are permissible for a national bank subsidiary but are different from activities permissible for the national bank parent itself. Additionally, the following standards shall apply for insured state nonmember banks that are not affiliated with a bank holding company to conduct securities activities in an affiliated organization.

§ 362.7 Restrictions on activities of insured state nonmember banks.

(a) *Real estate investment made by subsidiaries of insured state nonmember banks.* The FDIC Board of Directors has found that real estate investment activity may have adverse effects on the safety and soundness of insured state nonmember banks. Notwithstanding any interpretations, orders, circulars or official bulletins issued by the Office of the Comptroller of the Currency regarding activities permissible for operating subsidiaries of a national bank but different from activities permissible for the parent national bank itself under 12 CFR 5.34(f), insured state nonmember banks may not establish or acquire a subsidiary that engages in real estate investment activities not permissible for a national bank itself unless the insured state nonmember bank:

(1) Has an approval previously granted by the FDIC; or

(2) Meets the requirements for engaging in real estate investment activities that are not permissible for national banks as set forth in § 362.4(b)(5), and submits a corresponding notice under § 362.18(a) without objection, or files an application under §§ 362.4(b)(1) and 362.18(b) and receives approval to engage in the activity.

(b) *Affiliation with securities companies.* The Board of Directors of

the FDIC has found that an unrestricted affiliation between an insured state nonmember bank and a securities company may have adverse effects on the safety and soundness of insured state nonmember banks. An insured state nonmember bank which is affiliated with a company that is not treated as a bank holding company pursuant to section 4(f) of the Bank Holding Company Act (12 U.S.C. 1843(f)) is prohibited from becoming or remaining affiliated with any company that directly engages in the public sale, distribution or underwriting of stocks, bonds, debentures, notes, or other securities which is not permissible for a national bank unless:

(1) The securities business of the affiliate is physically separate and distinct in its operations from the operations of the bank, provided that this requirement shall not be construed to prohibit the bank and its affiliate from sharing the same facility if the area where the affiliate conducts retail sales activity with the public is physically distinct from the routine deposit taking area of the bank;

(2) Has a chief executive officer of the affiliate who is not an employee of the bank:

(3) A majority of the affiliate's board of directors are not directors, officers, or employees of the bank;

(4) The affiliate conducts business pursuant to independent policies and procedures designed to inform customers and prospective customers of the affiliate that the affiliate is a separate organization from the bank;

(5) The bank adopts policies and procedures, including appropriate limits on exposure, to govern their participation in financing transactions underwritten by an underwriting affiliate;

(6) The bank does not express an opinion on the value or the advisability of the purchase or sale of securities underwritten or dealt in by an affiliate unless it notifies the customer that the entity underwriting, making a market, distributing or dealing in the securities is an affiliate of the bank;

(7) The bank does not purchase as principal or fiduciary during the existence of any underwriting or selling syndicate any securities underwritten by the affiliate unless the purchase is approved by the bank's board of directors before the securities are initially offered for sale to the public;

(8) The bank does not condition any extension of credit to any company on the requirement that the company contract with, or agree to contract with, the bank's affiliate to underwrite or distribute the company's securities;

(9) The bank does not condition any extension of credit or the offering of any service to any person or company on the requirement that the person or company purchase any security underwritten or distributed by the affiliate; and

(10) The bank complies with the investment and transaction limitations of § 362.4(d). For the purposes of applying these restrictions, the term ''affiliate'' shall be substituted wherever the terms ''subsidiary'' or ''majority-owned subsidiary'' are used in § 362.4(d)(2), (3), and (4). For the purposes of applying these limitations, the term ''investment'' as defined in § 362.4(d)(2)(iii) shall also include any equity securities of the affiliate held by the insured state bank.

(c) *Definitions.* For the purposes of this section, the following definitions apply:

(1) *Affiliate* shall mean any company that directly or indirectly, through one or more intermediaries, controls or is under common control with an insured state nonmember bank.

(2) *Company, Control, Equity Security, Insured state nonmember bank, Security, and Subsidiary* have the same meaning as provided in subpart A.

Subpart C—Activities of Insured State Savings Associations

§ 362.8 Purpose and scope.

(a) This subpart, along with the notice and application procedures in subpart F, implements the provisions of section 28 of the Federal Deposit Insurance Act (12 U.S.C. 1831e) that restrict and prohibit insured state savings associations and their service corporations from engaging in activities and investments of a type that are not permissible for federal savings associations and their service corporations. The phrase ''activity permissible for a federal savings association'' means any activity authorized for federal savings associations under any statute including the Home Owners' Loan Act (HOLA, 12 U.S.C. 1464 *et seq.*), as well as activities recognized as permissible for a federal savings association in regulations, official thrift bulletins, orders or written interpretations issued by the Office of Thrift Supervision (OTS), or its predecessor, the Federal Home Loan Bank Board.

(b) This subpart does not cover the following activities:

(1) Activities conducted by the insured state savings association other than ''as principal''. Therefore, regarding insured state savings associations, this subpart does not restrict activities conducted as agent for a customer, conducted in a brokerage, custodial, advisory, or administrative capacity, or conducted as trustee.

(2) Interests in real estate in which the real property is used or intended in good faith to be used within a reasonable time by an insured savings association or its service corporations as offices or related facilities for the conduct of its business or future expansion of its business or used as public welfare investments of a type and in an amount permissible for federal savings associations.

(3) Equity investments acquired in connection with debts previously contracted that are held within the shorter of the time limits prescribed by state or federal law.

(c) The FDIC intends to allow insured state savings associations and their service corporations to undertake only safe and sound activities and investments that do not present a significant risk to the deposit insurance funds and that are consistent with the purposes of federal deposit insurance and other applicable law. This subpart does not authorize any insured state savings association to make investments or conduct activities that are not authorized or that are prohibited by either federal or state law.

§ 362.9 Definitions.

For the purposes of this subpart, the definitions provided in § 362.2 apply. Additionally, the following definitions apply to this subpart:

(a) *Affiliate* shall mean any company that directly or indirectly, through one or more intermediaries, controls or is under common control with an insured state savings association.

(b) *Corporate debt securities not of investment grade* means any corporate debt security that when acquired was not rated among the four highest rating categories by at least one nationally recognized statistical rating organization. The term shall not include any obligation issued or guaranteed by a corporation that may be held by a federal savings association without limitation as to percentage of assets under subparagraphs (D), (E), or (F) of section 5(c)(1) of HOLA (12 U.S.C. 1464 (c)(1)(D), (E), (F)).

(c) *Insured state savings association* means any state-chartered savings association insured by the Federal Deposit Insurance Corporation.

(d) *Qualified affiliate* means, in the case of a stock insured state savings association, an affiliate other than a subsidiary or an insured depository institution. In the case of a mutual savings association, ''qualified affiliate'' means a subsidiary other than an

insured depository institution provided that all of the savings association's investments in, and extensions of credit to, the subsidiary are deducted from the savings association's capital.

(e) *Service corporation* means any corporation the capital stock of which is available for purchase by savings associations.

§ 362.10 Activities of insured state savings associations.

(a) *Equity investments.*—(1) *Prohibited investments.* No insured state savings association may directly acquire or retain as principal any equity investment of a type, or in an amount, that is not permissible for a federal savings association unless the exception in paragraph (a)(2) of this section applies.

(2) *Exception: Equity investment in service corporations.* An insured state savings association that is and continues to be in compliance with the applicable capital standards as prescribed by the appropriate Federal banking agency may acquire or retain an equity investment in a service corporation:

(i) Not permissible for a federal savings association to the extent the service corporation is engaging in activities that are allowed pursuant to the provisions of or an application under § 362.11(b); or

(ii) Of a type permissible for a federal savings association, but in an amount exceeding the investment limits applicable to federal savings associations, if the insured state savings association obtains the FDIC's prior consent. Consent will be given only if the FDIC determines that the amount of the investment in a service corporation engaged in such activities does not present a significant risk to the affected deposit insurance fund. Applications should be filed in accordance with § 362.23(b). Approvals granted under § 362.23(b) may be made subject to any conditions or restrictions found by the FDIC to be necessary to protect the deposit insurance funds from significant risk, to prevent unsafe or unsound practices, and/or to ensure that the activity is consistent with the purposes of federal deposit insurance and other applicable law.

(b) *Activities other than equity investments.*—(1) *Prohibited activities.* An insured state savings association may not directly engage as principal in any activity, that is not an equity investment, of a type not permissible for a federal savings association, and an insured state savings association shall not make nonresidential real property loans in an amount exceeding that described in section 5(c)(2)(B) of HOLA (12 U.S.C. 1464 (c)(2)(B)), unless one of the exceptions in paragraph (b)(2) of this section applies. This section shall not be read to require the divestiture of any asset (including a nonresidential real estate loan), if the asset was acquired prior to August 9, 1989; however, any activity conducted with such asset must be in accordance with this subpart. After August 9, 1989, an insured state savings association directly or through a subsidiary (other than, in the case of a mutual savings association, a subsidiary that is a qualified affiliate), may not acquire or retain any corporate debt securities not of investment grade.

(2) *Exceptions.*—(i) *Consent obtained through application.* An insured state savings association that meets and continues to meet the applicable capital standards set by the appropriate Federal banking agency may directly conduct activities prohibited by paragraph (b)(1) of this section if the savings association obtains the FDIC's prior consent. Consent will be given only if the FDIC determines that conducting the activity designated poses no significant risk to the affected deposit insurance fund. Applications should be filed in accordance with § 362.22. Approvals granted under § 362.23(b) may be made subject to any conditions or restrictions found by the FDIC to be necessary to protect the deposit insurance funds from significant risk, to prevent unsafe or unsound practices, and/or to ensure that the activity is consistent with the purposes of federal deposit insurance and other applicable law.

(ii) *Nonresidential realty loans permissible for a federal savings association conducted in an amount not permissible.* An insured state savings association that meets and continues to meet the applicable capital standards set by the appropriate Federal banking agency may make nonresidential real property loans in an amount exceeding that described in section 5(c)(2)(B) of HOLA (12 U.S.C. 1464 (c)(2)(B)), if the savings association files a notice in compliance with § 362.23(a) and the FDIC does not object to the notice. Consent will be given only if the FDIC determines that engaging in such lending in the amount designated poses no significant risk to the affected deposit insurance fund.

(iii) *Acquiring and retaining adjustable rate and money market preferred stock.* An insured state savings association's investment of up to 15 percent of the association's tier one capital in adjustable rate preferred stock or money market (auction rate) preferred stock does not represent a significant risk to the relevant deposit insurance fund. An insured state savings association may conduct this activity without first obtaining the FDIC's consent, provided that the association meets and continues to meet the applicable capital standards as prescribed by the appropriate Federal banking agency. The fact that prior consent is not required by this subpart does not preclude the FDIC from taking any appropriate action with respect to the activities if the facts and circumstances warrant such action.

(iv) *Activities that are closely related to banking.* An insured state savings association may engage as principal in any activity that is not permissible for a federal savings association provided that the Federal Reserve Board by regulation or order has found the activity to be closely related to banking for the purposes of section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)), except that the insured state savings association shall make no equity investment directly which is not permissible for a federal savings association.

(3) *Activities permissible for a federal savings association conducted in an amount not permissible.* Except as provided in paragraph (b)(2)(ii) of this section, an insured state savings association may engage as principal in any activity, which is not an equity investment, of a type permissible for a federal savings association in an amount in excess of that permissible for a federal savings association, if the savings association meets and continues to meet the applicable capital standards set by the appropriate Federal banking agency, the institution has advised the appropriate regional director (Supervision) under the procedure in § 362.23(c) within thirty days before engaging in the activity, and the FDIC has not advised the insured state savings association that conducting the activity in the amount indicated poses a significant risk to the affected deposit insurance fund. This section shall not be read to require the divestiture of any asset if the asset was acquired prior to August 9, 1989; however, any activity conducted with such asset must be conducted in accordance with this subpart.

§ 362.11 Service corporations of insured state savings associations.

(a) *Prohibition.* A service corporation of an insured state savings association may not engage in any activity that is not permissible for a service corporation of a federal savings association, unless it meets one of the exceptions in paragraph (b) of this section.

(b) *Exceptions.*—(1) *Consent obtained through application.* A service

corporation of an insured state savings association may conduct activities prohibited by paragraph (a) of this section if the savings association obtains the FDIC's prior written consent and the insured state savings association meets and continues to meet the applicable capital standards set by the appropriate Federal banking agency. Consent will be given only if the FDIC determines that the activity poses no significant risk to the relevant deposit insurance fund. Applications for consent should be filed in accordance with § 362.23(b). Approvals granted under § 362.23(b) may be made subject to any conditions or restrictions found by the FDIC to be necessary to protect the deposit insurance funds from risk, to prevent unsafe or unsound banking practices, and/or to ensure that the activity is consistent with the purposes of federal deposit insurance and other applicable law.

(2) *Service corporations conducting unrestricted activities.* The FDIC has determined that the following activities do not represent a significant risk to the deposit insurance funds. The FDIC consents that the following activities may be conducted by a service corporation of an insured state savings association without first obtaining the FDIC's consent, provided that the savings association meets and continues to meet the applicable capital standards as prescribed by the appropriate Federal banking agency. The fact that prior consent is not required by this subpart does not preclude the FDIC from taking any appropriate action with respect to the activities if the facts and circumstances warrant such action.

(i) *Service corporations which own a control interest in companies engaged in permissible activities.* Provided the service corporation controls the issuer of owned stock, a service corporation may directly acquire and retain ownership interests in:

(A) *Stock of a company that engages in permissible activities.* A service corporation may own the stock of a company that engages in any activity permissible for a federal savings association or any activity permissible for an insured state savings association under § 362.10(b)(2)(iii) or (iv).

(B) *Stock of a company engaged in activities conducted not as principal.* A service corporation may own the stock of a company that engages solely in activities which are not conducted as principal.

(ii) *Activities that are not conducted ''as principal''.* A service corporation may engage in activities which are not conducted ''as principal'' such as acting as an agent for a customer, acting in a brokerage, custodial, advisory, or administrative capacity, or acting as trustee.

(iii) *Service corporations may engage in authorized activities.* A service corporation may engage in any activity permissible for an insured state savings association under § 362.10(b)(2)(iii) or § 362.10(b)(2)(iv), provided that this exception does not authorize a service corporation to acquire or hold the stock of a savings association other than as allowed by paragraph (b)(3) of this section.

(3) *Service corporation ownership of equity securities that do not represent a control interest.* The FDIC has determined that a service corporation's investment in the equity securities of any company, including an insured depository institution, a bank holding company (as that term is defined for purposes of the Bank Holding Company Act, 12 U.S.C. 1841, et seq.), or a savings and loan holding company (as that term is defined in 12 U.S.C. 1467a), does not represent a significant risk to the deposit insurance funds and may be conducted by a service corporation without first obtaining the FDIC's consent provided that the insured state savings association or its service corporation meets the eligibility requirements of § 362.4(b)(4)(i) and the transaction limitation contained in § 362.4(b)(4)(ii); and the savings association meets the capital requirements of paragraph 362.11(d) of this section. The fact that prior consent is not required by this subpart does not preclude the FDIC from taking any appropriate action with respect to the activities if the facts and circumstances warrant such action. For purposes of applying § 362.4(b)(4) (i) and (ii), the term ''majority-owned subsidiary'' shall be replaced with ''service corporation''.

(4) *Service corporations conducting securities underwriting.* The FDIC has determined that it does not represent a significant risk to the relevant deposit insurance fund for a service corporation of an insured state savings association to engage in the public sale, distribution or underwriting of securities provided that the activity is conducted by the service corporation in compliance with the core eligibility requirements listed in § 362.4(c); any additional requirements listed in § 362.4(b)(5)(ii); the savings association complies with the investment and transaction limitations of paragraph (c) of this section; and the savings association meets the capital requirements of paragraph (d) of this section. Subject to the stated requirements and limitations, the FDIC consents that these listed activities may be conducted by a service corporation of an insured state savings association if the savings association files a notice in compliance with § 362.23(a) and the FDIC does not object to the notice. The FDIC is not precluded from taking any appropriate action or imposing additional requirements with respect to the activities if the facts and circumstances warrant such action. If changes to the management or business plan of the service corporation at any time result in material changes to the nature of the service corporation's business or the manner in which its business is conducted, the insured state savings association shall advise the appropriate regional director (Supervision) in writing within 10 business days after such change. For purposes of applying § 362.4 (b)(5)(ii) and (c) to this paragraph, the terms ''subsidiary'' and ''majority-owned subsidiary'' shall be replaced with ''service corporation''. For the purposes of applying § 362.4(c), ''eligible subsidiary'' shall be replaced with ''eligible service corporation''.

(c) *Investment and transaction limits.* The restrictions detailed in § 362.4(d) apply to transactions between an insured state savings association and any service corporation engaging in activities which are not permissible for a service corporation of a federal savings association if specifically required by this part or FDIC order. For purposes of applying the investment limits detailed by § 362.4(d)(2), the term ''investment'' includes only those items described in § 362.4(d)(2)(iii)(A) (3) and (4). For purposes of applying § 362.4(d) (2), (3), and (4) to this paragraph, the terms ''insured state bank'' and ''majority-owned subsidiary'' shall be replaced, respectively, with ''insured state savings association'' and ''service corporation''. For purposes of applying § 362.4(d)(5), the term ''insured state bank'' shall be replaced by ''insured state savings association'', and ''subsidiary'' shall be replaced by ''service corporations or subsidiaries''.

(d) *Capital requirements.* If specifically required by this part or by FDIC order, an insured state savings association that wishes to conduct as principal activities through a service corporation which are not permissible for a service corporation of a federal savings association must:

(1) Be well-capitalized after deducting from its capital any amount required by section 5(t) of HOLA.

(2) Use such regulatory capital amount for the purposes of the insured state savings association's assessment risk classification under part 327 of this chapter.

§ 362.12 Approvals previously granted.

FDIC consent by order or notice. An insured state savings association that previously filed an application and obtained the FDIC's consent to engage in an activity or to acquire or retain an investment in a service corporation engaging as principal in an activity or acquiring and retaining any investment that is prohibited under this subpart may contine that activity or retain that investment without seeking the FDIC's consent, provided the insured state savings association and the service corporation, if applicable, continue to meet the conditions and restrictions of approval. An insured state savings association which was granted approval based on conditions which differ from the requirements of §§ 362.4(c)(2) and 362.11 (c) and (d) will be considered to meet the conditions and restrictions of the approval if the insured state savings association and any applicable service corporation meet the requirements of §§ 362.4(c)(2) and 362.11 (c) and (d). For the purposes of applying § 362.4(c)(2), ''eligible subsidiary'' and ''subsidiary'' shall be replaced with ''eligible service corporation'' and ''service corporation'', respectively.

Subpart D—Acquiring, Establishing, or Conducting New Activities Through a Subsidiary by an Insured Savings Association

§ 362.13 Purpose and scope.

This subpart implements section 18(m) of the Federal Deposit Insurance Act (12 U.S.C. 1828(m)) which requires that prior notice be given the FDIC when an insured savings association establishes or acquires a subsidiary or engages in any new activity in a subsidiary. For the purposes of the subpart, the term ''subsidiary'' does not include any insured depository institution as that term is defined in the Federal Deposit Insurance Act. Unless otherwise indictated, the definitions provided in § 362.2 apply to this subpart.

§ 362.14 Acquiring or establishing a subsidiary; conducting new activities through a subsidiary.

No state or federal insured savings association may establish or acquire a subsidiary, or conduct any new activity through a subsidiary, unless it files a notice in compliance with § 362.23(c) and the FDIC does not object to the notice. This requirement does not apply to any federal savings bank that was chartered prior to October 15, 1982, as a savings bank under state law or any savings association that acquired its principal assets from such an institution.

Subpart E—Applications and Notices; Activities of Insured State Banks

§ 362.15 Scope.

This subpart sets out the procedures for complying with the notice and application requirements for activities and investments of insured state banks and their subsidiaries under subparts A and B.

§ 362.16 Definitions.

For the purposes of this subpart, the following definitions shall apply:

(a) *Appropriate regional director, appropriate deputy regional director, and appropriate regional office* mean the regional director of DOS, deputy regional director of DOS, and FDIC regional office which the FDIC designates as follows:

(1) When an institution that is the subject of a notice or application is not part of a group of related institutions, the appropriate region for the institution and any individual associated with the institution is the FDIC region in which the institution or proposed institution is or will be located; or

(2) When an institution that is the subject of a notice or application is part of a group of related institutions, the appropriate region for the institution and any individual associated with the institution is the FDIC region in which the group's major policy and decision makers are located, or any other region the FDIC designates on a case-by-case basis.

(b) *Associate director* means any associate director of DOS, or in the event such title becomes obsolete, any official of equivalent authority within the division.

(c) *Deputy Director* means the Deputy Director of DOS, or in the event such title becomes obsolete, any official of equivalent or higher authority within the division.

(d) *Deputy regional director* means any deputy regional director of DOS, or in the event such title becomes obsolete, any official of equivalent authority within the same FDIC region of DOS.

(e) *DOS* means the Division of Supervision, or in the event the Division of Supervision is reorganized, any successor division.

(f) *Director* means the Director of DOS, or in the event such title becomes obsolete, any official of equivalent or higher authority within the division.

(g) *Regional director* means any regional director in DOS, or in the event such title becomes obsolete, any official of equivalent authority within the division.

§ 362.17 Filing procedures.

(a) *Where to file.* All applications and notices required by subpart A or subpart B of this part are to be in writing and filed with the appropriate regional director .

(b) *Contents of filing*—(1) *Filings generally.* All applications or notices required by subpart A or subpart B may be in letter form and shall contain the following information:

(i) A brief description of the activity and the manner in which it will be conducted;

(ii) The amount of the bank's existing or proposed direct or indirect investment in the activity as well as calculations sufficient to indicate compliance with any specific capital ratio or investment percentage limitation detailed in subpart A;

(iii) A copy of the bank's business plan regarding the conduct of the activity;

(iv) A citation to the state statutory or regulatory authority for the conduct of the activity;

(v) A copy of the order or other document from the appropriate regulatory authority granting approval for the bank to conduct the activity if such approval is necessary and has already been granted;

(vi) A brief description of the bank's policy and practice with regard to any anticipated involvement in the activity by a director, executive office or principal shareholder of the bank or any related interest of such a person; and

(vii) A description of the bank's expertise in the activity.

(2) *Copy of application or notice filed with another agency.* If an insured state bank has filed an application or notice with another federal or state regulatory authority which contains all of the information required by paragraph (b)(1) or (b)(2) of this section, the insured state bank may submit a copy to the FDIC in lieu of a separate filing.

(3) *Additional information.* The appropriate regional director may request additional information.

§ 362.18 Processing.

(a) *Expedited processing*—(1) *Notices.* Where subparts A and B permit an insured state bank or its subsidiary to commence or continue an activity after notice to the FDIC, and the appropriate regional director does not require any additional information with respect to the notice, the appropriate regional director will provide written acknowledgment that the FDIC has received the notice. The acknowledgment will indicate the date after which the bank or its subsidiary may commence the activity or continue

the activity as proposed if the FDIC has not withdrawn the notice from expedited processing in the interim in accordance with paragraph (a)(2). This period will normally be 30 days, subject to extension for an additional 15 days upon written notice to the bank. If the appropriate regional director requests additional information, the written acknowledgment will be provided to the bank once complete information has been received.

(2) *Removal from expedited processing.* Upon prompt written notice to the insured state bank, the appropriate regional director may remove the notice from expedited processing because:

(i) The notice presents a significant supervisory concern, policy issue, or legal issue; or

(ii) Other good cause exists for removal.

(b) *Standard processing for applications and notices that have been removed from expedited processing.* Where subparts A and B permit an insured state bank or its subsidiary to commence or continue an activity after application to the FDIC, or for notices which are not processed pursuant to the expedited processing procedures, the FDIC will provide the insured state bank with written notification of the final action taken. The FDIC will normally review and act on such applications within 60 days after receipt of a completed application, subject to extension for an additional 30 days upon written notice to the bank. Failure of the FDIC to act on an application prior to the expiration of these periods does not constitute approval of the application.

§ 362.19 Delegations of authority.

The authority to review and act upon applications and notices filed pursuant to this subpart E and to take any other action authorized by this subpart E or subparts A and B is delegated to the Director, the Deputy Director, and, where confirmed in writing by the Director, to an associate director, and to the appropriate regional director and deputy regional director.

Subpart F—Applications and Notices; Activities of Insured Savings Associations

§ 362.20 Scope.

This subpart sets out the procedures for complying with the notice and application requirements for activities and investments of insured state savings associations and their service corporations under subpart C. This subpart also sets out the procedures for complying with the notice requirements for establishing or engaging in new activities through a subsidiary of an insured savings association under subpart D.

§ 362.21 Definitions.

For the purposes of this subpart, the following definitions shall apply:

(a) *Appropriate regional director, appropriate deputy regional director, and appropriate regional office,* respectively, mean the regional director of DOS, deputy regional director of DOS, and FDIC regional office which the FDIC designates as follows:

(1) When an institution that is the subject of a notice or application is not part of a group of related institutions, the appropriate region for the institution and any individual associated with the institution is the FDIC region in which the institution or proposed institution is or will be located; or

(2) When an institution that is the subject of a notice or application is part of a group of related institutions, the appropriate region for the institution and any individual associated with the institution is the FDIC region in which the group's major policy and decision makers are located, or any other region the FDIC designates on a case-by-case basis.

(b) *Associate director* means any associate director of DOS, or in the event such title becomes obsolete, any official of equivalent authority within the division.

(c) *Deputy Director* means the Deputy Director of DOS, or in the event such title becomes obsolete, any official of equivalent or higher authority within the division.

(d) *Deputy regional director* means any deputy regional director of DOS, or in the event such title becomes obsolete, any official of equivalent authority within the same FDIC region of DOS.

(e) *DOS* means the Division of Supervision, or in the event the Division of Supervision is reorganized, such successor division.

(f) *Director* means the Director of DOS, or in the event such title becomes obsolete, any official of equivalent or higher authority within the division.

(g) *Regional director* means any regional director in DOS, or in the event such title becomes obsolete, any official of equivalent authority within the division.

§ 362.22 Filing procedures.

(a) *Where to file.* All applications and notices required by subpart C or subpart D of this part are to be in writing and filed with the appropriate regional director .

(b) *Contents of filing*—(1) *Filings generally.* All applications or notices required by subpart C or subpart D of this part may be in letter form and shall contain the following information:

(i) A brief description of the activity, the manner in which it will be conducted, and the expected volume or level of the activity;

(ii) The amount of the savings assocation's existing or proposed direct or indirect investment in the activity as well as calculations sufficient to indicate compliance with any specific capital ratio or investment percentage limitation detailed in subparts C or D;

(iii) A copy of the savings association's business plan regarding the conduct of the activity;

(iv) A citation to the state statutory or regulatory authority for the conduct of the activity;

(v) A copy of the order or other document from the appropriate regulatory authority granting approval for the bank to conduct the activity if such approval is necessary and has already been granted;

(vi) A brief description of the savings association's policy and practice with regard to any anticipated involvement in the activity by a director, executive office or principal shareholder of the savings association or any related interest of such a person; and

(vii) A description of the savings association's expertise in the activity.

(2) *Copy of application or notice filed with another agency.* If an insured savings association has filed an application or notice with another federal or state regulatory authority which contains all of the information required by paragraph (b)(1) or (b)(2) of this section, the insured savings association may submit a copy to the FDIC in lieu of a separate filing.

(3) *Additional information.* The appropriate regional director may request additional information.

§ 362.23 Processing.

(a) *Expedited processing.*—(1) *Notices.* Where subparts C and D permit an insured savings association, service corporation, or subsidiary to commence or continue an activity after notice to the FDIC, and the appropriate regional director does not require any additional information with respect to the notice, the appropriate regional director will provide written acknowledgment that the FDIC has received the notice. The acknowledgment will indicate the date after which the savings association, service corporation, or subsidiary may commence the activity or continue the activity as proposed if the FDIC has not withdrawn the notice from expedited

processing in the interim in accordance with paragraph (d)(2). This period will normally be 30 days, subject to extension for an additional 15 days upon written notice to the bank. If the appropriate regional director requests additional information, the written acknowledgment will be provided to the savings association once complete information has been received.

(2) *Removal from expedited processing.* Upon prompt written notice to the insured savings association, the appropriate regional director may remove the notice from expedited processing because:

(i) The notice presents a significant supervisory concern, policy issue, or legal issue; or

(ii) Other good cause exists for removal.

(b) *Standard processing for applications, and notices removed from expedited processing.* Where subpart C and D permit an insured savings association, service corporation, or subsidiary to commence or continue an activity after application to the FDIC, or for notices which are not processed pursuant to the expedited processing procedures, the FDIC will provide the insured savings association with written notification of the final action taken. The FDIC will normally review and act on such applications within 60 days after receipt of a completed application, subject to extension for an additional 30 days upon written notice to the bank. Failure of the FDIC to act on an application prior to the expiration of these periods does not constitute approval of the application.

(c) *Notices of activities in excess of an amount permissible for a federal savings association; subsidiary notices.* For notices required by § 362.10(b)(3) or § 362.14, the appropriate regional director will provide written acknowledgement that the FDIC has received the notice. The notice will be reviewed at the appropriate regional office, which will take such action as it deems necessary and appropriate.

§ 362.24 Delegations of authority.

The authority to review and act upon applications and notices filed pursuant to this subpart F and to take any other action authorized by this subpart F or subparts C and D is delegated to the Director, the Deputy Director, and, where confirmed in writing by the Director, to an associate director, and to the appropriate regional director and deputy regional director.

Dated at Washington, D.C. this 26th day of August, 1997.

By order of the Board of Directors.

Federal Deposit Insurance Corporation

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 97–23881 Filed 9–11–97; 8:45 am]

BILLING CODE 6714–01–p

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 362

RIN 3064–AB75

Activities and Investments of Insured State Banks

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Proposed rule; withdrawal.

SUMMARY: As part of the FDIC's systematic review of its regulations and written policies under section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI), the FDIC is withdrawing its proposed rule published August 23, 1996, in the **Federal Register** at 61 FR 43486 to amend its regulations governing the activities and investments of insured state banks. The FDIC has decided to withdraw this proposal to amend the regulation and to propose a comprehensive restructuring of the regulation. The new proposal is published elsewhere in today's **Federal Register**.

DATES: Proposed amendment to part 362 is withdrawn on September 12, 1997.

FOR FURTHER INFORMATION CONTACT: Curtis Vaughn, Examination Specialist, (202) 898–6759 or John Jilovec, Examination Specialist (202) 898–8958, Division of Supervision, FDIC 550 17th Street, N.W., Washington, D.C. 20429; Linda L. Stamp, Counsel, (202) 898–7310, or Jamey Basham, Counsel, (202) 898–7265, Legal Division, FDIC, 550 17th Street, N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1996, the FDIC published for comment a proposal (61 FR 43486) to amend part 362 (12 CFR part 362) of its regulations governing the activities and investments of insured banks. In general, subject to certain exceptions, insured state banks are prohibited from making equity investments of a type that are not permissible for national banks or engaging as principal in activities of a type not permissible for national banks. The proposed amendment substituted a notice for an application in the case of particular real estate, life insurance and annuity investment activities if banks met specified requirements. If the FDIC did not object during the notice period, the bank would have been allowed to proceed with the planned investment activities.

Proposed Rule Part 362

The FDIC is conducting a systematic review of its regulations and written policies. Section 303(a) of the CDRI (12 U.S.C. 4803(a)) requires the FDIC to streamline and modify its regulations and written policies in order to improve efficiency, reduce unnecessary costs, and eliminate unwarranted constraints on credit availability. Section 303(a) also requires the FDIC to remove inconsistencies and outmoded and duplicative requirements from its regulations and written policies.

As part of this review, and concurrent with the FDIC's withdrawal of its proposed rule amending its regulations governing the activities and investments of insured state banks, the FDIC is proposing a new rule that completely revises part 362, combining the regulations now found in §§ 303.13 and 337.4 of the FDIC's regulations (12 CFR 303.13 and 337.4) into part 362 and moving the application and notice procedures to part 303. The issues dealt with in the August, 1996 proposed amendment are addressed in the proposed overall revision to part 362.

Withdrawal of the Proposed Rule

In light of the FDIC's complete revision of the regulatory text of part 362, the FDIC withdraws its proposal published in the **Federal Register** on August 23, 1996 at 61 FR 43486.

Dated at Washington, D.C., this 26th day of August, 1997.

By Order of the Board of Directors.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 97–23880 Filed 9–11–97; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASO–13]

Proposed Establishment of Class E Airspace; Guntersville, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at

Guntersville, AL. A Global Positioning System (GPS)–A Standard Instrument Approach Procedure (SIAP) has been developed for Guntersville Municipal Airport. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at Guntersville Municipal Airport. The operating status of the airport will change from Visual Flight Rules (VFR) to include IFR operations concurrent with publication of the SIAP.

DATES: Comments must be received on or before October 14, 1997.

ADDRESSES: Send comments on the proposal in triplicate to:

Federal Aviation Administration, Docket No. 97–ASO–13, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5491.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 97–ASO–13.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA in considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Guntersville, AL. A GPS–A SIAP has been developed for Guntersville Municipal Airport. Controlled airspace extending upward from 700 feet AGL is needed to accommodate this SIAP and for IFR operations at Guntersville Municipal Airport. The operating status of the airport will change from VFR to include IFR operations concurrent with publication of this SIAP. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO AL E5 Guntersville, AL [New]

Guntersville Municipal Airport, AL
(lat. 34°23′57″ N, long. 86°16′12″ W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Guntersville Municipal Airport.

* * * * *

Issued in college Park, Georgia, on August 18, 1997.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 97–24258 Filed 9–11–97; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH106–1b; FRL–5890–8]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: On February 21, 1997 the Ohio Environmental Protection Agency (Ohio EPA) submitted a State Implementation Plan (SIP) revision request to USEPA which consisted of a number of rules and rule paragraphs formerly contained in the Ohio Administrative Code (OAC) which had been incorporated in the Ohio SIP but which had been amended or removed from the OAC by the State. The State requested that these rules and rule paragraphs be removed from the Ohio SIP since they are no longer part of the OAC. The USEPA is proposing to approve the State's request. In the final rules section of this **Federal Register**, the USEPA is approving the State's request as a direct final rule without prior proposal because USEPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for approving the State's request is set forth in the direct final rule. If no adverse written comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If USEPA receives substantive adverse written comments which have not already been responded to, the direct final rule will be withdrawn and all such public comments received will be addressed in a subsequent final rule based on the proposed rule. USEPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments on this proposed rule must be received on or before October 14, 1997.

ADDRESSES: Written comments may be mailed to J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Region 5 at the address listed below. Copies of the materials submitted by the Ohio EPA may be examined during normal business hours at the following locations: Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604. Ohio EPA, Division of Air Pollution Control, 1800 Watermark Drive, Columbus, OH 43215.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano at (312)886–6036.

SUPPLEMENTARY INFORMATION:

For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: August 27, 1997.

Michelle D. Jordan,

Acting Regional Administrator.

[FR Doc. 97–23978 Filed 9–11–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[GA–34–1–9709; FRL–5891–9]

Approval And Promulgation Of Implementation Plans; Georgia: Approval of Revisions to the Georgia State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed conditional interim approval.

SUMMARY: The EPA proposes a conditional interim approval of the State Implementation Plan (SIP) submitted by the State of Georgia through the Georgia Environmental Protection Division (EPD) on November 15, 1993, and amended on June 17, 1996, which included the 15% Rate-of-Progress Plan (15% plan). This submittal was made to meet the 15% plan requirements of section 182(b)(1)(A) of the Clean Air Act, as amended in 1990 (CAA). The EPA is proposing a conditional interim approval because achievement of the 15% reduction in emission of volatile organic compounds (VOCs) is dependent upon full implementation of the enhanced inspection and maintenance (I/M) plan and the conditions pertaining to the implementation of a low Reid Vapor Pressure (RVP) program of 7.0. Full approval of the 15% plan will be granted upon full approval of the I/M plan and the conditional approval of the low RVP program. The final interim approval of the I/M plan was published in the **Federal Register** on August 11, 1997 (see 62 FR 42916). Full approval of the individual measures that comprise the 15% plan except for I/M and the low RVP program is also being proposed in this document.

Additionally, the EPA is proposing full approval of Georgia's 1990 Baseline Inventory. The inventory was submitted by the State to fulfill requirements of section 182(b) of the CAA.

DATES: Comments on this proposed conditional interim action must be received in writing by October 14, 1997.

ADDRESSES: Written comments on this action should be addressed to Scott M. Martin, at the EPA Regional Office listed below.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104.

Air Protection Branch, Georgia Environmental Protection Division, Georgia Department of Natural Resources, 4244 International Parkway, Suite 120, Atlanta, Georgia 30354.

FOR FURTHER INFORMATION CONTACT: Scott M. Martin, Regulatory Planning Section, Air Planning Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104. The telephone number is 404/562–9036.

SUPPLEMENTARY INFORMATION:

Background

The Atlanta area was classified as serious ozone nonattainment on November 6, 1991. The nonattainment area consists of the following thirteen counties: Cherokee, Clayton, Cobb, Coweta, Dekalb, Douglas, Fayette, Forsyth, Fulton, Gwinnet, Henry, Paulding, and Rockdale.

Section 182(b) of the CAA requires that each state in which all or part of a serious nonattainment area is located submit, by November 15, 1992, an inventory of actual emissions from all sources, as described in section 172(c)(3) and 182(a)(1), in accordance with guidance provided by the Administrator. This inventory is for calendar year 1990 and is designated the baseline year inventory. The inventory should include both anthropogenic and biogenic sources of volatile organic compounds (VOCs), nitrogen oxides (NO_X), and carbon monoxide (CO), and must address actual emissions of these pollutants in the nonattainment area during the peak ozone season. The inventory should include all point and area sources, as well as all highway and non-highway mobile sources.

In addition, section 182(b)(1)(A) of the CAA requires ozone nonattainment areas classified as moderate and above to develop plans to reduce VOC emissions by 15 percent from the 1990 baseline. The plans were to be submitted by November 15, 1993, and the reductions were required to be achieved within six years of enactment or November 15, 1996. The CAA also set

limitations on the creditability of certain types of reductions. Specifically, a state cannot take credit for reductions achieved by Federal Motor Vehicle Control Program (FMVCP) measures promulgated prior to 1990, or for reductions resulting from requirements to lower the Reid Vapor Pressure (RVP) of gasoline promulgated prior to 1990 or required under section 211(h) of the CAA, which restricts gasoline RVP. Furthermore, the CAA does not allow credit for corrections to vehicle I/M Programs or corrections to Reasonably Available Control Technology (RACT) rules as these programs were required prior to 1990.

1990 Baseline Emissions Inventory

In this action, the EPA is proposing to approving the 1990 baseline emissions inventory for the Atlanta area. Detailed information on the emissions calculations can be obtained at the Regional address above. The following table is a summary of the baseline emissions inventory.

GEORGIA 1990 BASELINE EMISSIONS INVENTORY (TONS/DAY)

Source type	VOC	NO_X	CO
Point	57.55	121.34	6.38
Area	138.94	25.74	85.73
Highway	401.74	304.04	2,890.28
EPA Offroad	79.50	65.35	573.65
Aircraft &	9.06	22.26	31.43
Biogenic	429.10	N/A	N/A
Total	1,115.89	538.73	3,587.47

The adjusted base year inventory requires exclusion of emission reductions that would occur by 1996 as a result of the FMVCP and RVP promulgated prior to 1990. The following table is a summary of the adjusted base year inventory.

GEORGIA 1990 ADJUSTED BASELINE INVENTORY (TONS/DAY)

Source type	VOC
Point	57.55
Area	135.51
Highway Mobile	244.57
EPA Offroad Mobile	79.50
Aircraft & Railroad	9.06
Total	526.19

1990 Rate-of-Progress Inventory

The Rate-of-Progress inventory is comprised of the anthropogenic stationary (point and area) and mobile sources in the nonattainment area with all biogenic emissions removed from the baseline inventory. The following table is a summary of the Rate-of-Progress baseline inventory.

GEORGIA 1990 RATE-OF-PROGRESS BASELINE

Source type	VOC
Point	57.55
Area	138.94
Highway	401.74
EPA Offroad	79.50
Aircraft &	9.06
Total	686.79

The EPA is proposing to approve this inventory as satisfying the requirements of section 182(a)(1) of the CAA.

15% Plan

The State of Georgia submitted a 15% Plan for the Atlanta nonattainment area on November 15, 1993, with additional information submitted on June 17, 1996. This submittal was required in order to demonstrate reasonable further progress in attaining the National Ambient Air Quality Standard (NAAQS) for ozone. This 15% plan is not intended to demonstrate attainment of the ozone NAAQS. The CAA required Georgia to submit a plan by November 15, 1993, and to attain the ozone NAAQS by 1999. In order to demonstrate progress, the State must achieve actual VOC emission reductions of at least 15% from the baseline and account for growth during the first 6 years after enactment of the CAA. The 15% reduction must be based on a decrease of the 1990 baseline emissions, excluding emissions from other reduction programs and emission sources outside the nonattainment area.

Creditable 15% Reduction

The adjusted base year inventory of 526.19 tons/day is multiplied by 0.15 to calculate the creditable 15% reduction in tons/day. Georgia needs a reduction of 78.93 tons/day to obtain the creditable 15% reduction.

Total Expected Reductions by 1996

The total expected reductions by 1996 include the required 15% (78.93 tons/day), the reductions from FMVCP and RVP (160.60 tons/day), corrections to RACT rules (3.05 tons/day) and corrections to I/M programs (0.00 tons/day). Georgia expects to have a total of 242.58 tons/day of reductions by 1996.

Target Level Emissions for 1996

To calculate the 1996 target emissions level, the total expected reductions (242.58 tons/day) are subtracted from the 1990 Rate-of-Progress baseline inventory (686.79 tons/day) for the Atlanta nonattainment area. This gives a 1996 target level emissions of 444.21 tons/day.

Reductions Needed by 1996 to Achieve 15% Accounting for Growth

The reductions needed to achieve 15% net of growth are determined by subtracting the target level emissions (444.21 tons/day) from the 1996 estimated emissions (560.21 tons/day) giving a total of 116.00 tons/day in additional reductions needed.

Reductions Required by 1996

In order to meet the target level required for 1996 Georgia must reduce VOC emissions by an additional 116.00 tons/day. The 1990 Rate-of-Progress Baseline inventory is the base inventory from which the 15 percent reduction on existing sources and the reduction from growth by 1996 must be calculated to meet requirements of the CAA.

The following is a summary of the reductions Georgia will obtain to meet this requirement. More detailed information concerning specific areas of reduction can be found in the Technical Support Document (TSD) located at the Regional EPA address listed above.

SUMMARY OF REDUCTIONS NEEDED

Source type	Expected reductions (tons/day)
Point Sources	4.28
Area Sources	37.97
Highway Mobile Sources	71.88
Non-Road Mobile Sources	2.93
Reductions Demonstrated	117.06
Required Reductions	116.00
Excess Reductions	1.06

1996 Projected Emissions

The projected emissions for 1996 have been calculated by applying the control measures discussed below to the 1996 Estimated Emissions. The 1996 Projected Emissions are shown as follows:

1996 PROJECTED EMISSIONS (TONS/DAY)

Point	50.77
Area	118.83
Mobile	183.12
Nonroad	90.43
Total	443.15

The 1996 Projected Emissions of 443.15 tons/day are less than the 1996 Target Level Emissions of 444.21 tons/day.

Control Strategies

Point Source Control Measures

Point Source Rule Effectiveness Improvements

Following EPA guidance on rule effectiveness (RE) and RE improvements, RE for gasoline terminals, major graphic arts sources, and coil coating plants will be increased from the default 80% to 91.0% thus reducing emissions 2.25 tons/day, 0.97 tons/day, and 0.64 tons/day from respective 1990 levels. The above RE improvements do not require any rule changes.

Area Source Control Measures

Stage I

Stage I VOC emissions are VOC emissions from the loading of underground gasoline storage tanks at gasoline dispensing facilities. In 1991, Georgia Rule 391–3–1–.02(2)(rr) ''Gasoline Dispensing Facility-Stage I'' (rule (rr)) was revised to lower applicability level from facilities with throughput of more than 20,000 gallons per month to 10,000 gallons per month. The revised applicability will result in a reduction of 3.05 tons/day. This reduction is included as part of the Total Expected Reductions by 1996 but is not creditable towards the 15% reduction since it is a correction to a RACT rule.

In 1990, the Atlanta ozone nonattainment area did not include Forsyth and Cherokee counties so rule (rr) did not apply there. Rule (rr) was revised to require compliance in these two counties by November 1992, resulting in a reduction equal to 1.27 tons/day.

The above reductions from Stage I are based on the EPA suggested 80% value for RE. Since the majority of these facilities will become subject to and comply with the Stage II requirements of Rule 391–3–1–.02.(2)(zz) ''Gasoline Dispensing Facilities-Stage II,'' there will be additional inspections, operator education and training, etc. which will improve the RE of the Stage I rule. The RE will increase from 80% to 85.6% upon implementation of these additional programs. This will reduce projected 1996 emissions by 1.13 tons/day.

Architectural Coatings

Architectural coatings, traffic markings, and high performance maintenance coatings are all subcategories of area source surface coatings. Based on 1996 projected emissions, these surface coatings account for 33.08 tons/day of emissions. Reducing these emissions by 20% gives a reduction of 6.62 tons/day (reference March 7, 1996, memo from John Seitz (EPA) ''Update on the credit for the 15% Rate-of-Progress Plans for reductions from the architectural and industrial maintenance (AIM) coating rule'').

Open Burning

VOC emissions result from open burning at a projected rate of 12.65 tons/day. Rule 393–3–1–.02(5) bans such burning during the ozone season (April 1 to October 31). Due to exceptions to Rule 393–3–1–.02(5) 77.19% of open burning emissions will be eliminated resulting in a reduction of 9.76 tons/day of VOC emissions.

Slash/Prescribed Burning

The 1996 projected emissions for slash/prescribed burning are 4.36 tons/day for VOC. Rule 393–1–.02(5) bans 100% of such burning during the ozone season (April 1 to October 31) resulting in a reduction of 4.36 tons/day of VOC emissions.

Consumer/Commercial Solvents

The 1996 projected emissions for consumer/commercial solvents (i.e. windshield washer fluid) are 26.66 tons/day. Windshield washer fluid has a typical VOC content of 35%. Rule 391–3–1–.02(aaa) limits its VOC content to 8%, resulting in a 77.14% reduction in VOCs for a 1.96 tons/day reduction of VOC emissions.

Underground Storage Tank Breathing Losses

Uncontrolled emissions in 1996 are projected to be 2.11 tons/day. The Stage II controls in Rule 391–3–1–.02(zz) controls 90% of these emissions with a projected emission reduction of 1.78 tons/day assuming 85% overall control. The Stage I controls in rule (rr) will obtain a 7.2% reduction of these emissions with a projected reduction of 0.17 tons/day. The total projected reductions from Stage I and Stage II controls for breathing losses are 1.95 tons/day.

Autobody Refinishing

The 1996 projected VOC emissions from autobody refinishing are 13.84 tons/day. According to a memo from John Seitz (EPA) on November 29, 1994, ''Credit for the 15% Rate-of-Progress Plans for reductions from the architectural and industrial maintenance (AIM) coating rule and the autobody refinishing rule'' a 37% VOC emissions reduction for autobody refinishing is allowed. This rule provides a VOC reduction of 5.12 tons/day.

Consumer Products

Emission rates for the 1996 Estimated Inventory were calculated to be 26.66 tons/day of VOC. A reduction in previously unregulated areas of approximately 20% by November 15, 1996 is anticipated (reference June 22, 1995, memo from John Seitz (EPA) ''Regulatory schedule for consumer and commercial products under section 183(e) of the CAA''). Therefore, the consumer products rule, excluding windshield washer fluid which is already regulated by the State, will result in a 2.16 tons/day reduction of VOC emissions.

Mobile Source Control Measures

Total highway mobile source reductions are 71.88 tons/day. Due to the interaction of various control measures (i.e., reduced Reid Vapor Pressure and Stage II recovery), the VOC reductions from each control modeled separately is difficult to determine. Unless otherwise stated with a specific reduction, all of the following control measures contribute towards the cumulative reduction of 71.88 tons/day.

Enhanced Inspection and Maintenance (I/M)

Georgia Rule 391–3–20 establishes a biennial enhanced I/M program for all 13 counties of the Atlanta nonattainment are beginning October 1, 1996, and covering 1975 and newer model years of light duty gasoline-powered vehicles. According to E.H. Pechan & Associates, Inc. in Sample City Analysis Comparison of Enhanced I/M Reductions Versus Other 15 Percent ROP Plan Measures reductions the enhanced I/M program will contribute approximately 60 tons/day towards the cumulative 71.88 tons/day reductions from highway mobile sources for the nonattainment area. A more detailed description of Georgia's enhanced I/M program was published in a separate **Federal Register** action on December 13, 1996 (61 FR 65496).

Reid Vapor Pressure (RVP) Reduction

RVP is a measure of the tendency of gasoline to evaporate. Georgia Rule 391–3–1–.02(2)(bbb) requires that during the summer months (June 1—September 15) the RVP limit for gasoline dispensed in the 13 county nonattainment area not exceed 7.0 psi which is lower than the federally mandated RVP of 7.8 psi. The RVP reduction from 7.8 to 7.0 will contribute 3.13 tons/day towards the cumulative 71.88 tons/day reduction from highway mobile sources. Reductions in exhaust VOC emissions attributable to reducing RVP were calculated using EPA's Final Complex Model. Point Source Rule Effectiveness Improvements for gasoline terminals will reduce VOC emissions from this category by 0.40 tons/day with the implementation of 7.0 RVP gasoline. Based on the gasoline throughput in the 13 county nonattainment area, Stage I will contribute a reduction of 0.59 tons/day in additional VOC emissions attributable to the lower RVP limit.

State governments are generally preempted under section 211(c)(4)(A) of the CAA from requiring gasoline sold in any area in a State to meet an RVP standard different from the federal standard. However, under 211(c)(4)(C) a State can require a more stringent RVP standard in its SIP if the more stringent standard is necessary to achieve the NAAQS in a particular nonattainment area. The State can make this demonstration of necessity by providing evidence that no other measures exist that would bring about timely attainment, or that such measures exist, are technically possible to implement, but are unreasonable or impracticable. If a State makes this demonstration, it can lower the volatility to whatever standard is necessary for the nonattainment area. The State of Georgia submitted an attainment demonstration on November 15, 1994 that included regulations controlling the RVP of gasoline below 7.8. This attainment demonstration failed to show attainment, and therefore, EPA is requiring Georgia to submit a new attainment demonstration. This new attainment demonstration will be submitted to EPA in late 1997. Because Georgia is currently developing their attainment demonstration, EPA is proposing conditional approval of Georgia's low RVP program. The State will be considering new control strategies as part of their attainment demonstration, among those fuel controls. If the State still needs the program, they will need to meet the requirements under 211(c)(4)(C). As part of the conditional approval process, Georgia must commit within 30 days of this proposal to submit within one year of conditional interim approval documentation supporting the need for a 7.0 psi RVP program. If the commitment is not made within 30 days, EPA proposes in the alternative to disapprove the SIP revision. If the State does make a timely commitment but the condition is not met by the date to which the Statecommitted, EPA proposes that this rulemaking will convert to a final disapproval. EPA will notify the State by letter that the conditions have not been met and that the conditional approval has been converted to a disapproval. Georgia must commit to correct the deficiencies to enable EPA to conditionally approve the program.

Stage II

Georgia Rule 391–3–1–.02(2)(zz) ''Gasoline Dispensing Facilities-Stage II'' prohibits the transfer of gasoline from stationary storage tanks of gasoline dispensing facilities to any vehicle gasoline tank unless the facility is equipped with an approved vapor recovery system. Exemptions to this rule include facilities that dispense no more than 10,000 gallons/month and dispensing facilities owned by independent small business gasoline marketers that dispense up to and including 50,000 gallons/month. The reductions contribute toward the cumulative 71.88 tons/day VOC reductions from highway mobile sources. The EPA federally approved Georgia rule 391–3–1–.02(2)(zz) into the Georgia SIP on February 2, 1996, (61 FR 3819).

Tier I Tailpipe Standards

The CAA mandates new and stricter emissions standards for light duty vehicles. The total VOC reductions in the nonattainment area from Tier I Standards contribute toward the cumulative 71.88 tons/day from highway mobile sources.

Transportation Control Measures (TCMs)

TCMs programmed in Tier I (FY96–FY97) of the Atlanta Regional Transportation Improvement Program include the following types of projects: bike/pedestrian, HOV lanes, Park/Ride facilities, Traffic Flow Improvement, Transit. The TCMs reduce VOC emissions by 2.57 tons/day. Further information concerning methodologies for the TCM analysis is available at the EPA Regional address listed above.

Additional 1996 Mobile Source VOC Reductions

VOC reductions in the nonattainment area from promulgation of new federal rules were calculated using EPA guidance. EPA's planned detergent additives program reduce highway VOC emissions by 1.70 tons/day and nonroad VOC emissions by 0.77 tons/day. New federal nonroad engine emission standards (40 CFR part 90) for new nonroad spark-ignition engines at or below 19 kilowatts reduce VOCs by 2.16 tons/day.

Background on Georgia's I/M submittal

Section 182(b)(1) of the CAA requires that states containing ozone nonattainment areas classified as Moderate or above prepare SIPs that provide for a 15 percent VOC emissions reduction by November 15, 1996. Most of the 15% SIPs originally submitted to the EPA contained enhanced I/M programs because this program achieves more VOC emission reductions than most, if not all other, control strategies. However, because most states experienced substantial difficulties implementing these enhanced I/M programs, only a few states are currently testing cars using the original enhanced I/M protocol.

On September 18, 1995, EPA finalized revisions to its enhanced I/M rule allowing states significant flexibility in designing I/M programs appropriate for their needs. Subsequently, Congress enacted the National Highway Systems Designation Act of 1995 (NHSDA), which provides states with more flexibility in determining the design of enhanced I/M programs. The substantial amount of time needed by states to re-design enhanced I/M programs in accordance with the guidance contained

within the NHSDA, secure state legislative approval when necessary, and set up the infrastructure to perform the testing program precludes states that revise their I/M programs from obtaining emission reductions from such revised programs by November 15, 1996.

Given the heavy reliance by many States upon enhanced I/M programs to help achieve the 15% VOC emissions reduction required under CAA section 182(b)(1), and the recent NHSDA and regulatory changes regarding enhanced I/M programs, EPA believes that it is no longer possible for many states to achieve the portion of the 15% reductions that are attributed to I/M by November 15, 1996. Under these circumstances, disapproval of the 15% SIPs would serve no purpose. Consequently, under certain circumstances, EPA will propose to allow states that pursue re-design of enhanced I/M programs to receive emission reduction credit from these programs within their 15% plans, even though the emissions reductions from the I/M program will occur after November 15, 1996.

Specifically, EPA will propose approval of 15% SIPs if the emissions reductions from the revised, enhanced I/M programs, as well as from the other 15% SIP measures, will achieve the 15% level as soon after November 15, 1996 as practicable. To make this ''as soon as practicable'' determination, EPA must determine that the SIP contains all VOC control strategies that are practicable for the nonattainment area in question and that meaningfully accelerate the date by which the 15% level is achieved. The EPA does not believe that measures meaningfully accelerate the 15% date if they provide only an insignificant amount of reductions.

In the case of the Atlanta nonattainment area, the State of Georgia has submitted a 15% SIP that would achieve the amount of reductions needed from I/M by November 1999. The State of Georgia has submitted a 15% SIP that achieves all other reductions by 1996. The EPA proposes to determine that this SIP does contain all measures, including enhanced I/M, that achieve the required reductions as soon as practicable. The EPA also proposes to determine that the I/M program for the Atlanta nonattainment area does achieve reductions as soon as practicable.

The EPA has examined other potentially available SIP measures to determine if they are practicable for the Atlanta nonattainment area and if they would meaningfully accelerate the date by which the area reaches the 15% level of reductions. The EPA proposes to determine that the SIP does contain the appropriate measures.

Following, is a list of measures which are not included in the Georgia 15% plan with reductions of VOC emissions in tons/day which could be achieved if implemented: Industrial Adhesives (8.35), Treatment Storage Disposal Facility (TSDFs)—Federal Rule (early implementation) (3.33), Landfills—Federal Rule (0.00), Nonroad Gasoline—Reformulated Gasoline (3.72), Motor Vehicle—Reformulated Gasoline (32.24). The amount of reduction attributed to reformulated gasoline is overestimated because Georgia has implemented a lower RVP of 7.0. Georgia did not include these measures in their 15% plan because they could not be implemented quicker than I/M and the measures do not provide the level of reductions achieved through the implementation of enhanced I/M.

Proposed Rule Approval

In addition to proposing approval of Georgia's 15% plan, the EPA proposes to approve the following revisions submitted by the State into their SIP:

391–3–1–.01(lll) ''Volatile Organic Compound''

Georgia submitted revisions to their definition of VOC so that it is consistent with the federal definition.

391–3–1–.01(mmmm) ''Hazardous Air Pollutant'

Georgia submitted this new definition to define a class of pollutants which is now being regulated as a result of the CAA.

391–3–1–.02(2)(ii) VOC Emissions from Surface Coating of Miscellaneous Metal Parts and Products

A new paragraph 6. is being added to exempt facilities which have a potential to emit of less than 10 tons/year.

391–3–1–.02(2)(rr) Gasoline Dispensing Facility—Stage I

This section is being revised to outline requirements for the transfer of gasoline from any delivery vessel into a stationary storage tank. No person may transfer or cause or allow the transfer of gasoline from any delivery vessel into any stationary storage tank subject to this subsection unless the tank is equipped with all of the following: a submerged fill pipe; an approved Stage I vapor recovery system that is in good working order; Pressure/Vacuum vent valves with minimum settings of 8 ounces of pressure and ½ ounce of vacuum unless the facility has a California Air Resources Board (CARB) certified Stage II vapor recovery system; and the vapors displaced from the storage tank during filling are controlled by one of the following: a vapor-tight vapor return line from the stationary gasoline storage tank(s) to the delivery vessel for each product delivery line that is connected from the delivery vessel to the storage tank(s); if a manifold connects all stationary gasoline storage tanks vent lines, a vapor tight vapor return line from a tank being filled to the delivery vessel with sufficient return capacity to control vapors from all tanks being filled at the time and to prevent release of said vapors from the vent line(s) or other tank openings; or a refrigeration-condensation system or a carbon adsorption system is utilized and recovers at least 90 percent by weight of the organic compounds in the displaced vapor.

Paragraph 6 is being amended to state that Stage I gasoline vapor recovery systems installed prior to January 1, 1993 that currently utilize a co-axial Stage I vapor recovery system in which the gasoline tanks are not manifolded in manner and that are utilized at a facility that is not required to have a Stage II vapor recovery system shall be exempted from installing a co-axial poppetted drop tube.

The definition of ''Division Approved'' is also being added.

391–3–1–.02(2)(zz) Gasoline Dispensing Facilities—Stage II

This subsection is being revised to add or revise the definitions for ''Approved Stage II Vapor Recovery System,'' ''California Air Resources Board (CARB) certified system,'' ''Average monthly throughput,'' ''Fill cap,'' ''Independent small business owner,'' ''Operator,'' ''Owner,'' and ''Vapor cap.''. A compliance date for facilities with a throughput of 50,000 gallons or more per month is established as November 15, 1994. An exemption for facilities reconstructed prior to November 15, 1995, that dispense up to 50,000 gallons per month and are owned by an independent small business marketer of gasoline is established. Procedures for certification of Stage II facilities are also established.

391–3–1–.02(2)(aaa) Consumer and Commercial Products

This subsection is being added and is applicable to any person who supplies or sells consumer and commercial products limited by this subsection within the 13 county nonattainment area. After January 1, 1996, no person shall supply, offer for sale or sell any

automobile windshield washer fluid which contains VOCs as an active ingredient, or solvent in a concentration greater than 8.0% by weight.

391–3–1–.02(2)(bbb) Gasoline Marketing-Reid Vapor Pressure (RVP)

This subsection is being conditionally approved and states that during the period from June 1 to September 15 of any calendar year no person, retailer, or wholesale purchaser-consumer shall sell, offer for sale, dispense, supply, offer for supply, transport or introduce into commerce gasoline whose Reid vapor pressure exceeds 7.0 psi.

391–3–1–.02(5) Open Burning

Paragraph 13 is being added which allows open burning of vegetative material for the purpose of land clearing using an air curtain destructor.

Subsection (b) is being revised to state that beginning calendar year 1996 open burning during the months of May, June, July, August, and September is prohibited in the Atlanta ozone nonattainment area. Certain exemptions to this rule are granted for procedures necessary for production of harvesting crops, cooking food for immediate human consumption, fires set for the purpose of training fire-fighting personnel, operation of devices using open flames, setting and maintenance by contractors of miscellaneous small fires necessary to such activities as street paving, and disposal of packaging materials previously containing explosives, in accordance with U.S. Department of Labor Safety Regulations.

391–3–1–.02(2)(ff) Solvent Metal Cleaning

This subsection is being amended to establish requirements which apply to degreasers using trichlorethylene, carbon tetrachloride, and/or chloroform in a total concentration greater than 5 percent by weight.

391–3–1–.02(7) Prevention of Significant Deterioration

This subsection is being amended to add and update all of the new and amended changes to these federally-promulgated, state-implemented rules.

391–3–1–.03 Permits. Amended

Paragraph 6. Exemptions is being amended. Subparagraph (6)(b)11 is being amended to add exemptions for stationary engines, and (6)(b)13 is being added to exempt fire fighter or other emergency/safety equipment used to train firefighters. Subsection (6)(c) is amended to add exemptions for storage tanks. Subsection (6)(g) is added to provide exemptions for pollution control. Subsection (6)(h) is amended to provide exemptions for industrial operations.

Proposed Action

The EPA proposes conditional approval of the State of Georgia's 15% plan contingent upon full approval of the I/M plan. Final interim approval of the I/M plan was published in the **Federal Register** on August 11, 1997 (see 62 FR 42916). In addition EPA proposes conditional approval of rule 391–3–1–.02(2)(bbb) Gasoline Marketing-Reid Vapor Pressure (RVP). The condition for approvability is as follows: Georgia must submit documentation demonstrating that the program is needed for attainment. EPA proposes to approve Georgia's 1990 Baseline Emissions Inventory for the Atlanta nonattainment area. The EPA also proposes approval of the rule revisions discussed above to 391–3–1–.01(llll) ''Volatile Organic Compound''; 391–3–1–.01(mmmm) ''Hazardous Air Pollutant'; 391–3–1–.02(2)(ii) VOC Emissions from Surface Coating of Miscellaneous Metal Parts and Products; 391–3–1–.02(rr) Gasoline Dispensing Facility—Stage I; 391–3–1–.02(zz) Gasoline Dispensing Facilities—Stage II; 391–3–1–.02(2)(aaa) Consumer and Commercial Products; 391–3–1–.02(5) Open Burning; 391–3–1–.02(2)(ff) Solvent Metal Cleaning; 391–3–1–.02(7) Prevention of Significant Deterioration; 391–3–1–.03 Permits. Amended.

Included in this submittal were revisions to 391–3–1–.03(9) Permit Fees, 391–3–1–.03(10) Title V Operating Permits, and 391–3–1–.03(11) Permit by Rule. EPA is not taking action on these rules at this time as they will be acted upon in a separate action.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA 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, EPA 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.

Conditional SIP Approval Actions

Conditional approvals of SIP submittals under section 110 and subchapter I, part D of the CAA 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 any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2) and 7410(k)(3).

If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new Federal requirement.

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that

may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: August 29, 1997.

A. Stanley Meiburg,

Acting Regional Administrator.

[FR Doc. 97–24241 Filed 9–11–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX35–1–6168; FRL–5891–8]

Approval and Promulgation of Air Quality State Implementation Plans (SIP); Texas; Propose Disapproval of Revisions to the State Implementation Plan; Chapter IV, Sections 114.1 and 114.5

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing disapproval of SIP revisions Texas submitted for Regulation IV, 30 TAC Chapter 114, sections 114.1 ''Maintenance and Operation of Air Pollution Control Systems or Devices Used to Control Emissions from Motor Vehicles'' and 114.5 ''Exclusions and Exceptions'' on February 24, 1989, September 6, 1990, and July 13, 1993.

The EPA is acting on these three previously submitted revisions that relate to State wide antitampering provisions and exemptions to antitampering provisions for motor vehicles or motor vehicle engine emission control systems. The EPA is proposing disapproval because the States antitampering rules are not consistent with the Clean Air Act (the Act), section 203(a)(3) and EPA tampering prohibition as outlined in EPA's antitampering Enforcement Policy, Mobile Source Enforcement Memorandum No. 1A.

DATES: Comments must be received on or before October 14, 1997.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. Copies of the documents about this action are available for public inspection during normal business hours at the above and following locations. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas 78711–3087.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Scoggins, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7354 or via e-mail at scoggins.paul@epamail.epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the above Region 6 address.

SUPPLEMENTARY INFORMATION:

I. Summary of State Submittal

On February 24, 1989, September 6, 1990, and July 13, 1993, EPA received revisions to the Texas SIP for changes to Regulation IV, 30 TAC Chapter 114, sections 114.1 and 114.5, 114.5, and 114.1 and 114.5 respectively. In their regulations, Texas adopted specific measures restricting emission control equipment removal/modifications (antitampering) and exempting or providing exclusions for vehicles from antitampering requirements.

The Federal tampering prohibition for emission control equipment for motor vehicles and motor vehicle engines is contained in section 203(a)(3) of the Act, 42 U.S.C. 7522(a)(3). Section 203(a)(3)(A) of the Act prohibits ''any person from removing or rendering inoperative any emission control device or element of design installed on or in a motor vehicle or motor vehicle engine prior to its sale and delivery to an ultimate purchaser'' and prohibits ''any person from knowingly removing or rendering inoperative any such device or element of design after such sale and delivery to the ultimate purchaser.'' Mobile Source Enforcement Memorandum No. 1A provides guidance on what is a violation of section 203(a)(3).

The State revision, received February 24, 1989, made the following changes. Section 114.1 prohibits: (1) The removal of or render inoperative any system or device used to control emissions from a motor vehicle or motor vehicle engine or any part thereof; (2) specifies the conditions for the acceptable removal and/or installation of vehicle engines, catalytic converters, or other emission control components; (3) prohibits leasing, sale, or offer to sale motor vehicles that have tampered emission control equipment; (4) and finally, establishes sign posting requirements for prohibitions.

Section 114.5 exempts from the provisions of 114.1: (1) Dual-fuel conversions specified by the Department of Public Safety (DPS); (2) vehicles belonging to persons being transferred to a foreign country and specifies associated documentation requirements; (3) sales or offers for sale motor vehicles for wholesale transaction and for sales or trade-ins from an individual to a vehicle dealer; (4) Federal, State and local agencies that sell abandoned, confiscated, or seized vehicles and vehicle auction facilities if specific conditions are satisfied.

The State revision, received September 9, 1990, to section 114.5 exempts all dealer transactions that do not result in the sale of a tampered vehicle to an individual for operation on a public highway.

The State revision, received on July 13, 1993, made the following changes. Section 114.1 addresses the replacement or installation of aftermarket alternative fuel conversions equipment and any other system or device relating to emissions, safety concerns and antitampering. Section 114.5 specifies conditions for granting motor vehicle and motor vehicle engine exclusions from the provisions of section 114.1, deletes original text in 114.5(c) to improve consistency with section 114.1, and redesignates original paragraphs.

II. Analysis of State Submittal

The EPA is proposing disapproval of the revisions to Texas SIP for Texas Regulation IV, 30 TAC Chapter 114, sections 114.1 and 114.5 based on the following inconsistencies. Section 114.1 (b)(4) allows replacement or installation of any system or device (other than catalytic converters, engines and the conversion of the vehicle to alternative fuels, which are handled under separate subsections) if: The system or device can be demonstrated to be at least as effective in reducing emissions as the original equipment. This rule does not

provide how the above demonstration will be made nor the criteria for the demonstration. Section 114.5(a)(1) allows registered farm vehicles used primarily on a farm or ranch to remove or make inoperable the farm vehicles air pollution control system or device used to control emissions from the farm vehicle. This exemption is contrary to section 203(a)(3)(A) of the Act and EPA tampering prohibition as outlined in Memorandum No. 1A. Section 114.5(c) allows exclusion from tampering laws by petition to state for danger to person or property. The EPA has never recognized any circumstances that merit removal of a catalytic converter or other emissions controls because of a fire hazard or other problem. Again, this is contrary to the Act and EPA tampering prohibition. In addition, section 114.1(b)(3) references a deleted section and section 114.1(e) allows dispensing of leaded gasoline if properly labeled. The Act banned the dispensing of leaded gasoline on January 1, 1996.

III. Proposed Action

The EPA is proposing disapproval of the State submitted revisions received on February 21, 1989, September 20, 1990, and July 13, 1993, for Regulation IV, 30 TAC Chapter 114, sections 114.1 and 114.5. The EPA has evaluated the submitted rules and has determined that they are not consistent with the Clean Air Act, and EPA tampering prohibition.

The Regional office, with EPA's Office of Mobile Sources has initiated efforts to help ensure that this action is consistent with the Act and Memo 1A, and will not interfere with any applicable requirement concerning attainment or any other applicable requirement of the Act. These revisions are not required by the Act. Therefore, this proposed disapproval action does not impose sanctions for failure to meet Act requirements.

The EPA is soliciting public comments on the proposed action discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rule making procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. *See* 5 U.S.C. 603 and 604. Alternatively, EPA 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.

The EPA's disapproval of the State request under section 110 and subchapter I, part D of the Act does not affect any existing requirements applicable to small entities. Any preexisting Federal requirements remain in place after this disapproval. Federal disapproval of the State submittal does not affect its State-enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements and impose any new Federal requirements.

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the disapproval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal disapproval action imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: August 11, 1997.

Jerry Clifford,

Acting Regional Administrator.

[FR Doc. 97–24242 Filed 9–11–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WT Docket No. 97–192; FCC 97–303]

Procedures for Reviewing Requests for Relief From State and Local Regulations Pursuant to Section 332(c)(7)(B)(v) of the Communications Act of 1934

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This *Notice of Proposed Rulemaking (NPRM)* in WT Docket No. 97–192, opens a new proceeding to establish procedures for filing and reviewing requests for relief from state or local regulations based directly or indirectly on the environmental effects of RF emissions.

DATES: Comments are due October 9, 1997. Reply comments are due October 24, 1997.

ADDRESSES: Office of the Secretary, Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Shaun A. Maher, Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission, (202) 418–7240.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *NPRM*, WT Docket 97–192, FCC 97–303, adopted August 25, 1997, and released August 25, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be

purchased from the Commission's duplication contractor, International Transcription Service, (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

Summary of the Notice of Proposed Rulemaking

I. Definitional Issues

1. In this proceeding, we seek comment on proposed procedures for filing and reviewing requests filed pursuant to section 332(c)(7)(B) (iv)–(v) of the Communications Act for relief from state or local regulations on the placement, construction or modification of personal wireless service facilities based either directly or indirectly on the environmental effects of RF emissions. As the siting of personal wireless facilities expands and numerous new personal wireless service providers seek to construct their facilities, we anticipate being called upon more frequently to review petitions alleging that a state or local government has acted or failed to act in a manner that is inconsistent with section 332(c)(7)(B) (iv)–(v). Therefore, we believe it is appropriate to initiate a rulemaking proceeding to seek comment on the procedures we should adopt for reviewing section 332(c)(7)(B) (iv)–(v) petitions.

2. On August 1, 1996, we issued our *Report and Order* in ET Docket No. 93–62, 61 FR 41006, August 7, 1996, wherein we revised our RF emissions guidelines in response to Congress' mandate in section 704(b) of the Telecommunications Act. In the *Report and Order,* we first considered the implementation of section 332(c)(7)(B)(iv) when we sought to determine the definition of the term ''personal wireless service facilities.'' Congress specifically defined this term in section 332(c)(7)(C)(i) of the Communications Act to mean: ''commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services.'' This section does not provide specific authority for the Commission to preempt state or local regulations relating to RF emissions of communications services other than those specifically defined in the statute. Therefore, we declined to consider the preemption of state and local regulations relating to RF emissions involving broadcast or other communications facilities.

3. The Electromagnetic Energy Association filed a petition for reconsideration of our Report and Order requesting that a broader RF preemption policy be adopted for all services. The *Second Memorandum Opinion and Order* in ET Docket No. 93–62, declined to take that approach or to consider granting relief from state and local regulations relating to RF emissions for facilities other than those of ''personal wireless services'' as set forth in section 332(c)(7)(B)(iv) of the Communications Act. Congress provided a clear definition of this term in section 332(c)(7)(C)(i) of the Communications Act, and we find that definition is appropriate when determining whether to consider a request for relief filed under section 332(c)(7)(B)(v) of the Communications Act.

4. As a preliminary matter, before considering procedures to review requests for relief under section 332(c)(7)(B)(v) of the Communications Act, we seek comment concerning the definition of certain terms contained in this section. For example, Congress did not define the terms ''final action'' or ''failure to act'' as they appear in section 332(c)(7)(B)(v) of the Communications Act. In the *Conference Report*, however, ''final action'' is defined as final administrative action at the state or local government level so that a party can commence action under section 332(c)(7)(B)(v) rather than waiting for the exhaustion of any independent remedy otherwise required. We understand this to mean that, for example, a wireless provider could seek relief from the Commission from an adverse action of a local zoning board or commission while its independent appeal of that denial is pending before a local zoning board of appeals. We propose to adopt this definition of ''final action'' for the purpose of determining whether a state or local regulation is ripe for review under section 332(c)(7)(B)(v) and we seek comment on this definition.

5. In addition, while Congress provided no specific definition of the term ''failure to act,'' under section 332(c)(7)(B)(ii) of the Communications Act, decisions regarding personal wireless service facilities siting are to be rendered in a reasonable period of time, taking into account the nature and scope of each request. If a request for placement of a personal wireless service facility involves a zoning variance or a public hearing or comment process, the *Conference Report* states that the time period for rendering a decision will be the usual period under such circumstances. Congress also stated that it did not intend to confer preferential treatment upon the personal wireless service industry in the processing of requests, or to subject that industry's requests to anything but the generally applicable time frames for zoning decisions. Therefore, we propose to determine whether a state or local government has ''failed to act'' on a case-by-case basis taking into account various factors including how state and local governments typically process other facility siting requests and other RF-related actions by these governments. We seek comment on the average length of time it takes to issue various types of siting permits, such as building permits, special or conditional use permits, and zoning variances and whether additional time is needed when such permits are subject to a formal hearing.

6. Furthermore, we seek comment on whether the Commission should grant relief from a final action or failure to act based only partially on the environmental effects of RF emissions. We believe that state and local regulations do not have to be based entirely on the environmental effects of RF emissions in order for decisions to be reviewed by the Commission. The *Conference Report* stated that, in order to be reviewed pursuant to section 337(c)(7)(B)(v) of the Communications Act, such regulations may be based either directly or indirectly on the environmental effects of RF emissions. However, the *Conference Report* did not define the term ''indirectly.'' We seek comment as to how we should define this term. We propose to examine such determinations on a case-by-case basis and to preempt, where applicable, only that portion of an action or failure to act that is based on RF emissions and to permit the adversely-affected party to seek relief from the remainder of the state or local regulation for which the Commission does not have authority to grant relief from the appropriate federal or state court. We may act in an advisory capacity in those areas where the Commission does not have specific preemption authority and provide the court with our expert opinion, as requested by the court or parties.

7. We tentatively conclude that we have the authority to review state and local regulations that appear to be based upon RF concerns but for which no formal justification is provided. For example, in response to the CTIA Letter, the WTB considered a hypothetical case where a county denied a wireless provider's application for a conditional use permit. A significant portion of the record in the hypothetical local proceeding centered on the environmental effects of RF emissions. Although the local government entity did not refer to these concerns in its decision denying the permit, it did reference community opposition which was largely based upon these concerns.

The WTB advised that, under the circumstances, the decision's citation to community opposition as a ground for denial suggested that the decision may, in fact, have been based on environmental concerns. To the extent that the evidence in such a hypothetical case established that the decision was based either directly or indirectly on such impermissible considerations and the evidence did not establish non-compliance with the Commission's regulations, the WTB believed that the decision would apparently be inconsistent with section 332(c)(7)(B)(iv). In addition, we note that, pursuant to section 332(c)(7)(B)(iii) of the Communications Act, state and local decisions concerning the siting of personal wireless facilities are to be in writing and supported by substantial evidence contained in a written record. Therefore, we seek comment on our tentative conclusion to grant relief to licensees or personal wireless service facilities from state and local regulations of personal wireless facilities based upon concerns of the environmental effects of RF emissions even if there is no formal justification provided for the decision if there is evidence to support the conclusion that concerns over RF emissions constituted the basis for the regulation.

8. Finally, we seek comment on whether our authority under section 332(c)(7)(B)(v) to preempt state and local actions that are based on concerns over RF emissions extends to private entities' efforts to limit the placement, construction, and modification of personal wireless service facilities. We recognize that wireless providers, especially new services such as the ''wireless local loop,'' may encounter restrictions by non-governmental entities, such as homeowner associations and private land covenants, that could prove to be an impediment to their ability to deploy their services. We seek to determine whether such entities would fall under the definition of ''state or local government or any instrumentality thereof'' as that term is used in section 332(c)(7)(B)(v) of the Communications Act and whether decisions by private entities should be subject to Commission review.

II. Demonstration of RF Compliance

9. Section 332(c)(7)(B)(iv) of the Communications Act states that ''[n]o state or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.'' Neither the text of the Act nor the legislative history indicates to what extent localities are permitted to request that personal wireless service providers demonstrate compliance with our RF guidelines. LSGAC argues that Act preserves the authority of state and local governments to ensure that personal wireless service facilities comply with the Commission's RF emission regulations. We recognize that it is reasonable for state and local governments to inquire as to whether a specific personal wireless service facility will comply with our RF emissions guidelines. LSGAC contends that local officials must be able to assure their constituents that compliance with the Commission's RF regulations will be monitored. LSGAC recommends that the Commission adopt a mutually acceptable RF testing and documentation mechanism that providers and local authorities may use to demonstrate compliance with RF radiation limits. We tentatively agree with LSGAC's recommendation, however, we believe that there should be some limit as to the type of information that a state or local authority may seek from a personal wireless service provider. The type of information may vary depending upon how the personal wireless service facility is classified under our environmental rules. Under the procedural guidelines adopted in the *Report and Order* and modified in the *Second Memorandum Opinion and Order* in this proceeding, proposed wireless facilities may be considered either: (1) Environmental actions requiring the submission of an Environmental Assessment (EA); (2) actions that do not require such an assessment but nevertheless require routine RF emissions evaluation by the Commission; or (3) actions that are categorically excluded from routine RF emissions evaluation based upon their height above ground level or their low operating power. Facilities that are categorically excluded must comply with the substantive RF emissions guidelines; however, because they are extremely unlikely to cause routine exposure that exceeds the guidelines, applicants for such facilities are not required to perform any emissions evaluation as a condition of license, unless specifically ordered to do so by the Commission. Given these environmental classifications, we seek comment on two alternative showings that would be permissible for local and state governments to request personal wireless providers submit as part of the local approval process.

10. Under the first alternative, we propose a more limited showing. For personal wireless service facilities that were categorically excluded from routine Commission evaluation, state and local authorities would only be allowed to request that the personal wireless provider certify in writing that its proposed facility will comply with the Commission's RF emissions guidelines. In the case of facilities that were not categorically excluded, state or local authorities would be limited to requesting copies of any and all documents related to RF emissions submitted to the Commission as part of the licensing process. We seek comment on this limited showing and how a state or local authority would be able to seek relief from a licensee that falsely certifies its facility complies or will comply with our RF emissions guidelines.

11. Alternatively, we ask for comment on whether to adopt a more detailed showing. We believe, however, that this alternative can be workable only if we adopt uniform standards for such a demonstration that would be regarded as sufficient by all state and local governments for demonstrating compliance with the RF guidelines. We propose, once again, for facilities that were not categorically excluded, that state or local authorities would be limited to requesting copies of any and all documents related to RF emissions submitted to the Commission as part of the licensing process. For facilities that were categorically excluded, we propose that the state and local governments be permitted to request that the personal wireless service provider submit a demonstration of compliance. We ask for comments on the criteria for such a demonstration of compliance. We seek to develop a showing that would impose a minimal burden on service providers, while satisfying legitimate state and local government interests. In addition, we seek to determine which party should be required to pay for the preparation of the demonstration of compliance. LSGAC contends that local taxpayers should not bear the costs of investigations taken by state and local governments to determine compliance with the Commission's RF regulations.

12. While this proceeding is pending, we believe that it would be beneficial to personal wireless service providers and state and local governments for us to provide some policy guidance as to what information we believe a carrier should be obligated to provide to demonstrate to localities that its ''facilities comply with the

Commission's regulations concerning such (RF) emissions'' as stated in section 332(c)(7)(B)(iv) of the Communications Act. We therefore are providing a non-binding policy statement as to the circumstances in which we would be less likely to find such information requests to be inconsistent with section 332(c)(7)(B)(iv). We believe that such a statement will provide much needed guidance to state and local governments on the issue of RF compliance and would greatly expedite the siting of personal wireless service facilities pending our adoption of final rules herein. We are concerned that state and local governments may delay the siting of facilities based upon concerns about the effects of RF emissions and a carrier's compliance with our RF guidelines. As the record in the RF emissions proceeding indicated, several states have been adopting their own RF regulations in an effort to resolve these concerns. As a result of such actions, wireless facilities that otherwise comply with federal RF emissions guidelines are experiencing delays as state and local officials search for methods to assess such compliance. Conversely, personal wireless service providers cite to our RF rules and conclude that they should not be required to submit any information about RF compliance as part of the local approval process. Therefore, we believe that providing guidance as to the types of RF information a state or local government may request will provide both sides a much-needed measure of certainty because state and local governments would know certain types of RF information they could request in this interim period without concern that their actions would be subsequently preempted by the Commission. Similarly, personal wireless service providers would understand what we believe is reasonable for state and local governments to request.

13. We believe that, pending adoption of final rules, we would not preempt state and local government requests that personal wireless service providers submit, as part of their application to place, construct, or modify a personal wireless service facility, the more detailed demonstration of RF compliance set forth in our second alternative above. However, at the present time, we believe that this level of information should be the most that a state or local government should be permitted to request and we would be likely to find that information requests that exceed this level are inconsistent with section 332(c)(7)(B)(iv) of the Communications Act. The type of demonstration that could be requested by the state or local government would depend on how the facility was classified under the Commission's environmental categories. For those facilities that are not categorically excluded from routine environmental processing, as set forth in § 1.1306 of the rules, we would be less likely to preempt state or local authorities that simply request copies of all environmental documents, such as the Environmental Assessment or evaluation, that were submitted to the Commission as part of the licensing process. For those facilities that were categorically excluded, we would be less likely to preempt state and local authorities that simply request that the personal wireless service provider submit a uniform demonstration of compliance with the Commission's RF guidelines. We believe that a uniform demonstration of compliance should consist of a written statement signed by the personal wireless service provider or its representative and should conform to our rules on truthfulness of written statements, subscription and verification. We believe that the following information should also be contained in the uniform demonstration of RF compliance to be filed for facilities that were categorically excluded:

(1) A statement that the proposed or existing transmitting facility does or will comply with FCC radio frequency emission guidelines for both general population/uncontrolled exposures and occupational/controlled exposures as defined in the rules.

(2) A statement or explanation as to how the personal wireless service provider determined that the transmitting facility will comply, e.g., by calculational methods, by computer simulations, by actual field measurements, etc. Actual values for predicted exposure should be provided to further support the statement. An exhaustive record of all possible exposure locations is not necessary, but, for example, the ''worst case'' exposure value in an accessible area could be mentioned as showing that no exposures would ever be greater than that level. Reference should be given to the actual FCC exposure limit or limits relevant for the particular transmitting site.

(3) An explanation as to what, if any, restrictions on access to certain areas will be maintained to ensure compliance with the public or occupational exposure limits. This includes control procedures that are established for workers who may be exposed as a result of maintenance or other tasks related to their jobs.

(4) A statement as to whether other significant transmitting sources are located at or near the transmitting site, and, if required by the rules, whether their RF emissions were considered in determining compliance at the transmitting site.

14. We stress that the above-outlined policies concerning the demonstration of RF compliance are non-binding and are merely provided as guidance pending the final outcome of this proceeding. Should a state or local government request that a personal wireless service provider submit RF information that is consistent with our above-outlined policies, we would be less likely to find its action to be inconsistent with section 332(c)(7)(B)(iv) of the Communications Act. However, we stress that we will continue to evaluate each request for relief that is filed concerning state and local RF regulations and we will determine, on a case by-case basis, whether such regulations are consistent with section 332(c)(7)(B)(iv).

15. In addition, we seek comment as to whether the more detailed showing that we proposed as one of the two alternatives above should include the above outlined criteria. We believe that the criteria set forth above should provide sufficient information to constitute the more detailed showing of RF compliance while imposing a minimum burden on personal wireless service providers. We seek to determine whether additional information, not currently included above, is necessary to demonstrate compliance or whether any of the above-outlined elements are too broad or unnecessary.

III. General Procedures for Reviewing Requests for Relief

16. We seek comment on the following proposed procedures for reviewing requests for relief filed under section 332(c)(7)(B)(v) of the Communications Act. We propose that parties seeking relief file a request for declaratory ruling pursuant to § 1.2 of the Commission's Rules, asking that the Commission review the state or local regulation and grant appropriate relief. Sections 1.45 through 1.49 of the Commission's Rules, concerning the filing of pleadings and responsive pleadings, shall be applicable with respect to such requests. We propose that a copy of the request be served on the state or local authority that took the action or failed to take the action against which relief is sought.

17. We also seek comment on the following method for providing comment on such requests. We seek comment on whether we should limit participation in the proceeding to only those interested parties able to demonstrate standing to participate in the proceeding. Section 332(c)(7)(B)(v) of the Communications Act states that requests for relief may be filed by any ''person adversely affected.'' We seek comment on the definition of ''person

adversely affected.'' and how we should determine whether an entity has standing to participate in the preemption proceeding. We find that limiting the number of parties participating in the proceeding to only those that are ''adversely affected'' will reduce the possibility of frivolous filings, and expedite the processing of preemption requests. We seek comment on this proposed procedure.

IV. Rebuttable Presumption of Compliance

18. We tentatively conclude that we should adopt a rebuttable presumption that would operate when reviewing requests for relief from state and local actions under section 332(c)(7)(B)(v). Under such a procedure, we would presume that personal wireless facilities will comply with our RF emissions guidelines. The state or local government would have the burden of overcoming this presumption by demonstrating that the facility in question does not or will not, in fact, comply with our RF guidelines. We believe that such a presumption would be consistent with Commission practice. Generally, we presume that licensees are in compliance with our rules unless presented with evidence to the contrary. In addition, applicants for personal wireless services must certify in their applications that they will comply with all of the Commission's rules, including the RF guidelines. With respect to providers of ''unlicensed wireless services,'' we tentatively conclude that it would be consistent with Commission practice to presume that they are in compliance with our RF guidelines because such providers must employ type-accepted equipment that complies with our RF guidelines. Therefore, we seek comment on whether we should presume that personal wireless facilities are in compliance with our RF guidelines, and whether we should grant relief from state or local actions that prevent the construction of such facilities when such actions are based on RF concerns. We remain sensitive, of course, to the concerns of state and local governments and we encourage state and local governments to submit comments explaining how such a presumption might effect them. We encourage state and local governments, including LSGAC, to file comments on the NPRM. We specifically request comment in the interest of minimizing any potential adverse affect the establishment of a rebuttable presumption may have on state and local authorities' ability to ensure the health and safety of their citizens.

19. We have utilized a rebuttable presumption in other contexts similar to this one. In our proceeding concerning preemption of local zoning regulation of satellite earth stations, we adopted a rebuttal presumption that state and local regulation of small antennas is presumed unreasonable. If the state or local government objects to a request to preempt its action, then it is permitted to rebut the presumption by demonstrating the necessity of the regulation for health and safety reasons. In the rulemaking we conducted concerning access to telecommunications equipment and services by persons with disabilities, we adopted a rebuttable presumption that, by a date certain, all workplace non-common area telephones would be hearing aid compatible. We found that the rebuttable presumption approach would relieve employers of the need to field-test and identify whether their telephones are hearing aid compatible. This presumption can be rebutted, on a telephone-by-telephone basis, by any person legitimately on the premises who identifies a particular telephone as non-hearing aid compatible. Finally, in our proceeding concerning the improvement of the quality of the AM broadcast service, we adopted a rebuttable presumption of compliance with our newly-adopted emission limits and we did not require that AM station licensees conduct periodic emission measurements. However, this presumption could be rebutted by technical evidence (e.g., spectrum analyzer measurement results) of non-compliance. In each of these cases, we adopted a presumption and then permitted the presumption to be rebutted when presented with contrary evidence. We seek comment as to whether we should adopt a similar rebuttable presumption for consideration of preemption requests filed pursuant to section 332(c)(7)(B)(v) of the Communications Act.

V. Operation of Presumption

20. We recognize that some wireless services are licensed on a geographic area basis only and that our wireless rules do not provide for the licensing of individual tower or antenna facilities. There may be a concern that individual facilities do not, in fact, comply with our RF guidelines. Moreover, certain personal wireless services may be provided via low-power, unlicensed devices. Therefore, we believe that it is appropriate to permit interested parties to rebut the presumption of compliance. We seek comment on the procedures we should adopt to permit the presentation of such a rebuttal showing. We propose limiting the consideration of such presentations to only those parties that are able to demonstrate that they are ''interested parties'' or that otherwise demonstrate that they have standing to participate in the proceeding. We propose that, in order to rebut the presumption, interested parties would bear the initial burden of proof and would be required to demonstrate that a particular facility does not in fact comply with our RF limits. Such a demonstration of noncompliance could include, but would not be limited to: (1) The interested party demonstrating that the personal wireless service provider is or would be operating without a valid Commission authorization; (2) the interested party submitting an Environmental Assessment with detailed RF measurements or calculations that demonstrates that the Commission's RF exposure guidelines for controlled or uncontrolled environments is or would be exceeded in the disputed area, or (3) the interested party demonstrating that the licensee's operation otherwise may not comply with the Commission's RF exposure guidelines. The Commission shall examine this showing and determine whether the interested party has made a *prima facie* case for noncompliance. If the interested party fails to make a *prima facie* case for noncompliance, then we would preempt the state or local regulation. If a *prima facie* case for noncompliance is made, then the burden of proof would shift to the personal wireless provider to demonstrate that its facility would comply with the RF limits. Should we find that the facility in question does not comply with our RF limits or should the personal wireless service provider fail to respond, we would not grant relief from the state or local regulation and we would initiate an enforcement proceeding to ensure compliance with our RF guidelines. If, after examination of the personal wireless service provider's response, we find that the facility does comply with our RF limits, then we would preempt the state or local regulation. Should the personal wireless provider modify its facility to comply with the RF emissions guidelines, we propose allowing the provider to file subsequent requests for relief. In addition, we tentatively propose that both the wireless provider and the interested parties be permitted to seek review of final Commission and delegated authority actions taken pursuant to section 332(c)(7)(B)(v) of the Communications Act via the review procedures set forth in our rules and the

Communications Act. We seek comment on these procedures.

21. We believe that allowing interested parties to rebut the presumption of compliance will provide a balanced method for resolving section 332(c)(7)(B)(v) proceedings. We seek comment as to whether such a procedure is appropriate and whether there are other methods an interested party might employ to demonstrate its contention that a personal wireless facility does not or will not comply with the RF emissions guidelines.

22. We believe that the procedures we propose herein provide a fair and balanced approach to reviewing requests for relief from state and local regulations based on the effects of RF emissions filed pursuant to section 332(c)(7)(B)(v) of the Communications Act. These procedures, if adopted, would provide interested parties with the opportunity to present their views to the Commission and for the Commission to carefully review requests for relief in an expedited fashion. We view this proceeding as another important step in our ongoing efforts to assist in the resolution of state and local disputes concerning the siting of personal wireless service facilities and to provide expert guidance and input on these important matters.

VI. Procedural Matters

i. Regulatory Flexibility Act

23. An Initial Regulatory Flexibility Analysis for the *NPRM* in WT Docket No. 97–192 appears below. As required by section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Commission has prepared the Initial Regulatory Flexibility Analysis of the expected impact on small entities of the proposals suggested in this document. Written public comments are requested on the Initial Regulatory Flexibility Analysis. In order to fulfill the mandate of the Contract with America Advancement Act of 1996 regarding the Final Regulatory Flexibility Analysis we ask a number of questions in our Initial Regulatory Flexibility Analysis regarding the prevalence of small businesses that may be impacted by the proposed procedures. Comments on the Initial Regulatory Flexibility Analysis must be filed in accordance with the same filing deadlines as comments on the *NPRM*, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of this *NPRM*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 603(a).

24. As required by section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the policies and rules proposed in this *NPRM*. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM* as provided in the *NPRM*.

25. Reason for Action: This rulemaking proceeding was initiated to secure comment on procedures for reviewing requests for relief of State and local regulations concerning the siting of personal wireless service facilities that are based on the environmental effects of RF emissions pursuant to section 332(c)(7)(B)(v) of the Communications Act. This section of the Communications Act was created with the passage of section 704 the Telecommunications Act of 1996.

26. Objectives: The procedures set forth in the *NPRM* are designed to provide a balanced method for reviewing requests for relief and to ensure that personal wireless service providers are permitted to seek the full relief afforded them under the Communications Act. At the same time, the Commission seeks to provide an opportunity for interested parties to argue that a specific wireless facility will not comply with the Commission's RF guidelines. In addition, the Commission believes that the procedures adopted as a result of this proceeding will allow for expedited review of requests for relief, as well as, much-needed guidance on this important issue.

27. Legal Basis: The proposed action is authorized under sections 4(i), 303(g), 303(r) and 332(c)(7) of the Communications Act of 1934, as amended.

28. Reporting, Recordkeeping, and Other Compliance Requirements: The proposals under consideration in the *NPRM* include the possibility of imposing a new filing requirement for parties seeking relief pursuant to section 332(c)(7)(B)(v) of the Communications Act. The filing requirement would be used to determine whether to grant relief from the State or local regulation in question. This filing will be in the form of a request for declaratory ruling filed pursuant to § 1.2 of the Commission's Rules. Only interested parties or those parties demonstrating the requisite standing will be permitted to participate in the proceeding. The *NPRM* also seeks comment on whether to adopt either a simple certification of compliance or more detailed demonstration of compliance that personal wireless service providers will be required to submit to State and local governments as evidence of RF emissions compliance.

29. We estimate that the average burden on the party seeking relief will be approximately two hours to prepare the request for relief and file it with the Commission. We estimate an equal amount of time for the State or local authority or other interested party (referred to jointly herein as the ''respondents'') to prepare and file their comments on and/or oppositions to the preemption request. We estimate that 75 percent of both the requesting parties and the respondents (which may include small businesses) will contract out the burden of preparing their filings. We estimate that it will take approximately 1 hour to coordinate information with those contractors. The remaining 25 percent of parties filing requests and respondents (which may include small businesses) are estimated to employ in-house staff to provide the information. We estimate that parties requesting relief and respondents that contract out the task of preparing their filings will use an attorney or engineer (average $200 per hour) to prepare the information.

30. We estimate that the average burden on the party required to prepare a simple certification of RF compliance to be less than one hour. We estimate that the average burden on the party required to prepare a more detailed demonstration of RF compliance to be approximately 5 hours. We estimate that 75 percent of these parties (which may include small businesses) will contract out the burden of preparing their filings. We estimate that it will take approximately 1 hour to coordinate information with those contractors. The remaining 25 percent of parties (which may include small businesses) are estimated to employ in-house staff to provide the information. We estimate that parties that contract out the task of preparing their filings will use an engineer (average $200 per hour) to prepare the information.

31. Federal Rules Which Overlap, Duplicate or Conflict With These Rules: section 332(c)(7)(B)(iv)-(v) provides the authority for the Commission to consider requests for relief of state and local actions.

32. Description, Potential Impact, and Number of Small Entities Involved: The proposed rules in this NPRM will apply to all small businesses which avail themselves of these new procedures,

including small businesses defined as providers of ''personal wireless services'' that seek relief from State and local regulations based upon the environmental effects of RF emissions. The Commission is required to estimate in its Final Regulatory Flexibility Analysis the number of small entities to which these new procedures will apply, provide a description of these entities, and assess the impact of the rule on such entities. To assist the Commission in this analysis, commenters are requested to provide information regarding how many total providers of ''personal wireless services,'' existing and potential, will be considered small businesses. ''Small business'' is defined as having the same meaning as the term ''small business concern'' under the Small Business Act. Based on that statutory provision, we will consider a small business concern one which (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). We seek comment as to whether this definition is appropriate in this context. Additionally, we request each commenter to identify whether it is a small business under this definition. If the commenter is a subsidiary of another entity, this information should be provided for both the subsidiary and the parent corporation or entity.

33. The Commission has not yet developed a definition of small entities which respect to reviewing requests for relief pursuant to section 332(c)(7)(B)(v) of the Communications Act. Therefore, the applicable definition of small entity is the definition under the SBA applicable to the ''Communications Services, Not Elsewhere'' category. The Census Bureau estimates indicate that of the 848 firms in the ''Communications Services, Not Elsewhere'' category, 775 are small businesses. While the Commission anticipates receiving requests for relief filed pursuant to section 332(c)(7)(B)(v) of the Communications Act, it is not possible to predict how many will be filed or what percentage of these will be filed by small entities.

Cellular Radio Telephone Service

34. The Commission has not developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing fewer than 1,500 persons. The size data provided by the SBA does not enable us to make a meaningful estimate of the number of cellular providers which are small entities because it combines all radiotelephone companies with 500 or more employees. We therefore used the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. That census shows that only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. Therefore, even if all 12 of these large firms were cellular telephone companies, all of the remainder were small businesses under the SBA's definition. We assume that, for purposes of our evaluations and conclusions in this IRFA, all of the current cellular licensees are small entities, as that term is defined by the SBA. Although there are 1,758 cellular licenses, we do not know the number of cellular licensees, since a cellular licensee may own several licenses.

35. The rules we are proposing would permit a cellular licensee to seek relief from the Commission for an adverse State or local regulation that is based upon environmental effects of RF emissions. Since most cellular licensees have constructed their facilities, we anticipate receiving only a small number of such requests from cellular licensees and that all of these would be small entities.

Personal Communications Service

36. The broadband PCS spectrum is divided into six frequency blocks designated A through F. Pursuant to 47 CFR 24.720(b), the Commission has defined ''small entity'' for Blocks C and F licensees as firms that had average gross revenues of less than $40 million in the three previous calendar years. This regulation defining ''small entity'' in the context of broadband PCS auctions has been approved by the SBA.

37. The Commission has auctioned broadband PCS licenses in all of its spectrum blocks A through F. We do not have sufficient data to determine how many small businesses under the Commission's definition bid successfully for licenses in Blocks A and B. As of now, there are 90 non-defaulting winning bidders that qualify as small entities in the Block C auction and 93 non-defaulting winning bidders that qualify as small entities in the D, E, and F Block auctions. Based on this information, we conclude that the number of broadband PCS licensees that would be affected by the proposals in this *NPRM* includes the 183 non-defaulting winning bidders that qualify as small entities in the C, D, E and F Block broadband PCS auctions.

38. The Commission expects to receive a significant number of requests for relief filed pursuant to section 332(c)(7)(B)(v) involving broadband PCS licensee, many of whom may be small entities. However, it is not possible to estimate the exact number that will be filed.

Paging and Radiotelephone Service, and Paging Operations

39. Since the Commission has not yet approved a definition for paging services, we will utilize the SBA's definition applicable to radiotelephone companies, i.e., an entity employing less than 1,500 persons.

40. The Commission anticipates that a total of 15,531 non-nationwide geographic area licenses will be granted or auctioned. The geographic area licenses will consist of 3,050 MTA licenses and 12,481 EA licenses. In addition to the 47 Rand McNally MTAs, the Commission is licensing Alaska as a separate MTA and adding three MTAs for the U.S. territories, for a total of 51 MTAs. No auctions of paging licenses has been held yet, and there is no basis to determine the number of licenses that will be awarded to small entities. Given the fact that nearly all radiotelephone companies have fewer than 1,000 employees, and that no reliable estimate of the number of prospective paging licensees can be made, we assume, for purposes of this IRFA, that all the 15,531 geographic area paging licenses will be awarded to small entities, as that term is defined by the SBA.

41. We estimate that a significant number of paging licensees may file requests for relief pursuant to section 332(c)(7)(B)(v) and that all of these will be small entities.

Specialized Mobile Radio

42. Pursuant to 47 CFR 90.814(b)(1), the Commission has defined ''small entity'' for geographic area 800 MHz and 900 MHz SMR licenses as firms that had average gross revenues of less than $15 million in the three previous calendar years. This regulation defining ''small entity'' in the context of 800 MHz and 900 MHz SMR has been approved by the SBA.

43. The proposals set forth in the *NPRM* apply to SMR providers in the 800 MHz and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service, nor how many of these providers have annual revenues of less than $15 million. Furthermore, we are not able to estimate how many SMR

providers will seek preemption pursuant to section 332(c)(7)(B)(v) of the Communications Act.

44. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities under the Commission's definition in the 900 MHz auction. Based on this information, we conclude that the number of geographic area SMR licensees affected by the proposals set forth in this *NPRM* includes these 60 small entities.

45. No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. However, the Commission has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis to estimate, moreover, how many small entities within the SBA's definition will win these licenses. Given the facts that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, we assume, for purposes of our evaluations and conclusions in this IRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

Unlicensed Personal Communications Services and Wireless Exchange Access Carriers

46. Section 332(c)(7)(C)(i) of the Communications Act includes ''unlicensed wireless services'' and ''common carrier wireless exchange access services'' in the definition of ''personal wireless services'' for which relief may be sought under section 332(c)(7)(B)(v). We presently have no data on the number of providers of unlicensed wireless services or common carrier wireless exchange access services.

47. Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objectives: The proposals advanced in the *NPRM* are designed to permit personal wireless service providers with the opportunity to seek relief pursuant to section 332(c)(7)(B)(v) of the Communications Act. The impact on small entities in the proposals in the *NPRM* is the opportunity to seek such relief. These procedures were designed to have a minimal impact on all personal wireless providers, including small entities, and to provide for a balanced and expedited method for reviewing such requests. The Commission believes that such procedures shall help to attain the Congressional objective of ensuring that small businesses have an opportunity to participate in the provision of wireless services by enabling small businesses to overcome entry barriers in the provision of such services.

48. This *NPRM* solicits comments on a variety of proposals discussed herein. Any significant alternatives presented in the comments will be considered.

ii. Ex Parte Rules—Non-Restricted Proceedings

49. This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. See generally 47 CFR §§ 1.1201, 1203, and 1.1206(a).

iii. Comment Dates

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 to the *NPRM* on or before October 9, 1997, and reply comments on or before October 24, 1997. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center of the Federal Communications Commission, Room 239, 1919 M Street, N.W., Washington, D.C. 20554.

51. Parties are encouraged to submit comments and reply comments on diskette for possible inclusion on the Commission's Internet site so that copies of these documents may be obtained electronically. Such diskette submissions would be in addition to and not a substitute for the formal filing requirements presented above. Parties submitting diskettes should submit them to Shaun A. Maher, Esq., Policy & Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau, 2100 M Street, N.W., 7th Floor—Room 93, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible form using Word Perfect 5.1 for Windows software. The diskette should be submitted in ''read only'' mode, and should be clearly labelled with the party's name, proceeding, type of pleading (comment or reply comment) and date of submission.

iv. Initial Paperwork Reduction Act of 1995 Analysis

52. The *NPRM* contains either a proposed or modified information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget to take this opportunity to comment on the information collections contained in this *NPRM*, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this *NPRM*; OMB comments are due on or before 60 days after the publication in the **Federal Register**. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

53. Written comments by the public on the proposed and/or modified information collections are due October 14, 1997. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before 60 days after the publication in the **Federal Register**. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to both of the following: Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet at fain__t@al.eop.gov. For additional information regarding the information collections contained herein, contact Judy Boley above.

v. Ordering Clauses

54. *It is ordered* That, pursuant to the authority of sections 4(i), 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C.

sections 154(i), 303(g), 303(r), and 332(c)(7), a notice of proposed rulemaking is hereby adopted.

55. *It is further ordered* That the petition for rulemaking of the Cellular Telecommunications Industry Association, filed December 22, 1994 (RM–8577), is hereby Dismissed.

vi. Further Information

56. For further information concerning the *NPRM,* contact Shaun A. Maher, Esq. at (202) 418–7240, internet: smaher@fcc.gov, Policy & Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission, Washington, D.C. 20554.

List of Subjects in 47 CFR Part 1

Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–24166 Filed 9–11–97; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 54 and 69

[CC Docket No. 97–181; FCC 97–316]

Defining Primary Lines

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: As a result of reforms adopted to implement the Telecommunications Act of 1996, our access charge rules require incumbent LECs subject to the Commission's price cap rules to charge subscriber line charges (SLCs) and presubscribed interexchange carrier charges (PICCs) at different levels for secondary residential and multi-line business lines. This NPRM considers how Commission should define and identify primary lines for the purposes of implementing the Commission's access charge rules.

DATES: 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 September 25, 1997, and reply comments on or before October 9, 1997. Written comments by the public on the proposed and/or modified information collections are due September 25, 1997. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before November 12, 1997.

ADDRESSES: Parties should send their comments or reply comments to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554. Parties filing on paper should also send three (3) copies of their comments to Sheryl Todd, Federal Communications Commission, Accounting and Audits Division, Universal Service Branch, 2100 M Street, N.W., Room 8611, Washington, DC 20554. Parties filing in paper form should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, NW, Washington, D.C. 20036. See **SUPPLEMENTARY INFORMATION** section for further information about filing comments and reply comments electronically.

In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to fain__t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Valerie Yates, Legal Counsel, Common Carrier Bureau, (202) 418–1500, or Sheryl Todd, Common Carrier Bureau, (202) 418–7400. For additional information concerning the information collections contained in this NPRM contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

1. This NPRM contains either a proposed or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this NPRM; OMB notification of action is due 60 days from date of publication of this NPRM in the **Federal Register**. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: None, new information collection.

Title: In the Matter of Federal-State Joint Board on Universal Service, Defining Primary Lines, Notice of Proposed Rulemaking, CC Docket No. 97–181.

Form No.: None.

Type of Review: New collection.

Respondents: Business or other for-profit.

Frequency of Response: On occasion; one-time requirement.

Proposed collection	No. of respondents	Est. time per response	Total annual burden	Est. costs per respondent
(a.) Request by ILEC to consumer	164	100	16,400	1,6400.00
(b.) Response by consumer to identify primary line	149,141,075	[1].083	12,378,709	0.00
(c.) Disclosure statement	164	100	16,400	0.00
(d.) Recordkeeping	164	50	8,200	286,040.00

[1] 5 min.

Total Annual Burden: 12,419,709 hours.

Needs and Uses: The information collections proposed in this NPRM are necessary to fully implement the rules the Commission adopted in its *Universal Service Order* and *Access Charge Reform Order* because, without a definition and a means of identifying and verifying primary residential lines, incumbent LECs subject to Commission price cap regulation will not be able to

assess the appropriate charges for these lines. Requiring incumbent LECs to assess different-level charges on primary residential lines is necessary to balance between reforming our access charge rules to facilitate local competition, and preserving and advancing universal service by taking action to maintain low rates for subscribers to local telephone service.

Summary of Analysis, Tentative Conclusions, and Issues for Comment

I. Introduction

2. In the Universal Service Order and the Access Charge Reform Order we concluded that the $3.50 cap on the subscriber line charge (SLC) for primary residential and single-line businesses should remain unchanged. See Federal-State Joint Board on Universal Service, (62 FR 32862 (June 17, 1997)) (hereinafter *Universal Service Order*); Access Charge Reform, (62 FR 31868, (June 11, 1997)) (hereinafter *Access Charge Reform Order*); *see also* Federal-State Joint Board on Universal Service, (61 FR 63778 (December 2, 1996)) (hereinafter *Recommended Decision*). In the *Access Charge Reform Order,* however, we adjusted the SLC caps for additional residential and business lines. We also created a presubscribed interexchange carrier charge (PICC) that will, over time, supplant the traffic-sensitive carrier common line charge (CCLC). Under our new access charge rules, in 1998 SLC and PICC levels for primary residential and single-line business lines will be lower than the levels prescribed for secondary residential and multi-line business lines. As a result of these changes, we must establish criteria to identify primary residential lines for the purpose of determining SLC and PICC levels.

II. Discussion

3. Although this NPRM focuses on price cap ILECs, we also solicit comment on whether the various proposals set forth in this NPRM for defining, identifying, and verifying primary lines for price cap ILECs could also be applied for rate-of-return ILECs if, in a future proceeding, the Commission concludes that all ILECs should assess SLCs and PICCs that are higher for secondary lines.

A. Defining Single-Line Business Lines and Primary Residential Lines

4. We invite parties to describe the methods carriers use to distinguish multiple-line businesses from single-line businesses and to distinguish between residential and business customers, and seek comment on whether the Commission should revise its rules or policies to ensure the correct SLCs and PICCs are assessed on these lines. In particular, we note, that § 69.104(h) defines a single-line business line. It states: ''A line shall be deemed to be a single line business line if the subscriber pays a rate that is not described as a residential rate in the local exchange service tariff and does not obtain more than one such line from a particular telephone company.'' 47 CFR 69.104(h). In the *Access Charge Reform Order,* we defined the term ''telephone company'' for the purposes of part 69 of our rules, to mean an ''incumbent LEC'' as that term is defined in section 251(h)(1) of the Act. 47 CFR 69.2 We seek comment on whether we should alter this definition. We seek comment on whether maintaining this definition would be favorable because, given that only price cap ILECs will assess different SLCs and PICCs on multi-line businesses, maintaining this definition would allow incumbent LECs to assess the correct SLCs and PICCs without determining whether a customer receives service from other carriers. We note however, that if we maintain this definition, a business that obtains one line from an ILEC and one line from a competitive LEC or a wireless carrier would be treated as a single-line business for the purposes of its SLC and PICC. We seek comment on whether this outcome would be competitively neutral and whether it would be consistent with the Joint Board's recommendations with respect to the level of the primary line SLC. We further seek comment on whether a business with a single line in each of two locations should be considered a single-line business.

5. *Primary residential line.* We seek comment on how we should define ''primary residential line.'' Specifically, we seek comment on whether the primary residential line should be defined as the primary line of an individual subscriber, of a residence, of an individual household, or on another basis. For example, defining the primary line as the primary line to a primary residence would not allow two households in a single residence each to subscribe to a line that is subject to the primary-line level SLC and PICC (i.e., one of the two lines would be subject to the higher SLC and PICC). Conversely, defining the primary line in terms of a subscriber's residence may have the advantage of being administratively simple and less invasive of subscribers' privacy because it does not require the gathering of information regarding subscriber living arrangements that would be needed to identify households. We seek comment on these issues.

6. Parties that favor defining the primary residential line in terms of ''subscribers,'' ''residences,'' ''households,'' or any other term, should propose definitions of such terms, including definitions used by other entities. We seek comment on whether we should use, for example, the definition of household used by either the U.S. Census Bureau, see U.S. Department of Commerce, Bureau of the Census, Census of Population and Housing, 1990, Technical Documentation (May 1992) at B–14, or the Internal Revenue Service (IRS), see 26 CFR 1.2–2(b)(3) or (4); 26 U.S.C. 26 U.S.C. 151. We ask parties to identify other definitions that may be easily applied by consumers and carriers alike. Additionally, we ask parties to estimate, to the extent possible, the number of lines that will be classified as primary residential lines under any definition that they support. Parties should also discuss how the definition of the primary residential line selected would affect the success of the approach, discussed below, they favor to verify the number of such lines.

B. Identification of Primary Residential Lines

7. *Information Required To Identify Primary Residential Lines.* We tentatively conclude that, although an ILEC's business records likely distinguish between single-line and multi-line customers, and between residential and business customers, those records may be inadequate to identify the primary residential line. For these reasons, we tentatively conclude that identifying a primary residential line requires: (1) Identification of the subscriber, residence, or household (depending on the definition adopted); (2) identification of the primary residence of the subscriber or household; and (3) identification of the primary line, and of the incumbent LEC and interexchange carrier serving that line. We seek comment on these tentative conclusions.

8. *Using Customer Self-Certification To Collect Information.* We tentatively conclude that the Commission should permit price cap ILECs to use customer self-certification to identify primary lines for access charge purposes. We make this tentative conclusion because such an approach presumably would minimize the substantial administrative costs that would be inherent in any effort to require carriers or the Commission to identify primary residential lines without information

from the customer. The burden that self-certification will impose on individual customers would be significantly less than the burden that ILECs would otherwise bear to identify each of their customers' primary line independent of the customer.

9. We seek comment on the language that would have to be posed to subscribers to determine which is their primary residential line under such a self-certification proposal. We seek comment on whether we should adopt uniform language, or whether carriers should devise their own method of acquiring this information. We seek comment on whether LECs should be required to inform customers of the consequences of providing false information or designating more than one line as a primary line. We seek comment on how often this information should be collected. We tentatively conclude that this information should be collected once from all customers currently being served by price cap ILECs, and thereafter only at the time a customer orders service from a price cap ILEC. We seek comment on procedures that could be used to identify when customers switch service to a competing carrier. We also tentatively conclude that price cap ILECs should be required to maintain documentation of their customers' self-certification that is adequate to permit verification of the number of primary lines an ILEC reportedly serves. We seek comment on whether documentation could be accomplished by permitting customers to provide oral certification that is noted in the price cap ILEC's records or whether customers should be required to self-certify in writing. We also seek comment on how long these ILECs should be required to maintain documentation of customer self-certification. In addition, we seek comment on what action the price cap ILEC should take if a customer fails to provide a self-certification. We seek comment on any other administrative procedures parties recommend to implement a self-certification method of identifying primary residential lines, and are particularly interested in proposals that will reduce the administrative burden on carriers and customers.

10. *Resellers.* We seek comment on how to identify secondary lines for resellers that resell wholesale exchange service purchased from price cap ILECs. We seek comment on whether the Commission should require resellers to identify the primary and secondary lines of their customers and relay that information to price cap ILECs, or, whether price cap ILECs should identify the primary and secondary lines for resellers' customers directly. We seek comment on whether, if, for example, a reseller collected customer certifications, the reseller should pass along the original copies of its customers' certifications to the price cap ILEC from which it is purchasing wholesale service. We invite alternative proposals, and encourage parties to suggest proposals that will accurately identify the secondary lines served by resellers and will be administratively simple to implement.

11. Although databases maintained by price cap ILECs could be useful to those ILECs for retaining customer records, we tentatively conclude that we will not use a national database, maintained by the Commission or another entity on a nation-wide basis, to track primary residential lines or single-line businesses for two reasons. First, such a database is not necessary to implement our access charge rules. Second, the administrative resources necessary to create such a database might outweigh any additional accuracy gained from this approach.

12. *Other Proposals.* We tentatively conclude that we will not pursue several other approaches presented by commenters in the Universal Service proceeding. We tentatively conclude that we will not adopt Teleport's proposal to use county and municipal records and databases to identify addresses of individuals. We also tentatively conclude, for the reasons articulated by MFS and to protect the privacy of consumers, that social security numbers should not be used to track primary residential lines.

13. *Privacy Issues.* We encourage parties to comment on any potential issues related to subscriber privacy that may be raised by the customer self-certification proposal discussed above. Specifically, we seek comment on whether requiring consumers to provide information to their price cap ILECs regarding the identification of their households and primary residences would be consistent with those consumers' reasonable expectations of privacy and whether the Privacy Act would apply to the collection of self-certifications by ILECs. We tentatively conclude that we should require ILECs that collect this information to use this information only for the purposes of determining the correct SLC and PICC for individual consumers' lines, and not disclose it or permit access to it for any other purposes. We request comment on whether primary line information would constitute customer proprietary network information as defined in section 222(f)(1) of the Act. 47 U.S.C. 222(f)(1). We seek comment on whether sections 222 (c)(1), (d)(1), (d)(2), other parts of section 222, or other sections of the Act present exceptions that would allow carriers to disclose primary line information to the Commission, or another entity selected by the Commission, without customer approval.

C. Verifying Primary Residential Line Information

14. We tentatively conclude the Commission should implement a method to verify the number of primary lines served by a carrier, identified through customer self-certification. In light of the potential incentives for carriers to misreport the number of lines to which the end users subscribe, we tentatively conclude that we should adopt a method of verifying the number of primary lines served by price cap ILECs.

15. *Audits.* Although the Commission has broad authority to audit telecommunications carriers' records, 47 U.S.C. 220(c), we seek comment on whether audits would be an effective way to examine discrepancies in the number of primary lines a carrier serves and the number of primary-line SLCs and PICCs the carrier charges. Such audits would utilize appropriate auditing techniques and procedures to verify the number of primary-line SLCs and PICCs assessed by price cap ILECs. We tentatively conclude that audits of the ILEC's records could be performed to determine whether the ILEC misreported primary lines. We seek comment on our tentative conclusion to use audits to verify primary lines and on the type of audit that would be most effective and efficient. We also seek comment on what controls or procedures should be implemented that would protect against the possibility of a price cap ILEC misreporting primary lines.

16. *Models.* In the context of formulating a forward-looking economic cost mechanism to estimate the cost of providing service in high cost areas, the proponents of the Hatfield model have developed a method for estimating the number of primary lines in a census block. We seek comment on whether this method, or another modeling approach, could assist the Commission in verifying the number of primary lines served by price cap ILECs. Specifically, we seek comment on whether the Commission could use the estimates generated by the Hatfield model in conjunction with an audit. We also seek comment on whether the Hatfield approach would have to be modified to account for second homes. In addition,

we note that the Commission recently collected data on, *inter alia,* the number of loops served by carriers and the number of residential customers that subscribe to more than one line. We seek comment on whether these data would assist in verifying primary line counts.

D. Enforcement

17. We seek comment on available methods for the Commission to enforce its access charge rules, which impose different maximum SLCs and PICCs depending on whether a line is a primary or secondary line. We seek comment on whether the Commission's authority under sections 4(i), 206–209, 312, 403, and 503 of the Communications Act of 1934, and the provisions of Title 18 of the United States Code, 18 U.S.C. 1001(a), is sufficient to deter fraud or misrepresentation by carriers or consumers that may arise under the customer self-certification approach. We tentatively conclude that we should require carriers to notify their customers of the requirement to identify a single primary local exchange carrier and a single primary residence. We request comment on this tentative conclusion. We also seek comment on whether we should adopt measures to deter consumers from identifying more than one primary line.

18. We also seek comment on what types of sanctions would be appropriate and consistent with the Commission's statutory authority to punish violations of our rules regarding the identification of primary lines and request comment on whether section 222(c)(1) or any other portion of section 222 provides adequate authority to prevent misuse of the information that carriers collect. We tentatively conclude that, if the Commission, as a result of an audit or other method of verifying primary line counts, discovered that a price cap ILEC had misreported the number of primary lines it serves, the Commission could take the following actions: (1) Order the price cap ILEC to correct its billing practices and assess SLCs and PICCs at the correct level; (2) impose forfeitures pursuant to 47 U.S.C. 220(d) or 503(b) for violations of the Commission's rules; and (3) require the price cap ILEC to have an independent auditor conduct audits of its records at regular intervals determined by the Commission. We seek comment on these tentative conclusions.

E. Consumer Disclosure

19. We seek comment on whether the Commission should require carriers to provide consumers with a uniform disclosure statement describing this distinction. We tentatively conclude that such a disclosure requirement would be consistent with applicable First Amendment standards and invite comment on that conclusion. We seek comment on whether, for example, all local exchange carriers that charge a SLC should be required to make the following statement:

> The subscriber line charge is a fee collected by your local telephone company to defray part of the costs of providing telephone service. The subscriber line charge covers the costs that can be attributed to providing customers with the ability to place telephone calls across state lines. In order to ensure that all customers have affordable access to local telephone service, the Federal Communications Commission allows your local telephone company to charge no more than $3.50 for the subscriber line charge for each primary residential line. For additional lines, the Federal Communications Commission allows local telephone companies to charge no more than $5.00 per line for the subscriber line charge in 1998.

We seek comment on whether this statement will be easily understood by all consumers. We invite alternate suggestions for a uniform consumer disclosure statement. We seek comment on whether this statement should be given orally at the time when a subscriber orders telephone service. We seek comment on whether this statement should be provided in writing to all consumers when the change takes effect. We seek comment on how, if we adopt a consumer disclosure statement including a reference to the SLC cap on secondary lines, such disclosure statement should indicate the annual increases in the SLC cap. We seek comment on whether such a statement would be compatible with marketing and consumer information campaigns that carriers may have instituted or that they may be formulating in preparation for the Commission's new access charge rules.

Deadlines and Instructions for Filing Comments

20. 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 September 25, 1997, and reply comments on or before October 9, 1997.

21. We direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. Comments and reply comments also must clearly identify the specific portion of this NPRM to which a particular comment or set of comments is responsive. If a portion of a party's comments does not fall under a particular topic listed in the outline of this NPRM, such comments must be included in a clearly labelled section at the beginning or end of the filing. Irrespective of the length of their comments or reply comments, parties shall include a table of contents in their documents. *Cf.* 47 CFR 1.49(b).

22. Parties should send their comments or reply comments to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554. Parties filing on paper should also send three (3) copies of their comments to Sheryl Todd, Federal Communications Commission, Accounting and Audits Division, Universal Service Branch, 2100 M Street, N.W., Room 8611, Washington, DC 20554. Parties filing in paper form should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, NW, Washington, D.C. 20036. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, N.W., Room 239, Washington, D.C. 20554.

23. Commenters may also file informal comments or an exact copy of formal comments electronically via the Internet at: <http://gullfoss.fcc.gov/cgi-bin/websql/cgi-bin/comment/comment.hts>. Only one copy of electronically filed comments must be submitted. A commenter must note whether an electronic submission is an exact copy of formal comments on the subject line. A commenter also must include its full name and Postal Service mailing address its submission.

24. Parties not submitting an exact copy of their comments via the Internet are also asked to submit their comments and reply comments on diskette. Such diskette submissions are in addition to and not a substitute for the formal filing requirements addressed above. Parties submitting diskettes should submit them to Sheryl Todd of the Common Carrier Bureau, 2100 M Street, N.W., Room 8611, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible form using WordPerfect 5.1 for Windows or compatible software. The diskette should be submitted in ''read only'' mode. The diskette should be clearly labelled with the party's name, proceeding, type of pleading (comment or reply comments) and date of submission. Each diskette should contain only one party's comments in a single electronic file. The diskette

should be accompanied by a cover letter.

25. Written comments by the public on the proposed information collections are due September 25, 1997. Written comments must be submitted by OMB on the proposed information collection on or before 60 days after the date of publication in the **Federal Register**. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, D.C. 20554, or via the Internet to jboley@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 17th Street, N.W., Washington, D.C. 20503 or via the Internet to fain__t@al.eop.gov.

Initial Regulatory Flexibility Analysis

26. Pursuant to the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the expected significant economic impact of these proposed policies and rules on small entities. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of this NPRM, and should have a separate and distinct heading designating them as responses to the IRFA. The Commission will send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA) in accordance with the RFA. See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

27. *Need for and Objectives of the Proposed Rules.* Three principal goals of the Telecommunications Act of 1996 are: (1) Opening local exchange and exchange access markets to competition; (2) promoting increased competition in telecommunications markets that are already open to competition, particularly long distance services markets; and (3) reforming our system of universal service so that universal service is preserved and advanced as local exchange and exchange access markets move from monopoly to competition. The Commission's access charge and universal service rules were adopted at a time when interstate access and local exchange services were offered on a monopoly basis, and in many cases are inconsistent with the competitive market envisioned by the 1996 Act. This NPRM is necessary to implement the rules the Commission adopted in its *Universal Service Order* and *Access Charge Reform Order* because, without a definition and a means of identifying and verifying primary residential lines, price cap ILECs will not be able to assess the appropriate charges for these lines. With this NPRM, we seek to identify primary residential lines in order to make the Commission's access charge and universal service rules consistent with Sections 251 and 254 of the Telecommunications Act of 1996.

28. *Legal Basis.* The proposed action is supported by Sections 4(i), 4(j), 201–205, 251, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 201–205, 251, 254, and 403.

29. *Description and Estimate of the Number of Small Entities That May Be Affected by This NPRM.* The RFA directs the Commission to provide a description of, and where feasible, and estimate of the number of small entities that might be affected by proposed rules. The RFA defines the term ''small entity'' as having the same meaning as the term ''small business,'' ''small organization,'' and ''small business concern'' under section 3 of the Small Business Act (SBA). See 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). The Commission may also develop additional definitions that are appropriate to its activities. To be a small business concern, an entity must: (1) Be independently owned and operated; (2) be not dominant in its field of operation; and (3) meet any additional criteria established by the SBA. See 15 U.S.C. 632.

30. We believe that small ILECs are not small businesses for IRFA purposes because each is either dominant in its field of operation or is not independently owned and operated. We have found ILECs to be ''dominant in their field of operation'' since the early 1980s, and we consistently have certified under the Regulatory Flexibility Act, see 5 U.S.C. 605(b), that ILECs are not subject to regulatory flexibility analysis requirements because they are not ''small business concerns.'' Out of an abundance of caution, for regulatory flexibility analysis purposes we will consider small ILECs within this present analysis and use the term ''small ILECs'' to refer to any incumbent LEC that arguably might be defined by SBA as a small business concern.

31. The proposals under consideration in this NPRM, if adopted, would affect the fourteen (14) ILECs subject to price cap regulation by the Commission. Neither the Commission nor the SBA has developed a definition of small providers of local exchange service. The closest applicable definition under SBA rules is for telephone telecommunications companies other than radiotelephone (wireless) companies. The SBA has defined a small business for Standard Industrial Classification (SIC) category 4813 (Telephone Communications, Except Radiotelephone) to be an entity with no more than 1,500 employees, 15 U.S.C. 632 (citing 13 CFR 121.201). Of the fourteen ILECs subject to price cap regulation, we estimate that, at a maximum, six (6) of them have no more than 1,500 employees. Of these six, we estimate that at least one is not independently owned and operated. We seek comment on these estimates.

32. In addition, the proposals in this NPRM may also affect providers of local exchange service that purchase wholesale services from the 14 incumbent price cap LECs and resell that service to customers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable SBA definition for a reseller is a telephone communications company except radiotelephone (wireless) companies. 13 CFR 121.201, SIC 4813. However, the most reliable source of information regarding the number of resellers nationwide is the data that the Commission collects annually in connection with the *TRS Worksheet.* According to our most recent data, 260 companies reported that they were engaged in the resale of telephone service. We estimate that between 50 and 150 of these companies offer local exchange service on a resale basis, but we do not have data regarding how many of these carriers purchase service from price cap ILECs. We also do not have information on the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus we are unable at this time to estimate with greater precision the number of resellers that would qualify as small entities or small incumbent LEC concerns under the SBA's definition. Consequently, we estimate that there are fewer than 150 small entity resellers.

33. *Reporting, record keeping, and other compliance requirements.* The proposals to establish a customer certification system amy require price cap ILECs to ask customers to identify their primary lines, maintain records verifying a customer's primary line

designation, submit their records to Commission audits to verify accuracy of primary line counts, and publish a consumer disclosure statement in their monthly bills.

34. *Steps Taken to Minimize Significant Economic Impact on Small Entities and Alternatives Considered.* Throughout this NPRM, we seek comment on alternatives that will reduce the impact on all entities affected by these proposals, including small ILECs. We tentatively adopt a definition of single-line business lines that, we believe, will result in a smaller administrative burden for ILECs as they identify primary and secondary lines in order to charge the correct SLC or PICC. In addition, we ask commenters to identify the relative costs and benefits, including administrative costs, of adopting a particular definition of primary residential line. We ask parties to identify a definition of primary residential line that will be easy for carriers and customers to apply. We tentatively adopt customer self-certification as a means to identify primary lines because this method of identification is less administratively burdensome for ILECs than a method that does not include customer input. We seek comment on whether, and if so, the amount of time, ILECs must keep records of customer self-certification. We particularly encourage parties to submit proposals that will reduce the administrative burden on carriers and customers. We seek comment on whether we should include a standardized customer disclosure statement, and if so, whether that disclosure should be made in writing or may be made orally.

35. At this time, we tentatively conclude to eliminate several options because they would be too administratively burdensome. The proposals we tentatively reject include: creating and maintaining a national database of primary line designations; using local property records to identify and track primary lines; and using social security numbers to track primary lines.

36. *Federal rules which overlap, duplicate or conflict with this rule.* None.

Ordering Clauses

37. *It is ordered,* pursuant to Sections 1, 4 (i) and (j), 201–209, 218–222, 251, 254, and 403 of the Communications Act as amended, 47 U.S.C. 151, 154(i), 154(j), 201–209, 218–222, 251, 254, and 403 that this Notice of Proposed Rulemaking is hereby adopted and comments are requested as described above.

38. *It is further ordered* that the Commission shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 54

Communications common carriers, Health facilities, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone.

47 CFR Part 69

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–24211 Filed 9–11–97; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 970828210–7210–01; I.D. 080697H]

RIN 0648–AK37

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Control Date for Atlantic Mackerel

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

ACTION: Advance notice of proposed rulemaking; notice of control date for the Atlantic mackerel fishery.

SUMMARY: NMFS announces that anyone entering the commercial Atlantic mackerel fishery after September 12, 1997 (control date) will not be assured of future access to the Atlantic mackerel resource in Federal waters if a management regime is developed and implemented under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) that limits the number of participants in the fishery. This announcement is intended to promote awareness of potential eligibility criteria for future access to the commercial Atlantic mackerel fishery and to discourage new entries into this fishery based on economic speculation, while the Mid-Atlantic Fishery Management Council (Council) contemplates whether and how access to that portion of the Atlantic mackerel fishery in Federal waters should be controlled. The potential eligibility criteria may be based on historical participation, defined as any number of trips having any documented amount of Atlantic mackerel landings. If such a regime is implemented, fishery participants may need to preserve records that substantiate and verify their participation in the Atlantic mackerel fishery in Federal waters.

DATES: Comments must be submitted by October 14, 1997.

ADDRESSES: Comments should be directed to David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, 300 South New Street, Dover, DE 19904.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Fishery Policy Analyst, 508–281–9104.

SUPPLEMENTARY INFORMATION:

Background

Atlantic mackerel (*Scomber scombrus*) is a migratory species that supports important recreational and commercial fisheries along the Atlantic coast of the United States and Canada. The Fishery Management Plan for Atlantic Mackerel, Squid, and Butterfish (FMP) was developed by the Council to provide for the development of the U.S. Atlantic mackerel, squid, and butterfish fisheries. An initial notice establishing a control date of August 13, 1992, was issued for the Atlantic mackerel, squid, and butterfish fisheries (57 FR 36384, August 13, 1992), which stated that as of that date no vessel would be guaranteed entry into a limited access fishery, if the Council chose to implement one. This control date was rescinded for Atlantic mackerel on September 27, 1994 (59 FR 49235), because the Council and NMFS believed that information regarding biomass levels, fishing levels, fishing effort, and catch indicated that the mackerel fishery would not require limited-entry management in the foreseeable future. Removal of the control date also removed a barrier to access to this underutilized resource to vessel owners who were facing severe restrictions in other Northeast fisheries. In Amendment 5 to the FMP, the Council included a provision that would require the Secretary of Commerce to publish a control date for the Atlantic mackerel fishery when commercial landings reached 50 percent of allowable biological catch (ABC). NMFS did not

include this provision in the proposed rule because, as explained in the preamble to that rule (60 FR 65618, December 20, 1995), it was not considered to be a management measure to be implemented by regulation. Rather, it was viewed as a statement of Council intent. NMFS further noted that the Council could recommend the publication of a notice of control date when it deemed the action necessary. At its May 1997 meeting, the Council requested that NMFS issue an advance notice of proposed rulemaking reestablishing a control date for Atlantic mackerel. The Council stated that such action by NMFS would discourage new entries into the fishery based on economic speculation while the Council considers a limited access system for the fishery. The Council intends to consider, in the near future, a management program that would control the rate of capitalization in the fishery and promote the diversification of existing fishermen in the Atlantic mackerel industry.

Discussion of reinstatement of a control date was prompted by news that a large factory trawler was undergoing conversion to enter this fishery. Council members noted that, although the fishery is currently underexploited, a substantial increase in exploitation could be effected in a short period of time by the introduction of a factory trawler fleet. To prevent overcapitalization, Council members expressed the need to implement a management program for this fishery that allowed for controlled expansion. Amendment 5 to the FMP estimated that the hold capacity for vessels issued Atlantic mackerel, squid, and butterfish permits approached 50,000 mt if each vessel made just one trip at full capacity. Although all of these vessels do not have an interest or ability to expand into the mackerel fishery, there is a high level of existing capital in the region. The Council members noted that this capital, along with the possible addition of factory trawlers, raised concerns because the current estimate of long-term potential yield for this fishery is 150,000 mt. Further, both NMFS and the Council have indicated that first preference for entry into this fishery should be afforded to Northeast region vessels as an alternative to traditional fisheries that have been severely overfished. For these reasons, the Council voted to request publication of a control date for Atlantic mackerel.

At the May 1997 meeting, the Council committed to begin work shortly on Amendment 7 to the FMP. Amendment 7 would address whether and how to limit entry of commercial vessels into this fishery. Publication of a control date is intended to discourage speculative entry into the Atlantic mackerel fishery while potential management regimes to control access into the fishery are discussed and possibly developed by the Council. Establishment of a control date will help to distinguish established participants from speculative entrants to the fishery. Although participants are notified that entering the fishery after the control date will not assure them of future access to the Atlantic mackerel resource on the grounds of previous participation, additional and/or other qualifying criteria also may be applied. The Council may choose different and variably weighted methods to qualify fishermen, based on the type and length of participation in the fishery or on the quantity of landings.

This notice hereby establishes September 12, 1997 for potential use in determining historical or traditional participation in the Atlantic mackerel fishery. This action does not commit the Council to develop any particular management regime or to use any specific criteria for determining entry to the fishery. The Council may choose a different control date, or may choose a management program that does not make use of such a date. The Council may choose also to take no further action to control entry or access to the fishery. Any action by the Council will be taken pursuant to the requirement for FMP development established under the Magnuson-Stevens Act.

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

Dated: September 5, 1997.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service

[FR Doc. 97–24202 Filed 9–12–97; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 62, No. 177

Friday, September 12, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Bayou Bourbeux Watershed, St. Landry Parish, Louisiana

AGENCY: Natural Resources Conservation Service, Agriculture.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulation (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Bayou Bourbeux Watershed, St. Landry Parish, Louisiana.

FOR FURTHER INFORMATION CONTACT: Donald W. Gohmert, State Conservationist, Natural Resources Conservation Service, 3737 Government Street, Alexandria, Louisiana, 71302, telephone (318) 473–7751.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Donald W. Gohmert, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project features include the installation of flood control measures consisting of both structural and nonstructural measures to protect thirty-two residences within the floodplain of Bayous Yarbor and Callahan; land treatment on 3,200 acres of critically eroding cropland; acquiring agricultural easements on approximately 3,000 acres of land through the Wetlands Reserve Program; and 11 miles of channel restoration on Bayous Bellevue and Bourbeux.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Bruce Lehto, Assistant State Conservationist/Water Resources, Natural Resources Conservation Service, 3737 Government Street, Alexandria, Louisiana 71302, telephone (318) 473–7756.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under NO. 10.904, Watershed Protection and Flood Prevention, and is subject to the provision of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

Dated: September 3, 1997.

Donald W. Gohmert,

State Conservationist.

[FR Doc. 97–24177 Filed 9–11–97; 8:45 am]

BILLING CODE 3410–16–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: October 14, 1997.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Office and Miscellaneous Supplies
(Requirements for the U.S. Military Academy, West Point, New York)
NPA: Winston-Salem Industries for the Blind, Winston-Salem, North Carolina

Services

Central Facility Management (including Janitorial/Custodial, Grounds Maintenance, Interior Landscaping, Copier Operation, Mail and Messenger, Shipping and Receiving and Self Service Supply Store)
U.S. Department of Agriculture, Beltsville, Maryland
NPA: Melwood Horticultural Training Center, Upper Marlboro, Maryland

Janitorial/Custodial

Veterans Administration Medical Center, 2600 M. L. King, Jr. Parkway, Des Moines, Iowa
NPA: Goodwill Industries of Central Iowa, Des Moines, Iowa
L. W. Stoddard USARC 25 North Lake Avenue, Worcester, Massachusetts
NPA: Seven Hills Occupational & Rehabilitation Services, Inc., Worcester, Massachusetts
Repair & Distribution of Government Owned Shoe Lasts
Defense Personnel Support Center, Philadelphia, Pennsylvania
NPA: Cleveland Skilled Industries, Cleveland, Ohio

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–24261 Filed 9–11–97; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: October 14, 1997.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On June 13, 20, 27 and July 25, 1997 the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (62 FR 32288, 33585, 34686 and 40049) of proposed additions to the Procurement List.

The following comments pertain to Woman's USMC Slacks: Comments were received from the current contractor for the slacks. The contractor indicated that the addition of the slacks would significantly and adversely impact its business and, as a result, its employees and the depressed region in which it is located. The contractor explained that its potential closure as a result of the proposed addition would be devastating, as it was the largest employer in town and the largest minority employer in the area.

The Committee noted that the contractor overstated the impact on its business by including sales data associated with slacks of another color not proposed for addition to the Procurement List. When those sales were eliminated, the resulting percentage of the firm's sales that would be lost by the Committee's addition action was below the level that the Committee normally considers to be severe adverse impact. Consequently, the Committee believes it is unlikely that the contractor will be forced to discontinue operations and, thereby, exaccerbate any existing area economic problems. While it is possible that a few of the contractor's employees may lose their jobs as a result of the action, the Committee believes that even in a depressed area, it will be easier for them to find jobs than it would be for the people with severe disabilities who will benefit from the addition.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Office and Miscellaneous Supplies (Requirements for the Naval Air Station, Lemoore, California)

Office and Miscellaneous Supplies (Requirements for Dover Air Force Base, Delaware)

VuRyte—VuRyser Ergonomic Computer Workstation 7520–01–443–4902

Slacks, Woman's, USMC

8410–01–413–5188
8410–01–413–5189
8410–01–413–5190
8410–01–413–5193
8410–01–413–5194
8410–01–413–5195
8410–01–413–5196
8410–01–413–5245
8410–01–413–5256
8410–01–413–5258
8410–01–413–5259
8410–01–413–5260
8410–01–413–5262
8410–01–413–5800
8410–01–413–5855
8410–01–413–5860
8410–01–413–5864
8410–01–413–5872
8410–01–413–5875
8410–01–413–5877
8410–01–413–5880
8410–01–413–5881
8410–01–413–5883
8410–01–413–5884
8410–01–413–5886
8410–01–413–5887
8410–01–413–5888
8410–01–413–5889
8410–01–413–5248

Services

Administrative Services, Social Security Administration, Oxmoor South Industrial Park, 220 Oxmoor Court, Birmingham, Alabama

Janitorial/Custodial

New Boston Courthouse, Northern Avenue, Boston, Massachusetts.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–24262 Filed 9–11–97; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 970725180–7180–01]

RIN No. 0693–ZA16

Announcing Request for Candidate Algorithm Nominations for the Advanced Encryption Standard

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; Request for candidate encryption algorithm nomination packages.

SUMMARY: A process to develop a Federal Information Processing Standard (FIPS) for Advanced Encryption Standard (AES) specifying an Advanced Encryption Algorithm (AEA) has been initiated by the National Institute of Standards and Technology (NIST). This notice requests submission of candidate algorithms for consideration for inclusion in the AES and specifies how to submit a nomination package. The requirements for candidate algorithm submission packages and minimum acceptability requirements that must be satisfied in order to be deemed a ''complete and proper'' submission are presented. the evaluation criteria which will be used to appraise the candidate algorithms are also described.

It is intended that the AES will specify an unclassified, publicly disclosed encryption algorithm available royalty-free worldwide that is capable of protecting sensitive government information well into the next century.

The purpose of this notice is to solicit candidate algorithms from the public, academic/research communities, manufacturers, voluntary standards organizations, and Federal, state, and local government organizations. Following the close of the submission period, NIST intends to make all submissions publicly available for review and comment.

DATES: *Submission deadline:* Candidate algorithm nomination packages must be received by June 15, 1998.

Submission packages received before April 15, 1998, will be reviewed for completeness by NIST and notified of their specific deficiencies, if any, by May 15, 1998, allowing time for deficient packages to be amended by the submission deadline.

No amendments to deficient packages will be permitted after the submission deadline. Requests for withdrawal of candidate algorithm submission packages previously submitted will only be honored until the submission deadline.

ADDRESSES: Candidate algorithm submission packages should be send to Director, Information Technology Laboratory, Attn: Advanced Encryption Standard Nominations, Technology Building, Room A231, National Institute of Standards and Technology, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: For general information, contact: Edward Roback, National Institute of Standards and Technology, Building 820, Room 426, Gaithersburg, MD 20899; telephone 301–975–3696 or via fax at 301–948–1233.

If necessary, general questions for clarification of these requirements for candidate algorithm submission packages, minimum acceptability requirements, or evaluation criteria/process should be sent electronically to AESQUEST@NIST.GOV or via fax to 301–948–1233 (Attn: AES Questions). In fairness to all parties, answers to germane questions will be made publicly available simultaneously to all those interested at <http://csrc.nist.gov/encryption/aes>. Non-pertinent questions may be ignored.

Technical questions and questions related to a specific submission package may be made by contacting either Miles Smid at (301) 975–2938, or Jim Foti at (301) 975–5237.

NIST will endeavor to answer all questions in a timely manner.

SUPPLEMENTARY INFORMATION: This section contains the following:

1. Background
2. Requirements for Candidate Algorithm Submission Packages
   2.A Cover sheet
   2.B Algorithm Specifications and Supporting Documentation
   2.C Magnetic media
   2.D Intellectual property statements/agreements/disclosures
   2.E General Submission Requirements
3. Minimum Acceptability Requirements
4. Evaluation Criteria
5. First AES Conference
6. Plans for Candidate Evaluation Process
   6.A Overview
   6.B Round 1 Technical Evaluation
   6.C Round 2 Technical Evaluation
7. Miscellaneous

1. Background

This work effort is being initiated pursuant to NIST's responsibilities under the Computer Security Act of 1987, the Information Technology Management Reform Act of 1996, Executive Order 13011, and OMB Circular A–130.

NIST recognizes that many institutions, both within and outside the Federal Government, have considerable investments in their current installed base of encryption equipment implementing the Data Encryption Algorithm, specified in the Data Encryption Standard (DES, Federal Information Processing Standard 46–2). DES was first approved in 1977 and was most recently reaffirmed by the Secretary in 1993, until December 1998. In 1993 the following statement was included in the standard:

> At the next review (1998), the algorithm specified in this standard will be over twenty years old. NIST will consider alternatives which offer a high level of security. One of these alternatives may be proposed as a replacement standard at the 1998 review.

It is NIST's view that a multi-year transition period will be necessary to move toward any new encryption standard and the DES will continue to be of sufficient strength for many applications. NIST will consult with all interested parties so that a smooth transition can be accomplished. NIST may not complete the AES selection process before the end of its 1998 DES Review, and an interim solution(s) may be necessary.

For interoperability and other purposes, NIST strongly desires to select a single block encryption algorithm to be specified in the AES with a strength equal to or better than that of Triple DES and significantly improved efficiency. However, if more than one suitable candidate is identified which provides significantly better advantages in a specific application(s), NIST may consider recommending more than one algorithm. Present resource constraints do not permit the development of a specific standard algorithm for 8-bit smart card implementations or a standard stream cipher. It is hoped that the block cipher selected will be suitably flexible for a wide variety of implementations, recognizing that it may not operate with optimal efficiency in each and every potential application.

2. Requirements for Candidate Algorithm Submission Packages

To be considered as a ''complete'' nomination package (and continue further in the AES consideration process), candidate algorithm submission packages MUST contain the following (as described in detail below):

Cover sheet

Algorithm Specifications and Supporting Documentation

Magnetic media

Intellectual property statements/agreements/disclosures

Each of these is discussed in detail below, including ''general submission requirements'' which all nominations must also satisfy.

2. A Cover sheet

A cover sheet containing the following information:

Name of submitted algorithm
Principal submitter's name, telephone, fax, organization, postal address, e-mail address
Name(s) of auxiliary submitter(s)
Name of algorithm inventor(s) developer(s)
Name of owner, if any, of the algorithm. (normally expected to be the same as the submitter)
Signature of Submitter (optional)
Backup point of contact (w/telephone, fax, postal address, e-mail)

2.B Algorithm Specifications and Supporting Documentation

2.B.1 A complete written specification of the algorithm shall be included, consisting of all necessary mathematical equations, tables, diagrams, and parameters that are needed to implement the algorithm. The submission of all design rationale (e.g., method for generating table values, rationale for number of rounds, etc.) is strongly encouraged, in order to facilitate the public evaluation process.

Parity bits shall not be specified in the key definition. The bit naming/numbering convention for the key shall be provided by the submitter.

2.B.2 A statement of the algorithm's estimated computational efficiency in hardware and software shall be included. At a minimum, the submitter shall state efficiency estimates for the ''NIST AES analysis platform'' (specified elsewhere in section 6.B) and for 8-bit processors. (Efficiency estimates for other platforms may be included at the submitters' discretion.) These estimates shall *each* include the following information, at a minimum:

a. Description of the platform used to generate the estimate, in sufficient detail so that the estimates could be verified in the public evaluation process (e.g., for software running on a PC, include processor, clock speed, memory, operating system, etc.). For hardware estimates, it is encouraged that a gate count (or estimated gate count) be included.

b. Speed estimate for the algorithm on the platform specified in section 6.B. At a minimum, the number of clock cycles required to

(1) encrypt one block of data,
(2) decrypt one block of data,
(3) setup a key,
(4) setup the algorithm (e.g., build internal tables), and
(5) change a key after its initial setup

shall be specified *for each key- and block-size combination required in the Minimum Acceptability Requirements section of this announcement.*

c. Any available information on tradeoffs between speed and memory.

2.B.3 A series of Known Answer Tests (KATs) and Monte Carlo Tests (MCTs) shall be included as specified below. All of these KAT and MCT values shall be submitted electronically, in separate files, on a diskette as described in section 2.C.3. (The files containing test values may be compressed using PKZIP or GNUZIP to conserve disk space.) Each file shall be clearly labeled with header information listing: (1) Algorithm name, (2) Test name, (3) Description of the test, and (4) Key-block size combination being tested. All values within the file shall be clearly labeled (e.g., index, key, plaintext, ciphertext, etc.), and shall be in the exact format specified by NIST on its WWW site at <http://csrc.nist.gov/encryption/aes>.

a. All applicable KATs shall be included that can be used to exercise various features of the algorithm when operated in the Electronic Codebook (ECB) mode. A set of KATs shall be included for *each* key and block size specified in the Minimum Acceptability Requirements section. Required KATs include:

i. *Variable Key Known Answer Test*—A variable key KAT is required for the algorithm's encryption state. For an *n*-bit *key* size, there shall be *n* key-plaintext-ciphertext triples. The plaintext shall always consist entirely of binary zeros; the key shall always contain a single '1' bit and *n*-1 '0' bits, and the *n* possible keys (where each key has the '1' bit in a different position) shall be used to generate ciphertext. (To run this test for decryption, the ciphertext should be used as input to recover the block of all zero bits, for *each* possible one-bit key.)

ii. *Variable Plaintext Known Answer Test*—A variable plaintext KAT is required for the algorithm's encryption state. For an *m*-bit *block* size, there shall be *m* kep-plaintext-ciphertext triples. The key shall always consist entirely of binary zeros; the plaintext block shall always contain a single '1' bit and *m*-1 '0' bits, and the *m* possible blocks (where each input block has the '1' bit in a different position) shall be used to generate ciphertext. (To run this test for decryption, the ciphertext should be used as input to recover the correct input block, using the key consisting only of '0' bits.)

iii. If the candidate algorithm calculates intermediate values (e.g., internal rounds) for an encryption or decryption operation, then the submitter shall include known answers for those intermediate values for a single encryption and decryption operation for *each* of the required key- and block-size combinations.

iv. If tables are used in the algorithm, then a known answer test shall be included to exercise every table entry.

Note: The submitter may include any other known answer tests that exercise different features of the algorithm (e.g., for permutation tables, etc.). The purposes of these tests shall be clearly described in the file containing the test values.

b. Four Monte Carlo Tests shall be included, with key and data values, for *each* of the key-block combinations required in the Minimum Acceptability Requirements section. These four tests correspond with tests specified in the NIST Special Publication, *Modes of Operation Validation System: Requirements and Procedures* [MOVS]. The four tests required for the AES submissions correspond with the two Electronic Codebook Modes Tests for encryption and decryption (Sections 5.1.1.5 and 5.1.2.5 in [MOVS]) the two Cipher Block Chaining Modes Tests for encryption and decryption (Sections 5.2.1.5 and 5.2.2.5 in [MOVS]).

A link to a description of the required tests will be available at <http://csrc.nist.gov/encryption/aes>. Required submission data for the Monte Carlo Tests will also be found at that location.

2.B.4 A statement of the expected strength (i.e. workfactor) of the algorithm shall be included, along with any supporting rationale. The expected strength shall be given for *each* key- and block-size combination required in the minimum Acceptability Requirements section of this announcement, and for all other key- and block-size combinations claimed to be supported by the algorithm.

2.B.5 An analysis of the algorithm with respect to known attacks (e.g., known and chosen plaintext) shall be included. In addition, all known weak keys, equivalent keys, complementation properties, restrictions on key selection, and other similar features of the algorithm shall be noted by the submitter. If no such values are known, then this shall be stated by the submitter.

The submitter should provide any mathematical rationale for the non-existence of ''trap-doors'' in the algorithm, to the greatest extent possible.

The submitter shall provide a list of known references to any published

materials describing or analyzing the security of the submitted algorithm. Submission of copies of these materials (accompanied by a waiver of copyright or permission from the copyright holder for AES public evaluation purposes) is encouraged.

2.B.6 A statement shall be included that lists *and describes* advantages and limitations of the algorithm. Such advantages and limitations shall address the ability to:

a. implement the algorithm as a stream cipher, Message Authentication Code (MAC) generator, pseudo-random number generator, hashing algorithm, etc.

b. implement the algorithm in various environments, including—but not limited to: 8-bit processors (smartcards), ATM, HDTV, B–ISDN, voice applications, satellite applications, etc. To demonstrate the efficiency of a hardware implementation of the algorithm, the submitter may include a specification of the algorithm in a nonproprietary Hardware Description Language (HDL).

c. use the algorithm with key- and block-sizes other than those required as a minimum in the Minimum Acceptability Requirements section of this announcement.

If the submitter believes that the algorithm has certain features deemed advantageous by the submitter, then these should be listed and described, along with supporting rationale. Some examples of these features might include, for example: throw-away tables, mathematically (rather than empirically) designed tables, statistical basis for inter-round mixing, variable key setup time, etc.

2.C Magnetic Media

2.C.1 Reference Implementation

A reference implementation shall be submitted, in order to promote the understanding of how the candidate algorithm may be implemented. This implementation shall consist of source code written in ANSI C; appropriate comments should be included in the code, and it should clearly map to the algorithm description included under section 2.B.1. Since this implementation is intended for reference purposes, *clarity in programming* is more important than efficiency.

The reference implementation shall be capable of fully demonstrating the operation of the candidate algorithm. The reference implementation shall support all key- and block-size combinations specified in the Minimum Acceptability Requirements section of this announcement. Additionally, it *must* support all other key-block sizes that are claimed to be supported by the algorithm.

NIST will specify a cryptographic API for the ANSI C implementations, which will be made available at <http://csrc.nist.gov/encryption/aes>. All ANSI C submissions shall implement that API, so that the NIST test system can be compatible with all submissions.

Separate source code for implementing the required Known Answer Tests and Modes Tests with the reference implementation shall also be included. This code shall be able to process input specified in the format indicated by NIST (on the WWW site as referred to under section 2.B.3) and run the required tests.

The reference implementation shall be provided on a single diskette, which shall be labeled with the submitter's name, the algorithm name, and ''Reference Implementation.''

2.C.2 Mathematically Optimized Implementation

Two *mathematically* optimized implementations of the candidate algorithm shall be submitted, so that NIST can perform tests in two different languages in order to demonstrate the potential for efficient implementation. These two implementations shall be specified in ANSI C and Java programming languages:

i. *ANSI C*: The first mathematically optimized implementation shall be specified in ANSI C source code. NIST intends to use the ANSI C compiler specified under ''Round 1 Technical Analysis'' to compile the code and link it to the NIST test system. (NIST received many comments that the optimized implementation should be written in C, since it is a very common language.)

NIST will specify a cryptographic API for the ANSI C implementations, which will be made available at <http://csrc.nist.gov/encryption/aes>. All ANSI C submissions shall implement that API, so that the NIST test system can be compatible with all submissions.

ii. *Java language specification:* The second mathematically optimized implementation shall be specified in the Java programming language, as defined by the Java Development Kit (JDK) version 1.1. This JDK 1.1 is publicly available for multiple platforms from Javasoft, at <http://www.javasoft.com>. NIST has selected Java as one language for the mathematically optimized implementations because it will provide an accurate *relative* mathematical efficiency measure of the different candidate algorithms, since it uses machine-independent code. The use of one Java Virtual Machine—to test all of the Java implementations submitted to NIST—is intended to eliminate differences in hardware optimizations that may occur when using other languages. It is *not* intended that the Java implementation will provide an absolute efficiency measure of each candidate algorithm on the NIST Analysis Platform.

Submissions are required to use the cryptographic API defined by the Java Cryptography Architecture (JCA) in conjunction with the Java Cryptography Extension (JCE). An AES submitter shall create a Cryptography Package Provider (CPP) that implements the submitted candidate algorithm. The Provider class is described in the JCA (Refer to <http://java.sun.com:80/products/jdk/1.1/docs/guide/security/CryptoSpec.html>, under ''The Provider Class''; JCE 1.1 APIs may be found at <http://java.sun.com/security>). The ''Cipher'' engine subclass within the CPP (as defined in the JCE) shall then be used to implement the candidate encryption algorithm. Other appropriate engine subclasses from the JCA and JCE may also be implemented, to accommodate features of the particular candidate algorithm (e.g., ''Key Generator'' class in the JCE).

General Requirements for Both Mathematically Optimized Implementations

Both of the mathematically optimized implementations shall support key- and block-size combinations specified in the Minimum Acceptability Requirements section of this announcement.

The mathematically optimized implementations shall operate in the Electronic Codebook (ECB), Cipher Block Chaining (CBC), and 1-bit Cipher Feedback (1–CFB) modes for encryption and decryption. Other modes are not required to be implemented in the software provided to NIST.

Separate source code for implementing the required Known Answer Tests and Modes Tests with the mathematically optimized implementations shall also be included. This code shall be able to process input specified in the format indicated by NIST (on the WWW site as referred to under section 2.B.3) and run the required tests.

The submitter shall provide the mathematically optimized implementations on two separate diskettes, which shall be labeled with the submitter's name, the algorithm name, and ''Optimized—ANSI C'' or ''Optimized—Java''.

Additionally, submitters may, at their discretion, submit revised optimized

implementations (for both the ANSI C and Java implementations) for use in the Round 2 evaluation process, allowing additional time for improvements. These must be received prior to the beginning of the round 2 evaluation; submittors will be notified of the specific deadline as appropriate. Note that the mathematically optimized implementations on file with NIST at the close of the initial submission period will be the ones used in the Round 1 evaluation.

2.C.3 Test Values—Known Answer Tests and Monte Carlo Tests

The files on this diskette shall contain all of the test values required under section 2.B.3 of this announcement. That section includes descriptions of the required tests as well as a list of the values that must be provided. These files may be compressed using PKZIP or GNUZIP to conserve disk space, if necessary.

The required format for the test vectors will be specified by NIST at <http://csrc.nist.gov/encryption/aes>

The test values shall be provided on a single diskette, which shall be labeled with the submitter's name, the algorithm name, and ''Test Values: Known Answer Tests and Monte Carlo Tests.''

2.C.4 Supporting Documentation

So as to facilitate electronic distribution of submissions to all interested parties, copies of all written materials must also be submitted in electronic form in either PostScript or Adobe PDF. PDF is preferable. (NIST will convert PostScript submissions to PDF.) Submitters planning to create PDF are encouraged to use the thumbnail and bookmark features, to have a clickable table of contents (if applicable), and to include other links within the PDF as appropriate. To create a PostScript file, users of PC word processors should configure their software to print using a PostScript printer driver, and capture the output using the ''print to file'' feature, preferably using standard PostScript printer fonts (not downloaded fonts).

Users of TeX, LaTeX/DVIPS should use PostScript Type 1 fonts, preferably standard PostScript printer fonts, rather than the default embedded bitmapped Computer Modern fonts. Instructions for configuring DVIPS can be found at <http://www.adobe.com/supportservice/custsupport/SOLUTIONS/385e.htm>, ''Creating quality Adobe PDF files from TeX with DVIPS,'' by Kendall Whitehouse/EMERGE, FaxYI number 131303. (This is cited for reference purposes only, and does not constitute a direct or implied endorsement.)

NIST then intends to make submissions available electronically (consistent with U.S. export regulations) in both PostScript and PDF formats.

This electronic version of the supporting documentation shall be provided on diskette(s), which shall be labeled with the submitter's name, the algorithm name, and ''Supporting Documentation.'' If multiple diskettes are necessary, each diskette must also be labeled with ''#*m* of *n*'' as appropriate.

2.C.5 General Requirements for Magnetic Media

A separate diskette shall be used for the reference implementation, mathematically optimized implementations, test values, and supporting materials.

All magnetic media presented to NIST shall be free of viruses or other malicious code. Media submitted will be scanned for the presence of such code. If such malicious code is found, NIST will notify the submitter and ask that a clean version of the magnetic media be re-submitted.

All magnetic media shall be submitted on 3.5″ 1.44MB floppy diskettes, formatted for use on an IBM-compatible PC.

A file labeled ''README'' shall be included on each diskette, listing all files included on the diskette, with a brief description of each.

NIST is in the process of defining a selected set of cryptographic service calls for the ANSI C implementations. For the Java implementation, NIST will use calls from the Java Cryptography Architecture API. These two sets of calls shall be used by the NIST test software to make appropriate calls to the optimized and reference implementations, so that the test software does not have to be rewritten for each submitted algorithm. Therefore, *both the mathematically optimized and reference implementations are required to conform with these specific calls.* The implementations shall be supplied in source code so that NIST can compile and link them appropriately with the test software. The two selected sets of required calls will be available at the following location: <http://csrc.nist.gov/encryption/aes>. NIST intends that these will be available within three months after publication of this notice.

2.D Intellectual Property Statements/Agreements/Disclosures

After review of the public comments on the draft minimum acceptability requirements and evaluation criteria (published for comment in the Federal Register on January 2, 1997), NIST has determined that potential users of the AES desire to have the AES available worldwide on a royalty free basis. Additionally, based upon the results of the April 15, 1997 public workshop held on the draft evaluation criteria and submission requirements, NIST believes there is a reasonable basis to expect a sufficient number and variety of submissions willing to meet these licensing conditions such that the expressed needs of potential AES users can be accommodated.

In order to ensure this and minimize any intellectual property issues, the following statement is required:

2.D.1 Statement by the Submitter

I, _____ (print submitter's full name) _____ do hereby declare that to the best of my knowledge the practice of the algorithm, reference implementation, and mathematically optimized implementations, I have submitted, known as _____ (print name of algorithm) _____ may be covered by the following U.S. and/or foreign patents: _____ (describe and enumerate or state ''none'' if appropriate) _____.

I do herby declare that I am aware of no patent applications which may cover the practice of my submitted algorithm, reference implementation or mathematically optimized implementations. –OR– *I do hereby declare that the following pending patent applications may cover the practice of my submitted algorithm, reference implementation or mathematically optimized implementations:* _____ (*describe and enumerate)* _____.

I do hereby understand that my submitted algorithm may not be selected for inclusion in the Advanced Encryption Standard. I also understand and agree that after the close of the submission period, my submission may not be withdrawn from public consideration for inclusion in the Federal Information Processing Standard (FIPS) for Advanced Encryption Standard (AES). I further understand that I will not receive financial compensation from the government for my submission. I certify that, to the best of my knowledge, I have fully disclosed all patents and patent applications relating to my algorithm. I also understand that the U.S. Government may, during the course of the lifetime of the AES or during the FIPS public review process, modify the algorithm's specifications (e.g., to protect against a newly discovered vulnerability). Should my submission be

selected for inclusion in the AES, I hereby agree not to place any restrictions on the use of the algorithm intending it to be available on a worldwide, non-exclusive, royalty-free basis.

I do hereby agree to provide the statements required by sections 2.D.2 and 2.D.3, below, for any patent or patent application identified to cover practice of my algorithm, reference implementation or mathematically optimized implementations and the right to use such implementation for the purposes of the AES evaluation process.

I understand that NIST will announce the selected algorithm(s) and proceed to publish the draft FIPS for public comment. If my algorithm (or the derived algorithm) is not selected for inclusion in the FIPS (including those not selected for second round of public evaluation), I understand that all rights, including use rights of the reference and mathematically optimized implementation, revert back to the submitter (and other owner[s] as appropriate). Additionally, should the U.S. Government not select my algorithm for inclusion in the AES after a period of four years from the close of the submission date for candidate algorithms, all rights revert to the submitter (and other owner[s] as appropriate).

Signed:
Title:
Dated:
Place:

2.D.2 Statement by Patent (and Patent Application) Owner(s)

If there are any patents (or patent applications) identified by the submitter, including those held by the submitter, the following statement must be signed by each and every owner of the patent and patent applications above identified.

I, _____ (print full name) _____, of _____ (print full postal address) _____, am the owner or authorized representative of the owner (print full name, _____ if different than _____ the signer) of the following patent(s) and or _____ patent application(s): _____ (enumerate) _____, and do hereby agree to grant to _____ any interested party if the algorithm known as _____ (print name of algorithm _____, is selected for inclusion in the Advanced Encryption Standard, an irrevocable nonexclusive royalty-free license to practice the referenced algorithm, reference implementation or the mathematically optimized implementations. Furthermore, I agree to grant the same rights in any other patent granted to me or my company which may be necessary for the practice of the referenced algorithm, reference implementation, or the mathematically optimized implementations.

Signed:
Title:
Dated:
Place:

Note that the government may conduct research as may be appropriate to verify the availability of the submission of a royalty free basis worldwide.

2.D.3 Statement by Reference/ Mathematically Optimized Implementations' Owner(s)

The following must also be included:

I, _____ (print full name) _____, am the owner of the submitted reference implementation and mathematically optimized implementations and hereby grant the Government and any interested party the right to use such implementations for the purposes of the AES evaluation process notwithstanding that the implementations may be copyrighted.

Signed:
Title:
Dated:
Place:

2.E General Submission Requirements

NIST welcomes both domestic and international submissions; however, in order to facilitate analysis and evaluation, it is required that the submission packages be in English. This information includes the cover sheet, algorithm specification and supporting documentation, source code, and intellectual property information. Any required information that is submitted in a language other than English shall render the submission package ''incomplete.'' Optional supporting materials (e.g., journal articles) in another language may be submitted.

Classified and/or proprietary submissions shall not be accepted.

3. Minimum Acceptability Requirements

Those packages which are deemed to be ''complete'' will then be evaluated to see if they contain a ''proper'' candidate algorithm. To be considered as a ''proper'' candidate algorithm submissions (and continue further in the AES Development Process), candidate algorithms must meet the following minimum acceptability requirements:

1. The algorithm must implement symmetric (secret) key cryptography.

2. The algorithm must be a block cipher.

3. The candidate algorithm shall be capable of supporting key-block combinations with sizes of 128–128, 192–128, and 256–128 bits. A submitted algorithm may support other key-block sizes and combinations, and such features will be taken into consideration during analysis and evaluation.

(End of minimum acceptability requirements)

Candidate algorithm submission packages which are complete (as defined earlier) and whose algorithm meets the minimum acceptability requirements (as defined immediately above) will be deemed to be ''complete and proper'' submissions. Those deemed otherwise will receive no further consideration. A complete list of submissions will be publicly announced by NIST—those which are ''complete and proper,'' and any others.

4. Evaluation Criteria

In order to provide a basis for the analysis and evaluation of encryption algorithms submitted to be considered for incorporation into the FIPS for AES, evaluation criteria will be used to review candidate algorithms. All of NIST's analysis results will be made publicly available.

Although NIST will be performing its own analyses of the candidate algorithms, NIST strongly encourages public evaluation, making those results publicly available and submitting them to NIST. This information may be addressed at the Second and Third AES Candidate Conferences. NIST will take into account its own analysis, as well as all other input received, in order to make its decision regarding the AES selection.

Security (i.e., the effort required to cryptanalyze)

The security provided by an algorithm is the most important factor in the evaluation.

Algorithms will be judged on the following factors:

i. Actual security of the algorithm compared to other submitted algorithms (at the same key and block size).

ii. The extent to which the algorithm output is indistinguishable from a random permutation on the input block.

iii. soundness of the mathematical basis for the algorithm's security.

iv. Other security factors raised by the public during the evaluation process, including any attacks which demonstrate that the actual security of the algorithm is less than the strength claimed by the submitter.

Claimed attacks will be evaluated for practicality.

Cost

i. Licensing requirements: NIST intends that when the AES is issued, the algorithm(s) specified in the AES shall be available on a worldwide, non-exclusive, royalty-free basis.

ii. Computational efficiency: The evaluation of computational efficiency will be applicable to both hardware and software implementations. Round 1 analysis by NIST will focus primarily on software implementations and specifically on one key-block size combination (128–128); more attention will be paid to hardware implementations and other supported key-block size combinations (particularly those required in the ''Minimum Acceptability Requirements'' section) during Round 2 analysis.

Computational efficiency essentially refers to the speed of the algorithm. NIST's analysis of computational efficiency will be made using each submission's mathematically optimized implementations on the platform specified under ''Round 1 Technical Evaluation'' below. Public comments on each algorithm's efficiency (particularly for various platforms and applications) will also be taken into consideration by NIST.

iii. *Memory requirements:* The memory required to implement a candidate algorithm—for both hardware and software implementations of the algorithm—will also be considered during the evaluation process. Round 1 analysis by NIST will focus primarily on software implementations; more attention will be paid to hardware implementations during Round 2.

Memory requirements will include such factors as gate counts for hardware implementations, and code size and RAM requirements for software implementations.

Testing will be performed by NIST using the mathematically optimized implementations provided in the submission package. Memory requirement estimates (for different platforms and environments) that are included in the submission package will also be taken into consideration by NIST. Input from public evaluations of each algorithm's memory requirements (particularly for various platforms and applications) will also be taken into consideration by NIST.

Algorithm and Implementation Characteristics

i. Flexibility: Candidate algorithms with greater flexibility will meet the needs of more users than less flexible ones, and therefore, *inter alia,* are preferable. However, some extremes of functionality are of little practical application (e.g., extremely short key lengths)—for those cases, preference will not be given.

Some examples of ''flexibility'' may include (but are not limited to) the following:

a. The algorithm can accommodate additional key- and block-sizes (e.g., 64-bit block sizes, key sizes other than those specified in the Minimum Acceptability Requirements section, [e.g., keys between 128 and 256 that are multiples of 32 bits, etc.]).

b. The algorithm can be implemented securely and efficiently in a wide variety of platforms and applications (e.g., 8-bit processors, ATM networks, voice & satellite communications, HDTV, B–ISDN, etc.).

c. The algorithm can be implemented as a stream cipher, Message Authentication Code (MAC) generator, pseudo-random number generator, hashing algorithm, etc.

ii. Hardware and software suitability: A candidate algorithm shall not be restrictive in the sense that it can only be implemented in hardware. If one can also implement the algorithm efficiency in firmware, then this will be an advantage in the area of flexibility.

iii. Simplicity: A candidate algorithm shall be judged according to relative simplicity of design.

5. Initial Planning for the First AES Candidate Conference

An open public conference is being planned for the summer of 1998, at which the submitter of each complete and proper nomination package is invited to publicly discuss and explain their candidate algorithm.

Written portions of all submitted candidates will be made available at the Conference, including those not deemed ''complete and proper.'' Submitters of complete and proper submissions will be invited to speak to discuss their submission and answer questions.

As details and registration procedures are finalized, they will be posted to <http://csrc.nist.gov/encryption/>.

6. Plans for Candidate Evaluation Process

This section provides an overview of the envisioned AES candidate review process, including NIST's plans for technical analysis of submissions.

6.A Overview

Following the close of the call for candidate algorithm submission packages, NIST will review them to determine which are ''complete and proper,'' as described elsewhere in this notice. NIST then intends to make all submissions publicly available (consistent with U.S. export regulations) and invite public comments on the ''complete and proper'' submissions. To help better inform the public, the First AES Candidate Conference will be held at the start of the public comment process to allow submitters to publicly explain and answer questions regarding their submissions. NIST intends to publish a separate **Federal Register** notice in the future requesting public comments on the candidate algorithms in the Round 1 evaluation to be used in narrowing of the candidate pool for more careful study and analysis in Round 2.

During the Round 1 public review, NIST intends to technically evaluate the candidate algorithm as outlined in the ''Round 1 Technical Evaluation'' section below. Note that NIST does not intend to conduct its own cryptanalysis, but, rather it will review the public evaluations of the candidate algorithms' cryptographic strengths and weaknesses, and NIST will use these in determining if an algorithm meets the objectives of the AES. Because of limited resources, and also to avoid moving evaluation targets (i.e., modifying the submitted algorithms undergoing public review), NIST will not accept modifications to the submitted algorithm during Round 1.

For informational and planning purposes, near the end of the Round 1 public evaluation process, NIST intends to hold the Second AES Candidate Conference (approximately six months after the first conference; exact date to be scheduled.) Its purpose will be to publicly discuss the AEA candidate algorithms by NIST and others, and provide NIST with advice for narrowing the field of algorithms to be considered for the AEA.

NIST thereafter intends to narrow the field of candidates to no more than five candidate algorithms based upon its own analysis, public comment, and all other available information. It is envisioned that this narrowing will be done primarily on security, efficiency, and intellectual property considerations.

Before the start of Round 2 evaluation, submitters have the option of providing updated mathematically optimized implementations for use during the second phase of evaluation (for those algorithms remaining in the Round 2 evaluation). During the course of Round 1 evaluations it is conceivable that some small deficiencies may be identified in even some of the most promising

candidates. Therefore, for the Round 2 evaluations, small modifications to the submitted algorithms will be permitted for their security or efficiency purposes. Submitters may submit minor changes (no substantial redesigns) along with a supporting explanation/justification (see below) which must be received by NIST prior to the beginning of Round 2. (Submitters will be notified by NIST of the exact deadline.) If this option is exercised, new reference and mathematically optimized implementations and written descriptions must also be provided by the start of Round 2. This will allow public review of the modified algorithms during the entire course of the second evaluation.

Note: All proposed changes for Round 2 must be proposed by the submitter; no proposed changes (to the algorithm or implementations) will be accepted from a third party.

After the narrowed list of candidate algorithms is officially announced, NIST intends that a six to nine month public review period will follow (the Round 2 evaluation). During the public review, NIST intends to technically evaluate the candidate algorithms as outlined in the two sections below. Near the end of the public review period, NIST intends to hold the Third AES Candidate Conference. (The exact date is to be scheduled.)

NIST then will select the algorithm(s) for inclusion in the AES, which will be incorporated into a draft FIPS, which NIST intends to announce in the **Federal Register** for comment.

Note that this schedule for the AES development is somewhat tentative, depending in part upon the type, quantity, and quality of submissions. Specific conference dates and public comment periods will be announced at appropriate times in the future. Note also that as a result of comments received on the draft evaluation criteria and submission requirements, NIST has further extended the length of time for algorithm submissions and each of the ensuing planned public comment periods.

6.B Round 1 Technical Evaluation

NIST will invite public comments on all complete and proper submissions. NIST's Round 1 analysis are intended, at a minimum, to be performed as follows:

i. Key-Block Size Combinations: Round 1 testing by NIST will be performed on the 128-bit key and 128-bit block size combination. (The public, however, is welcome to also focus on other key- and block-size combinations.) Testing of other key-block sizes may be accomplished if time and resources permit.

ii. Correctness check: The Known Answer Test and Monte Carlo Test values included with the submission will be used to test the correctness of the reference and mathematically optimized implementations, once they are compiled. *(It is more likely that NIST will perform this check of the reference code—and possibly the optimized code as well—even before accepting the submission package as ''complete and proper.'')*

iii. Efficiency testing: Using the submitted mathematically optimized implementations, NIST intends to perform various computational efficiency tests for the 128–128 key-block combination, including the calculation of the time required to perform:

—Algorithm setup,
—Key setup,
—Key change, and
—Encryption and decryption.

NIST may perform efficiency testing on other platforms.

iv. Other testing: Other features of the candidate algorithms may be examined by NIST.

Platform and Compilers

The above tests will be performed by NIST with the following tools, at a minimum. Due to limited resources, NIST has limited its own efficiency analysis to a single, common platform; however, NIST invites the public to conduct similar tests and compare results on additional platforms (e.g., RISC processors, 8-bit processors, Digital Signal Processors, dedicated CMOS, etc.).

i. NIST Analysis Platform: IBM-compatible PC, with an Intel Pentium Pro Processor, 200MHz clock speed, 64MB RAM, running Windows95.

ii. Compiler (Note that the selection of these two compilers is for use by NIST in the Rounds 1 and 2, and does not constitute a direct or implied endorsement by NIST.):

(a) For the *reference* implementation, NIST intends to use the ANSI C compiler in the Borland C++ Development Suite 5.0.

(b) For the *mathematically optimized* implementations, NIST intends to use the following compilers:

(1) *ANSI C implementation:* ANSI C compiler found in the Borland C++ Development Suite 5.0, and

(2) *Java implementation:* NIST intends to use the bytecode compiler and virtual machine provided in Javasoft's Java Development Kit (JDK) 1.1.

Note: any changes to the intended platform/compiler will be noted on <http://csrc.nist.gov/encryption/aes>.

6.C Round 2 Technical Evaluation

At the end of the Round 1 Technical evaluation and the Second AES Candidate Conference, NIST intends to narrow the field of candidate algorithms to five or fewer, in order to focus the remaining efforts of both NIST and the public. Once again, NIST intends to perform its own analysis of the submissions, and make that information publicly available. NIST's Round 2 analysis will, at a minimum, be performed as follows. *Note: the same platform and compilers from Round 1 will be used for the Round 2.*

i. Key-Block Size Combinations: Round 2 testing by NIST will be performed on the minimum key-block combinations specified in the Minimum Acceptability Requirements (beyond the 128-128 key-block combination that was evaluated in Round 1). *Note: If the submitter chose to submit updated mathematically optimized implementations prior to the beginning of Round 2, then some of the tests performed in Round 1 for the 128-128 combination may be performed again using the new mathematically optimized implementations. This will be done to obtain updated measurements.*

ii. Efficiency testing: Using the submitted mathematically optimized implementations, NIST intends to perform various computational efficiency tests for the minimum key-block combinations specified in the Minimum Acceptability Requirements, including the calculation of the time required to perform:

—Algorithm setup,
—Key setup,
—Key change, and
—Encryption and decryption.

NIST will welcome comments regarding the efficiency of the candidate algorithms when implemented in hardware. NIST may pursue having the remaining algorithms specified using a Hardware Description Language, to compare the estimated hardware efficiency of the candidate algorithms.

NIST may perform efficiency testing using additional platforms. Once again, NIST welcomes public input regarding efficiency testing on additional platforms.

iii. Other testing: Other features of the candidate algorithms may be examined by NIST. If appropriate, analyses from the Second AES Candidate Conference and the public evaluation during Round 1 may warrant the testing of specific features.

7. Miscellaneous

This section is intended to address some of the questions/comments raised in the review of the draft evaluation criteria.

When evaluating algorithms, NIST will make every effort to obtain public input and will encourage review of the candidate algorithms by outside organizations; however, the final decision as to which algorithms(s) will be proposed to the Secretary of Commerce for inclusion in the AES is the responsibility of NIST.

NIST intends to develop a validation program for AES conformance testing, with the goal of having it operational concurrently with the effective date of the AES.

NIST does NOT have a fixed timeable for completion of the AES.

NIST is not specifically seeking a stream cipher algorithm, since any block cipher algorithm can be operated in a stream cipher mode.

NIST does not intend to select a wholly distinct algorithm for each of the minimum required key-block combinations. It is strongly recommended that no submission be so constructed.

NIST does not wish to target a specific application or platform for implementing the AES, as the evaluation of candidate algorithms takes place. However, one factor that is being taken into consideration for each candidate algorithm is its flexibility—the ability to implement the algorithm securely and efficiently in a wide variety of platforms and applications (see ''Algorithm and Implementation Characteristics'' under ''Evaluation Criteria'' section).

NIST does not intend to select a ''backup'' AES algorithm. Rather, should the circumstances arise (e.g., discovery of a significant security flaw) which could not be satisfactorily addressed by modifying the AES, NIST would likely look to the other AES candidate finalists. Additionally, if a significant period of time has elapsed since the AES selection, it would also make sense to examine other algorithms which may have been developed in the intervening period.

Exportability decisions regarding submissions and, eventually, products implementing AES will be made by the appropriate government regulatory authorities. NIST is a non-regulatory agency of the U.S. Department of Commerce.

NIST does not intend to offer financial incentives (e.g., contests) for cryptanalysis of AES candidates.

Should no appropriate algorithms be submitted in response to this call, NIST expressly reserves the right to cease this process and examine other possible courses of action.

Submitters are strongly encouraged to submit only one algorithm each (presumably the one in which the submitter has the greatest confidence). Submission of similar, yet distinct, algorithms may delay the public evaluation process and may well raise public questions as to the submitter's level of confidence in his/her candidates.

For conference and resource allocation planning purposes, it would be appreciated if those planning to submit candidates could notify the individuals listed in the ''For Further Information'' section as soon as possible.

Appreciation

NIST extends its appreciation to all submitters and those providing public comments during the AES development process.

Dated: September 8, 1997.

Elaine Bunten-Mines,

Director, Program Office.

[FR Doc. 97–24214 Filed 9–11–97; 8:45 am]

BILLING CODE 3510–CN–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080697D]

Request for Nomination of Individuals for the Federal Investment Task Force (Deadline Extension)

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

ACTION: Notice of request for nominations deadline extension.

SUMMARY: The Sustainable Fisheries Act (SFA) requires the Secretary of Commerce (Secretary) to establish a task force to study the role of the Federal Government in subsidizing fleet capacity and influencing capital investment in fisheries. NMFS is extending the deadline for nominations of qualified individuals to serve on the task force.

DATES: Nominations will now be accepted through October 1, 1997.

ADDRESSES: Nominations should be sent to Atlantic States Marine Fisheries Commission, 1444 Eye Street, NW, 6th Floor, Washington, DC 20005, ATTN: Federal Investment Task Force. Nominations may be submitted by fax, (202) 289–6051

FOR FURTHER INFORMATION CONTACT: Robert Beal, Atlantic States Marine Fisheries Commission, (202) 289–6400.

SUPPLEMENTARY INFORMATION: The Secretary is establishing a task force of interested parties to study the role of the Federal Government in (1) subsidizing the expansion and contraction of fishing capacity in fishing fleets the Magnuson-Stevens Fishery Conservation and Management Act, and (2) otherwise influencing the aggregate capital investment in fisheries. The original request for nominations was published in the **Federal Register** at Vol. 62, No. 167/Thursday August 28, 1997, page 45628. However, in order to allow sufficient time for all interested parties to submit nominations, the deadline for submission has been extended through October 1, 1997. The procedures and guidelines for submitting nominations can be found in the original **Federal Register** notice.

Please note: The task force is now tentatively scheduled to meet five times between November 1997 and June 1997.

Dated: September 8, 1997.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 97–24263 Filed 9–9–97; 3:19 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 090497A]

Spiny Dogfish in U.S. Waters in the Western Atlantic Ocean; Scoping Process

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

ACTION: Notice of intent to prepare an environmental impact statement (EIS) and request for scoping comments.

SUMMARY: The Mid-Atlantic and New England Fishery Management Councils (Councils) announce their intention to jointly prepare, in cooperation with NMFS, an EIS to assess potential effects on the human environment of a management regime for spiny dogfish (*Squalus acanthias*) pursuant to the Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended (Magnuson-Stevens Act). This would be accomplished through the development of a Spiny Dogfish Fishery Management Plan (FMP). If such an FMP is approved by the Secretary of Commerce (Secretary),

implementation of such action is expected no sooner than 1998. In addition, the Councils announce a public process for determining the scope of issues to be addressed and for identifying the significant issues relating to management of spiny dogfish. The intended effect of this notice is to alert the interested public of the commencement of a scoping process and to provide for public participation. This action is necessary to comply with Federal environmental documentation requirements.

DATES: Written comments will be accepted until November 21, 1997. Scoping meetings will be held as follows:

1. 7 p.m., September 24, 1997, Philadelphia, PA.
2. 4 p.m., October 1, 1997, Wakefield, MA.
3. 7 p.m., October 29, 1997, Virginia Beach, VA.
4. 4 p.m., November 5, 1997, Portland, ME.

ADDRESSES: Send scoping comments to Mr. David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904–6790. The scoping meetings will be held at the following locations:

1. Philadelphia—Radisson Hotel Philadelphia Airport, 500 Stevens Drive, Philadelphia, PA (610–521–5900).

2. Wakefield—Colonial Hilton, 427 Walnut Street, Wakefield, MA (781–245–9300).

3. Virginia Beach—Holiday Inn SunSpree, 39th Street and Atlantic Avenue, Virginia Beach, VA (804–428–1711).

4. Portland—Holiday Inn by the Bay, 88 Spring Street, Portland, ME (207–775–2311).

FOR FURTHER INFORMATION CONTACT: David R. Keifer, 302–674–2331 (fax 302–674–5399).

SUPPLEMENTARY INFORMATION:

Fishery Management Unit

The management unit is all Atlantic spiny dogfish (*Squalus acanthias*) in U.S. waters in the western Atlantic Ocean.

Problems Discussed for this FMP

1. Development of an Overfishing Definition

The spiny dogfish stock is currently at or near full exploitation. A formal definition of, in order to prevent, overfishing needs to be developed. The 18th Northeast Regional Stock Assessment Workshop (SAW–18) suggested that the stock be considered overfished when the level of fishing mortality results in a value of less than one female pup per recruit. Current analyses suggest that replacement recruitment would occur at values of $F \leq 0.25$ at a minimum size of 33 in (84 cm). Lower Fs would be required at lower minimum landing sizes. Another option would be to define overfishing as the rate of fishing which exceeds that which produces maximum sustainable yield (F_{MSY}). SAW–18 estimated $F_{MSY} = 0.18$ and MSY = 30,000 mt. In addition, a minimum spawning stock threshold can be specified. The current analysis suggests that a minimum spawning stock biomass of 185,000 mt should be maintained.

2. High Discard Rates in the Non-Directed Fisheries

Virtually all of the spiny dogfish taken as bycatch in the mixed- and multi-species gillnet and otter trawl fisheries in the Northwest Atlantic Ocean are discarded. The primary reason for discarding of dogfish taken in these fisheries is small size or lack of market. The result of this activity is to reduce the mean size/age of selection. Since these animals are discarded they represent economic and biological waste. Any harvest policy developed must take into account the background mortality that results from discarding of dogfish from these fisheries.

3. Predation Mortality by Dogfish On Other Stocks

Spiny dogfish are voracious predators of a variety of species of commercial and recreational importance. Several studies reported that the diet of spiny dogfish greater than 23.6 in (60 cm) was predominantly fish including herring, Atlantic mackerel, redfish, Atlantic cod, haddock, silver, red, white and spotted hake, and sand lance. Squid also is an important component of the diet. Preliminary calculations indicated that the biomass of commercially important species consumed by spiny dogfish was comparable to that harvested by man. As a result, the effect of spiny dogfish consumption on the population levels of other fish species in the Northwest Atlantic ecosystem should be considered when establishing a harvest policy for the species.

4. Interjurisdictional Nature of the Stock

A significant portion of the Northwest Atlantic population of spiny dogfish resides in Canadian waters during the summer months. Given the evidence that this represents a single unit stock in the Northwest Atlantic, joint assessment and management of this stock by the United States and Canada should be considered.

5. Smooth Dogfish Fisheries

When the need for management of the dogfish fisheries under the Magnuson Act was first evaluated in the late 1970s, the Councils considered including smooth dogfish (Mustelus canis) in the management unit. Since then, the fishery for spiny dogfish has expanded dramatically while the fishery for smooth dogfish has remained of minor significance. For example, unpublished NMFS weighout data indicate that while greater than 34.8 million lb (15,785 mt) of spiny dogfish were landed in 1993, smooth dogfish landings amounted to only about 0.5 million lb (226.8 mt). Input is needed to determine if smooth dogfish should be included in this management plan.

6. Identification of Essential Habitat for Spiny Dogfish

Pursuant to the new requirements of the Magnuson-Stevens Act, the Councils will be identifying essential habitat for spiny dogfish in the western Atlantic Ocean. Therefore, the Councils are soliciting comments from the public on the identification of and threats to essential habitat for spiny dogfish.

POSSIBLE MANAGEMENT MEASURES

Possible management measures for the spiny dogfish commercial fishery include:	
Minimum and/or maximum fish size	X
Minimum mesh size	X
Selective harvest of males	X
Prohibition of "finning"	X
Closed seasons	X
Closed areas	X
Quotas	X
Moratorium on vessels	X
ITQs	X
Dealer and vessel permits	X
Dealer and vessel reports	X
Operator permits	X
Trip limits	X
Permit limits	X
Gear restrictions & limits	X

Possible management measures for the spiny dogfish recreational fishery include:	
Minimum and/or maximum fish size	X
Selective harvest of males	X
Prohibition of "finning"	X
Maximum possession limit	X
Closed seasons	X
Closed areas	X
Gear restrictions & limits	X
Quotas	X
Restrictions on the ability to sell recreational caught fish	X

Permitting and Reporting

It is anticipated that permits will be required for vessels landing spiny

dogfish for sale, dealers purchasing this species from permitted vessels, and party and charter boats in the spiny dogfish fishery. It is anticipated that operators of commercial vessels (vessels with permits to sell spiny dogfish) and operators of party and charter boats will be required to obtain permits.

It is anticipated that vessels landing spiny dogfish for sale would need to submit logbooks. It is anticipated that dealers purchasing these species from permitted commercial vessels would need to submit reports. It is anticipated that operators of charter and party boats would need to submit logbooks.

In the Paperwork Reduction Act (SF–83) forms prepared by NMFS for Amendment 2 to the Summer Flounder FMP, the Dealer Purchase Report was estimated to involve 1,255 respondents and 26+ responses per respondent per year, for a total of 33,135 responses at 0.0448 hours per response, for a total of 1,485 hours. The Vessel Logbook was estimated at 1,314 respondents, 12 responses per respondent, at 0.08 hours per response, for a total of 1,261 burden hours. The Vessel Permit was estimated at 24,943 annual responses at 0.2878 hours per response, for a total of 7,179 burden hours.

Similar burden hours should be experienced through spiny dogfish management. These burden hours may be reduced if vessels with summer flounder permits qualify for the spiny dogfish fishery. Currently, operating permits are required in the Northeast Multispecies, Atlantic Sea Scallop, and Summer Flounder fisheries. It is expected that the burden hours for the operator permit for spiny dogfish would be similar to those estimated for the operator permit for the Summer Flounder fishery.

Timetable for EIS Preparation and Decision Making

The Councils have adopted a tentative FMP preparation, review, and approval schedule for spiny dogfish. Under this schedule, the draft EIS is planned for completion during 1998. If an acceptable draft is completed, the Councils could decide in 1998 whether to submit the draft EIS for public review. Oral comments to the Councils on their decision could be made at the respective Council meetings. If the Councils' decisions are affirmative, public review of the draft EIS would occur 45 days following these meetings. During late 1998, the Councils would decide on the final management measures and proposed regulations for spiny dogfish. Again, oral comments on this decision could be made to the Councils at those meetings. If the Councils' decisions are affirmative, the EIS would be made final and submitted with the FMP and other rulemaking documents to the Secretary for review and approval. The Councils reserve the right to modify or abandon this schedule if determined necessary.

Under the Magnuson-Stevens Act, Secretarial review and approval of a proposed FMP is completed in no more than 95 days and includes concurrent public comment periods on the FMP and proposed regulations. If approved by the Secretary under this schedule, the spiny dogfish management measures would be effective in 1998 or 1999.

Special Accommodations

The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to David R. Keifer (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: September 9, 1997.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–24228 Filed 9–11–97; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 970828208–7208–01; I.D. 072997C]

RIN 0648–XX88

Scup and Black Sea Bass; Interstate Fishery Management Plans

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

ACTION: Notice of determination of noncompliance; notice of implementation of a moratorium.

SUMMARY: In accordance with the Atlantic Coastal Fisheries Cooperative Management Act of 1993 (Act), 16 U.S.C. 5101 *et seq.*, the Secretary of Commerce (Secretary) has determined that the State of Maryland and the Commonwealth of Massachusetts are not in compliance with the Atlantic States Marine Fisheries Commission's (Commission) Interstate Coastal Fishery Management Plans (FMPs) for scup and black sea bass and that the measures Maryland and Massachusetts have failed to implement are necessary for the conservation of the fishery in question. Pursuant to the Act, a Federal moratorium on fishing for scup and black sea bass within Maryland and Massachusetts state waters effective November 15, 1997, is hereby declared.

DATES: This declaration is made on September 11, 1997. This moratorium will become effective on November 15, 1997, unless, by November 1, 1997, the State of Maryland and/or the Commonwealth of Massachusetts adopt and implement measures bringing themselves into compliance with the Commission's FMPs. If the State of Maryland and/or the Commonwealth of Massachusetts adopt and implement the measures required by the FMPs, the Secretary will publish an appropriate announcement in the **Federal Register** rescinding the moratorium with respect to State and/or Commonwealth.

FOR FURTHER INFORMATION CONTACT: Richard H. Schaefer, Chief, Staff Office for Intergovernmental and Recreational Fisheries, NMFS, 301–427–2014.

SUPPLEMENTARY INFORMATION:

Background

The Act was enacted to support and encourage the development, implementation, and enforcement of the Commission's FMPs to conserve and manage Atlantic coastal fishery resources.

Section 807 of the Act specifies that, after notification by the Commission that an Atlantic coastal state is not in compliance with a Commission's FMP, the Secretary shall make a finding, no later than 30 days after receipt of the Commission's determination, on: (1) Whether the state has failed to carry out its responsibilities to implement and enforce the Commission's FMP; and (2) whether the measures that the state has failed to implement and enforce are necessary for the conservation of the fishery in question. If the Secretary finds that the state is not in compliance with the Commission's FMP, and if the measures the state has failed to implement are necessary for the conservation of the fishery, the Secretary shall declare (i.e., impose) a moratorium on fishing in that fishery within the waters of the noncomplying state. The Secretary shall specify the moratorium's effective date, which shall be any date within 6 months after declaration of the moratorium. In making such a finding, the Secretary shall carefully consider the comments of the Commission, the coastal state found out of compliance by the Commission, and the appropriate Regional Fishery Management Councils.

Activities Pursuant to the Act

On June 27, 1997, the Secretary received letters from the Commission prepared pursuant to section 806(b) of the Act. The Commission's letters stated that the State of Maryland's and the Commonwealth of Massachusetts' scup and black sea bass regulations did not meet the provisions of the Commission's FMPs, and, therefore, the Commission found the State of Maryland and the Commonwealth of Massachusetts out of compliance with the FMPs as described below:

Scup

The State of Maryland has not implemented and is not enforcing the Commission's FMP for scup because it has not adopted the following measures contained in the FMP:

a. Minimum sizes for commercial and recreational fisheries (9 inches),

b. Minimum mesh sized for commercial fisheries (7 inches),

c. Commercial quota limitation (4–1/2 inches),

d. Permitting and reporting requirements,

e. Summer closure for the commercial fishery,

f. Pot and trap limitations, and

g. Prohibition concerning roller gear greater than 18 inches.

The Commonwealth of Massachusetts has not implemented permit and reporting requirements and restrictions on the use of pot and trap gear.

Black Sea Bass

The State of Maryland has not implemented and is not enforcing the Commission's FMP for black sea bass because it has not adopted the following measures contained in the FMP:

a. Minimum size for commercial fisheries (9 inches),

b. Minimum mesh size for commercial fisheries (4 inches),

c. Pot and trap restrictions, and

d. Restriction on roller gear in excess of 18 inches.

The Commonwealth of Massachusetts has not implemented and is not enforcing the Commission's FMP for black sea bass because it has not adopted the pot and trap restrictions contained in the FMP.

The Commission's letters also suggested that the Secretary use his discretionary authority under the Act to delay the date of the moratorium for up to 6 months, because both states are making an effort to come into compliance.

Both states have agreed with the Commission's determination that they are not in compliance, but are taking action to be in compliance with both Commission FMPs by September 19, 1997, for Massachusetts, and October 20, 1997, for Maryland. Further comments were received from the Commission; the New England and Mid-Atlantic Fishery Management Councils; NMFS' Northeast Science Center; and the Department of Interior's U.S. Fish and Wildlife Service.

Determination Regarding Compliance by the State of Maryland and the Commonwealth of Massachusetts

Based on a careful analysis of all relevant information, and taking into account comments presented by the State of Maryland and the Commonwealth of Massachusetts, the Secretary has determined that the State of Maryland and the Commonwealth of Massachusetts are not in compliance with the Commission's FMPs for scup and black sea bass. This determination is based on Maryland's and Massachusetts' failure to implement and enforce regulatory measures established in the Commission's scup and black sea bass FMPs. Further, the Secretary has determined that enforcement of these measures is necessary for the conservation of scup and black sea bass.

Although the State of Maryland and the Commonwealth of Massachusetts are not in compliance with the Commission's FMPs for scup and black sea bass, because they are making expeditious efforts to promulgate regulations which would bring themselves into compliance by November 1997, the Secretary is delaying the effective date of the moratorium until November 15, 1997. If the State of Maryland and/or the Commonwealth of Massachusetts adopt and implement measures bringing themselves into compliance, the Secretary will publish an appropriate announcement in the **Federal Register** rescinding the moratorium with respect to the State and/or the Commonwealth. If the State of Maryland and/or the Commonwealth of Massachusetts have not promulgated appropriate regulations by November 1, 1997, the moratorium will go into effect as of November 15, 1997. In such case, NMFS will promulgate a final regulation prohibiting fishing for scup, black sea bass, or both within Maryland and/or Massachusetts state waters, effective November 15, 1997. Delaying the effective date of the moratorium until November 15, 1997, will not significantly diminish conservation efforts because each state does have conservation measures in effect, although they do not meet the Commission's FMPs for scup and black sea bass.

NMFS will notify the Governors of Maryland and Massachusetts of this action and will promulgate the regulations in the **Federal Register** necessary to implement this moratorium effective November 15, 1997. If the moratorium goes into effect, the Secretary will terminate it immediately with respect to the State and/or the Commonwealth upon receipt of notification from the Commission, and if the Secretary concurs with the Commission, that the State and/or the Commonwealth of Massachusetts have taken appropriate remedial actions to bring themselves into compliance.

Dated: September 9, 1997.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 97–24203 Filed 9–11–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 090897A]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Groundfish Management Team (GMT) will hold a public meeting.

DATES: The meeting will be held on Monday, September 29, 1997 at 1:00 p.m. and will continue through Friday, October 3, 1997. The Tuesday through Friday sessions will begin at 8:00 a.m. and may go into the evening until business for the day is completed.

ADDRESSES: The meeting will be held in the conference room at the Council office, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Jim Glock, Groundfish Fishery Management Coordinator; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The primary purpose of the meeting is to prepare analyses and reports for the Council's November 1997 meeting. The GMT will address topics as drafting assignments are prepared and completed during this meeting. As a result, daily agendas or schedules will not be available in advance of the

meeting. However, proposed items that may be discussed by the GMT in preparation for the Council's November meeting include development of final acceptable biological catch and harvest guideline recommendations for 1998, review and analysis of proposed management options for 1998, inseason catch projections for the remainder of 1997, and preparation of fishery management plan amendments, the Stock Assessment and Fishery Evaluation document, and the Draft Environmental Assessment for Proposed Harvest Levels.

Although other issues may come before the GMT for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal GMT action during this meeting. GMT action will be restricted to those issues specifically identified in this notice.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Eric Greene at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: September 8, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–24230 Filed 9–11–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 090597C]

Western Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold a meeting of its Bottomfish Task Force.

DATES: The meeting will be held on October 2, 1997, from 9:00 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at the Council office, Conference Room, 1164 Bishop Street, Suite 1400, Honolulu, HI; telephone: (808) 522–8220.

Council address: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The Bottomfish Task Force will review a draft amendment for the Mau Zone bottomfish fishery limited entry program in the Northwestern Hawaiian Islands. The Task Force will also discuss new entry criteria for the limited entry program and consider other business as needed.

Although other issues not contained in this agenda may come before this Task Force for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Task Force action during this meeting. Task Force action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: September 5, 1997.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–24204 Filed 9–11–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 090497B]

Marine Mammals; Permit No. 837 (File No. P771#67)

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

ACTION: Receipt of application for amendment.

SUMMARY: Notice is hereby given that the National Marine Mammal Laboratory, Alaska Fisheries Science Center, NMFS, NOAA, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington 98115, has requested an amendment to permit no. 837.

DATES: Written or telefaxed comments must be received on or before October 14, 1997.

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

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

Regional Administrator, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907) 586–7221.

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by email or other electronic media. Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject amendment to permit no. 837, issued on June 4, 1993 (58 FR 33085) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq*.), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq*.), the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR 222.23), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq*.).

Permit no. 837 authorizes the permit holder to: harass up to 222,720 northern fur seals (*Callorhinus ursinus*) and 3500 California sea lions (*Zalophus californianus*) while conducting ground surveys; capture, restrain, shear-mark, sample and handle up to 30,000+ northern fur seals over a 5-year period; and collect parts from dead animals. The permit holder now requests authorization to collect biopsies from 60 additional female northern fur seals, (30 seals on St. Paul, 30 seals on St. George). The permittee is currently authorized to

collect 120 biopsy samples. The total number of biopsy samples would therefore increase to 180 (90 from each island).

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: September 5, 1997.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–24229 Filed 9–11–97; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

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

September 8, 1997.

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

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

EFFECTIVE DATE: September 15, 1997.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, 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); Uruguay Round Agreements Act.

The current limits for certain categories are being adjusted for special shift.

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 61 FR 66263, published on December 17, 1996). Also see 61 FR 64505, published on December 5, 1996.

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 Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 8, 1997.

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 November 29, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on September 15, 1997, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
313	13,758,742 square meters.
315	28,917,774 square meters.
338/339	1,327,732 dozen.
341	977,690 dozen.
347/348	1,798,653 dozen.
350/650	116,465 dozen.
351/651	505,368 dozen.
638/639	1,411,601 dozen.
641	2,281,397 dozen.
647/648	3,231,936 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1996.

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

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–24244 Filed 9–11–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Mauritius

September 8, 1997.

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

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

EFFECTIVE DATE: September 12, 1997.

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

SUPPLEMENTARY INFORMATION:

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

The current limit for Categories 338/339 is being increased for 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 61 FR 66263, published on December 17, 1996). Also see 61 FR 56522, published on November 1, 1996.

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 Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 8, 1997.

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 October 28, 1996, 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, 1997 and extends through December 31, 1997.

Effective on September 12, 1997, you are directed to increase the limit for Categories 338/339 to 529,002 dozen [1], as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing.

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

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–24245 Filed 9–11–97; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Grant an Exclusive License to Materials Sciences Corporation

AGENCY: U.S. Army Research Laboratory, DOD.

ACTION: Notice of intent.

SUMMARY: In compliance with 37 CFR 404 *et seq.*, the Department of the Army hereby gives notice of its intent to grant to Materials Sciences Corporation, a corporation having its principle place of business at Suite 250, 500 Office Center Drive, Fort Washington, Pennsylvania, 19034, an exclusive data license relative to ARL produced composite materials properties data. Anyone wishing to object to the granting of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any.

FOR FURTHER INFORMATION CONTACT:

Michael D. Rausa, U.S. Army Research Laboratory, Office of Research and Technology Applications, ATTN: AMSRL–CS–TT/Bldg. 434, Aberdeen Proving Ground, Maryland 21005–5425, Telephone: (410) 278–5028.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 97–24197 Filed 9–11–97; 8:45 am]

BILLING CODE 3710–08–M

[1] The limit has not been adjusted to account for any imports exported after December 31, 1996.

DEPARTMENT OF DEFENSE

Department of the Army

Performance Review Boards; Membership

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: Notice is given of the names of members of a Performance Review Board for the Department of the Army.

EFFECTIVE DATE: August 1, 1997.

FOR FURTHER INFORMATION CONTACT: David Stokes, U.S. Army Senior Executive Service Office, Assistant Secretary of the Army, Manpower & Reserve Affairs, 111 Army, Washington, DC 20310–0111.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

The members of the Performance Review Board for the Army Acquisition Executive are:

1. Dr. A. Fenner Milton, Deputy Assistant Secretary for Research & Technology/Chief Scientist
2. Mr. Walter Wynbelt, Program Executive Officer (PEO), Tactical Wheeled Vehicles
3. Mr. Edward Bair, Deputy PEO, Intelligence & Electronic Warfare
4. Mr. Bennett Hart, Deputy PEO, Command & Control Systems

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 97–24193 Filed 9–11–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Proposed Environmental Restoration and Storm Damage Reduction Project for Lower Cape May Meadows, Cape May County, NJ

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The action being taken is an evaluation of the alternatives for storm damage reduction and environmental restoration for the Lower Cape May Meadows, Cape May, New Jersey. The purpose of any consequent work would be to provide protection and stabilization to the shoreline protecting the important ecological habitat at The Meadows and to restore sensitive habitat behind the dune.

FOR FURTHER INFORMATION CONTACT: Questions regarding the DEIS should be addressed to Ms. Beth Brandreth, (215) 656–6558, U.S. Army Corps of Engineers, CENAP–PL–E, Wanamaker Building, 100 Penn Square East, Philadelphia, Pennsylvania 19107–3390.

SUPPLEMENTARY INFORMATION:

1. Proposed Action

a. The draft document evaluates a study area which includes the Lower Cape May Meadows and Cape May Point, extending from Alexander Avenue east to the terminal groin located at Third Avenue in Cape May City. The study area encompasses approximately 350 acres of critical migratory bird habitat, composed mostly of fresh water and brackish water wetlands. A portion of this site is owned by the Nature Conservancy while the remainder is managed by the State of New Jersey in the form of Cape May Point State Park. The beach which protects this habitat has been subject to extensive erosion by storms, tidal inundation, and wave action, resulting in the loss of approximately 115 acres of habitat since 1955. In addition, the continuous erosion, dune breaching and salt water intrusion has degraded the remaining habitat. Two potential offshore sand borrow sources, located in the vicinity of The Meadows, have been investigated during this study.

b. The authorities for the proposed project are the resolutions adopted by the Committee on Public Works and Transportation of the U.S. House of Representatives and the Committee on Environmental and Public Works of the U.S. Senate in December 1987.

2. Alternatives

In addition to the no action alternative, the alternatives considered for environmental restoration, storm damage reduction, and erosion control will fall into structural and environmental management categories. The structural measures to correct the beach erosion include offshore breakwaters, groins, beach nourishment, perched beach, submerged reef with beachfill, and offshore submerged feeder berms. Environmental management measures include the elimination/

control of nuisance plant species (Phragmites australis), increasing the availability of fresh water, improving internal water quality, and protecting and restoring beach and freshwater wetlands habitat.

3. Scoping

a. Numerous studies and reports addressing beach erosion along the New Jersey Coast were conducted by the Corps of Engineers. The most recent study for this area is a Reconnaissance Report; Lower Cape May Meadows—Cape May Point Reconnaissance Study (August 1994), which identified a number of problem areas where erosion and tidal inundation were negatively impacting the shoreline and adjacent wildlife habitat. This study identified Lower Cape May Meadows and Cape May Point as areas to be recommended for further study in the feasibility phase.

b. The scoping process is on-going and has involved preliminary coordination with Federal, State, and local agencies. Participation of the general public and other interested parties and organizations will be invited by means of a public notice.

c. The significant issues and concerns that have been identified include the impacts of the project on aquatic biota, water quality, intertidal habitat, shallow water habitat, migratory bird species, and cultural resources.

4. Availability

It is estimated that the DEIS will be made available to the public in November 1997.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 97–24199 Filed 9–11–97; 8:45 am]

BILLING CODE 3710–GR–M

DEPARTMENT OF ENERGY

Office of Environment, Safety and Health; Notice of Availability of Funds and Request for Applications To Deliver Special Medical Care in the Marshall Islands

AGENCY: Office of Environment, Safety and Health, Department of Energy.

ACTION: Request for applications.

SUMMARY: The Department of Energy (DOE) Office of Environment, Safety and Health (EH) is requesting applications to provide special medical care to a specific group of citizens of the Republic of the Marshall Islands (RMI). This Notice of Availability of Funds and Request for Applications to Deliver Special Medical Care in the Marshall Islands is a follow-on to a more general, annual notice of potential availability of grants and cooperative agreements for epidemiology and other health studies published in the **Federal Register** on October 16, 1996.

DATES: The deadline for receipt of applications is October 27, 1997.

ADDRESSES: Applications may be submitted to Mr. Neil Barss at the U.S. Department of Energy, Office of International Health Programs, EH–63/270CC, 19901 Germantown Road, Germantown, Maryland 20874–1290.

FOR FURTHER INFORMATION CONTACT: Requests for application forms, the additional program information described below, and any other requests for information in response to this Notice should be directed to Mr. Barss, U.S. Department of Energy, Office of International Health Programs, EH–63/270CC, 19901 Germantown Road, Germantown, Maryland 20874–1290; telephone: (301) 903–4024; facsimile: (301) 903–1413; or email: neil.barss@eh.doe.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Purpose
III. Background
IV. Program Requirements
V. Applications
VI. Application Format and Instructions
VII. Application Review, Evaluation Criteria and Award Information
VIII. DOE's Role
IX. Applicants

I. Introduction

A Draft Notice of Availability of Funds and Request for Applications for the Department of Energy Medical Program in the Republic of the Marshall Islands was published in the **Federal Register** on May 29, 1997 (62 FR 29125). A public meeting was held July 8, 1997 to receive comments and questions on the Draft Notice. A Notice of Potential Applicant Visit to Honolulu, Hawaii, and the Republic of the Marshall Islands was published in the **Federal Register** on September 5, 1997 (62 FR 46954). In addition, the following information will be made available in conjunction with the application forms:

(1) A transcript of the public meeting;

(2) Answers to questions of general interest raised at and submitted in written form after the public meeting;

(3) The ''Memorandum Of Understanding Between The U.S. Army Space And Strategic Defense Command (USASSDC) U.S. Army Kwajalein Atoll/Kwajalein Missile Range (USAKA/KMR) And The U.S. Department of Energy Office Of International Health Programs'';

(4) A tabulation of DOE medical equipment used currently by Brookhaven National Laboratory and associated location and functional status;

(5) Marshall Islands Medical Program reports provided to the U.S. Congress by DOE for the last five years;

(6) A table illustrating distribution of DOE's Marshall Islands program budget for FY 1990 through FY 1997, which includes the DOE's special medical care program;

(7) A list of predominant diseases observed in DOE patients by Brookhaven National Laboratory and the ICD–9 code associated with each disease;

(8) The forms required by the Office of International Health Programs for budget planning, program progress and activity reporting, in addition to those specified in 10 CFR part 600; and

(9) A report entitled, ''Medical Status of Marshallese Accidentally Exposed to 1954 Bravo Fallout Radiation: January 1988 through December 1991'', DOE/EH–0493 and BNL–52470, July 1995.

As noted above, DOE has arranged a site visit to Honolulu and the Republic of the Marshall Islands for potential applicants. Anyone who intends to participate in the site visit and has not contacted Mr. William Jackson for details and arrangements should do so immediately. Mr. Jackson can be reached by telephone at (808) 422–9211 or 422–9203, by facsimile at (808) 422–9217, or by e-mail at bjackson@tis.eh.doe.gov.

II. Purpose

DOE provides a special medical care program for a specific group of RMI citizens in accordance with section 103(h) of the Compact of Free Association Act of 1985, as amended, which mandates that the United States ''shall continue to provide special medical care and logistical support thereto for the remaining * * * members of the population of Rongelap and Utrik [sic] who were exposed to radiation resulting from the 1954 United States thermonuclear 'Bravo' test, pursuant to Public Laws 95–134 and 96–205.'' Section 104(a)(4) of Public Law 95–134, enacted in 1977, directed the Secretary of the Interior to provide for the populations residing on Rongelap and Utirik Atolls on March 1, 1954, ''adequate medical care and treatment * * * of any radiation injury or illness directly related to the [''Bravo''] thermonuclear detonation * * *'' Section 104(a)(4) goes on to state that, ''The costs of such medical care and treatment shall be assumed by the Administrator of the Energy Research

and Development Administration,'' a precursor agency to DOE. Pursuant to this congressional mandate, DOE provides a special medical care program consisting of:

- Medical screening, diagnosis and treatment for radiation-related diseases or illnesses (see Appendix A for definition) in an economically disadvantaged tropical environment in the central Pacific.
- Medical care and treatment of other diseases or illnesses as time and resources permit.
- Administrative management, cognizance and oversight of patients and patient records, clinical referrals and followups as medically appropriate.

DOE is soliciting applications to provide medically appropriate care to the exposed population and a comparison group within applicable legal, financial and logistical constraints. By so doing, DOE is seeking ways to more effectively and efficiently deliver special medical care services in the Marshall Islands to an aging population. As used in this Notice, primary medical care means the community based medical services provided locally at each Atoll by medically trained individuals. Secondary medical care means those medical services provided at the U.S. Army Hospital at Kwajalein Atoll or by other providers, as described below. Tertiary medical care means medical services that are not currently available in the Marshall Islands and that must be provided to the patients outside the Marshall Islands.

Subject to available funding, DOE intends to award one (1) cooperative agreement in support of the RMI special medical care program in FY 1998. The cooperative agreement award will be for a one (1) year budget period, and subject to available funding, may be negotiated and extended annually as continuation awards for up to four (4) additional years.

The funding level for the implementation of the current DOE primary and secondary special medical care program is $1.1 million annually.

III. Background

As a result of the 1954 United States' thermonuclear ''Bravo'' test in the Marshall Islands, approximately 253 Marshallese people (hereinafter referred to as patients) on Rongelap and Utirik Atolls were exposed to high levels of radioactive fallout. Since 1956, DOE and its predecessor agencies have provided medical care to these patients. Within DOE, this special medical care program is currently administered by the Office of International Health Programs for the Assistant Secretary for Environment, Safety and Health.

Currently, there are three programs providing medical care in the RMI:

- *The RMI Ministry of Health national medical care program for approximately 60,000 people.*

This care is delivered at primary and secondary care facilities on Ebeye and Majuro islands, with smaller facilities in the remote outer islands that function as first aid stations, providing limited primary care and pharmaceutical capabilities (see Appendix B for details). Two-way radio is the primary means of inter-atoll communications, and medical emergencies are transported by air from the outer islands to Ebeye or Majuro.

- *The 177 Health Care Program (177 HCP), described in section 103(j) of the Compact of Free Association Act of 1985 as the Four Atoll Health Care Program.*

This program provides medical care for the people of the Atolls of Bikini, Enewetak, Rongelap, and Utirik who were affected by the consequences of the 1946–1958 U.S. nuclear testing program in the northern Marshall Islands, and their descendants. The program is administratively overseen by the Department of the Interior (DOI), is funded by the U.S. Congress through the DOI, and is currently implemented by Mercy International, Inc., under contract to the RMI Ministry of Health. The program serves approximately 10,600 individuals (see Appendix C for additional details) and provides primary medical care, secondary care referrals to the hospitals at Ebeye and Majuro, and tertiary care referrals to the Queen's Medical Center and Group in Honolulu, Hawaii.

Since 1986, DOE patients have been referred to the 177 HCP for primary and continued medical care during the time between Brookhaven National Laboratory screening visits and for non-radiation related disease or injuries. Currently, the 177 HCP has not been able to adequately meet all the medical needs of the DOE patients.

- *The special medical care program provided by DOE to approximately 238 patients in the Rongelap and Utirik communities.*

DOE's special medical care program currently provides biannual medical screening visits and full medical care for radiation-related conditions for the remaining 131 members of the original patient population, as well as medical treatment for approximately 107 people in a comparison group. From the inception of DOE's program, medical treatment has been delivered biannually by teams consisting of Brookhaven National Laboratory (BNL) employees supplemented with volunteer medical specialists. Logistical support for DOE's special medical care program has also been provided by a contractor, which is currently Bechtel Nevada Corporation.

In 1995, DOE transitioned from biannual vessel-based medical missions to biannual land-based medical missions located at Kwajalein Island. Vessel-based missions were handicapped by the inability to keep a vessel equipped with state-of-the-art medical equipment. The land-based approach has improved the quality of medical care delivery for the patient populations in Rongelap and Utirik and will also effect cost efficiencies. This approach makes available at the U.S. Army Hospital on Kwajalein Island in the Marshall Islands secondary medical care facilities and more sophisticated diagnostic equipment and improved laboratory capabilities, for example: use of ultrasound equipment; ability to perform immediate fine needle aspiration or thyroid surgery; availability of certified mammography equipment and other medical equipment that permits immediate followup, additional tests, and surgery when needed.

As with vessel-based care, the land-based system includes visits to infirm patients in their homes at Mejatto and Utirik. Land-based medical assets have also added the ability to provide full diagnostics and tests of samples taken right after the visit to these remote islands, rather than (as previously) shipping such samples for analysis to the U.S. mainland.

Those DOE patients with medical conditions that can be effectively managed in the Marshall Islands are either treated by the BNL medical personnel at the U.S. Army hospital on Kwajalein Island or are referred to the 177 HCP. Those DOE patients with radiation-related medical findings that cannot be managed in the Marshall Islands are referred to Straub Hospital and Clinic in Honolulu for tertiary evaluation and medical treatment.

In January 1997, the RMI requested the DOE to compete the current special medical care program due to problems being experienced by the 177 HCP and the RMI's desire to have more of the allocated budget spent on medical care services rather than on logistical support services.

IV. Program Requirements

A. General

Note: The terms ''application'' and ''proposal'' are used synonymously herein.

(1) The awardee will be required to execute a special medical care program within DOE requirements and budget; provide continuity with the medical program conducted since 1956; and operate in a highly visible international political environment and under rigorous oversight by the U.S. Congress.

(2) A Primary Application (see definition in section VI. A., herein) shall describe the applicant's approach to the primary and secondary clinical medical elements, as well as the other elements of the special medical care program identified in section IV.B. herein, based on a budget of $1.1 million annually over a 5-year period. In preparing applications to deliver DOE's special medical care program in the RMI, potential applicants should consider innovative ways to:

(a) Provide full-time medical services in the Marshall Islands to the Rongelap and Utirik communities, sufficient to cover the medical needs of the affected Marshallese citizens.

(b) Collaborate and coordinate medical care delivery with local Marshallese health care providers.

(c) Use telemedicine and other electronic technologies that enhance professional communications and maximize cost savings.

(d) Use recruited volunteer medical professionals to maximize cost savings.

(e) Provide medical services as much as possible within the Marshall Islands, thus reducing the need for expensive tertiary medical referrals.

(f) Use current DOE contractor, subcontractor and interagency support (i.e., Bechtel Nevada Corporation, the Straub Hospital and Clinic, and the U.S. Army Hospital at Kwajalein; see Appendices D, E, and F, respectively, for currently provided services).

(3) In addition, the applicant may submit an Optional Application (see definition in section VI.A., herein) for an alternative approach to replace a part or all of the following being provided by current DOE providers:

(a) Tertiary medical care services for an annual average of 13 patients, and/or

(b) Related logistical support for an annual average of 13 patients receiving tertiary medical care services, and/or

(c) Related logistical support for the primary and secondary medical care services of all the DOE patients within the Marshall Islands. Such an application should be based on an annual budget that does not exceed $800,000.

For example, in FY 1996, DOE spent $259,000 on 13 patient referrals to the Straub Hospital and Clinic. For each patient, this cost involved both the medical services provided at the Straub Hospital and Clinic and the concomitant logistical services provided by Bechtel Nevada Corporation. Examples of patient logistical support costs include, as a minimum, the following:

- Patient travel costs to and from his/her local atoll to Majuro Atoll;
- Patient travel costs to and from Majuro Atoll to the tertiary care facility located outside the RMI (currently Straub Hospital and Clinic);
- Patient travel costs to and from Kwajalein Atoll for the medical services currently provided at the U.S. Army Hospital;
- Marshallese translator salaries and travel costs and/or patient family member escort travel costs; and
- Associated lodging, meal, and living expenses incurred for all individuals while the patient is in transit or being treated at any location.

B. Project Description

For the approximately 238 patients, whose general medical and demographic information is summarized in Appendix G, the awardee shall either itself implement or use subcontractors for the following special medical care program requirements:

The DOE Clinical Medical Program

For this program element:

(a) Conduct and implement a primary, secondary and tertiary clinical medical program for patients with radiation-related diseases and illnesses in a tropical and under-developed area of the world, together with the treatment of as much non radiation-related disease as medically indicated and as resources permit. The clinical medical program should be implemented by primary care medical professional(s) augmented by physicians with specialties including, but not limited to oncology, diagnostic radiology, gynecology, internal medicine, and endocrinology, as appropriate.

(b) Provide the services of other medical specialists, as indicated by patient condition, including but not limited to the fields of: allergy/immunology, cardiology, dentistry, dermatology, emergency medicine, family practice, gastroenterology, geriatrics, hematology, infectious diseases and parasitology, nephrology, neurology, nuclear medicine, obstetrics, ophthalmology, pathology, physical medicine, pulmonary medicine, rheumatology, surgery, tropical medicine and therapeutic radiology.

(c) Provide, in addition to the physician services specified in this section, nursing, pharmacy, radiology (including nuclear medicine), clinical laboratory, histology and pathology, inpatient, outpatient and technical medical support services.

(d) Institute appropriate ethical safeguards to ensure patient informed consent in writing.

(e) Provide appropriate gender medical personnel to accommodate Marshallese cultural sensitivities.

(f) Conduct medical examinations in accordance with medical screening recommendations, published guidelines or standards (e.g., American Cancer Society, American College of Physicians, U.S. Preventive Services Task Force of the Department of Health and Human Services, etc.).

(g) Provide radiology services that include:

(1) Mammography utilizing a unit that is certified by the American College of Radiology and complies with U.S. Food and Drug Administration regulations.

(2) Diagnostic equipment that has been inspected for radiological safety and approved for operation (e.g., chest x-ray, nuclear medicine imaging or therapy, mammography).

(3) Therapy as clinically prescribed for the treatment of cancer.

(h) Conduct examinations of the thyroid gland including:

(1) Thyroid ultrasound measurements.

(2) Palpation of the thyroid by a physician skilled in such technique.

(3) Appropriate blood and chemistry tests of thyroid function (e.g., TSH, T_3, T_4).

(i) Provide diagnostic and clinical laboratory services, as appropriate.

(j) Utilize laboratory testing capabilities and services that comply with the requirements specified in the Clinical Laboratory Improvement Amendments of 1988 (documentation required).

(k) Provide appropriate immunizations, as indicated by patient needs.

(l) Provide pharmaceuticals, medical supplies or equipment based on the needs of the patients.

(m) Provide pathological services for the identification of cancer.

Administrative Support

For this program element:

(a) Obtain insurance (and documentation thereof) for medical malpractice and comprehensive general liability, for $1 million per occurrence and $3 million aggregate for each insurance type for any U.S. licensed individual.

(b) Implement non-medical administrative functions in support of the special medical care program, which shall at a minimum include the following:

(1) Provision of non-medical personnel and administrative staff services to adequately support the medical personnel and services.

(2) If the awardee intends to use DOE's contractors or the services of the U.S. Army Hospital at Kwajalein, the awardee will be required to:

(i) Establish and maintain a working programmatic relationship with Bechtel Nevada Corporation.

(ii) Establish and maintain a working programmatic relationship with the current secondary or tertiary referral facilities (U.S. Army Hospital at Kwajalein and Straub Hospital and Clinic in Honolulu). These services are currently provided pursuant to a Memorandum of Understanding between DOE and the U.S. Army Space and Strategic Defense Command at Kwajalein Atoll and a subcontract between Bechtel Nevada Corporation and Straub Hospital and Clinic, respectively.

(3) As applicable, establish and maintain a working programmatic relationship with existing medical providers in the Marshall Islands and/or the 177 HCP (using the capabilities listed in Appendix C), to help implement the DOE special medical care program.

(4) Provide current state-of-the-art methods for the consolidation, storage, management and retention of current and historical patient medical records and medical program operational records, which will include receipt of approximately 30 cubic feet of all hardcopy medical records, a similar volume of records compressed onto compact discs and an Oracle ©® database of current patients.

(5) Protect the confidentiality of patient medical information and records.

(6) Implement a continuing quality control and assurance program for all clinical medical and recordkeeping aspects of the program necessary to maintain compliance with applicable medical standards.

(7) Develop and implement a transition phase with Brookhaven National Laboratory.

Direct Marshallese Involvement

For this program element:

(a) Interface, establish and maintain a working relationship with Marshallese appointed spokespersons and/or citizen advisory committees in the Rongelap and Utirik communities to:

(1) Consult and inform before implementing any changes in the DOE special medical care program.

(2) Establish a regular process that receives community and patient input and feedback on DOE special medical care program activities.

(3) Consider Marshallese patient concerns and recommended improvements in the special medical care delivery;

(4) Work with DOE to accommodate Marshallese concerns and improvements within a framework of DOE's legal mandate, funding and sound medical practice.

(b) Develop and implement a Rongelap and Utirik community health outreach educational program that:

(1) Develops educational materials (e.g., videotapes, brochures and/or handouts) that include DOE and Marshallese community representative input, to be used by health care providers that strive to accentuate awareness of, increase sensitivity to, and accommodate Marshallese traditional perceptions and attitudes towards the practice of ''Western-style'' medicine in the Marshall Islands.

(2) Helps patients and their family members learn about the special medical care program activities and findings by preparing, distributing and explaining the annual medical activity report, which is required to be sent to DOE.

(3) Utilizes Marshallese public health educational materials and brochures.

(4) Develops public health and educational materials (e.g., handouts, brochures or videotapes) for Marshallese use that describes the types of special medical care being provided by the awardee.

(5) Advises on the known relationships between radiation dose and health effects.

(c) Develop and implement a training program for Marshallese medical and para-medical, and/or technical support professionals for the special medical care program that includes:

(1) A needs assessment as to the types and number of professionals (physicians, physician assistants, nurses, support-service technicians).

(2) Means to provide training and ''on-the-job'' practical experience in the Marshall Islands.

(3) Consideration of available regional educational resources to meet these objectives.

(d) Develop and implement a plan to build an infrastructure in the Marshall Islands for the special medical care program including:

(1) Partnerships with local health care providers.

(2) Facilitating the training of Marshallese health care professionals.

(3) Acquisition, use, and maintenance of medical equipment.

Development of Procedures and Documentation

The awardee will be required to provide the following:

(a) Written protocol(s) and/or manuals describing procedures and associated forms to be used by the medical professionals for medical examinations, patient referrals, and overall administrative implementation of the special medical care program that includes:

(1) Identities, qualifications, and biographies of medical or medical program experience for all persons providing medical, technical, nursing, and administrative support services.

(2) The awardee's selection and qualification criteria for all personnel who will participate in or implement the program.

(3) Involvement of local Marshallese medical, health, and support personnel, including:

(i) Participation of medical and other health care or technical professionals.

(ii) As applicable, selection and qualification criteria by which these personnel will be made eligible to participate.

(iii) Provision of bilingual Marshallese/English speaking individuals for adequate communication, translation and the interpretation of examination results, and meaning between the patients (or their designated guardians) and the medical care providers.

(4) Frequency and types of patient examinations.

(5) Method(s) of patient examinations and treatments that afford personal privacy.

(6) Method(s) by which patient informed consent and medical release will be obtained for any medical examination or treatment modality in a way that ensures patient understanding in Marshallese.

(7) As applicable, method(s) by which a special medical care program physician will interface with existing medical care providers in the Republic of the Marshall Islands or the Pacific region and provide tertiary medical referrals as needed.

(8) Method(s) by which medical services will be provided to those patients (currently, approximately 25) who habitually reside in the United States, such as other medical care insurance options in lieu of awardee provided medical services.

(9) Method(s) by which the program referring physician will consult with and remain continually cognizant of the medical condition and results of a patient referred to another medical

professional or organization identified in items (7) or (8).

(10) Method(s) to inform all patients (or their designated guardians) in Marshallese of individual medical results and any additional followup actions necessary.

(11) Method(s) by which pharmaceuticals will be obtained, inventoried, managed, and dispensed.

(12) Method(s) for retaining, storing, maintaining, or releasing (to honor a lawful request), patient tissue samples and specimens used for pathological classification of disease.

(13) As applicable, method(s) by which the awardee will implement the working programmatic relationships with any current DOE provider of services or regional health care provider.

(b) An annual summary report (in English and Marshallese) on the following:

(1) Program activities, medical conditions, and statistical analyses of the findings.

(2) Number of individuals remaining in the patient and comparison populations.

(3) The overall health of the two populations and the identification of any special risks to their health.

(4) Identification of all medical, nursing, technical practitioners, and support personnel that performed provider services.

(5) Identification of patient related medical problems with recommendations for improvement or resolution.

(6) Progress made on strategic plan initiatives.

(7) Recommendations to improve programmatic functions.

(c) A strategic plan that proposes and details ways to advance the special medical care program to:

(1) Achieve partnership and coordination with the RMI medical and health care organizations.

(2) Evolve medical partnerships and coordinate the awardee's resources, to the greatest extent possible, with local Marshallese or other U.S. Federal resources, to advance the DOE's special medical care program as follows:

(i) Strengthen local health care delivery.

(ii) Involve local personnel in medical activities.

(iii) Share new skills and technical knowledge.

(iv) Strengthen local land-based assets, such as radiologic, pathologic, and laboratory support services.

(3) Maintain a cost effective special medical care program as the patient population ages and incurs greater needs for medical services.

Cost and Reporting Requirements

(a) The awardee shall implement cost containment measures, maximization of financial savings, and negotiation of subcontracted services to maintain a high quality special medical care program in accordance with DOE budgetary constraints. At a minimum, the cost reporting requirements that will be required under the cooperative agreement will include, but not be limited to providing:

(1) Budget, financial and programmatic activity reports. The contents and formats are to be specified and revised as necessary by DOE.

(2) A monthly report of all program expenditures.

(3) Fiscal planning and budget information in the format prescribed by DOE.

(4) A separate itemized price list (detailing both direct and indirect costs) for all clinical medical examinations, treatments, services, or supplies to conduct and implement the special medical care program.

(5) A separate itemized price list for the direct and indirect medical program and non-clinical administrative and program management aspects, salaries, and supplies for the proposed support services.

(6) A separate itemized price list for any service that is anticipated to be subcontracted.

(7) A separate itemized price list for any capital equipment that must be purchased to implement the special medical care program.

(8) The formula or estimated cost for each of the following non-priced listed items:

(i) Special DOE requests (e.g., record duplication, statistical analysis of medical findings, special topical reports in response to RMI or congressional inquiries).

(ii) Non-stocked medical or administrative items and supplies.

(iii) Cost of any other service or expense that the provider intends to charge but does not appear on a price list.

V. Applications

This Notice of Availability of Funds and Request for Applications is issued pursuant to DOE regulations contained in 10 CFR part 602: Epidemiology and Other Health Studies Financial Assistance Program, as published in the **Federal Register** on January 31, 1995 (60 FR 5841). The Catalog of Federal Domestic Assistance number for 10 CFR part 602 is 81.108, and its solicitation control number is EOHSFAP 10 CFR part 602. 10 CFR 602 contains the specific requirements for applications, evaluation, and selection criteria, except as modified herein. Only those applications complying with the criteria and using the forms specified in 10 CFR 602 will be considered. Application forms may be obtained at the address previously cited. Applications will be peer reviewed by evaluators apart from DOE employees and contractors as described under section 10 CFR 602.9(c) and in section VII. of this Notice, and submission of an application constitutes agreement that this is acceptable to the care provider(s) and the submitting organization.

VI. Application Format and Instructions

A. General

An application shall contain a proposal for the following:

- The primary and secondary clinical medical program;
- The other elements of the special medical care program (i.e., administrative support, direct Marshallese involvement, the development of procedures and documentation, the cost and reporting elements);
- Any proposed replacement for part or all of the secondary medical services provided at the U.S. Army Hospital on Kwajalein Island in the Kwajalein Atoll.

For the purposes of this Notice, the proposal containing the above components will be referred to as the Primary Application and shall contain two volumes, one providing technical details and the other the costs.

In addition, an Optional Application may be submitted for an alternative approach to replace a part or all of the following being provided by current DOE providers:

- Tertiary medical care services for an annual average of 13 patients, and/or
- Related logistical support for an annual average of 13 patients receiving tertiary medical care services, and/or
- Related logistical support for the primary and secondary medical care services of all the DOE patients within the Marshall Islands.

The Optional Application shall also contain two volumes, one for the technical details and the other for the cost. The technical volumes for both the Primary and Optional Applications shall be:

- No more than one hundred (100) pages in length;
- One-sided, 12-point font size; and
- Submitted in black and white.

Resumes of key personnel should be submitted as an appendix to the technical application(s) and will not be

counted against the page limit. Cost proposal volume(s) have no page limit and either one or both application(s) will be structured to include a five (5) year project period consisting of five one (1) year budget periods.

The application(s) shall not merely offer to perform work in accordance with the program requirements but shall outline the actual work proposed as specifically as possible.

B. Specific Application Instructions

All applicants must submit a Primary Application for the special medical care program, as described herein, based on a budget of $1.1 million annually over a 5 year period. An Optional Application for an alternative approach as described herein may also be submitted, based on a budget that does not exceed $0.8 million annually over a 5-year period. If an Optional Application is not submitted, the DOE will assume that the applicant plans to utilize the current DOE provider logistical support, and the secondary and tertiary medical care services referenced herein. However, an applicant can propose in the Primary Application any replacement for the secondary medical services currently provided at the U.S.Army Hospital at Kwajalein Island (see paragraph (1)(n), as follows).

(1) The technical volume of the Primary Application must include technical details and information that:

(a) Demonstrate that the applicant has the experience and capability to plan, organize, implement, and manage the primary and secondary medical care services and all the other elements of the special medical care program described herein. This includes organizational structure, plans for self-assessment of the special medical care program, and envisioned relationship with DOE.

(b) Demonstrate the competency of the applicant's personnel and the adequacy of its resources.

(c) Identify technical and administrative staff, and detail their professional experience, as well as their level of program involvement. In the event that any of the proposed personnel are not currently employed by the applicant, letters of commitment from those individuals shall be submitted.

(d) Itemize the medical diagnostic or laboratory equipment that the applicant intends to use for this special medical care program, and how the applicant will integrate such equipment with the Federal Government owned equipment listed in Appendix H.

(e) Specify the location(s) where services will be obtained or performed.

(f) Identify the recommendations or standards to be used to satisfy the requirements of section IV.B., paragraph (f) under the special medical care program element, *DOE Clinical Medical Program,* and any reason for exception(s) taken by the applicant to those standards.

(g) Contain initial concepts for the training program development requirements of paragraph (c) under the special medical care program element, *Direct Marshallese Involvement.*

(h) Contain initial concepts for the development and implementation of the applicant's plan to meet the Marshall Islands infrastructure requirements of paragraph (d) under the special medical care program element, *Direct Marshallese Involvement.*

(i) Contain a short-term plan detailing milestones and deadlines stating:

(i) Applicant's requirements for a transition phase with Brookhaven National Laboratory.

(ii) When independence will be achieved to implement all elements of the special medical care program.

(j) Contain initial concepts for the strategic plan required by paragraph (c) under the special medical care program element, *Development of Procedures and Documentation,* that includes milestones and deadlines for implementation.

(k) Provide evidence of medical malpractice insurance for any individual licensed in the United States, required by paragraph (a) under the *Administrative Support* element of the special medical care program.

(l) Provide applicant's plan to obtain malpractice insurance for any non-U.S. health care provider that the applicant intends to hire or provide.

(m) Propose a plan to provide medical care services and associated logistical support for those Marshallese patients who do not habitually reside in the Marshall Islands.

(n) Identify and propose, if the applicant desires, a replacement for any or all of the secondary medical care services provided at the U.S. Army Hospital on Kwajalein Island.

(2) The cost volume of the Primary Application must include the following information that:

(a) Provides a cost proposal for the first budget period year (year 1) detailing expenses to implement the following:

(i) The primary and secondary medical services of the *DOE Clinical Medical program* element of the special medical care program;

(ii) The *Administrative Support* element of the special medical care program;

(iii) The *Direct Marshallese Involvement* element of the special medical care program;

(iv) The *Development of Procedures and Documentation* element of the special medical care program;

(v) Establishment and maintenance of a working relationship with DOE providers of medical and logistics services;

(vi) The medical care services, in combination with associated logistical support, for those Marshallese patients who do not habitually reside in the Marshall Islands;

(vii) The costs to replace any or all of the secondary medical services currently provided at the U.S. Army Hospital on Kwajalein Island; and

(viii) The identification and magnitude of any other cost the applicant intends to charge.

(b) Contains estimated cost information supporting the applicant's special medical care project description for budget years 2 through 5.

(3) If an Optional Application is submitted, the applicant shall demonstrate its approach to replacing the logistical support for the primary and secondary clinical medical program in the Marshall Islands, and/or the approach to replacing the tertiary medical care for an annual average of 13 patients currently provided by Straub Hospital and Clinic, as specified in Appendix E, and/or the logistical support of such tertiary medical care for the annual average of 13 patients. The technical volume of the Optional Application must include the following information that:

(a) Demonstrates that the applicant has the experience and capability to plan, organize, implement, and manage the tertiary medical care services and logistical support requirements. This includes organizational structure, plans for self-assessment of the special medical care program, and envisioned relationship with DOE.

(b) Demonstrates the competency of the applicant's personnel and the adequacy of its resources.

(c) Identifies technical and administrative staff, and details their professional experience, as well as their level of program involvement. In the event that any of the proposed personnel are not currently employed by the applicant, letters of commitment from those individuals shall be submitted.

(d) Itemizes the medical diagnostic or laboratory equipment that the applicant intends to use for tertiary medical care

services, and how the applicant will integrate such equipment with the Federal Government owned equipment listed in Appendix H.

(e) Specifies the location(s) where tertiary medical care services will be obtained or provided. The applicant is free to propose tertiary referral locations of its choosing within or outside of the Marshall Islands.

(f) Identifies the standards to be used to satisfy the requirements of section IV.B., paragraph (f) under the special medical care program element, *DOE Clinical Medical Program*, and any reason for exception(s) taken by the applicant to those standards.

(g) If applicable, contains initial concepts for any tertiary medical care training program development requirements of paragraph (c) under the special medical care element, *Direct Marshallese Involvement*. This also includes any proposal to use local Marshallese individuals or companies to perform logistical support requirements.

(h) Contains initial concepts for the development and implementation of the applicant's plan to meet the infrastructure requirements of paragraph (d) under the special medical care element, *Direct Marshallese Involvement*.

(i) Contains a short-term plan detailing milestones and deadlines stating:

(i) If applicable, applicant's requirements for a transition phase with Straub Hospital and Clinic and Bechtel Nevada Corporation,

(ii) When independence will be achieved to implement all elements of the tertiary medical care services and the associated logistical requirements.

(j) Contains initial concepts for the strategic plan required by paragraph (c) under the special medical care program element, *Development of Procedures and Documentation*, that includes milestones and deadlines for long-term implementation of any proposals to replace the tertiary medical and associated logistical support services.

(k) Provides evidence of medical malpractice insurance for any individual licensed in the United States, required by paragraph (a) under the *Administrative Support* element of the special medical care program.

(l) Provides applicant's plan to obtain malpractice insurance for any non-U.S. health care provider that the applicant intends to hire or provide.

(4) The cost volume of the Optional Application must include the following information that:

(a) Provides a cost proposal for the first budget period year (year 1) detailing expenses to implement the following:

(i) Tertiary medical care services for an annual average of 13 patients, and/or

(ii) Logistic support for an annual average of 13 patients receiving tertiary medical care services, and/or

(iii) Logistic support for the primary and secondary medical services of all the DOE patients provided in the Marshall Islands.

(iv) The identification and magnitude of any other tertiary medical service or logistical support cost the applicant intends to charge.

(b) Contains estimated cost information supporting the applicant's special medical care program project description for budget years 2 through 5.

VII. Application Review, Evaluation Criteria and Award Information

Primary Applications will be subject to merit review (peer review) and will be evaluated against the following criteria, all of which are of equal importance. The peer review will be conducted by the Division of Research Grants (DRG) of the National Institutes of Health (NIH), utilizing standard NIH peer review procedures. The following criteria constitute a single case deviation from the Office of Environment, Safety and Health's merit review system (57 FR 55524, November 25, 1992) and EH's program rule at 10 CFR 602.

(a) The medical and technical merit of the proposed special medical care program.

(b) The appropriateness of the proposed program.

(c) Competency of the program personnel.

(d) Organizational structure, plans for self-assessment and envisioned relationship with DOE.

(e) Adequacy of equipment and associated physical resources.

(f) Reasonableness and appropriateness of the proposed budget.

In accordance with 10 CFR 602.9(e) and 10 CFR 600.8(c)(13), a program policy factor which DOE will consider in making an award is the merit of an applicant's Optional Application for an alternative approach to the provision of logistics for primary and secondary medical care services and the tertiary medical care services and associated logistic services as addressed in the ''Specific Application Instructions'' (see section VI., B, paragraphs (3) and (4)). The NIH will conduct the peer review and score any Optional Application using the identical procedure for evaluating the Primary Application. However, the resulting score will not be added to the applicant's score for the Primary Application, because the merit of the Optional Application is a program policy factor. The DOE selecting official will give the Primary Application predominant consideration, with lesser consideration being accorded the Optional Application.

The resulting award may be for the Primary Application only, or for the Primary Application and all or any part of the Optional Application. An award will not be made for only an Optional Application.

One cooperative agreement will be awarded for the first budget year only and may be negotiated and extended annually as continuation awards for up to four (4) additional years based on the following:

- Availability of appropriated funds;
- The awardee's continuation application, which will be submitted not later than 120 days before the end of each budget period, and
- The results of the DOE evaluations of the awardee's performance as described in section VIII., below.

VIII. DOE's Role

In order for DOE to maintain appropriate oversight of the special medical care program, there must be substantial interaction between DOE and the awardee. DOE established the core requirements for this program and prepared this Notice of Availability of Funds and Request for Applications. DOE will conduct the selection and award process, which will include evaluations by persons outside the Federal Government. DOE will utilize the results of these evaluations and make one initial award. Continuation awards may be made based upon the availability of funds and other DOE performance criteria that will be set forth in any initial award. DOE will consult with program medical professionals and will coordinate meetings between medical care provider(s) and Marshallese community members. DOE will consult with representatives from the RMI national and local governments, the Department of the Interior, the Department of State and the Department of Health and Human Services on the special medical care program. To help evaluate program effectiveness, DOE will establish a program coordination committee as part of the cooperative agreement consisting of representatives from the awardee's organization, the DOE contracting office, the DOE Office of International Health Programs, and the Rongelap and Utirik communities. This committee will meet on a semi-annual basis at a mutually agreed location.

Finally, DOE will monitor and evaluate the performance and delivery of the special medical care program by conducting program reviews and considering the patients' level of satisfaction.

IX. Applicants

Applicants for the cooperative agreement could include domestic or international nonprofit and for profit organizations, universities, medical centers, state or local government health care organizations, labor unions and other employee representative groups, small, minority and/or women-owned businesses, or other domestic or international health care organizations. Consortiums of interested organizations are encouraged to apply. Awardee(s) for the special medical care program will work cooperatively with Marshallese health care providers, current DOE providers (as applicable), other regional health care providers and designated Marshallese community representatives.

Issued in Washington, D.C., on September 8, 1997.

Paul J. Seligman,

Deputy Assistant Secretary for Health Studies.

Appendix A—Definition of Radiation Related Diseases or Illnesses

For the purposes of this Notice, applicants shall consider the following to be radiation related diseases or illnesses:

(a) Any thyroid cancer, other tumor or thyroid nodule that has been found as a result of medical evaluation.

(b) In accordance with the ''Radiation Exposure Compensation Act'', 42 U.S.C. 2210 note, the following are considered latently expressed diseases attributed to radiation:

(1) Leukemia (other than chronic lymphocytic leukemia).

And the following diseases, provided onset was at least 5 years after the first exposure to radiation:

(2) Multiple myeloma.

(3) Lymphomas, other than Hodgkin's disease.

(4) Primary cancer of the thyroid, provided that the initial exposure occurred by age 20.

(5) Primary cancer of the female breast, provided that the initial exposure occurred prior to age 40.

(6) Primary cancer of the esophagus, provided low alcohol consumption and not a heavy smoker.

(7) Primary cancer of the stomach.

(8) Primary cancer of the pharynx, provided not a heavy smoker.

(9) Primary cancer of the small intestine.

(10) Primary cancer of the pancreas.

(11) Primary cancer of the bile ducts.

(12) Primary cancer of the gall bladder.

(13) Primary cancer of the liver, except if cirrhosis or hepatitis B is indicated.

Appendix B—RMI Medical Program Information

Available RMI medical facilities and services include:

(a) Local dispensaries at Utirik and Mejatto provide limited medicine and first aid, and are staffed by medical personnel with MEDEX level training and experience (i.e., between a regional nurse and nurse-practitioner). Short-wave radio communications are maintained between the dispensaries and the off-island medical health care providers (up to 300 miles distant) to discuss serious medical conditions.

(b) A small 34 bed community hospital is available with limited capabilities in a community of 12,000 living on Ebeye (an island of approximately 4 square miles located 2 miles from Kwajalein Island where the U.S. Army contractor-operated hospital facility that serves the base personnel is located).

(c) A 75 bed hospital is available with limited capabilities to serve 29,000 living on the capital island of Majuro. This hospital also receives referrals from the entire national population of 60,000.

Appendix C—The RMI 177 Health Care Program (HCP)

For the DOE patients:

(a) Currently implements DOE patient care in absence of Brookhaven National Laboratory.

(b) Provides all non radiation-related care of DOE patients.

(c) Provides access to DOE patient records.

For the non-DOE patients:

(a) Provides general medical care for the people of Rongelap, Utirik, Enewetak, and Bikini.

(b) Serves a total population of approximately 10,600 (which includes the 238 DOE patients)

(c) Refers its tertiary patients to the Queen's Medical Center and Group in Honolulu, Hawaii.

Appendix D—Bechtel Nevada Corporation Logistical Capabilities to Support DOE'S Special Medical Care Program

(a) Provides all logistics to transport and support medical program personnel to the Marshall Islands twice a year, which is currently limited to travel, lodging and per diem costs west of Honolulu.

(b) Provides all logistics to transport and support ambulatory patients and their authorized medical escorts to medical facilities at Kwajalein.

(c) Provides all logistics to transport medical personnel for subsidiary home visits to non-ambulatory infirm patients at Mejatto, Ebeye, Utirik, and Majuro.

(d) Provides transportation and support to RMI medical personnel assigned to participate in the DOE special medical care program.

(e) Operates and provides all logistics and support services for patients referred to the Straub Hospital and Clinic located in Honolulu, Hawaii, by Brookhaven National Laboratory. The services provided include:

(1) Bilingual Marshallese/English speaking escorts to accompany patients.

(2) Coordination of patient travel and medical appointment schedules.

(3) Lodging and per diem arrangements and expenses.

(4) Coordination between Brookhaven National Laboratory and the Straub Hospital and Clinic on medical services, as required.

(f) Conducts market research on the availability of marine assets in the U.S. and Central Pacific Area to support a limited, sea-based medical program.

(g) Issues and monitors the Straub Hospital and Clinic medical services subcontract.

(h) Implements terms and conditions, including the making of payments and collections under DOE's agreements with other agencies, and instrumentalities of the RMI.

(i) Implements requirements as directed by DOE during the course of the year.

(j) Interfaces and coordinates with the U.S. Army at Kwajalein Island to provide the following in accordance with a Memorandum of Understanding between DOE and the U.S. Army:

(1) Marine craft (currently a LCU) used to transport patients to and from Mejatto.

(2) Hospital services as delineated in Appendix F.

(3) Trailer rentals for medical use (currently 2, each 660 square feet).

(4) Housing, lodging, and dining facilities for patients and medical team members.

(5) Maintenance of facilities and equipment.

(6) Aircraft services limited to within Kwajalein Atoll at no cost.

(7) Automotive services used to transport patients at Kwajalein Island.

(8) Recreational services for medical team use.

(9) Public services used to announce medical team activities at Kwajalein Atoll.

(10) Ferry services between Kwajalein and Ebeye Islands at no cost.

Appendix E—Services Provided by the Straub Hospital and Clinic Located in Honolulu, Hawaii

(a) Complete and comprehensive medical services for DOE patients that have radiation-related diseases, including but not limited to, nuclear medicine diagnostic imaging and techniques, diagnostic and radiation therapy facilities, chemotherapy, pathological and advanced surgical services.

(b) Refers diseases diagnosed as non radiation-related back to the 177 HCP.

(c) Provides certified and accredited medical personnel.

(d) Provides price list as basis for charges.

Note: Straub Hospital and Clinic is accredited by the Joint Commission for Accreditation of Health Care Organizations.

Appendix F—Secondary Medical Services Provided by U.S. Army Hospital on Kwajalein Island in the Kwajalein Atoll in the RMI

In accordance with the Memorandum of Understanding between DOE and the U.S. Army, the following medical services are provided at the U.S. Army Hospital on Kwajalein Island:

(a) Laboratory Services.

(b) Mammography Screening.

(c) X-ray Screening.

(d) Proctosigmoidoscopy.

(e) Limited Surgery (e.g., appendectomy, amputations for advanced diabetic conditions).

(f) Professional Services (physicians, nurses, technicians).
(g) Safety inspection and certification of mammography and x-ray equipment by Trippler Army Hospital technical staff.
(h) Inpatient care and treatment.

Note: Brookhaven National Laboratory is responsible to ensure that proper and current certification for the special medical equipment and services are in place prior to receiving services.

Appendix G—DOE Special Medical Program Information

1. Summary of Clinical Findings

After 41 years of medical monitoring, the most prevalent health effect has been related to thyroid function and the appearance of thyroid-related nodules and cancer. There has been one case and death due to radiation-related leukemia, two pituitary tumors and two cases of basal cell carcinoma. The major non radiation-related diseases seen in the Rongelap and Utirik people have been Type II diabetes, hypertension, cardiovascular diseases, and their associated complications.

The above information has been summarized from the report entitled, ''Medical Status of Marshallese Accidentally Exposed to 1954 Bravo Fallout Radiation; January 1988 Through December 1991,'' by Brookhaven National Laboratory/Department of Energy, DOE/EH0493 and BNL–52470, July 1995.

2. Patient Population Description

Age range	Male	Female
30–39	1	1
40–49	57	59
50–59	28	35
60–69	15	19
70–79	8	12
80+	1	2

3. Summary of Patient Location

Patients in the Rongelap and Utirik populations are combined in the table below and represent approximate estimates of total patients in each location:

Location	Female	Male	Total
Ailinglaplap	1	1	2
Ailingnae	2	0	2
Arno	1	0	1
Ebeye	40	33	73
Hawaii	9	4	13
Kili	1	0	1
Lib	1	0	1
Mainland USA	4	2	6
Majuro	41	46	87
Mejatto	19	12	31
Mejit	1	1	2
Ujae	1	1	2
Unknown	1	0	1
Utirik	6	8	14
Wotje	1	1	2
Total	129	109	238

Appendix H—DOE Equipment Used by Brookhaven National Laboratory

(a) Johnson & Johnson
Ektachem DT60 II-DTSC II Module Chemistry Analyzer
K-Number 339 4116, Serial Number 60029378
(b) Kodak-Ektachem DT60 DTSC Module Chemistry Analyzer
K-Number 337 0137
(c) Ektachem DT60 Module Chemistry Analyzer
K-Number 322 1695
(d) Calposcope
(e) Ultramark 4 Plus with transducers
(f) Nikon Microscope
(g) Sereno Baker 9118c Blood Analyzer Machine
(h) Ektachem DT60II System
(i) Biorad Micromat Model 415
(j) Beckman TJ6 Centrifuge
(k) Portable defibrillator
(l) Hoag-Streit Slip Lamp system
(m) Sun computer workstation

[FR Doc. 97–24225 Filed 9–11–97; 8:45 am]

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DEPARTMENT OF ENERGY

Inventions Available for License

AGENCY: Department of Energy, Office of General Counsel.

ACTION: Notice.

SUMMARY: The U.S. Department of Energy announces that the following invention is available for license in accordance with 35 U.S.C. 207–209.

Israel Patent Application S.N. 119,342, entitled ''Methods for Priming and DNA Sequencing,'' and corresponding patent applications, to be filed in the U.S.A. and other countries.

FOR FURTHER INFORMATION CONTACT: Robert J. Marchick, Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585; Telephone (202) 586–2802.

SUPPLEMENTARY INFORMATION: 35 U.S.C. 207 authorizes licensing of Government-owned inventions. Implementing regulations are contained in 37 CFR part 404. 37 CFR 404.7(a)(1) authorizes exclusive licensing of Government-owned inventions under certain circumstances, provided that notice of the invention's availability for license has been announced in the **Federal Register**.

* Issued in Washington, D.C., on September 5, 1997.

Paul A. Gottlieb,

Assistant General Counsel for Technology Transfer and Intellectual Property.

[FR Doc. 97–24221 Filed 9–11–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Advisory Board

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of the following Advisory Committee meeting:

Name: Environmental Management Advisory Board.

Date and Times: Wednesday, October 1, 1997, 8:30 a.m.–3:00 p.m.

Place: U.S. Department of Energy/ Forrestal Building, 1000 Independence Avenue, S.W.; Room 1E–245, Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: James T. Melillo, Special Assistant to the Assistant Secretary for Environmental Management; Environmental Management Advisory Board (EMAB), EM–22, 1000 Independence Avenue, S.W., Washington, DC 20585, (202) 586–4400. The Internet address is: James.Melillo@em.doe.gov

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to provide the Assistant Secretary for Environmental Management (EM) with advice and recommendations on issues confronting the Environmental Management program from the perspectives of affected groups and state, local, and tribal governments. The Board will help to improve the Environmental Management Program by assisting in the process of securing consensus recommendations, and providing the Department's numerous publics with opportunities to express their opinions regarding the Environmental Management Program.

Tentative Agenda

Wednesday, October 1, 1997

8:30 a.m. Co-Chairmen Open Public Meeting
8:45 a.m. Opening Remarks, Assistant Secretary for Environmental Management
9:00 a.m. Baseline Project Presentation
9:30 a.m. Technology Development and Transfer Committee Presentation and Discussion
10:00 a.m. 2006 Plan & Strategic Integration Committees Presentation and Discussion
10:30 a.m. Privatization Committee Presentation and Discussion
11:00 a.m. Science Committee Presentation and Discussion

11:30 a.m. Worker Health & Safety Committee Presentation and Discussion
12:05 p.m. Lunch
12:30 p.m. FUSRAP Committee Presentation and Discussion
1:00 p.m. Board Business
2:00 p.m. Public Comment Session
3:00 p.m. Meeting Adjourns

A final agenda will be available at the meeting.

Public Participation

The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should either contact James T. Melillo at the address or telephone number listed above, or call 1–(800) 736–3282, the Center for Environmental Management Information and register to speak during the public comment session of the meeting. Individuals may also register on October 1, 1997 at the meeting site. Every effort will be made to hear all those wishing to speak to the Board, on a first come, first serve basis. Those who call in and reserve time will be given the opportunity to speak first. The Board Co-Chairs are empowered to conduct the meeting in a fashion that will facilitate the orderly coduct of business.

Transcripts and Minutes

A meeting transcript and minutes will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on September 9, 1997.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 97–24223 Filed 9–11–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

State Energy Advisory Board

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463; 86 Stat. 770), notice is hereby given of the following meeting: State Energy Advisory Board.

Date and Time: October 9, 1997 from 9:00 am to 5:00 pm, and October 10, 1997 from 9:00 am to 3:00 pm.

Place: The Radisson-Barcelo Hotel, 2121 P Street NW, Washington, DC 20037. 202–293–3100.

FOR FURTHER INFORMATION CONTACT: William J. Raup, Office of Building Technology, State, and Community Programs, Energy Efficiency and Renewable Energy, U.S. Department of Energy, Washington, DC 20585, Telephone 202/586–2214.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

To make recommendations to the Assistant Secretary for Energy Efficiency and Renewable Energy regarding goals and objectives and programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. 101–440).

Tentative Agenda

Briefings on, and discussions of:

- The FY1998 Federal budget figures for Energy Efficiency and Renewable Energy programs.
- Issues related to Electric Utility Industry restructuring and potential Federal legislation in this area.
- Review of priorities of the new Secretary and Assistant Secretary for Energy Efficiency and Renewable Energy.

Public Participation

The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact William J. Raup at the address or telephone number listed above. Requests to make oral presentations must be received five days prior to the meeting; reasonable provision will be made to include the statements in the agenda. The Chair of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes

The minutes of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on September 9, 1997.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 97–24224 Filed 9–11–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–360–001]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

September 8, 1997.

Take notice that, on September 3, 1997, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet proposed to be effective October 6, 1997:

First Revised Sheet No. 140

ANR states that the purpose of this filing is to comply with the Commission's August 4, 1997, Order on Cashout Report in this proceeding. That order required ANR to amend the annual reconciliation under its cashout program to reflect actual purchase activity under that program.

ANR states that copies of the filing have been mailed to all Second Revised Volume No. 1 customers, interested parties and state regulatory commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–24185 Filed 9–11–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–506–000]

CNG Transmission Corporation; Notice of Section 4 Filing

September 8, 1997.

Take notice that on September 2, 1997, CNG Transmission Corporation (CNG) tendered for filing pursuant to Section 4 of the Natural Gas Act, a notice of termination of service on specified lines in Crook District, Boone County, West Virginia.

CNG states that it will abandon the lines by sale to Eastern American Energy Corporation and Classic Oil & Gas Resources, Inc. CNG further states that no contract for transportation service with CNG will be canceled or terminated as a result of the proposed abandonment of service.

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, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 15, 1997. 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. 97–24186 Filed 9–11–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–512–000]

Crossroads Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

September 8, 1997.

Take notice that on September 3, 1997, Crossroads Pipeline Company (Crossroads) tendered for filing as part of its FERC Gas Tariff, First Revised Tariff Sheet No. 74. Crossroads asserts that this filing is being made to comply with the Commission's Order No. 626–C, which reduced the right-of first-refusal contract term cap to five years. Crossroads requests an effective date of September 25, 1997 for the proposed tariff sheet and a waiver of Section 154.207 of the Commission's Regulations.

Crossroads states further that copies of the filing were served on its current firm and interruptible customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with the Commission's rules and regulations found in Sections 385.211 and 385.214. All such motions or protests must be filed as provided in Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, 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 Crossroads' filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–24188 Filed 9–11–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–720–000]

KO Transmission Company; Notice of Application

September 8, 1997.

Take notice that on August 29, 1997, KO Transmission Company (KO Transmission) 139 East Fourth Street, Cincinnati, Ohio 45202, filed in Docket No. CP97–720–000 an application pursuant to Section 7(c) of the Natural Gas Act for authorization to acquire certain facilities from Columbia Gas Transmission Corporation (Columbia) in Menifee County, Bracken County, and Pendleton County, and Cold Spring, Kentucky, all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, KO Transmission proposes to acquire (1) an undivided 12.62 percent interest in Columbia's Kentucky System extending from Columbia's interconnection with Columbia Gulf Transmission Company to Columbia's Foster Regulation Station, and (2) an undivided 67.33 percent interest in Columbia's Kentucky System extending northward from the Foster Regulation Station to the terminus of the Kentucky System. KO intends to acquire the 12.62 percent ownership interest for approximately $441,582 and the 67.33 ownership interest for approximately $198,820.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 29, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for KO Transmission to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–24183 Filed 9–11–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–511–000]

Michigan Gas Storage Company; Notice of Proposed Changes in FERC Gas Tariff

September 8, 1997.

Take notice that on September 3, 1997, Michigan Gas Storage Company (MGS) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the First Revised Sheet No. 69, to be effective October 3, 1997. MGS states that the purpose of this filing is to reflect the requirements of the Federal Energy Regulatory Commission's Order No. 636–C. The filed sheet changes MGS's right-of-first-refusal contract term cap to five years.

MGS states that copies of this filing are being served on all affected customers and applicable state regulatory agencies as well as on those on the official service list in RP96–290–000.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Regulations. All such motions or protests should be filed in accordance with Section 154.210 of the Commission's Regulations. 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. 97–24187 Filed 9–11–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–706–000]

Williams Natural Gas Company; Notice of Request Under Blanket Authorization

September 8, 1997.

Take notice that on August 22, 1997, Williams Natural Gas Company (WNG), One Williams Center, Tulsa, Oklahoma, filed in Docket No. CP97–706–000, a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to utilize facilities originally installed for the delivery of NGPA Section 311 transportation gas to Cotton Valley Compression, LLC (Cotton Valley Compression) in Washington County, Oklahoma, for purposes other than NGPA Section 311 transportation, under WNG's blanket certificate issued in Docket No. CP82–479–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

WNG explains that its 16-inch Hogshooter pipeline is a low pressure line which functions as both a delivery lateral serving the cites of Bartlesville and Nowata, Oklahoma, and several smaller towns in the area, and a receipt lateral for several independent producers. WNG explains that recently supplies have exceeded demand on the Hogshooter line, resulting in increased pressure on the line and production shut-ins. WNG says that its Cotton Valley compression station cannot be used to relieve the pressure on the Hogshooter line and eliminate the production shut-ins. WNG relates that in order to increase production levels and alleviate the problem of production shut-ins on WNG's Hogshooter line, the producers in the area formed Cotton Valley Compression. WNG explains that Cotton Valley Compression will take delivery of gas from WNG's 16-inch low pressure Hogshooter line and compress the gas to a pressure sufficient to allow redelivery into WNG's 16-inch pressure Quapaw line downstream of WNG's Cotton Valley compressor station. WNG says the producers utilizing the service will pay for the cost of operating the compression and associated fuel. WNG states that Cotton Valley Compression's compression will only be utilized when demand on WNG's Hogshooter line is less than the level of production connected to that line.

WNG reports that it installed the following Section 311 facilities: a tap, orifice meter, and appurtenant facilities in Section 25, Township 29 North, Range 13 East, Washington County, Oklahoma to deliver the gas to Cotton Valley Compression; and receipt facilities were installed in Section 26, Township 29 North, Range 13 East, Washington County, Oklahoma, pursuant to WNG's blanket certificate authorization and this will be reported on WNG's annual construction report. WNG says it began delivering to Cotton Valley Compression through the Section 311 facilities on July 29, 1997. WNG relates that the initial delivery was 500 Dth and it is estimated that the peak day requirement will be approximately 6,000 Dth with an annual volume of 48,000 Dth.

WNG indicates that the cost to construct the facilities was approximately $53,025, which will be offset by the execution of a firm transportation agreement by Cotton Valley Compression.

WNG states that this change is not prohibited by an existing tariff and that it has sufficient capacity to accomplish the deliveries specified without detriment or disadvantage to its other customers. WNG says the operation of these facilities will have no impact on WNG's peak day or annual deliveries. WNG also asserts that the volume of gas delivered to Cotton Valley Compression after this request will not exceed the volume of gas authorized prior to the request.

WNG states that it has sent a copy of this request to the Oklahoma Corporation Commission.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–24182 Filed 9–11–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4246–000, et al.]

Midwest Energy, Inc., et al., Electric Rate and Corporate Regulation Filings

September 8, 1997.

Take notice that the following filings have been made with the Commission:

1. Midwest Energy, Inc.

[Docket No. ER97–4246–000]

Take Notice that on August 18, 1997, Midwest Energy, Inc. (Midwest), tendered for filing with the Federal Energy Regulatory Commission the Service Agreement for Non-Firm Point-to-Point Transmission Service entered into between Midwest and CMS Marketing Services and Trading Company.

Midwest states that it is serving copies of the instant filing to its customers, State Commissions and other interested parties.

Comment date: September 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. San Diego Gas & Electric Company, Enova Energy, Inc., AIG Trading Corporation

[Docket No. EC97–51–000]

Take notice that on August 28, 1997, San Diego Gas & Electric Company (SDG&E), Enova Energy, Inc. (Enova Energy), and AIG Trading Corporation (AIG)(collectively, the Applicants) tendered for filing pursuant to Section 203 of the Federal Power Act (FPA) 16 U.S.C. § 824b (1985), and Part 33 of the Commission's Regulations, 18 CFR Part 33, an application for an order approving a proposed merger and disposition of jurisdictional assets entailed in the acquisition of all of AIG's stock by Wine Acquisition Inc. (Wine). Wine is a newly formed corporation, the stock of which is owned in equal shares by Enova Corporation (Enova) and Pacific Enterprises. SDG&E and Enova Energy are subsidiaries of Enova.

Comment date: October 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Wisconsin Power and Light Company

[Docket No. ER97–4247–000]

Take notice that on August 18, 1997, Wisconsin Power and Light Company (WP&L), tendered for filing Form Of Service Agreement for Non-Firm Point-to-Point Transmission Service establishing Market Responsive Energy, Incorporated (MREI) as a point-to-point transmission customer under the terms of WP&L's transmission tariff.

WP&L requests an effective date of June 25, 1997, and; accordingly, seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: September 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Boston Edison Company

[Docket No. ER97–4248–000]

Take notice that on August 18, 1997, Boston Edison Company (Boston Edison), tendered for filing a Service Agreement and Appendix A under Original Volume No. 6, Power Sales and Exchange Tariff (Tariff) for PacifiCorp Power Marketing, Inc. (PacifiCorp). Boston Edison requests that the Service Agreement become effective as of September 1, 1997.

Edison states that it has served a copy of this filing on PacifiCorp and the Massachusetts Department of Public Utilities.

Comment date: September 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Arizona Public Service Company

[Docket No. ER97–4249–000]

Take notice that on August 19, 1997, Arizona Public Service Company (APS), tendered for filing Service Agreements under APS' FERC Electric Tariff, Original Volume No. 3 with Sonat Power Marketing, L.P. (Sonat), American Hunter Energy, Inc. (Hunter), Western Power Services, Inc. (Western), and National Gas & Electric, L.P. (NG&E).

A copy of this filing has been served on the Arizona Corporation Commission, Sonat, Hunter, Western and NG&E.

Comment date: September 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Orange and Rockland Utilities, Inc.

[Docket No. ER97–4251–000]

Take notice that on August 18, 1997, Orange and Rockland Utilities, Inc. (O&R), tendered for filing pursuant to Part 35 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR Part 35, a service agreement under which O&R will provide capacity and/or energy to Williams Energy Services Company (Williams).

O&R requests waiver of the notice requirement so that the service agreement with Williams becomes effective as of July 24, 1997.

O&R has served copies of the filing on The New York State Public Service Commission and Williams.

Comment date: September 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Illinois Power Company

[Docket No. ER97–4252–000]

Take notice that on August 18, 1997, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm transmission agreements under which PPG Industries, Inc., will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of August 1, 1997.

Comment date: September 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Commonwealth Energy Corporation

[Docket No. ER97–4253–000]

Take notice that on August 18, 1997, Commonwealth Energy Corporation, a California corporation, tendered for filing Commonwealth Rate Schedule FERC No. 1, under which Commonwealth will engage in wholesale electric power and energy transactions as a marketer.

Comment date: September 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Great Bay Power Corporation

[Docket No. ER97–4254–000]

Take notice that on August 19, 1997, Great Bay Power Corporation (Great Bay), tendered for filing a service agreement between NP Energy Inc. and Great Bay for service under Great Bay's revised Tariff for Short Term Sales. This Tariff was accepted for filing by the Commission on May 17, 1996, in Docket No. ER96–726–000. The service agreement is proposed to be effective August 13, 1997.

Comment date: Sepember 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Northeast Utilities Service Company

[Docket No. ER97–4255–000]

Take notice that on August 19, 1997, Northeast Utilities Service Company (NUSCO), tendered for filing a First Amendment to Transmission Service Agreement between the NU System Companies and the City of Chicopee Municipal Lighting Plant (Chicopee).

NUSCO states that a copy of this filing has been mailed to Chicopee.

NUSCO requests that the First Amendment become effective on March 1, 1997, in order to coincide with the effective date of service under the New England Power Pool Open Access Transmission Tariff, filed on December 31, 1996, in FERC Docket Nos. OA97–237–000 and ER97–1079–000.

Comment date: September 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Northeast Utilities Service Company

[Docket No. ER97–4256–000]

Take notice that on August 19, 1997, Northeast Utilities Service Company (NUSCO), tendered for filing a First Amendment to Transmission Service Agreement between the NU System Companies and the Town of South Hadley Electric Light Department (South Hadley).

NUSCO states that a copy of this filing has been mailed to South Hadley.

NUSCO requests that the First Amendment become effective on March 1, 1997, in order to coincide with the effective date of service under the New England Power Pool Open Access Transmission Tariff, filed on December 31, 1996, in FERC Docket Nos. OA97–237–000 and ER97–1079–000.

Comment date: September 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Mid-Power Service Corp.

[Docket No. ER97–4257–000]

Take notice that on August 19, 1997, Mid-Power Service Corp. (Mid-Power), petitioned the Commission for acceptance of Mid-Power Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

Mid-Power intends to engage in wholesale electric power and energy purchases and sales as a marketer. Mid-Power is not in the business of generating or transmitting electric power.

Comment date: September 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Commonwealth Electric Company

[Docket No. ER97–4258–000]

Take notice that on July 7, 1997, Commonwealth Electric Company (Commonwealth) and Cambridge Electric Light Company (Cambridge), tendered for filing their first quarterly report of transactions under their market-based power sales tariff (Tariffs) for the period of April 1, 1997 to June 30, 1997.

Comment date: September 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Louisville Gas and Electric Company

[Docket No. ER97–4259–000]

Take notice that on August 19, 1997, Louisville Gas and Electric Company, tendered for filing a copy of a service agreement between Louisville Gas and Electric Company and Electric Clearinghouse, Inc., under Rate GSS.

Comment date: September 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Louisville Gas and Electric Company

[Docket No. ER97–4260–000]

Take notice that on August 19, 1997, Louisville Gas and Electric Company, tendered for filing a copy of a service agreement between Louisville Gas and Electric Company and AYP Energy under Rate GSS.

Comment date: September 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. South Carolina Electric & Gas Company

[Docket No. ER97–4261–000]

Take notice that on August 19, 1997, South Carolina Electric & Gas Company (SCE&G) submitted service agreements establishing Ohio Edison Company (OEC), New York State Electric & Gas Corporation (NYSE&G), Equitable Power Services Co. (EPS) and VTEC Energy, Inc. (VTEC), as customers under the terms of SCE&G's Open Access Transmission Tariff.

SCE&G requests an effective date of one day subsequent to the filing of the service agreements. Accordingly, SCE&G requests waiver of the Commission's notice requirements. Copies of this filing were served upon OEC, NYSE&G, EPS, VTEC, and the South Carolina Public Service Commission.

Comment date: September 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Wisconsin Public Service Corporation

[Docket No. ER97–4262–000]

Take notice that on August 19, 1997, Wisconsin Public Service Corporation (WPSC), tendered for filing executed Transmission Service Agreements between WPSC and Kansas City Power & Light Company. The Agreements provide for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11.

Comment date: September 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

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, 888 First 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. 97–24216 Filed 9–11–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2379–000, et al.]

Minnesota Power & Light Company, et al., Electric Rate and Corporate Regulation Filings

September 5, 1997.

Take notice that the following filings have been made with the Commission:

1. Minnesota Power & Light Company

[Docket No. ER97–2379–000]

Take notice that on August 29, 1997, Minnesota Power & Light Company tendered for filing an amendment in the above-referenced docket.

Comment date: September 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. MidAmerican Energy Company

[Docket No. ER97–2993–000]

Take notice that on August 11, 1997, MidAmerican Energy Company tendered for filing an amendment in the above-referenced docket.

Comment date: September 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Virginia Electric and Power Company

[Docket No. ER97–3659–000]

Take notice that on August 13, 1997, Virginia Electric and Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: September 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. The Detroit Edison Company

[Docket No. ER97–4216–000]

Take notice that on August 15, 1997, The Detroit Edison Company (Detroit

Edison), tendered for filing a Service Agreement for wholesale power sales transactions (the Service Agreement) under Detroit Edison's Wholesale Power Sales Tariff (WPS–2), FERC Electric Tariff No. 3 (the WPS–2 Tariff), between Detroit Edison and Sonat Power Marketing L.P., dated as of August 7, 1997. Detroit Edison requests that the Service Agreement be made effective as of August 7, 1997.

Comment date: September 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. The Detroit Edison Company

[Docket No. ER97–4217–000]

Take notice that on August 15, 1997, The Detroit Edison Company (Detroit Edison), tendered for filing a Service Agreement for wholesale power sales transactions (the Service Agreement) under Detroit Edison's Wholesale Power Sales Tariff (WPS–2), FERC Electric Tariff No. 3 (the WPS–2 Tariff), between Detroit Edison and Delhi Energy Services, Inc., dated as of August 7, 1997. Detroit Edison requests that the Service Agreement be made effective as of August 7, 1997.

Comment date: September 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. The Detroit Edison Company

[Docket No. ER97–4218–000]

Take notice that on August 15, 1997, The Detroit Edison Company (Detroit Edison), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service between Detroit Edison Transmission Operations and Commonwealth Edison Company under the Joint Open Access Transmission Tariff of Consumers Energy Company and Detroit Edison, FERC Electric Tariff No. 1, dated as of July 2, 1997. Detroit Edison requests that the Service Agreement be made effective as of August 11, 1997.

Comment date: September 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. IES Utilities, Inc.

[Docket No. ER97–4219–000]

Take notice that on August 15, 1997, IES Utilities, Inc., submitted for filing a transmission service agreement to provide non-firm transmission service under its open access transmission tariff for Sonat Power Marketing L.P.

Comment date: September 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. IES Utilities, Inc.

[Docket No. ER97–4220–000]

Take notice that on August 15, 1997, IES Utilities, Inc., submitted for filing a transmission service agreement to provide non-firm transmission service under its open access transmission tariff for Industrial Energy Applications, Inc.

Comment date: September 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. IES Utilities, Inc.

[Docket No. ER97–4221–000]

Take notice that on August 15, 1997, IES Utilities, Inc., submitted for filing transmission service agreements to provide non-firm transmission service under its open access transmission tariff for the following entities:

Heartland Energy Services
InterCoast
J. Power
AES Power Inc.
Illinois Power
Wisconsin Power & Light
Electric Clearinghouse, Inc.
Tennessee Power Company (TPCO)
Delhi Energy Services, Inc.
MidAmerican Energy Company
Wisconsin Electric Power Company
Minnesota Power
Western Gas Resources Power Marketing, Inc.
WPS Energy Services Inc.
Union Electric Company
Aquila Power Corporation
PacifiCorp
PECO Energy Company

Comment date: September 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Cinergy Services, Inc.

[Docket No. ER97–4223–000]

Take notice that on August 15, 1997, Cinergy Services, Inc., (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Florida Power Corporation (Florida).

Cinergy and Florida are requesting an effective date of August 15, 1997.

Comment date: September 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Northeast Utilities Service Company

[Docket No. ER97–4224–000]

Take notice that on August 15, 1997, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with Unitil Resources Inc. (URI), under the NU System Companies' System Power Sales/Exchange Tariff No. 6.

NUSCO states that a copy of this filing has been mailed to URI.

NUSCO requests that the Service Agreement become effective October 1, 1997.

Comment date: September 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Northeast Utilities Service Company

[Docket No. ER97–4225–000]

Take notice that on August 15, 1997, Northeast Utilities Service Company (NUSCO), on behalf of its operating affiliates, The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company, Holyoke Power and Electric Company and Public Service Company of New Hampshire, tendered for filing a Service Agreement with Aquila Power Corporation (Aquila) under the Northeast Utilities System Companies' Sale for Resale Tariff No. 7 Market Based Rates. NUSCO requests an effective date of September 1, 1997.

NUSCO states that a copy of its submission has been mailed or delivered to Aquila.

Comment date: September 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Cinergy Services, Inc.

[Docket No. ER97–4226–000]

Take notice that on August 15, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Duke Energy Trading and Marketing, L.L.C. (Duke).

Cinergy and Duke are requesting an effective date of August 15, 1997.

Comment date: September 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Cinergy Services, Inc.

[Docket No. ER97–4227–000]

Take notice that on August 15, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Florida Power Corporation (Florida).

Cinergy and Florida are requesting an effective date of August 15, 1997.

Comment date: September 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Wisconsin Power and Light Company

[Docket No. ER97–4228–000]

Take notice that on August 15, 1997, Wisconsin Power and Light Company (WP&L), tendered for filing Form Of Service Agreements for Firm and Non-Firm Point-to-Point Transmission Service establishing Entergy Power Marketing Corp., as a point-to-point transmission customer under the terms of WP&L's transmission tariff.

WP&L requests an effective date of August 6, 1997, and, accordingly, seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: September 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Cinergy Services, Inc.

[Docket No. ER97–4229–000]

Take notice that on August 15, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Allegheny Power (Allegheny).

Cinergy and Allegheny are requesting an effective date of August 10, 1997.

Comment date: September 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Northwestern Public Service Company

[Docket No. ER97–4230–000]

Take notice that on August 15, 1997, Northwestern Public Service Company (NWPS), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Services by and between Northwestern Public Service and Southern Energy Trading and Marketing, Inc., and a Service Agreement for Non-Firm Point-to-Point Transmission Services by and between Northwestern Public Service and Northwestern Public Service.

Copies of the filing were served upon NWPS's wholesale electric customers, interested public bodies, and all parties previously requesting copies.

Comment date: September 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Rochester Gas and Electric Corporation

[Docket No. ER97–4231–000]

Take notice that on August 15, 1997, Rochester Gas and Electric Corporation (RG&E), filed a Transaction Agreement between RG&E and Williams Energy Services Company (Customer). The Transaction Agreement involves RG&E selling off-peak capacity and energy to the Customer.

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of July 1, 1997, for the Williams Energy Services Company Transaction Agreement. RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: September 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Rochester Gas and Electric Corporation

[Docket No. ER97–4232–000]

Take notice that on August 15, 1997, Rochester Gas and Electric Corporation (RG&E) filed a Service Agreement between RG&E and the Energy Transfer Group, L.L.C. (Customer). This Service Agreement specifies that the Customer has agreed to the rates, term and conditions of RG&E's FERC Electric Rate Schedule, Original Volume No. 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER94–1279–000, as amended by RG&E's December 31, 1996, filing in Docket No. OA97–243–000(pending).

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of July 28, 1997, for the Energy Transfer Group, L.L.C., Service Agreement. RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: September 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. New York State Electric & Gas Corporation

[Docket No. ER97–4233–000]

Take notice that on August 18, 1997, New York State Electric & Gas Corporation (NYSEG), filed a Service Agreement between NYSEG and the New York Power Authority (Customer). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of the NYSEG open access transmission tariff filed and effective on May 28, 1997, with revised sheets effective on June 11, 1997, in Docket No. OA97–571–000 and OA96–195–000.

NYSEG requests waiver of the Commission's sixty-day notice requirements and an effective date of July 17, 1997, for the New York Power Authority Agreement. NYSEG has served copies of the filing on The New York State Public Service Commission and on the Customer.

Comment date: September 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation, Power Authority of the State of New York, New York Power Pool

[Docket No. ER97–4234–000]

Take notice that on August 15, 1997, six of the Member Systems of the New York Power Pool (NYPP), Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation, filed an application for market-based rate authority for energy, installed capacity, and ancillary services and certain market power analyses. The application indicates that on January 31, 1997, the eight member systems of NYPP filed a comprehensive proposal to establish an Independent System Operator (New York ISO or NYISO), and related institutions that will foster a fully competitive wholesale electricity market in New York. According to the applicants, the January 31, filing announced that requests for market-based pricing authority under the new proposed market structure in New York would be filed separately. Applicants state that this supplemental filing supports the market-based pricing authority requested by six of the Member Systems.

Comment date: September 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. The Montana Power Company

[Docket No. ER97–4238–000]

Take notice that on August 18, 1997, The Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 Firm Point-to-Point Transmission Service Agreements with PacifiCorp and Powerex under FERC Electric tariff, First Revised Volume No. 5 (Open Access transmission Tariff).

A copy of the filing was served upon PacifiCorp and Powerex.

Comment date: September 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Louisville Gas and Electric Co.

[Docket No. ER97–4239–000]

Take notice that on August 18, 1997, Louisville Gas and Electric Company, tendered for filing a copy of a service agreement between Louisville Gas and Electric Company and The Power Company of America under Rate GSS.

Comment date: September 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Granger Energy, L.L.C.

[Docket No. ER97–4240–000]

Take notice that on August 18, 1997, Granger Energy, L.L.C. (Granger), petitioned the Commission for acceptance of Granger's Rate Schedule FERC Tariff No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market based rates; and waiver of certain Commission Regulations.

Comment date: September 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Puget Sound Energy, Inc.

[Docket No. ER97–4241–000]

Take notice that on August 18, 1997, Puget Sound Energy, Inc., tendered for filing an unexecuted Interconnection Agreement with the Public Hospital District No. 1 of King County, doing business as Valley Medical Center (Valley Medical Center). A copy of the filing was served on Valley Medical Center. PSE states that the Interconnection Agreement establishes the terms and conditions of interconnection during the Test Period.

Comment date: September 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Minnesota Power & Light Company

[Docket No. ER97–4244–000]

Take notice that on August 18, 1997, Minnesota Power & Light Company tendered for filing signed Service Agreements with

CMS Marketing, Services and Trading
Equitable Power Services Company
Madison Gas & Electric Company
NIPSCO Energy Services, Inc.
PacifiCorp
PECO Energy Company—Power Team
Southern Minn Municipal Power Agency
Williams Energy Services

under its Non-Firm Point-to-Point Transmission Service to satisfy its filing requirements under this tariff.

Comment date: September 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Midwest Energy, Inc.

[Docket No. ER97–4245–000]

Take notice that on August 18, 1997, Midwest Energy, Inc. (Midwest), tendered for filing with the Federal Energy Regulatory Commission the Service Agreement for Non-Firm Point-to-Point Transmission Service entered into between Midwest and PECO Energy Company—Power Team.

Midwest states that it is serving copies of the instant filing to its customers, State Commissions and other interested parties.

Comment date: Septmeber 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. Valley Electric Association Inc.

[Docket No. ES97–46–000]

Take notice that on August 29, 1997, Valley Electric Association, Inc. (Valley) submitted an application seeking authorization under Section 204(a) of the Federal Power Act, 16 U.S.C. § 824c(a)(1994), to issue debt in the amount of $35 million, in the form of a series of loans from the National Rural Utilities Cooperative Finance Corporation (CFC). Proceeds of the loans, which will be advanced commencing with Commission approval of this application, will be used to complete the construction and improvement of transmission, distribution and other electrical facilities. Valley also seeks a waiver of the Commission's competitive placement requirements.

Comment date: September 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

29. Northeast Utilities Service Company

[Docket Nos. OA96–19–001; OA97–300–000; and ER97–1359–000]

Take notice that on August 15, 1997, Northeast Utilities Service Company (NUSCO), on behalf of the Northeast Utilities (NU) System Companies, tendered for filing revisions to the NU System Companies' Open Access Transmission Service Tariff No. 9 in compliance with the Commission's July 31, 1997 order in *Allegheny Power System, Inc. et al,* 80 FERC ¶ 61,143 (1997).

Comment date: September 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

30. Wisconsin Power & Light Company

[Docket No. OA96–20–002]

Take notice that on August 15, 1997, Wisconsin Power & Light Company (WPL) tendered for filing its compliance filing in the above-captioned docket.

Comment date: September 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

31. Central Illinois Light Company

[Docket No. OA96–36–001]

Take notice that Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61602, on August 15, 1997, tendered for filing with the Commission an Index of Open Access Transmission Service Agreements in compliance with the Commission's July 31, 1997 order.

Copies of the filing were served on the affected customers and the Illinois Commerce Commission.

Comment date: September 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

32. Montana-Dakota Utilities Company

[Docket No. OA96–40–002]

Take notice that on August 15, 1997, Montana-Dakota Utilities Company tendered for filing its compliance filing in the above-referenced docket.

Comment date: September 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

33. Florida Power Corporation

[Docket No. OA96–73–001]

Take notice that on August 15, 1997, Florida Power Corporation tendered for filing revised tariff sheets and indices of its service agreements in compliance with the Commission's order in Allegheny Power System, Inc., 80 FERC ¶ 61,143 (1997).

Comment date: September 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

34. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. OA96–114–001]

Take notice that on August 15, 1997, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (doing business as GPU Energy) made a filing in compliance with the Commission's Orders issued in this docket on January 29, 1997 and July 31, 1997.

Comment date: September 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

35. Southern Indiana Gas & Electric Company

[Docket No. OA96–117–001]

On August 15, 1997 Southern Indiana Gas & Electric Company (SIGECO) submitted for filing in compliance with the Federal Energy Regulatory

Commission's July 31, 1997, blanket order issued in Docket Nos. OA96–18–000, et al.: (A) an index of all transmission customers served since July 9, 1996, under SIGECO's open access transmission compliance tariff, or revised tariff, which identifies the status of service agreements for each such indexed customer; (B) forms of service agreements for the services SIGECO provides to itself under its own compliance tariff (including transactions that support power sales); and (C) a request for an extension of time of a reasonable period to revise SIGECO's compliance tariff to separately offer and price individual ancillary services.

Comment date: September 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

36. IES Utilities, Inc.

[Docket No. OA96–125–001]

Take notice that on August 15, 1997, IES Utilities, Inc., tendered for filing an index of all customers served under its open access transmission tariff, and revised transmission tariff sheets, as required by the Commission in its Order On Compliance Tariff Rates and Generic Clarification of Implementation Procedures, 80 FERC ¶ 61,143 (1997).

Comment date: September 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

37. Portland General Electric Company

[Docket No. OA96–137–001]

Take notice that on August 15, 1997, Portland General Electric Company (PGE) tendered for filing a substitute revised tariff sheet to its open access transmission tariff (PGE–8) as ordered by the Commission in Docket No. OA96–18–000, *et al.*, and submitted various other documents in compliance with same order. The substitute revised tariff sheet reflects a change to PGE's language in Attachment J, Calculation of Opportunity Costs. In addition, PGE tendered for refiling substitute revised tariff sheets to Sections 1.44 and 14.7 of PGE–8 as ordered by the Commission in Docket No. OA96–159–000, *et al.*

PGE respectfully requests that the Commission grant a waiver of the applicable notice requirements of 18 CFR Section 35.3 to allow the revised tariff sheets to become effective July 9, 1996, as ordered in OA96–18–000, *et al.*

Copies of this filing were served upon entities noted in the filing letter.

Comment date: September 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

38. Atlantic City Electric Company

[Docket No. OA96–159–002]

Take notice that on August 15, 1997, Atlantic City Electric Company (Atlantic Electric) revised its open access transmission service tariff to comply with the Commission's July 31, 1997, order in *Allegheny Power System, Inc.*, Docket No. OA96–18–000, *et al.*

Comment date: September 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

39. Cinergy Services, Inc., The Cincinnati Gas Electric & Co. and PSI Energy, Inc.

[Docket No. OA96–169–001]

Take notice that on August 15, 1997, Cinergy Services, Inc. (Cinergy), on behalf of The Cincinnati Gas & Electric Company and PSI Energy, Inc., filed its compliance filing in the above-captioned docket.

Comment date: September 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

40. Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, Southwestern Electric Power Company

[Docket No. OA96–185–001]

Take notice that on August 15, 1997, Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, and Southwestern Electric Power Company (collectively, the CSW Operating Companies) tendered a filing to comply with the Commission's July 31, 1997, order in *Allegheny Power System, Inc.*, Docket No. OA96–18–000, *et al.*

The CSW Operating Companies state that a copy of the filing has been served on all parties to Docket No. OA97–24–000 and the Public Utility Commission of Texas, the Louisiana Public Service Commission, the Oklahoma Corporation Commission, and the Arkansas Public Service Commission.

Comment date: September 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

41. Ohio Valley Electric Corporation; and Indiana-Kentucky Electric Corp.

[Docket No. OA96–190–001]

Take notice that on August 15, 1997, Ohio Valley Electric Corporation and its wholly-owned subsidiary, Indiana-Kentucky Electric Corporation (together, the OVEC System) tendered for filing amended versions of two schedules to their Open Access Transmission Tariff (the Revised Schedules).

As required by the Commission's order in *Allegheny Power Sys., Inc. et al.*, 80 FERC ¶ 61,143 (1997), the Revised Schedules amend the OVEC System's Open Access Transmission Tariff to separately state charges for (i) scheduling, system control and dispatch service and (ii) reactive supply and voltage control from generation sources service. The requested effective date of the Compliance Tariff is October 14, 1997, sixty (60) days after the date of the OVEC System's filing.

Copies of the filing were served upon the OVEC System's jurisdictional customers and upon each state public service commission that, to the best of the OVEC System's knowledge, has retail rate jurisdiction over such customers.

Comment date: September 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

42. Otter Tail Power Company

[Docket No. OA96–192–003]

Take notice that on August 15, 1997, Otter Tail Power Company (OTP) tendered for filing on behalf of itself a compliance filing listing service agreements filed under its Open Access Transmission Tariff in compliance with a Order on Compliance Tariff Rates and Generic Clarification of Implementation Procedures issued July 31, 1997.

OTP states that copies of this filing have been served on the Minnesota Public Utilities Commission, the North Dakota Public Service Commission, the South Dakota Public Service Commission and the Wisconsin Public Service Commission and all customers which are requirements customers.

Comment date: September 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

43. Northwestern Public Service Company

[Docket No. OA96–207–001]

Take notice that Northwestern Public Service Company (NWPS) on August 15, 1997, tendered for filing a Revised Index of Point to Point Transmission Service Customers for NWPS's FERC Open Access Transmission Tariff.

Copies of the filing were served upon NWPS's wholesale electric customers, interested public bodies, and all parties previously requesting copies.

Comment date: September 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

44. Consumers Energy Company

[Docket No. OA97–249–001]

Take notice that on August 15, 1997, the Consumers Energy Company/The Detroit Energy Company tendered for filing an index of all customers served under its joint open access transmission

tariff as required by the Commission in its Order On Compliance Tariff Rates and Generic Clarification of Implementation Procedures, 80 FERC ¶ 61,143 (1997).

Comment date: September 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

45. New Century Services, Inc.

[Docket No. OA97–691–001]

Take notice that on August 15, 1997, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company, filed a compliance open access transmission tariff in accordance with the Order on Compliance Tariff Rates and Generic Clarification of Implementation Procedures (Order) issued in Docket Nos. OA96–18–000, et al., issued on July 31, 1997.

Comment date: September 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

46. Mid-Georgia Cogen L.P.

[Docket No. QF96–26–001]

On August 19, 1997, Mid-Georgia Cogen L.P.(Applicant), c/o GPU International, Inc., One Upper Pond Road, Parsippany, New Jersey 07054, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to Section 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 323 MW natural gas-fired, topping-cycle cogeneration facility is located near Cathleen, Houston, Georgia. The Commission previously certified the facility as a qualifying cogeneration facility in Mid-Georgia Cogen, L.P., 74 FERC ¶ 62,162 (1996). According to the application, the instant recertification is requested to assure that the facility will remain a qualifying facility following a change in the ownership of Mid-Georgia Cogen L.P.

Comment date: September 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

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, 888 First 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. 97–24215 Filed 9–11–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2584–003 New York]

Rochester Gas & Electric Corp.; Notice of Availability of Final Environmental Assessment

September 8, 1997.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for new license for the Station 26 Hydroelectric Project, located on the Genesee River, in City of Rochester, Monroe County, New York, and has prepared a Final Environmental Assessment (FEA) for the project.

Copies of the FEA are available in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–24184 Filed 9–11–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–656–000]

Texas Gas Transmission Corporation; Notice of Intent To Prepare an Environmental Assessment for the Proposed North Louisiana Expansion Project and Request for Comments on Environmental Issues

September 8, 1997.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of an additional 4,600 horsepower (hp) of compression at the existing Haughton Compression Station, proposed in the North Louisiana Expansion Project.[1] This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

Summary of the Proposed Project

Texas Gas Transmission Corporation (Texas Gas) proposes to expand the capacity of its facilities in Louisiana to transport an additional 105,000 million British thermal units per day of firm natural gas service to a new customer. Texas Gas seeks authority to construct and operate a 4,600 hp Dresser-Rand reciprocating compressor unit and associated equipment at its existing Haughton Compressor Station in Bossier Parish, Louisiana.

The location of the project facilities is shown in appendix 1.[2] If you are interested in obtaining procedural information, please write to the Secretary of the Commission.

Land Requirements for Construction

Texas Gas owns the 28.54 acre Haughton Compressor Station site. Construction and operation of the proposed project would require a total of 10.5 acres, all of which would be within the existing site.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are

[1] Texas Gas Transmission Corporation's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's Regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Water resources, fisheries and wetlands
- Vegetation and wildlife
- Endangered and threatened species
- Public safety
- Land use
- Curtural resources
- Air quality and noise
- Hazardous waste

We will also evaluate possible alternatives to the proposed project and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

Currently Identified Environmental Issues

We have already identified one issue that we think deserves attention based on a preliminary review of the proposed facilities and the environmental information provided by Texas Gas. Additional issues may be included based on your comments and our analysis.

- Noise levels at the nearest noise-sensitive areas would exceed a day-night sound level of 55 dBA (decibels of the A-weighted scale) with the construction of the additional compressor unit.

Also, we have made a preliminary decision to not address the impacts of the nonjurisdictional facilities. We will briefly describe their location and status in the EA.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.2;
- Reference Docket No. CP97–656–000; and
- Mail your comments so that they will be received in Washington, DC on or before October 6, 1997.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an ''intervenor.'' Among other things, intervenors have the right to receive copies of case-related Commission documents and filing by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your comments considered.

Lois D. Cashell,

Secretary.

[FR Doc. 97–24181 Filed 9–11–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders; Week of July 28 Through August 1, 1997

During the week of July 28 through August 1, 1997, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: September 3, 1997.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 44—Week of July 28 Through August 1, 1997

Appeals

The Cincinnati Enquirer, 7/29/97, VFA–0307

The Cincinnati Enquirer (Appellant) filed an Appeal concerning its request under the Freedom of Information Act (FOIA). The Appellant had requested documentation for all sole-source contracts at the Fernald Environmental Management Project (FEMP). The DOE's Ohio Field Office (DOE/OFO) released some documents but found that other documents were owned by FEMP's management and operating contractor, Fluor Daniel Fernald (FDF). On appeal, the Appellant argued that FDF is an agency and that the withheld documents are agency records. The DOE rejected both of these arguments and found that the documents were not subject to release under DOE regulations. Accordingly, the Appeal was denied.

Personnel Security Hearings

Personnel Security Hearing, 7/31/97 VSO–0146

An Office of Hearings and Appeals Hearing Officer issued an opinion regarding the eligibility of an individual employed by a contractor at a DOE facility to maintain an access authorization under the provisions of 10 CFR Part 710. The individual's access authorization had been suspended because the individual had consumed alcohol habitually to excess in the past. The Hearing Officer found that the individual had mitigated the concerns raised by the DOE with respect to his alcohol use by presenting documentary and testimonial evidence indicating that

his alcohol problem was in remission and that he did not need further rehabilitation. Accordingly, the Hearing Officer recommended that the individual's access authorization be restored.

Personnel Security Hearing, 7/30/97 VSO–0152

An Office of Hearings and Appeals Hearing Officer issued an Opinion under 10 CFR Part 710 concerning the continued eligibility of an individual to hold an access authorization. The Hearing Officer found that the individual: (1) Had deliberately misrepresented, falsified, or omitted significant information during a personnel security interview, in responding to an official inquiry on a matter regarding his eligibility for DOE access authorization; (2) had a mental condition of a nature which caused, and may continue to cause, a significant defect in judgment or reliability; and (3) had engaged in unusual conduct which tended to show that the individual is not honest, reliable, or trustworthy. The Hearing Officer further found that the individual had failed to mitigate the legitimate security concerns of DOE relating to these matters. Accordingly, the Hearing Officer recommended that the individual's access authorization, which had been suspended, not be restored.

Motion for Reconsideration

Greenville Automatic Gas Co., Inc., 7/30/97 VER–0002

Greenville Automatic Gas Co., Inc. filed a Motion for Reconsideration of a Decision denying its Application for Exception from the Energy Information Administration requirement that it file Form EIA–782B, the ''Resellers'/ Retailers'' Monthly Petroleum Product Sales Report.'' In considering Greenville's Motion, the DOE found that the firm had not demonstrated that completing the form would cause it to experience a serious hardship or gross inequity. Accordingly, the Motion for Reconsideration was denied.

Refund Application

Chesebrough-Pond's USA Co., 7/29/97 RF272–97101

The DOE issued a Decision and Order considering an Application for Refund in the crude oil overcharge proceeding filed by Chesebrough-Pond's USA Co. (CP). The DOE rejected a refund claim based on CP's purchases of petrolatum, finding that the firm did nothing more than heat and cool that substance in order to turn it into Vaseline. As such, the DOE found that CP was a reseller of petrolatum and not an end-user. The DOE did approve the firm's refund request based on purchases of motor gasoline and motor oil that it used in its vehicles. The total refund granted was $930,063.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

CAPELETTI BROTHERS, INC. ET AL	RF272–98602	7/30/97
COLTRANS, INC	RA272–78	7/30/97
ENRON CORPORATION/NEBRASKA PUBLIC POWER DIST	RF340–196	7/29/97
UNITED LP GAS CORPORATION	RF340–201	

Dismissals

The following submissions were dismissed.

Name	Case No.
CITIZEN ACTION	VFA–0320
DEGUSSA CORPORATION	RG272–00577
DUVAL ASPHALT PRODUCTS INC.	RG272–00574
HAARMANN & REIMER CORP.	RG272–00575
PERSONNEL SECURITY HEARING	VSO–0160
PERSONNEL SECURITY HEARING	VSO–0165
PERSONNEL SECURITY HEARING	VSO–0169
SANDORE LANE GARDENS	RG272–00576
ST. AUGUSTINE TRAWLERS, INC.	RF272–57064

[FR Doc. 97–24222 Filed 9–11–97; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5891–7]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Collection of Economic and Regulatory Impact Support Data Under RCRA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: ''Collection of Economic and Regulatory Impact Support Data Under RCRA,'' OMB No. 2050–0136, expiring 10/31/97. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 14, 1997.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 1641.02.

SUPPLEMENTARY INFORMATION:

Title: ''Collection of Economic and Regulatory Impact Support Data Under RCRA,'' (OMB Control No. 2050–0136; EPA ICR No. 1641.02) expiring 10/31/97. This is a request for extension of a currently approved collection.

Abstract: EPA's Office of Solid Waste (OSW) is requesting renewal for a generic clearance to collect economic and regulatory impact data through surveys, interviews, or focus group meetings with industry or other parties

in support of the Resource Conservation and Recovery Act (RCRA) rulemaking actions. RCRA , as amended by the Hazardous and Solid Waste Amendments, requires EPA to establish a national regulatory program to ensure that hazardous waste is managed in a manner protective of human health and the environment. EPA is authorized under section 2002 and 3007 of RCRA to collect information from industry and other parties when necessary to carry out its regulatory responsibilities. The information collected will be used to assess the costs and benefits of various potential regulatory and nonregulatory actions. Executive Order 12866 specifies that all administrative decisions shall be based on adequate information concerning the need for and consequences of proposed government action. To this end, Executive Order No. 12866 requires the preparation and evaluation of an assessment of costs and benefits for all proposed regulatory actions determined to be significant. This generic clearance simplifies the authorization process to develop and administer surveys, interviews and focus group meetings and provides OSW with the flexibility needed to conduct information collection in a rapid and efficient manner. An important element in preparing an Economic Impact Analysis (EIA) may include the administration of surveys, interview and focus group meetings to obtain data from the regulated community and other interested parties. OSW often needs to collect such information and perform analysis over a short time frame. It is for this reason that the Agency is currently requesting renewal of this Information Collection Request (ICR).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 4/30/97 (FRL–5819–2); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 12 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Hazardous waste generators, scientists, industry experts, and treatment storage and disposal facilities.

Estimated Number of Respondents: 1000.

Frequency of Response: 1 .

Estimated Total Annual Hour Burden: 12,000 hours.

Estimated Total Annualized Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1641.02 and OMB Control No. 2050–0136 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA 725 17th Street, NW, Washington, DC 20503.

Dated: September 8, 1997.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 97–24243 Filed 9–11–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5891–3]

Fort Peck Assiniboine and Sioux Tribes in Montana; Underground Injection Control; Primacy Application

AGENCY: Environmental Protection Agency.

ACTION: Notice of public comment period and of public hearing.

SUMMARY: The purpose of this notice is to announce that: the Environmental Protection Agency (''EPA'') has received a submission of a proposed underground injection control (''UIC'') program for Class II (oil and gas related) injection wells from the Fort Peck Assiniboine and Sioux Tribes (''Tribes'') in Montana; the EPA has determined that the Tribes' submission is complete; the submission is available to the public for inspection and copying; the EPA requests public comment on the Tribes' application; and the EPA has scheduled a public hearing regarding the Tribes' application.

DATES: The public hearing will be held on Thursday, October 16, 1997. The EPA asks that any requests to speak at this hearing be submitted by Wednesday, October 8, 1997. All written comments on this application must be received by Friday, October 24, 1997.

ADDRESSES: The hearing will be held on the Fort Peck Indian Reservation in the Cultural Center, Highway 2, Poplar, Montana, at 7 p.m. Written comments regarding the Tribes' application and requests to speak at the hearing should be mailed to Douglas K. Minter, Ground Water Unit (8P2–W–GW), Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202–2466, by the deadlines provided above. Copies of the application and pertinent materials are available between 8:30 a.m. and 4:00 p.m. Monday through Friday at the following locations:

Environmental Protection Agency, Region VIII, Ground Water Unit, 4th Floor Terrace, 999 18th Street, Denver, CO 80202–2466, PH: 303 312–6079.

Fort Peck Tribal Offices, 605 Indian Avenue, Poplar, MT 59255, PH: 406–768–5155.

Environmental Protection Agency, Region VIII, Montana Office Building, Federal Office Building, 301 S. Park, Helena, MT 59626–0096, PH: 406–441–1140.

FOR FURTHER INFORMATION CONTACT: Douglas K. Minter, Ground Water Unit (8P2–W–GW), Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, CO 80202–2466, (303) 312–6079.

SUPPLEMENTARY INFORMATION: The UIC program was implemented to prevent contamination of all underground sources of drinking water (USDWs). These are aquifers capable of yielding a significant amount of water containing less than 10,000 mg/liter of total dissolved solids, that have not been exempted under the provisions of 40 CFR 146.4. (See 40 CFR 144.3.)

One potential source of USDW contamination is a type of injection well known as a Class II underground

injection well. Class II wells dispose (via injection) of fluids that are brought to the surface in connection with natural gas storage operations or primary oil or natural gas development and production. These fluids may be commingled with waste waters from gas plants which are an integral part of production operations, unless these fluids are classified as a hazardous waste at the time of production. Class II wells also may inject fluids for enhanced recovery of oil or natural gas or for storage of hydrocarbons which are liquid at standard temperature and pressure. (See 40 CFR Section 144.6.)

If the application by the Fort Peck Tribes is approved, the Tribes would be responsible for regulating injection into Class II wells. The program described in the Tribes' application would require that any injection into Class II wells be done in compliance with Tribally-issued permits, which will include technical requirements for the protection of USDWs. These requirements include criteria for construction, testing, operation, monitoring, and abandonment of Class II injection wells. At present, there are approximately 28 Class II injection wells on the Fort Peck Indian Reservation.

The EPA has held primary enforcement authority for the UIC program on the Fort Peck Indian Reservation in Montana since the program was implemented in 1984. If the Tribes' application is approved, the Tribes would assume primary enforcement authority (except for the authority to take criminal actions against non-Indians, which the EPA would retain) for the regulation of all Class II injection wells on all lands within the exterior boundaries of the Fort Peck Indian Reservation. The EPA would retain regulatory and enforcement authority for all other classes of injection wells. However, the Tribes would not be prevented from implementing any more stringent enforcement program of their own for any type of injection wells.

The Tribes' submission includes a proposed Tribal Code, a program description, copies of all applicable rules and forms, statements from Tribal counsel, and a proposed memorandum of agreement between the EPA and the Tribes.

Dated: September 4, 1997.

Kerrigan G. Clough,

Assistant Regional Administrator, Office of Pollution Prevention, State and Tribal Assistance, Region VIII, U.S. Environmental Protection Agency.

[FR Doc. 97–24146 Filed 9–11–97; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5484–3]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or (202) 564–7153. Weekly receipt of Environmental Impact Statements filed September 2, 1997 through September 5, 1997 pursuant to 40 CFR 1506.9.

EIS No. 970350, Draft EIS, COE, CA, Upper Guadalupe River Feasibility Study, Flood Control Protection, Construction, National Economic Development Plan (NED), Santa Clara Valley Water District, City of San Jose, Santa Clara County, CA, Due: October 27, 1997, Contact: William DeJager (415) 977–8670.

EIS No. 970351, Draft EIS, BLM, NV, Olinghouse Mine Project, Construction of Two Open Pits, Waste Dump, Haul Road and Cyanide Heap Leach Pads, Plan-of-Operation, Carson City, Washoe County, NV, Due: November 14, 1997, Contact: Terri Knutson (702) 885–6156.

EIS No. 970352, Draft EIS, FHW, WA, NE 8TH/I–405 Interchange Project, Construction, Funding, Right-of-Way Use Permit and NPDES Stormwater Permit, City of Bellevue, King County, WA, Due: October 27, 1997, Contact: Gene Fong (425) 452–6827.

EIS No. 970353, Draft Supplement, COE, CA, Sacramento River Bank Protection Project, Implemention of Streambank Protection for the Lower American River between RM–0 and 13.7, Updated Information, City of Sacramento, Sacramento County, CA, Due: October 27, 1997, Contact: Matt Davis (916) 557–1534.

EIS No. 970354, Final EIS, AFS, WA, Long Draw Salvage Sale, Implementation, Okanogan National Forest, Tonasket Ranger District, Okanogan County, WA, Due: October 14, 1997, Contact: John Townsley (509) 826–3568.

EIS No. 970355, Final EIS, AFS, AZ, Eastern Roosevelt Lake Watershed Analysis Area Grazing Strategy and Associated Range Improvements Management Plan, Development and Implementation, Tonto National Forest, Tonto Basin Ranger District, Gila County, AZ, Due: October 14, 1997, Contact: Linny Warren (520) 467–3200.

EIS No. 970356, Final EIS, FHW, VA, DC, MD, Woodrow Wilson Bridge Improvement, I–95 from the Telegraph Road/Capital Beltway Interchange in Alexandria, VA to the MD–210/Capital Beltway Interchange in Oxon Hill, MD, Funding, Section 10 and 404 Permits and CGD Bridge Permit, Fairfax County, VA; Prince George's County, MD, and DC, Due: October 14, 1997, Contact: David C. Lawton (410) 962–0077.

Amended Notices

EIS No. 970290, Final EIS, FHW, CO, CO–82 Highway Transportation Project, Improvements to ''Entrance to Aspen'', Funding and COE Section 404 Permit, City of Aspen, Pitkin County, CO, Due: October 6, 1997, Contact: Ron Speral (303) 969–6737. Published FR–09–12–97—Review Period Reestablished.

Dated: September 9, 1997.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97–24240 Filed 9–11–97; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5892–2]

National Drinking Water Advisory Council Operator Certification Working Group; Notice of Open Meeting

Under section 10(a)(2) of Public Law 92–423, ''The Federal Advisory Committee Act,'' notice is hereby given that a meeting of the Operator Certification Working Group of the National Drinking Water Advisory Council, established under the Safe Drinking Water Act, as amended (42 U.S.C. S300f *et seq.*), will be held on September 22, 1997, from 10 a.m. to 5 p.m., and on September 23, 1997, from 9 a.m. to 5 p.m. in Meeting Room 4, at the Renaissance Washington D.C. Hotel, 999 9th Street, NW, Washington, DC. The meeting is open to the public to observe, but due to past experience, seating will be limited.

The purpose of this meeting is to discuss the key standards for a State operator certification program. The working group members are meeting to discuss and comment on proposed issue papers for deliberation by the advisory council. Statements from the public will

be taken at the end of the meeting if time allows.

For more information, please contact Richard Naylor, Designated Federal Officer, Operator Certification Working Group, U.S. EPA, Office of Ground Water and Drinking Water (4606), 401 M Street, SW, Washington, D.C. 20460. The telephone number is (202) 260–5135 and to e-mail address is naylor.richardopamail.epa.gov.

Dated: September 9, 1997.

Charlene Shaw,

Designated Federal Officer, National Drinking Water Advisory Council.

[FR Doc. 97–24238 Filed 9–11–97; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) Being Reviewed by the Federal Communications Commission

September 8, 1997.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before November 12, 1997. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 3060–0704.

Title: Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended, CC Docket No. 96–61.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 519.

Estimated Hour Per Response: 146 hours per response (average).

Frequency of Response: On occasion, annual one-time reporting requirement.

Cost to Respondents: $435,000.

Estimated Total Annual Burden: 75,895 hours.

Needs and Uses: In the Order on Reconsideration issued in CC Docket 96–61 (released 8/20/97), the Commission amended the collections adopted in the Second Report and Order in this proceeding.

a. Tariff cancellation requirement: In the Order on Reconsideration, the Commission concludes that, with two exceptions, the statutory forbearance criteria in Section 10 of the Communications Act, as amended, are met for the Commission no longer to require or allow nondominant interexchange carriers to file tariffs pursuant to Section 203 for their interstate, domestic, interexchange services. The Commission further concludes that nondominant interexchange carriers are allowed to file tariffs for: (1) Their interstate, domestic, interexchange direct-dial services to which end-users obtain access by dialing a carrier's carrier access code (dial-around 1+services), and (2) interstate, domestic, interexchange services provided by a nondominant interexchange carrier for the lesser period of the initial 45 days of service or until there is a written contract between the carrier and the customer, in those limited circumstances in which a prospective customer contacts the LEC to select an interexchange carrier or to initiate a change in his or her primary carrier. See 47 CFR Section 61.20.

In order to implement the Commission's detariffing policy, the Second Report and Order requires nondominant interexchange carriers to cancel their tariffs for interstate, domestic, interexchange services on file with the Commission within nine months of the effective date of that Order. That requirement, however, was not implemented by the carriers in light of the stay of the Second Report and Order, pending judicial review, entered by the United States Court of Appeals for the District of Columbia Circuit on February 13, 1997. The Order on Reconsideration provides that the Common Carrier Bureau will determine the appropriate transition period when the detariffing rules become effective. Nondominant interexchange carriers that have on file with the Commission tariff offerings that contain services subject to different tariffing requirements (*e.g.*, tariff offerings that include dial-around 1+services and service to new customers that contact the LEC to select an interexchange carrier or to initiate a change in their primary interexchange carrier, for which carriers are permitted to file tariffs, and tariff offerings that combine international services, which still must be tariffed, with interstate, domestic, interexchange services, which are detariffed), may comply with the Order on Reconsideration either by: (1) Cancelling the entire tariff and refiling a new tariff for only those services for which tariffs are required or permitted (519 respondents × 2 hours per page = 2504 annual burden hours); or (2) issuing revised pages cancelling the material in the tariffs that pertain to those services subject to forbearance (519 respondents × 2 hours per page = 72,094 burden hours).

b. Information disclosure requirement: The Order on Reconsideration eliminates the requirement that nondominant interexchange carriers make information on current rates, terms, and conditions for all of their interstate, domestic, interexchange services available to any member of the public in an easy to understand format and in a timely manner, for purposes of enforcing Section 254(g) of the Communications Act, as amended.

c. Recordkeeping requirement: In the Order on Reconsideration, the Commission affirms its conclusion in the Second Report and Order to require nondominant interexchange carriers to maintain at their premises price and service information regarding all of their interstate, domestic, interexchange service offerings that they can submit to the Commission upon request. The

Commission clarifies in the Order on Reconsideration that nondominant interexchange carriers should retain the documents supporting the rates, terms, and conditions of the carriers' interstate, domestic, interexchange offerings. Nondominant interexchange carriers are required to retain the foregoing records for a period of at least two years and six months following the date the carrier ceases to provide services on such rates, terms and conditions, in order to afford the Commission sufficient time to notify a carrier of the filing of a complaint, which generally must be filed within two years from the time the cause of action accrues (in the event a complaint is filed against a carrier, the carrier will be required to retain documents relating to the complaint until the complaint is resolved). See 47 CFR Section 42.11. Nondominant interexchange carriers are required to maintain the foregoing records in a manner that allows them to produce such records within ten business days of receipt of a Commission request, and to file with the Commission, and update as necessary, the name, address, and telephone number of the individual, or individuals, designated by the carrier to respond to Commission inquiries and requests for documents. The availability of such records will enable the Commission to meet its statutory duty of ensuring that such carriers' rates, terms, and conditions for service are just, reasonable, and not unreasonably discriminatory, and that these carriers comply with the geographic rate averaging and rate integration requirements of the 1996 Act. In addition, maintenance of such records will enable the Commission to investigate and resolve complaints. (519 respondents × 2 hours per response = 1038 annual burden hours).

d. Certification Requirement: In the Second Report and Order, the Commission adopted its proposal to require nondominant interexchange carriers to file certifications with the Commission stating that they are in compliance with their statutory geographic rate averaging obligations under Section 254(g) of the Communications Act, as amended. These providers must also file certifications with the Commission stating that they are in compliance with their statutory rate integration obligations under Section 254(g). See 47 CFR 64.1900. This requirement is reaffirmed in the Order on Reconsideration. (519 respondents × .05 hours per response = 259.5 annual burden hours).

The information collected under the tariff cancellation requirement must be disclosed to the Commission, and will be used to implement the Commission's detariffing policy. The information collected under the recordkeeping and other requirements will be used by the Commission to ensure that affected interexchange carriers fulfill their obligations under the Communications Act, as amended.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–24212 Filed 9–11–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday, September 16, 1997, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' meetings.

Report of actions taken pursuant to authority delegated by the Board of Directors.

Discussion Agenda

Memorandum re: Revised Strategic Plan.

Memorandum and resolution re: Proposal to Revise the Risk-Based Capital Treatment of Recourse and Direct Credit Substitutes.

Memorandum and resolution re: Part 325 Proposal to Revise the Regulatory Capital Treatment of Net Unrealized Gains on Equity Securities.

Memorandum and resolution re: Part 325 Final Rule Implementing Section 208 of the CDRI Act—Capital Requirement for Small Business Loans Transferred With Recourse.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2449 (Voice); (202) 416–2004 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: September 9, 1997.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 97–24323 Filed 9–9–97; 5:01 pm]

BILLING CODE 6714–01–M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Uniform Retail Credit Classification Policy

AGENCY: Federal Financial Institutions Examination Council.

ACTION: Notice and request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision (OTS) (collectively referred to as the agencies), under the auspices of the Federal Financial Institutions Examination Council (FFIEC), are requesting comment on changes to the 1980 Uniform Policy for Classification of Consumer Instalment Credit Based on Delinquency Status (1980 policy). The 1980 policy is used by the agencies for classifying retail credit loans of financial institutions on a uniform basis.

The FFIEC is currently reviewing the 1980 policy to determine where revisions may be necessary to more accurately reflect the changing nature of risk in today's retail credit environment. The preliminary results of this review indicate that revisions should include: a charge-off policy for open-end and closed-end credit; a classification policy for loans affected by bankruptcy, fraudulent activity, and/or death of a borrower; a prudent re-aging policy for past due accounts; and a classification policy for delinquent residential mortgage and home equity loans.

Before developing a revised policy statement for public comment, the FFIEC is first soliciting comments on: areas in the existing policy statement that may need to be revised; specific recommendations for changing the policy statement; data that would help quantify the financial or business impact on financial institutions if the existing policy was revised; and an estimate of the time frames necessary for

an institution to successfully implement the revisions. After reviewing the input received, the FFIEC will issue a revised policy statement for public comment that establishes clear guidance for the industry; is based on an informed and reasonable analysis of all available data; and satisfies the principles of sound and effective supervision.

DATES: Comments must be received by November 12, 1997.

ADDRESSES: Comments should be sent to Joe M. Cleaver, Executive Secretary, Federal Financial Institutions Examination Council, 2100 Pennsylvania Avenue NW, Suite 200, Washington, DC 20037 or by facsimile transmission to (202) 634–6556.

FOR FURTHER INFORMATION CONTACT:

FRB: William Coen, Supervisory Financial Analyst, (202) 452–5219, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson, (202) 452–3544, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551.

FDIC: James Leitner, Examination Specialist, (202) 898–6790, Division of Supervision. For legal issues, Michael Phillips, Counsel, (202) 898–3581, Supervision and Legislation Branch, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

OCC: Cathy Young, National Bank Examiner, Credit Risk Division, (202) 874–4474; Ron Shimabukuro, Senior Attorney, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency (202) 874–5090, 250 E Street SW, Washington, DC 20219.

OTS: William J. Magrini, Senior Project Manager, (202) 906–5744, Supervision Policy; Vern McKinley, Attorney, (202) 906–6241, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street NW, Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Background Information

On June 30, 1980, the FRB, FDIC, and OCC adopted the FFIEC uniform policy for classification of open-end and closed-end credit. The OTS adopted the policy in 1987. The policy was issued to establish uniform guidelines for the classification of instalment credit based on delinquency status. While the 1980 policy recognized the statistical validity of measuring losses predicated on past due status, the 1980 policy also permitted exceptions to the classification policy in situations where significant amounts were involved or when a loan was well secured and in the process of collection.

A fundamental objective of the 1980 policy is the timely recognition of losses as required by generally accepted accounting principles (GAAP). While the 1980 policy provides general guidance for a large segment of the retail credit portfolio, it does not provide supervisory guidance on loan charge-offs related to consumer bankruptcy, fraudulent activities, and accounts of decedents. Furthermore, no guidance is provided on the classification of delinquent residential mortgages and home equity loans. In light of the questionable asset quality of many of these accounts and the inconsistent way in which financial institutions report and charge-off these accounts, the FFIEC believes that additional supervisory guidance is necessary.

Request for Comments in the Following Areas

(1) Charge-off Policy for Open-End and Closed-End Credit

The agencies recognize the inconsistency between the level of risk associated with open-end and closed-end credit and the policy for charging-off delinquent accounts. Under the 1980 policy, open-end credit, which is generally unsecured, should be charged-off when an account is 180 days delinquent. Conversely, closed-end credit, which is normally secured by some type of collateral, is subject to a more stringent policy of 120 days delinquent before a loan is charged off. Over the years this inconsistency has become more apparent as the market for open-end credit evolved.

In 1980, open-end credit generally consisted of credit card accounts with small credit lines that limited the exposure an institution had to an individual borrower. In today's environment, open-end credit generally includes accounts with much larger lines of credit and higher risk levels. The change in the nature of these accounts, combined with the variety of charge-off practices examiners recently encountered, raised the concern of the agencies. To address this concern, the FFIEC is seeking public comment on whether a charge-off policy that is more consistent with the risk associated with open-end and closed-end accounts should be adopted and if so, what that policy should be. Specifically, the FFIEC requests comment on:

(1)(a) Should a uniform time frame be used to charge-off both open-end and closed-end accounts?

(1)(b) If so, what should that time frame be?

(1)(c) If a uniform time frame for both types of credit is not considered appropriate, what time frames are reasonable for charging off open-end credit and closed-end credit? Please explain.

(1)(d) If there was a change in the time frames for charging-off delinquent accounts, what is a reasonable time frame to allow institutions to comply with such a change?

(1)(e) Should the current regulatory practice be continued of classifying open-end and closed-end credit Substandard when the account is 90 days or more delinquent? If not, what alternative would you suggest? Please explain the benefits of a suggested alternative.

(1)(f) Should a standard for the Doubtful classification be adopted and, if so, what should be the standard and why?

(1)(g) Currently, no requirement exists to place retail credit loans on nonaccrual status. Should guidance for placing loans on a nonaccrual status be adopted and, if so, at how many days delinquent should open-end credit and closed-end credit be placed on a nonaccrual status?

(1)(h) An alternative to a requirement that accounts be charged-off after a designated delinquency is the creation of an allocated or specific reserve. Should the FFIEC require an allocated or specific reserve, and if so, when should it be established? Please discuss the advantages and disadvantages of such a proposal.

(2) Bankruptcy, Fraud, and Deceased Accounts

No FFIEC guidance exists for bankruptcy, fraud, and deceased accounts. The FFIEC believes guidance on these accounts is needed to ensure recognition of loss among regulated institutions is timely and consistent. Comment is requested on the need to provide such guidance and on the following more specific issues.

(2)(a) Should there be separate guidance for determining when an account should be charged-off for Chapter 7 bankruptcies and Chapter 13 bankruptcies? If so, what should that guidance be?

(2)(b) What event in the bankruptcy process should trigger loss recognition: the filing date, the date of notification to the creditor by the bankruptcy court that a borrower has filed for bankruptcy, the date that the bankruptcy trustee

meets with the creditors, or some other date? Please explain why one date is better than another.

(2)(c) How much time is needed by an institution to process the charge-off after any one of the bankruptcy events identified in question 2(a)?

(2)(d) As an alternative to an immediate charge off, would it be beneficial to set up a specific reserve account at the time of the filing and charge the loss to that reserve account at the bankruptcy discharge date? Please explain the pros and cons of this alternative.

(2)(e) Subsequent to notification, how much time is needed by an institution to charge-off losses due to loan fraud?

(2)(f) Subsequent to notification, how much time is needed by an institution to charge-off losses on loans to deceased borrowers?

(3) Partial Payments

The 1980 policy includes a provision that 90 percent of a contractual payment will be considered a full payment. However, if less than 90 percent is received, no recognition of any payment is given. The FFIEC is considering eliminating this policy provision and giving credit for any partial payments received. If such a change is adopted, a loan will be considered one month delinquent when the sum of the missed portions of the payments equals one full payment. A series of partial payments could result in accumulating delinquencies. For example, if a regular installment payment is $300 and the borrower makes payments of only $150 per month for a six-month period, the loan would be $900, or three full months delinquent.

(3)(a) Should borrowers receive credit for partial payments in determining delinquency using the method described? If so, would such a change require significant computer programming changes? Are there other reasonable alternatives?

(3)(b) If partial payments are allowed, how should the payment be applied?

(3)(b)(1) Pro rata, equally to principle and interest.

(3)(b)(2) First to principle, any remaining to interest.

(3)(b)(3) Other.

No guidance currently exists on fixed payment programs. Fixed payment accounts are accounts for which a payment plan (less than contractual) has been established as a result of credit counseling, bankruptcy proceedings, or direct negotiations.

(3)(c) Should the FFIEC adopt policy guidance on fixed payment programs? What should that guidance be?

(4) Re-Aging, Extension, Renewal, or Deferral Policy

Re-aging is the practice of bringing a delinquent account current after the borrower has demonstrated a renewed willingness and ability to repay the loan by making some, but not all, past due payments. A permissive re-aging policy on credit card accounts or an extension, renewal, or deferral policy on other types of retail credit can distort the true performance and delinquency status of individual accounts and the entire portfolio. Re-aging, extension, renewal, or deferral of delinquent loans is an acceptable practice when it is based on recent, satisfactory performance and other positive credit factors of the borrower and when it is structured in accordance with prudent internal policies. Institutions that re-age, extend, renew, or defer accounts should establish a reasonable policy and ensure that it is followed by adopting appropriate operating standards. While no FFIEC guidance currently addresses this issue, it is an area where uniform guidance is appropriate to protect against distortions in the performance of the consumer loan portfolio. The following standards are under consideration:

(4)(a) The borrower shows a renewed willingness and ability to repay the loan. Is this standard appropriate?

(4)(b) The borrower makes a certain number of contractual payments or the equivalent amount. How many payments are appropriate?

(4)(c) The loan can only be re-aged, extended, renewed, or deferred once within a specified time. What time frame is appropriate? Should there be a limit to the number of re-agings over the life of an account? If so, what should that limit be?

(4)(d) The account must be in existence for a certain period of time before it can be re-aged, extended, renewed, or deferred. What time period is appropriate?

(4)(e) The loan balance should not exceed the predelinquency credit limits (last limit approved by bank). Is this standard appropriate?

(4)(f) Other. What other standards should be considered?

(5) Residential and Home Equity Loans

No FFIEC uniform classification policy exists for residential and home equity loans. Since most of these loans are underwritten using uniform credit criteria, the FFIEC supports reviewing and classifying these portfolios on an aggregate basis. The FFIEC is considering the substandard classification based on delinquency status.

As the delinquency progresses, repayment becomes dependent on the sale of the real estate collateral. For collateral dependent loans, GAAP requires that any loan amount in excess of the collateral's fair value less cost to sell should be charged off, or that a valuation allowance be established for that excess amount. The FFIEC is considering requiring that an evaluation of the residential collateral be made within a prescribed delinquency time frame to determine fair value.

(5)(a) Should residential and home equity loans be classified substandard at a certain delinquency (similar to the time period used in open-end and closed-end credit)? If so, what should that delinquency be?

(5)(b) Should the FFIEC require a collateral evaluation at a certain delinquency? If so, what should that delinquency time frame be?

(6) Need for Additional Retail Credit Guidance

The FFIEC notes that classification policies are just one component of prudent loan portfolio management. Classification policies, by themselves, do not address potential problems or weaknesses that may exist in the origination and underwriting of such loans.

(6)(a) What type of additional supervisory guidance is needed or would be beneficial to address this or other aspects of retail credit portfolio management?

(6)(b) Should there be additional supervisory guidance on the loan loss reserve for retail credit?

(7) Industry Experience and Impact

The FFIEC welcomes comment on any other issues that it should consider in updating this policy. Additionally, the FFIEC would benefit from receiving financial institutions' data on their charge off and recovery experience rates for charged-off open-end credit, closed-end credit, loans in bankruptcy, fraudulent loans, or loans of deceased persons. The FFIEC is also interested in understanding the financial and business practice impact that these policy changes may have. Revisions to the 1980 policy may result in changes to the Call Report, which may require banks to make reporting system changes. If an institution's recommendations vary from current business practice, please provide an estimate of the programming costs or other costs that will be incurred to change the practice and report accurately. Some institutions have securitized and sold their loans, but such loans are still under institution

management. Please comment on how the FFIEC should treat such loans.

Dated: September 9, 1997.

Joe M.Cleaver,

Executive Secretary, Federal Financial Institutions Examination Council.

[FR Doc. 97–24235 Filed 9–11–97; 8:45 am]

BILLING CODE 4810–33–P, 6210–01–P, 6714–01–P, 6720–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 29, 1997.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Steven L. Voorhees, Harvard, Nebraska; to acquire voting shares of Harvard State Company, Harvard, Nebraska, and thereby indirectly acquire Harvard State Bank, Harvard, Nebraska.

Board of Governors of the Federal Reserve System, September 9, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–24265 Filed 9–11–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 9, 1997.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Olympian New York Corporation, Brooklyn, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Olympian Bank, Brooklyn, New York.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Albrecht Financial Services, Inc., Norwalk, Iowa; to acquire 100 percent of the voting shares of Heartland Bankshares, Inc., Madrid, Iowa, and thereby indirectly acquire City State Bank, Grimes, Iowa.

2. Mercantile Bank Corporation, Grand Rapids, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Mercantile Bank of West Michigan, Grand Rapids, Michigan (in organization).

C. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480-2171:

1. Rice Lake Bancorp, Inc., Rice Lake, Wisconsin; to acquire 100 percent of the voting shares of TALCO, Inc., Menomonie, Wisconsin, and thereby indirectly acquire Menomonie Shares, Inc., Menomonie, Wisconsin; Menomonie Financial Services, Inc., Menomonie, Wisconsin; and First Bank and Trust, Menomonie, Wisconsin.

Board of Governors of the Federal Reserve System, September 9, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–24264 Filed 9–11–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, September 17, 1997.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 2lst Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposals concerning reorganization of Federal Reserve Board functions.

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 10, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–24351 Filed 9–10–97; 12:00 pm]

BILLING CODE 6210–01–P

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: 080497 AND 081597

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
American Residential Services, Inc, Mark P. Shambaugh, Havel Bros., a Division of Shambaugh & Sons, Inc	97–2861	08/04/97
Caisse de depot et placement du Quebec, Andre Chagnon, OpTel, Inc	97–2866	08/04/97
Societe BIC S.A., Emildir Anstalt, a Swiss Trust, Sheaffer International	97–2889	08/04/97
360 Communications Company, 360 Communications Company, South Bend/Mishawaka MSA Limited Partnership	97–2920	08/04/97
DreamWorks L.L.C., SGW Holding Inc., Sega Gameworks, LLC	97–2925	08/04/97
Sega Enterprises, Ltd, SGW Holding Inc, Sega Gameworks, LLC	97–2926	08/04/97
The Seagram Company Ltd., SGW Holding, Inc., Sega Gameworks, LLC	97–2927	08/04/97
John M. Anderson, Republic Industries, Inc., Republic Industries, Inc	97–2941	08/04/97
Republic Industries, Inc., John M. Anderson, Anderson Dealership Group, Inc., Anderson Chevrolet, Inc	97–2942	08/04/97
The Williams Companies, Inc., Continental Energy Associates, Continental Energy Associates	97–2945	08/04/97
Callaway Golf Company, U.S. Industries, Inc., Odyssey Sports, Inc	97–2957	08/04/97
Wasserstein Perella Group, Inc., Time Warner Inc., American Lawyer Media, L.P.; ALM Counsel Connect Inc	97–2961	08/04/97
Lear Corporation; ITT Industries, Inc., ITT Assets	97–2964	08/04/97
Pool Energy Services Co., Steve L. Holifield, Trey Services, Inc	97–2965	08/04/97
Code, Hennessy & Simmons II, L.P. Douglas J. Von Allmen, Temple, Inc	97–2968	08/04/97
Avonmore Creameries Limited (An Ireland Company), Waterford Co-operative Society Limited (An Ireland Co.), Waterford Co-operative Society Limited	97–2971	08/04/97
Waterford Co-operative Society Limited (An Ireland Co.), Avonmore Creameries Limited (An Ireland Company), Avonmore Creameries Limited	97–2972	08/04/97
Aurora Equity Partners L.P., James E. Henderson, Trans Mart, Inc	97–2977	08/04/97
Aurora Equity Partners L.P., Gary A. Gamble, Trans Mart, Inc	97–2983	08/04/97
Sidney B. DeBoer, Edmund Bartlett, Sun Valley Ford, Inc	97–2988	08/04/97
Johnson & Johnson, Raision Tehtast Oy AB, Raisio Staest US Inc. & Raision Benecol US LLC	97–3005	08/04/97
Lehman Brothers Holdings Inc., The Energy Group PLC, Citizens Power Sales, Hartford Power Sales plus twelve	97–3006	08/04/97
Bucyrus International, Inc., Global Industrial Technologies, Inc., The Marion Power Shovel Company	97–2507	08/05/97
Castle Tower Holding Corp., Robert A. Crown, Crown Communications	97–2870	08/05/97
Robert A. Crown, Castle Tower Holding Corp., Castle Tower Holding Corp	97–2871	08/05/97
Unisource Worldwide, Inc., Rolf W. Turnquist, Turnquist, Inc	97–2880	08/05/97
Berkshire Fund IV, Limited Partnership, Raymond L. Jensen and Barbara Jensen, husband and wife, JMS Automotive Rebuilders, Inc	97–2946	08/05/97
WorldCom, Inc., Steven J. Muir, ComTech, Inc	97–2975	08/05/97
WorldCom, Inc., Jerry Nelson, ComTech, Inc	97–2976	08/05/97
Falcon Holding Group, L.P., Falcon Classic Cable Income Properties, L.P., Falcon Classic Cable Income Properties, L.P	97–2978	08/05/97
Newell Co., American Greeting Corporation, Wilhold, Inc., and Acme Frame Products, Inc	97–2545	08/06/97
Sisters of Mercy of the Americas, Reg. Cmty, Cincinnati, NorthCoast Health Systems, Inc., Riverside Hospital and NorthCoast Affiliates, Inc	97–2813	08/06/97
Hy-Vee, Inc., Schnuck Markets, Inc., Schnuck Markets, Inc	97–2833	08/06/97
Zurich Insurance Company (a Swiss company), Saratoga Partners III, L.P., U.S.I. Holdings Corporation	97–2915	08/06/97
Golder, Thoma, Cressey, Rauner Fund IV, LP, WIlliam G. Kamarek, Electronic Systems, Inc	97–2970	08/06/97
Sinophil Corporation, Sinophil Corporation, MagiNet Corporation	97–2994	08/06/97
II Acquisition Corp., Imo Industries Inc., Imo Industries Inc	97–3024	08/06/97
Diagnostics Holding, Inc., Hoechst A.G., Hoechst Diagnostics Holding Corporation et al	97–2757	08/07/97
Hoechst A.G., Diagnostics Holding, Inc., Diagnostics Holding, Inc	97–2758	08/07/97
James L. Ferman, Jr., Jeffrey I. Wooley, JIW Enterprises, Inc., Gulf Auto Holdings, Inc	97–2763	08/07/97
Kelso Investment Associates V, L.P., Merck & Co., Inc., The DuPont Merck Pharmaceutical Co., Endo Lab, LLC	97–2845	08/07/97
Kelso Investment Associates V, L.P., E.I. du Pont de Nemours and Company, The DuPont Merck Pharmaceutical Co., Endo Lab, LLC	97–2846	08/07/97
American Radio Systems Corporation, Jacor Communications, Inc., Jacor Communications, Inc./Assets	97–2876	08/07/97
Jacor Communications, Inc., American Radio Systems Corporation, American Radio Systems Corporation/Assets	97–2877	08/07/97
Kelso Investment Associates V, L.P., Endo Pharmaceuticals, Inc., Endo Pharmaceuticals, Inc	97–2911	08/07/97
Irving Laidlaw, Edwin L. Phelps, Educational Services Institute, Inc	.....	.....
Franciscan Sisters of the Sacred Heart, Servants of the Holy Heart of Mary, ServantCor et al	97–2954	08/07/97
Franciscan Sisters of the Sacred Heart, Sisters of Mercy of the Americas, Regional Comm. of Chi, Mercy Health Corporation	97–2955	08/07/97
Republic Industries, Inc., Silver State Disposal Service, Inc., Silver State Disposal Service, Inc	97–3021	08/07/97
General Electric Company/Greenwich Air Services, Inc., UNC Incorporated, UNC Incorporated	97–1684	08/08/97
Axiohm, S.A., French Corporation, DH Technology, Inc., DH Technology, Inc	97–2867	08/08/97
Thomas J. Perkins, Compaq Computer Corporation, Compaq Computer Corporation	97–2897	08/08/97
Harbour Group Investments III, L.P., The Hotsy Corporation, The Hotsy Corporation	97–2966	08/08/97

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 080497 AND 081597—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
HealthSouth Corporation, James R. Leininger, National Imaging Affiliates, Inc	97–2974	08/08/97
Medusa Corporation, Blaine Scott White, White Stone Company of Southwest Virginia	97–2981	08/08/97
Thomas T. Gores, Cognizant Corporation, Aviator Holdings Corporation	97–2991	08/08/97
Kinder Morgan Energy Partners, L.P., Vulcan Materials Company, BRT Transfer Terminal, Inc	97–2995	08/08/97
PhyMatrix Corp., Dr. Paul Bonheim, M.D., Babrad, Inc.; Deerco, Inc.; Bab Nuclear Radiology, P.C	97–2999	08/08/97
PhyMatrix Corp., Dr. Jeffrey Warhit, M.D., Babrad, Inc.; Deerco, Inc.; Bab Nuclear Radiology, P.C	97–3000	08/08/97
Life Re Corporation, J. Dix Druce, Jr., AML Acquisition Company	97–3003	08/08/97
Amoco Corporation, Emmanuel Torbati, Interstate Oil	97–3008	08/08/97
BellSouth Corporation, BellSouth Corporation, Tennessee RSA LP; Memphis SMSA LP	97–3009	08/08/97
General Electric Company, Leucadia National Corporation, Colonial Penn Insurance Company	97–3010	08/08/97
Boston Chicken, Inc., Boston Chicken, Inc., Mid-Atlantic Restaurant Systems L.P	97–3012	08/08/97
Insurance Service Office, Inc., American Insurance Association, American Insurance Services Group, Inc	97–3014	08/08/97
EMI Group plc, John Morey, Narada Productions Inc.; Music Design, Inc.; Nara Music	97–3018	08/08/97
Ameritech Corporation, The Dunn & Bradstreet Corporation, DonTech I Publishing Company, L.L.C	97–3019	08/08/97
Bradley S. Jacobs, USA Waste Services, Inc., USA Waste Services, Inc	97–3022	08/08/97
Cooper Industries, Inc., Rex-Hide Incorporated, Major Liting, Inc.; Thepitt Manufacturing Company	97–3023	08/08/97
Nortek, Inc., Ply Gem Industries, Inc., Ply Gem Industries, Inc	97–3029	08/08/97
American Radio Systems Corporation, Joseph M. Field, Entertainment Communications, Inc./ECI License Company	97–3030	08/08/97
Quorum Health Group, Inc., Wesley Health System, Inc., Wesley Health System, Inc	97–3032	08/08/97
United Auto Group, Inc., Ronnie L. Golden, Stone Mountain Jeep-Eagle, Inc	97–3033	08/08/97
Johns-Manville Corporation (formerly Schuller Corp.), HPG International, Inc., HPG International, Inc	97–3034	08/08/97
Total Renal Care Holdings, Inc., The New York & Presbyterian Hospitals Healthcare System, Rogosin's Institute, Inc	97–3035	08/08/97
KeyCorp, Champion Mortgage Co., Inc., Champion Mortgage Co., Inc	97–2749	08/10/97
Metropolitan Life Insurance Company, Craig O. McCaw, Cable Plus Holding Company	97–2802	08/10/97
Orbital Sciences Corporation, Dr. C.E. Velez, CTA Incorporated	97–2860	08/11/97
Clear Channel Communications, Inc., John T. Lynch, Monterey Broadcasting, LLC	97–2996	08/11/97
Owens Corning, AmeriMark Building Products, Inc., Amerimark Building Products, Inc	97–3016	08/11/97
John Rutledge Partners II, L.P., GWI Holding Inc., StairMaster Sports/Medical products, L.P	97–3036	08/11/97
Danaher Corporation, II Acquisition Corp., Gems Sensors, the Instrumentation Division of Imo	97–3040	08/11/97
The Times Mirror Company, K–III Communications Corporation, Krames Communications Incorporated	97–3042	08/11/97
Aetna Inc., Virginia Mason Health System, Virginia Mason Health Plan, Inc	97–3049	08/11/97
Foundation Health Systems, Inc., PACC, PACC HMO and PACC Health Plans (non-profit corporations)	97–3051	08/11/97
Triumph Group, Inc., Wells Charitable Remainder Unitrust, Hydro-Mill Co	97–3054	08/11/97
Dime Bancorp, Inc., North American Mortgage Company, North American Mortgage Company	97–3070	08/11/97
KCSN Management, L.P., Oda Nursery, Inc., Oda Nursery, Inc	97–3072	08/11/97
Jay M. Davis, The Kronheim Company, The Kronheim Company	97–3073	08/11/97
Michael C. Carlos, The Kronheim Company, Inc., The Kronheim Company, Inc	97–3074	08/11/97
Tel-Save Holdings, Inc., Shared Technologies Fairchild Inc., Shared Technologies Fairchild Inc	97–3075	08/11/97
Fujitsu Limited, Amdahl Corporation, Amdahl Corporation	97–3077	08/11/97
Camcare, Inc., Tenet Healthcare Corporation, MPC, Inc. (Plateau Medical Center)	97–3083	08/11/97
Bunzl, plc (a British company), American Filtrona Corporation, American Filtrona Corporation	97–3092	08/11/97
Kranson Industries, Inc., Jeffrey T. Segar, Caliber Packaging Inc	97–3097	08/11/97
James L. Ferman, Jr., Carl W. Lindell, Jr., Lindell Motors, Inc.; Performance Motors, Inc	97–2827	08/12/97
Republic Industries, Inc., Powell Motor Co., Powell Motor Co	97–2906	08/12/97
Gerald W. Schwartz, Hewlett-Packard Company, Hewlett-Packard Company	97–2958	08/12/97
Yale-New Haven Health Services Corporation, Greenwich Health Care Services, Inc., Greenwich Health Care Services, Inc	97–3068	08/12/97
Green Equity Investors, II, L.P., Hechinger Company, Hechinger Company	97–2950	08/13/97
Green Equity Investors II, L.P., KMart Corporation, Builders Square, Inc	97–2956	08/13/97
Outdoor Systems, Inc., Minnesota Mining and Manufacturing Company, National Advertising Company	97–2016	08/14/97
Societe d'Investissement Familiale, Tarkett AG, Tarkett AG	97–3041	08/14/97
American Residential Services, Inc., Robert G. Dello Russo, Del-Air Heating, Air-Conditioning, Refrigeration, Inc	97–3067	08/14/97
Reilly Family Limited Partnership, Outdoor Systems, Inc., National Advertising Company	97–3087	08/14/97
ABRY Broadcast Partners, II, L.P., Sinclair Broadcast Group, Inc., Sinclair Broadcast Group, Inc	97–3100	08/14/97
Kelso Investment Associates V, L.P., 21st Century Newspapers Acquisition, Inc., 21st Century Newspapers Acquisition, Inc	97–2898	08/15/97
Warburg, Pincus Investors, L.P., Vista 2000, Inc., Vista 2000, Inc./Assets	97–2904	08/15/97
GS Capital Partners II, L.P., 21st Century Newspapers Acquisition, Inc., 21st Century Newspapers Acquisition, Inc	97–2909	08/15/97
Tabacalera, S.A., Max Rohr Importer, Inc., Max Rohr Importer, Inc	97–2932	08/15/97
Conrad A. Kalitta, M. Tom Christopher, Kitty Hawk, Inc	97–2986	08/15/97
M. Tom Christopher, Conrad A. Kalitta, American International Airways, Inc., Kalitta Flying	97–2987	08/15/97
Tarkett AG, Societe d'Investissement Familiale, Sommer Allibert SA subsidiaries	97–3045	08/15/97
Societe d'Investissement Familiale, Tarkett AG, Tarkett AG	97–3046	08/15/97
Abbott Laboratories, Johnson & Johnson, Direct Access Diagnostics Division	97–3056	08/15/97
Wireless One Network, L.P., Price Communications Corporation, Price Communications Corporation	97–3069	08/15/97
ITEQ, Inc., Astrotech International Corporation, Astrotech International Corporation	97–3084	08/15/97
George S. Hofmeister, Harper Steel Service Center, Inc., Harper Steel Service Center, Inc	97–3108	08/15/97

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 080497 AND 081597—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Anixter International, Inc., Accu-Tech Corporation, Accu-Tech Corporation	97–3111	08/15/97
Gulf Canada Resources Limited, Stampeder Exploration Ltd., Stampeder Exploration Ltd	97–3112	08/15/97
The DII Group, Inc., International Business Machines Corporation, International Business Machines Corporation	97–3115	08/15/97
Credit Suisse Group, Craig O McCaw, Cable Plus Holding Company	97–3116	08/15/97
Laidlaw Inc., EmCare Holdings, Inc., EmCare Holdings, Inc	97–3118	08/15/97
Vestar Capital Partners III, LP, Russell-Stanley Holdings, Inc., Russell-Stanley Holdings, Inc	97–3125	08/15/97
AlliedSignal, Inc., Kris Shah, Litronic Industries, Inc./KRDS, Inc	97–3132	08/15/97
Estate of Charles A. Sammons, Maria DeSanto, Santo Tours & Travel, Inc	97–3141	08/15/97

FOR FURTHER INFORMATION CONTACT:

Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 97–24247 Filed 9–11–97; 8:45 am]

BILLING CODE 6750–01–M

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: 081897 AND 082997

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Paine Webber Group, Inc., General Electric Company, Kidder Peadbody & Co	97–3133	08/18/97
Pentair, Inc., General Signal Corporation, General Signal Group Assets	97–2913	08/19/97
ABRY Broadcast Partners II, L.P., Northeastern Television Investors, L.P., Northeastern Television Investors, L.P	97–2951	08/19/97
Boyd Gaming Corporation, Robert J. Guidry, Treasure Chest Casino, L.L.C	97–2963	08/19/97
Royal Bank of Canada, Partners Limited, London Insurance Group Inc	97–2969	08/19/97
General Electric Company, Tom W. Ward, Data Storage Marketing, Inc	97–3015	08/19/97
Financial Holding Corporation, NationsBank Corporation, NationsBank, N.A	97–3039	08/19/97
Sinclair Broadcast Group, Inc., The News Corporation Limited, HMI Broadcasting Corp	97–3105	08/19/97
Dyersburg Corporation, WestPoint Stevens Inc., AIH Inc	97–2919	08/20/97
The Viscount Rothermere, The Walt Disney Company, Institutional Investor, Inc	97–3027	08/20/97
American Business Information, Inc., Acxiom Corporation, Pro CD, Inc	97–3120	08/20/97
The St. Paul Companies, Inc., George W. Connell, Rittenhouse Financial Services, Inc	97–3122	08/20/97
Protective Life Corporation, John Alden Financial Corporation, Western Diversified Life Insurance Company	97–3126	08/20/97
Abraham D. Gosman, Santa Anita Realty Enterprises, Inc., Santa Anita Realty Enterprises, Inc	97–3135	08/20/97
FIRSTPLUS Financial Group, Inc., G. Elton and Doris Todd, Southern Management Corporation	97–3137	08/20/97
Austrialian National Industries Limited, Von Roll Holding, Ltd., Excel Mining Mining Systems, Inc	97–3145	08/20/97
PBSJ Corporation (The), Charles T. Jasper, EH&A Acquisition, Inc	97–3161	08/20/97
PBSJ Corporation (The), Everett M. Owen, EH&A Acquisition, Inc	97–3162	08/20/97
The Bank of New York Company, Inc., Nationsbank Corporation, Nationsbank Corporation	97–2577	08/21/97
Oracle Corporation, Treasury Services Corporation, Treasury Services Corporation	97–3057	08/21/97
Laidlaw Inc., EmCare Holdings, Inc., EmCare Holdings, Inc	97–3118	08/21/97
Interpublic Group of Companies, Inc., Adler Boschetto Peebles & Partners Inc., Adler Boschetto Peebles & Partners Inc	97–3119	08/21/97
Tyco International Ltd., Keystone International, Inc., Keystone International, Inc	97–2546	08/21/97
Benesse Corporation, Roger O. Walther, ELS Educational Services, Inc	97–2960	08/22/97
Tele-Communications, Inc., US West, Inc., King Videocable Company	97–2962	08/22/97
The Bank of New York Company, Inc., Wells Fargo and Company, Wells Fargo Bank, National Association	97–3064	08/22/97
Gerald W. Schwartz, Triple L Partners, L.P., GT Automotive Systems, Inc	97–3081	08/22/97
Sterling B. McCall, Jr., Group 1 Automotive, Inc., Group 1 Automotive, Inc	97–3098	08/22/97
Robert E. Howard, II, Group 1 Automotive, Inc., Group 1 Automotive, Inc	97–3099	08/22/97
PG&E Corporation, Bechtel Group, Inc., U.S. Operating Services Company; U.S. Generating Co	97–3113	08/22/97
Merrill Lynch & Co., Inc., Barclays PLC, Barclays Global Investors, N.A	97–3143	08/22/97
SunAmerica Inc., Financial Service Corporation, Financial Service Corporation	97–3147	08/22/97
Compagnie Generale des Establissements Michelin, Kokoku Steel Wire Ltd., Kokoku Steel Cord Corporation	97–3155	08/22/97

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 081897 AND 082997—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Seagate Technology, Inc., James K. Baker and Janet M. Baker, Dragon Systems, Inc	97–3165	08/22/97
Simsmetal Limited (an Australian company), B. David Peck, Peck Iron & Metal Company, Inc	97–3169	08/22/97
Partners HealthCare System, Inc., South Shore Health and Educational Corporation, South Shore Health and Educational Corporation	97–3171	08/22/97
Shaw Industries, Ltd. (a Canadian company), Dresser Industries, Inc., Bredero-Shaw, Inc	97–3179	08/22/97
Columbia/HCA Healthcare Corporation, Bethany Medical Center, Bethany Medical Center and Medical Holdings, Inc	97–3186	08/22/97
Dover Corporation, Roy G. Gullberg, Presco Turbine Services, Inc	97–3190	08/22/97
Roy G. Gullberg, Jr., Dover Corporation, Dover Corporation	97–3191	08/22/97
Questor Partners Fund, L.P., KSM Acquisition Company, L.P., Simplicity Manufacturing, Inc	97–3101	08/22/97
Gordon B. Lankton, D–J, Inc., D–J, Inc	97–3209	08/22/97
W. Marvin Rush, Stewart & Stevenson Services, Inc., C. Jim Stewart & Stevenson, Inc	97–3213	08/24/97
Burlington Resources Inc., Resources Inc., The Louisiana Land and Exploration Company, The Louisiana Land and Exploration Company	97–2979	08/25/97
Atlantic Energy, Inc., Delmarva Power & Light Company, Delmarva Power & Light Company	97–2117	08/25/97
Delmarva Power & Light Company, Atlantic Energy, Inc., Atlantic Energy, Inc	.....	.....
M.A. Hanna Company, Harwick Chemical Corporation, Harwick Chemical Corporation	97–3011	08/25/97
Bayer AG, E.I. du Pont de Nemours & Company, E.I. du Pont de Nemours & Company	97–3093	08/25/97
CareGroup, Inc., Care New England Health System, Care New England Health System	97–3110	08/25/97
AAA Mid Atlantic Inc., The American Automobie Association, Inc., The Potomac Division	97–3117	08/25/97
Integrated Health Services, Inc., BankAmerica Corporation, Home Technology Healhtcare, Inc.	97–3124	08/25/97
Fortis AG S.A. (a Belgian company), 1890 North Star, Ltd., Insureco, Inc	97–3146	08/25/97
MicroAge, Inc., Leo James Russell, Pride Technologies, Inc	97–3152	08/25/97
Leo James Russell, MicroAge, Inc., MicroAge, Inc	97–3153	08/25/97
Frontenac VII Limited Partnership, Applause Enterprises, Inc., Applause Enterprises, Inc	97–3157	08/25/97
Donald C. Mealy, Charles Whitehead, Cook-Whitehead Ford, Inc	97–3164	08/25/97
Fortis AMEV N.V., 1890 North Star Ltd., Insureco Incorporated	97–3166	08/25/97
Evergreen Media Corporation, Deseret Management Corporation, Bonneville International Corporation	97–3170	08/25/97
Summit Ventures IV, LP, Marc Hamon, Netcom Systems, Inc	97–3172	08/25/97
Deseret Management Corporation, Evergreen Media Corporation, Evergreen Media Corporation	97–3187	08/25/97
MBR Associates, L.P., St. Louis Lithographing Company, St. Louis Lithographing Company	97–3192	08/25/97
Sumner M. Redstone, Cox Enterprises, Inc., Cox Broadcasting, Inc	97–3199	08/25/97
Knightsbridge Capital Fund I, L.P., ACO Brokerage Holdings Corporation, ACO Brokerage Holdings Corporation	97–3203	08/25/97
Phoenix Home Life Mutual Insurance Company, Pasadena Capital Corporation, Pasadena Capital Corporation	97–3205	08/25/97
Watsco, Inc., Trek Corporation, Baker Distributing Company	97–3206	08/25/97
CRH plc, CPM Development Corporation, CPM Development Corporation	97–3216	08/25/97
Reinhard Mohn (Mr.), Devon Group, Inc., Graftek Press, Inc	97–3219	08/25/97
Welsh, Carson, Anderson & Stowe, VII, L.P., Millard E. Morris, AMERISAFE, Inc	97–3220	08/25/97
MedPartners, Inc., Talbert Medical Management Holdings Corporation, Talbert Medical Management Holdings Corporation	97–3236	08/25/97
Reed International P.L.C., The Walt Disney Company, Chilton Holding Company, Inc., Chilton Media, Inc	97–2717	08/26/97
Elsevier NV, The Walt Disney Company, Chilton Holding Company, Inc., Chilton Media, Inc	97–2718	08/26/97
Cisco Systems, Inc., Integrated Network Corporation, a newly-formed subsidiary	97–3013	08/26/97
MBC Associates, L.P. CMG Health, Inc., CMG Health, Inc	97–3017	08/26/97
Capstone Pharmacy Services, Inc., Beverly Enterprises, Inc., Beverly Enterprises, Inc	97–3037	08/26/97
Lonnie C. Pool, Jr., Browning-Ferris Industries, Inc., Browning-Ferris Industries of South Atlantic, Inc	97–3078	08/26/97
PPG Industries, Inc., Alan J. Reid, Man-Gill Chemical Company	97–3086	08/26/97
Electronic Data Systems Corporation, Neodata Corporation, Neodata Corporation	97–3140	08/26/97
Fine Host Corporation, William J. Benzick, Best, Inc	97–3149	08/26/97
Apollo Investment Fund III, L.P., National Realty Trust, National Realty Trust	97–3194	08/26/97
Equilease Holding Corp., Fiberite Holdings, Inc., Fiberite Holdings, Inc	97–2135	08/27/97
Omniquip International, Inc., Figgie International, Inc., Snorkel Division of Figgie International, Inc	97–3038	08/27/97
Cidadel Communications Corporation, Richard C. Dean, Maranatha Broadcasting Co., Inc	97–3043	08/27/97
Beverly Enterprises, Inc., William W. and Diana J. Conley, Quad C Health Care Centers	97–3071	08/27/97
Hicks, Muse, Tate & Furst Equity (or) Evergreen Media Corp, Robert D. Greenlee, Ever Green Wireless L.L.C	97–3106	08/27/97
Mark S. Crossen, Whole Foods Market, Inc., Whole Foods Market, Inc	97–3107	08/27/97
NationsBanc Corporation, Marc Hamon, Netcom Systems, Inc	97–3173	08/27/97
Smiths Industries plc, Graseby plc, Graseby plc	97–3181	08/27/97
General Electric Company, West Rents, Inc., West Rents, Inc	97–3188	08/27/97
Apollo Investment Fund III, L.P., NRT Incorporated, NRT Incorporated	97–3202	08/27/97
P.T. Prasidha, Pasqua, Inc., Pasqua, Inc	97–3227	08/27/97
Horiba Ltd. (a Japanese company), Instruments, S.A. (a French company), Instruments, S.A. (a French company)	97–3229	08/27/97
P.T. Prasidha, The Coffee Station, Inc., The Coffee Station, Inc	97–3237	08/27/97
Sisters of Providence, Sacred Heart Province, PeaceHealth, SelectCare Health Plans	97–3248	08/27/97
PeaceHealth, Sisters of Providence, Sacred Heart Province, Providence Plan Partners	97–3249	08/27/97
Sumner M. Redstone, General Electric Company, KPWB–TV, Channel 31	97–3103	08/28/97
General Electric Company, Harry J. Pappas, Pappas Telecasting Companies	97–3104	08/28/97
Mitsubishi Estate Co., Ltd., The Prudential Insurance Company of America, Premisys Real Estate Services, Inc	97–3121	08/28/97

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 081897 AND 082997—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Lee Enterprises, Incorporated, The Walt Disney Company, Southern Utah Media, Inc	97–3134	08/28/97
Jeffrey J. Steiner, Tel-Save Holdings, Inc., Tel-Save Holdings, Inc	97–3148	08/28/97
O. Bruton Smith, Phil M. Gandy, Jr., Lake Norman Dodge, Inc	97–3150	08/28/97
360 Communications Company, 360 Communications Company, Susquehanna Cellular Communications Limited Partnership	97–3156	08/28/97
Clayton, Dubilier & Rice Fund V Limited Partnership, ITT Corporation, ITT Information Services, Inc	97–3168	08/28/97
AMF Holdings, Inc., Conbow Corporation, Conbow Corporation	97–3180	08/28/97
Schlumberger Limited, Interactive Video Systems, Inc., Interactive Video Systems, Inc	97–3204	08/28/97
Questor Partners Fund, L.P., Zell/Chilmark Fund, L.P., Schwinn Cycling & Fitness Inc	97–3207	08/28/97
BankBoston Corporation, PepsiCo, Inc., D'Angelo's Sandwich Shops, Inc	97–3225	08/28/97
Big Flower Press Holdings, Inc., Gamma One, Inc., Gamma One, Inc	97–3226	08/28/97
Sun Healthcare Group, Inc., Regency Health Services, Inc., Regency Health Services, Inc	97–3238	08/28/97
Interpublic Group of Companies, Inc., James R. McManus, Marketing Corporation of America & Lee Hill, Inc	97–3240	08/28/97
Westgate International Limited, Grant Geophysical, Inc., Grant Geophysical, Inc	97–3241	08/28/97
Elliott Associates, L.P., Grant Geophysical, Inc., Grant Geophysical, Inc	97–3242	08/28/97
STERIS Corporation, Isomedix Inc., Isomedix Inc	97–3250	08/28/97
Clear Channel Communications, Inc., Lowell W. Paxson, Paxson Communications Corporation; L. Paxson, Inc	97–2637	08/29/97
Joseph M. Field, American Radio Systems Corporation (''ARS''), ARS and American Radio Systems License Corp.		
Global DirectMail Corp, Mark L. and Joyce J. Runkle, Infotel, Inc	97–3154	08/29/97
American Radio Systems Corporation, H.F. Lenfest, Suburban Cable TV Co. Inc	97–3184	08/29/97
American Radio Systems Corporation, Tele-Communications, Inc., Suburban Cable TV Co. Inc	97–3185	08/29/97
Sumner M. Redstone, General Electric Company, General Electric Company	97–3222	08/29/97
IMC Global Inc., Freeport-McMoRan, Inc., Freeport-McMoRan, Inc	97–3244	08/29/97
Unisource Worldwide, Inc., Chemed Corporation, National Sanitary Supply Company	97–3251	08/29/97
AlliedSignal Inc., Aloe Holding Company, Shenango Incorporated	97–3254	08/29/97
The Clayton & Dubilier Private Equity Fund IV LP, Daniel H. Yergin, Cambridge Energy Research Associates, Inc.; Cambridge	97–3257	08/29/97
Jordan Industries, Inc., Timothy J. Gooding, Engineered Endeavors, Inc	97–3271	08/29/97
Fortune Brands, Inc., May Tag & Label Corp., May Tag & Label Corp.	97–3273	08/29/97
Leggett & Platt, Incorporated, Falcon Products, Incorporated, Hodges Division	97–3277	08/29/97

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 97–24248 Filed 9–11–97; 8:45 am]

BILLING CODE 6750–01–M

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board

AGENCY: General Accounting Office.

ACTION: Notice of September meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, notice is hereby given that the Federal Accounting Standards Advisory Board will meet on Friday, September 26, 1997, from 9:00 a.m. to 4:00 p.m. in Room 2N30 (not 7C13) of the General Accounting Office building, 441 G St., N.W., Washington, D.C.

The purpose of the meeting is to discuss the following issues: (1) Social Insurance; (2) deferral of the implementation of the Managerial Cost Accounting Standard; (3) amendment of the Property, Plant, and Equipment (PP&E) Standard; and (4) Management's Discussion and Analysis (MD&A).

Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Wendy Comes, Executive Director, 441 G St., N.W., Room 3B18, Washington, D.C. 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. No. 92–463, Section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990).

Dated: September 8, 1997.

Wendy M. Comes,

Executive Director.

[FR Doc. 97–24180 Filed 9–11–97; 8:45 am]

BILLING CODE 1610–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Advisory Board on Welfare Indicators Meeting

AGENCY: Advisory Board on Welfare Indicators, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for the fourth meeting of the Advisory Board on Welfare Indicators. This notice also describes the functions of the Advisory Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend.

DATE AND TIME: September 25, 1997, 10:00 a.m. to 4:00 p.m.

ADDRESSES: Hubert H. Humphrey Building, Room 405A, 200 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Ann McCormick, Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation—Human Services Policy, 200 Independence Ave., SW., Washington, DC 20201. Telephone: (202) 690–5880; FAX: (202) 690–6562.

SUPPLEMENTARY INFORMATION: The Advisory Board on Welfare Indicators was established by Subtitle D, section 232 of the Social Security Act Amendments of 1994 (Pub. L. 103–432). The duties of the Advisory Board include (A) providing advice and recommendations to the Secretary of Health and Human Services on the development of indicators of the rate at which and, to the extent feasible, the degree to which, families depend on income from welfare programs and the duration of welfare receipt and (B) providing advice on the development and presentation of annual welfare indicators reports to the Congress required by the Social Security Act Amendments of 1994.

The meeting of the Advisory Board is open to the public. The agenda for the September 25 meeting includes discussion of the first annual welfare indicators report to Congress. The report will include analysis of families and individuals receiving assistance under means-tested benefit programs under part A of title IV of the Social Security Act, the Food Stamp Act of 1977, and title XVI of the Social Security Act, or as general assistance under programs administered by state and local governments. At a minimum, the report is required to set forth indicators of the rate at which and, to the extent feasible, the degree to which, families depend on income from welfare programs and the duration of receipt; trends in indicators; predictors of welfare receipt; the causes of welfare receipt; and patterns of multiple program receipt. A final agenda will be available from the office of the Assistant Secretary for Planning and Evaluation—Human Services Policy on September 19, 1997.

Records will be kept of the Advisory Board proceedings, and will be available for public inspection at offices of the Assistant Secretary for Planning and Evaluation—Human Services Policy, 200 Independence Avenue, S.W., room 404–E, Washington, D.C. 20201 between the hours of 9:00 a.m.–5:00 p.m.

Dated: September 8, 1997.

Patricia Ruggles,

Deputy Assistant Secretary for Human Services Policy, ASPE.

[FR Doc. 97–24205 Filed 9–11–97; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee Meeting; Cancellation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is cancelling the joint meeting of the Nonprescription Drugs Advisory Committee and the Pulmonary-Allergy Drugs Advisory Committee scheduled for September 19, 1997. The meeting was announced in the **Federal Register** of August 14, 1997 (62 FR 43539).

FOR FURTHER INFORMATION CONTACT: Andera G. Neal or Leander B. Madoo, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or call the FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), codes 12541 and 12545.

Dated: September 9, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–24275 Filed 9–9–97; 3:19 pm]

BILLING CODE 4160–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[MB–115–N]

RIN 0938–AI23

State Children's Health Insurance Program; Reserved Allotments to States for Fiscal Year 1998; Enhanced Federal Medical Assistance Percentages

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice provides advance notification of the reserved fiscal year (FY) 1998 State allotments available to provide Federal funding to individual States, Commonwealths, and Territories for expenditures in the new State Children's Health Insurance Program established under title XXI of the Social Security Act. The notice also describes the methodology and process that HCFA used to determine these reserved allotments in accordance with section 2104 of the Act. These reserved State allotments are estimates of States' FY 1998 title XXI allotments, assuming that each State were to submit, and receive approval for, a State child health plan. Under title XXI the amount of a State's allotment for a fiscal year is available for 3 years for States with approved child health plans.

This notice also specifies the enhanced Federal medical assistance percentages (FMAP) for child health assistance provided under Title XXI for fiscal year 1998.

Established by section 4901 of the Balanced Budget Act of 1997 (Pub. L. 105–33), the State Children's Health Insurance Program will provide Federal matching funds to States to initiate and expand health insurance coverage to uninsured, low-income children.

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FOR FURTHER INFORMATION CONTACT: Richard Strauss, (410) 786–2019.

SUPPLEMENTARY INFORMATION:

I. General Background on New Legislation

Section 490l of the Balanced Budget Act of 1997 (BBA, Pub. L. 105–33,

signed into law on August 5, 1997), amended the Social Security Act (the Act) to add a new title XXI. Under title XXI, a new State Children's Health Insurance Program is established to assist State efforts to initiate and expand child health assistance to uninsured, low-income children. Under the program, child health assistance is to be provided primarily for obtaining health benefits coverage through (1) Providing coverage that meets requirements specified in the law under section 2103 of the Act; or (2) expanding coverage under the State's Medicaid plan under title XIX of the Act; or (3) a combination of both.

In order to be eligible for Federal matching funds under the State Children's Health Insurance Program, States must submit to the Secretary, and receive approval for, a State child health plan that describes how the State intends to use the funds provided under title XXI. The plan must meet certain criteria specified in the statute, which include benefit packages, eligibility standards and methodologies, coverage requirements, basic and additional services offered, strategic objectives and performance goals, plan administration, and evaluations.

The law limits the total amount of Federal funds for the State Children's Health Insurance Program and specifies the formula that is to be used to determine an allotment for each State from this total amount, as described under section III of this notice.

II. Purpose of This Notice

We are issuing this notice to provide advance notification to States, Commonwealths, and Territories of the reserved allotments that will be available to them for FY 1998 for child health insurance expenditures if they choose to establish a State Children's Health Insurance Program under an approved State child health plan under title XXI of the Act, or to claim an enhanced FMAP rate for certain Medicaid expenditures under title XIX of the Act as specified in title XXI. States, Commonwealths, and Territories may submit State child health plans to HCFA for approval, to be effective as early as October 1, 1997. We believe that this notification is necessary to enable States, Commonwealths, and Territories to conduct advance planning and budgeting.

Section 2104(b) of the Act indicates that ''the Secretary shall allot to each State * * * with a State child health plan approved under this title.'' We believe that this language requires States to have an approved State child health plan for the fiscal year in order for the Secretary to provide a final allotment to that State for that fiscal year. We believe that if a State does not have an approved State child health plan for that fiscal year, the amount of that State's reserved allotment would be unavailable to that State and would be included in the final allotments for States with approved child health plans.

The reserved allotment amounts in this notice were determined by application of the formula specified in title XXI of the Act and described in detail in section III of this notice. Final allotments for each State will be determined in accordance with statutory requirements; we plan to issue a notice of proposed rulemaking as soon as possible on the requirements for the allotment and payment process under title XXI. Although final allotments have not been determined, under section 2105(e), we have authority to make ongoing payments based on advance estimates of allowable expenditures. At this time, we intend to make advance payments to States with approval health plans based on these reserved allotments. All issues related to the allotment and payment process, however, will be open for public comment as part of the rulemaking process.

III. Methodology for Determining Reserved Allotments for States, Commonwealths, and Territories

This notice specifies in Table I under section IV the reserved FY 1998 allotments that would be available to individual States, Commonwealths, and Territories for child health assistance expenditures under approved State child health plans, assuming that each State, Commonwealth, or Territory qualifies for such an allotment. We have applied the applicable statutory formula specified in section 2104 of the Act in determining the reserved allotments for FY 1998, as discussed below.

Section 2104(a) of title XXI provides that, for purposes of providing allotments to the 50 States and the District of Columbia, the following amounts are appropriated: $4.275 billion for each FY 1998 through 2001; $3.15 billion for each FY 2002 through 2004; $4.05 billion for each FY 2005 through 2006 and $5 billion for FY 2007. However, under section 2104(c) of the Act, 0.25 percent of the total amount appropriated each year is available for allotment to the Territories and Commonwealths of Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands. This total amount is allotted among the Commonwealths and the Territories according to the following percentages: Puerto Rico, 91.6 percent; Guam, 3.5 percent; the Virgin Islands, 2.6 percent; American Samoa, 1.2 percent; and the Northern Mariana Islands, 1.1 percent.

Further, under sections 4921 and 4922 of the BBA, the total allotment available to the 50 States and the District of Columbia is reduced by an additional total of $60,000,000; $30,000,000 each for a special diabetes research program for Type I diabetes and special diabetes programs for Indians. The diabetes programs are funded from FY 1998 through FY 2002 only.

The total amount of the allotment available for the 50 States and the District of Columbia for FY 1998 was determined in accordance with the following formula:

$A_{TA}=S_{2104(a)}-T_{2104(c)}-D_{4921}-D_{4922}$

A_{TA}=Total amount available for allotment to the 50 States and the District of Columbia for the fiscal year.

$S_{2104(a)}$=Total appropriation for the fiscal year indicated in section 2104(a)of the Act. For FY 1998, this is $4,275,000,000.

$T_{2104(c)}$=Total amount available for allotment for the Commonwealths and Territories; determined under section 2104(c) of the Act as 0.25 percent of the total appropriation for the 50 States and the District of Columbia. For FY 1998, this is: .0025×$4,275,000,000=$10,687,500

D_{4921}=Amount of grant for research regarding Type I Diabetes under section 4921 of the BBA. This is $30,000,000 for FYs 1998 through 2002.

D_{4922}=Amount of grant for diabetes programs for Indians under section 4922 of the BBA. This is $30,000,000 for FYs 1998 through 2002.

Therefore, for FY 1998 the total amount available for allotment to the 50 States and the District of Columbia is $4,204,312,500. This was determined as follows:

A_{TA}($4,204,312,500)=S2104(a) ($4,275,000,000)—$T_{2104(c)}$ ($10,687,500)—$D_{4921}$($30,000,000) —D_{4922}($30,000,000)

The total amount available for allotment to the 50 States and the District of Columbia is allotted to each State with a child health plan approved under title XXI based on the formula indicated at section 2104(b)(1) of the Act. The fiscal year allotment for each State with an approved child health plan is determined on the basis of the product of two factors, the Number of Children and the State Cost Factor, for

each State divided by the sum of these products over all States.

For FYs 1998 through 2000, the first factor, the Number of Children, is based only on the total number of low-income, uninsured children in the State. For FY 2001 only, the Number of Children is calculated as the sum of 75 percent of the low-income, uninsured children in the State, and 25 percent of the number of low-income children in the State. For FY 2002 and succeeding years through FY 2007, the Number of Children is calculated as the sum of 50 percent of the low-income, uninsured children in the State, and 50 percent of the number of low-income in the State.

For FY 1998 the Number of Children for each State (provided in thousands) was determined and provided by the Bureau of the Census based on the arithmetic average of the number of low-income children and low-income children with no health insurance as calculated from the three most recent March supplements to the Current Population Survey (1994, 1995, and 1996) prior to FY 1998. Because of time constraints we are using Bureau of Census data obtained prior to September 1, 1997. These data refer to information for calendar years 1993, 1994, and 1995, respectively, and represent the number of people in each State under 19 years of age whose family income is at or below 200 percent of the poverty threshold appropriate for that family, and who are not reported to be covered by health insurance. The Number of Children for each State was developed by the Bureau of the Census based on the standard methodology used to determine official poverty status and uninsured status in their annual Current Population Reports on these topics. As part of a continuing formal process between HCFA and the Bureau of the Census, each fiscal year HCFA will obtain such Number of Children data officially from the Bureau of the Census.

The second factor, the State Cost Factor, is based on annual average wages in the health services industry in the State. The State Cost Factor for a State is equal to the sum of: .15 and .85 multiplied by the ratio of the annual average wages in the health industry per employee for the State to the annual wages per employee in the health industry for the 50 States and the District of Columbia. The State Cost Factor for each State was calculated based on such wage data for each State as reported, determined, and provided to HCFA by the Bureau of Labor Statistics (BLS) in the Department of Labor for each of the most recent 3 years before the beginning of the fiscal year. Because of time constraints we are using BLS data obtained prior to September 1, 1997.

The average of wages per employee for the 50 States and the District of Columbia was calculated by HCFA directly from the State specific data for each State provided by the BLS. This was necessary because BLS suppressed certain State specific data in providing HCFA with the State specific average wages per health services industry employee. BLS is required to suppress such data under the Privacy Act. The State Cost Factor is determined based on the calculation of the ratio of each State's average annual wages in the health industry to the National average annual wages in the health care industry. In order for such National average to appropriately reflect the State specific suppressed data, HCFA calculated the National average wages directly from the State specific data provided by BLS. As part of a continuing formal process between HCFA and the BLS, each fiscal year HCFA will obtain these wage data officially from the BLS.

Under section 2104(b)(4) of the Act each of the 50 States and the District of Columbia will receive a minimum allotment of $2 million. Under this provision, to the extent any State's allotment is increased to $2,000,000 from a lower amount that would otherwise have been allotted to the State, the allotments to other States and the District and Columbia must be reduced in a ''pro rata manner'' (but not below $2,000,000) so that the total amount available for allotment to all States does not exceed the amount previously available. For FY 1998, no State's reserved allotment is below $2,000,000; therefore, no pro rata adjustment was necessary.

Following is an explanation of how HCFA applied the two State-related factors specified in the statute to determine the States' child health plan reserved allotments for FY 1998. The formula for determining each State's reserved allotment for FY 1998 of the total available allotment is:

$$SA_i = \frac{(C_i \times SCF_i)}{\sum (C_i \times SCF_i)} \times A_{TA}$$

Sa_i=Allotment for State i.

C_i=Number of Children. This is the number of certain low-income children in State i as officially reported, defined, and provided to HCFA by the Bureau of the Census. For FY 1998, this is the number of children under age 19 with no health insurance whose family income is at or below 200 percent of the poverty line for a family of the same size. (section 2104(b)(2)(B))

SCFi = The State cost factor for State i (section 2104(b)(1)(A)(ii)). This is equal to: $.15+.85\times(W_i/W_N)$ (section 2104(b)(3)(A)).

W_i=Certain annual average wages per health industry employee for State i.

W_N=Certain annual wages per health industry employee for the 50 States and the District of Columbia.

The annual wages per employee for a State or for all States for a fiscal year is equal to the average of such wages for employees in the health industry, *as reported* by the *Bureau of Labor Statistics* of the Department of Labor.

$\Sigma(C_i x SCF_i)$=The sum of the products of $Ci \times SCFi$ for each State (section 2104(b)(1)(B)).

A_{TA}=Total amount available for allotment to all States for the fiscal year. For FY 1998, this is $4,204,312,500.

Section 2104(e) of the Act requires that the amount of a State's allotment for a fiscal year be available to the State for a total of 3 years, the fiscal year in which the State child health plan is approved and 2 years following. Section 2104(f) of the Act requires the Secretary to establish a process for redistribution of the amounts of States' allotments that are not expended during the 3-year period to States that have fully expended their allotments.

HCFA will soon issue a notice of proposed rulemaking that will address the redistribution process and propose to incorporate the process in Federal regulations.

In accordance with section 2104 (b) and (c) of the Act, the total allotment for all States for each fiscal year is available to the 50 States and District of Columbia, the Commonwealths and the Territories. Although the statute precludes the Secretary from making an allotment to a specific State until it has an approved State child health plan, because of the statutory provisions for redistribution of unused amounts of allotments, the availability of allotments for 3 years, and the potential for retroactive effective dates of State child health plans back to October 1, 1997, we believe it is necessary to establish and publish these reserved allotment amounts for FY 1998 so that States can begin to plan operation, if they chose to establish a State children's health insurance program under title XXI, effective October 1, 1997. No payments may be made from these allotments until a State has an approved State child health plan under title XXI.

In developing the reserved allotment amounts for FY 1998, we applied the following principles, upon which we will be inviting public comment during the rulemaking process.

- For each fiscal year for FY 1998 through FY 2007, an allotment amount will be reserved for all 50 States and the District of Columbia and for the Commonwealths and Territories, regardless of whether every State, Commonwealth, or Territory has submitted and the Secretary has approved a State child health plan. This will provide States with the flexibility and time to develop their programs and submit their State child health plans.
- The formula for ''reserving'' an allotment amount for each State will be the same as the formula contained at section 2104(b) of the Act. The reserved amount is an estimate of the State's title XXI allotment upon submission and approval of the State's child health plan.
- Under sections 2101(b)(2) and 2105(a) of the Act, no payment of Federal funds from a State's allotment is available for expenditures under a State's title XXI program unless the State has an approved State child health plan. Therefore, States may be at risk for expenditures made under a title XXI child health plan that is submitted, but not yet approved.

IV. Table of Reserved State Children's Health Insurance Program Allotments for FY 1998

Key to Table II

Column/Description

Column A = Name of State, Commonwealth, or Territory.

Column B = Number of Children. The Number of Children for each State (provided in thousands) was determined and provided by the Bureau of the Census based on the arithmetic average of the number of low-income children and low-income children with no health insurance as calculated from the three most recent March supplements to the Current Population Survey. These data represent the number of people in each State under 19 years of age whose family income is at or below 200 percent of the poverty threshold appropriate for that family, and who are reported to be not covered by health insurance. The Number of Children for each State was developed by the Bureau of the Census based on the standard methodology used to determine official poverty status and uninsured status in their annual Current Population Reports on these topics.

For FYS 1998–2000, the Number of Children is equal to the number of low-income children in each State with no health insurance for the fiscal year. For FY 2001, the Number of Children is equal to the sum of 75 percent of the number of low-income children in the State with no health insurance and 25 percent of the number of low-income children in the State. This is also based on a 3-year average of Census data. For FY 2002 and succeeding years, the Number of Children is equal to the sum of 50 percent of the number of low-income children in the State with no health insurance and 50 percent of the number of low-income children in the State. This is also based on a 3-year average of Census data.

Column C = State Cost Factor. The State Cost Factor for a State is equal to the sum of: .15, and .85 multiplied by the ratio of the annual average wages in the health industry per employee for the State to the annual wages per employee in the health industry for the 50 States and the District of Columbia. The State Cost Factor for each State was calculated based on such wage data for each State as reported, determined, and provided to HCFA by the BLS in the Department of Labor for each of the most recent 3 years before the beginning of the fiscal year.

Column D = Product. The Product for each State was calculated by multiplying the Number of Children in Column B by the State Cost Factor in Column C. The sum of the Products for all 50 States and the District of Columbia is below the Products for each State in Column D. The Product for each State and the sum of the Products for all States provides the basis for allotment to States.

Column E = Percent Share of Total. This is the calculated percentage share for each State of the total allotment available to the 50 States and the District of Columbia. The Percent Share of Total is calculated as the ratio of the Product for each State in Column D to the sum of the products for all 50 States and the District of Columbia below the Products for each State in Column D.

Column F = Allotment. This is the State Child Health Program allotment for each State, Commonwealth, or Territory. For each of the 50 States and the District of Columbia, this is determined as the Percent Share of Total in Column E for the State multiplied by the total amount available for allotment for the 50 States and the District of Columbia for the fiscal year.

For each of the Commonwealths and Territories, the allotment is determined as the Percent Share of Total in Column E multiplied by the total amount available for allotment to the Commonwealths and Territories. For the Commonwealths and Territories, the Percent Share of Total in Column E is specified in section 2104(c) of the Act.

STATE CHILDREN'S HEALTH INSURANCE PROGRAM ALLOTMENTS FOR FISCAL YEAR: 1998

A State	B Number of low-income children (000)	C State cost factor	D Product	E Percent share of total (1)	F Allotment (3)
Alabama	154	0.9510	146.46	2.05	$85,997,312
Alaska	9	1.0669	9.60	0.13	5,638,146
Arizona	184	1.0472	192.69	2.69	113,138,521
Arkansas	90	0.8871	79.84	1.12	46,878,527
California	1,281	1.1365	1,455.92	20.33	854,864,484
Colorado	72	0.9888	71.19	0.99	41,801,288
Connecticut	53	1.1237	59.55	0.83	34,968,061
Delaware	13	1.0553	13.72	0.19	8,055,533
District of Columbia	16	1.2857	20.57	0.29	12,079,106
Florida	444	1.0368	460.32	6.43	270,284,180
Georgia	214	0.9923	212.36	2.97	124,692,179
Hawaii	13	1.1722	15.24	0.21	8,947,603
Idaho	31	0.8726	27.05	0.38	15,883,789
Illinois	211	0.9892	208.73	2.92	122,560,067

STATE CHILDREN'S HEALTH INSURANCE PROGRAM ALLOTMENTS FOR FISCAL YEAR: 1998—Continued

A State	B Number of low-income children (000)	C State cost factor	D Product	E Percent share of total (1)	F Allotment (3)
Indiana	131	0.9169	120.12	1.68	70,530,557
Iowa	67	0.8253	55.30	0.77	32,468,807
Kansas	60	0.8704	52.22	0.73	30,664,400
Kentucky	93	0.9146	85.06	1.19	49,945,361
Louisiana	194	0.8934	173.31	2.42	101,762,991
Maine	24	0.8863	21.27	0.30	12,490,186
Maryland	100	1.0498	104.98	1.47	61,643,199
Massachusetts	69	1.0576	72.97	1.02	42,847,242
Michigan	156	1.0001	156.02	2.18	91,609,050
Minnesota	50	0.9675	48.37	0.68	28,403,279
Mississippi	110	0.8675	95.43	1.33	56,031,502
Missouri	97	0.9075	88.03	1.23	51,686,405
Montana	20	0.8333	16.67	0.23	9,786,177
Nebraska	30	0.8440	25.32	0.35	14,866,746
Nevada	43	1.2046	51.80	0.72	30,414,882
New Hampshire	20	0.9760	19.52	0.27	11,461,349
New Jersey	134	1.1241	150.62	2.10	88,440,626
New Mexico	107	0.9169	98.11	1.37	57,605,226
New York	399	1.0914	435.47	6.08	255,692,115
North Carolina	138	0.9815	135.45	1.89	79,528,899
North Dakota	10	0.8587	8.59	0.12	5,042,037
Ohio	205	0.9617	197.16	2.75	115,764,112
Oklahoma	161	0.8588	138.26	1.93	81,182,913
Oregon	67	0.9947	66.65	0.93	39,131,718
Pennsylvania	200	1.0005	200.09	2.79	117,486,712
Rhode Island	19	0.9580	18.20	0.25	10,687,168
South Carolina	110	0.9843	108.27	1.51	63,574,155
South Dakota	15	0.8559	12.84	0.18	7,538,311
Tennessee	115	0.9799	112.69	1.57	66,170,086
Texas	1,031	0.9275	956.25	13.35	561,475,805
Utah	46	0.8977	41.30	0.58	24,247,390
Vermont	7	0.8604	6.02	0.08	3,536,354
Virginia	118	0.9862	116.38	1.63	68,332,474
Washington	85	0.9352	79.49	1.11	46,673,207
West Virginia	45	0.8937	40.21	0.56	23,612,812
Wisconsin	71	0.9229	65.53	0.92	38,475,831
Wyoming	15	0.8758	13.14	0.18	7,713,620
Total States Only	.....	.....	7,160.35	100.00	4,204,312,500
Allotments for Commonwealths and Territories (2):					
Puerto Rico	.....	.....	.....	91.60	9,789,750
Guam	.....	.....	.....	3.50	374,063
Virgin Islands	.....	.....	.....	2.60	277,875
American Samoa	.....	.....	.....	1.20	128,250
N. Mariana Islands	.....	.....	.....	1.10	117,563
Total Commonwealths and Territories Only	.....	.....	.....	100.00	10,687,500
Total States and Commonwealths and Territories	.....	.....	.....	.....	4,215,000,000

Footnotes:

1 Total amount available for allotment to the 50 States and the District of Columbia is $4,204,312,500; determined as the FY 1998 appropriation ($4,275,000,000) reduced by the total amount available for allotment to the Commonwealths and Territories ($10,687,500) and amounts for Special Diabetes Grants ($60,000,000) under sections 4921 and 4922 of BBA.

2 Total amount available for allotment to the Commonwealths and Territories is $10,687,500; determined as .25 percent of the FY 1998 appropriation ($4,275,000,000).

3 Percent share of total amount available for allotment to the Commonwealths and Territories is as specified in section 2104(c) of the Social Security Act.

V. Calculation of Enhanced Federal Medical Assistance Percentage

In accordance with formulas in sections 1101(a)(8) and 1905(b) of the Act, the Secretary each year calculates and publishes the ''Federal percentages'' and ''Federal medical assistance percentages'' (FMAP) that are used in determining the amount of Federal matching in State welfare and medical assistance expenditures. Section 2105(b) of title XXI provides for an ''enhanced FMAP'' for child health assistance provided under title XXI that is equal to the current FMAP for fiscal year in the Medicaid Title XIX program, increased by 30 percent of the difference between 100 and the current FMAP for that fiscal year. The enhanced FMAP may not exceed 85 percent.

The FMAPs for each State and Commonwealth and Territory for the title XIX Medicaid program that are applicable for FY 1998 have already been published in the **Federal Register** (on January 29, 1997, 62 FR 4293). We are republishing the FY 1998 FMAPs in Table II, along with the enhanced FMAP for the State Children's Health Insurance Program, computed in accordance with the formula specified in section 2105(b) of the Act.

Key to Table I

Column/Description

Column A = State. This contains the name of the State, Commonwealth, or Territory.

Column B = Federal Medical Assistance Percentages FY 1998. This contains the title XIX FMAPs, previously published in the **Federal Register** (January 29, 1997, 62 FR 4293).

Column C = Amount of FMAP Increase. This contains the amount of the FMAP increase calculated as 30 percent of the difference between 100 percent and the title XIX FMAP rate in Column B.

Column D = Enhanced FMAP FY 1998. This is the title XXI enhanced FMAP rate specified at section 2105(b) of the Act. The enhanced FMAP is limited to no more than 85 percent.

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ENHANCED FMAPS UNDER SECTION 2105(b) OF THE SOCIAL SECURITY ACT			
A	B	C	D
STATE	FEDERAL MEDICAL ASSISTANCE PERCENTAGES FY 1998	AMOUNT OF FMAP INCREASE	ENHANCED FMAP FY 1998
ALABAMA	69.32%	9.20%	78.52%
ALASKA(1)	59.80%	12.06%	71.86%
AMERICAN SAMOA	50.00%	15.00%	65.00%
ARIZONA	65.33%	10.40%	75.73%
ARKANSAS	72.84%	8.15%	80.99%
CALIFORNIA	51.23%	14.63%	65.86%
COLORADO	51.97%	14.41%	66.38%
CONNECTICUT	50.00%	15.00%	65.00%
DELAWARE	50.00%	15.00%	65.00%
DISTRICT OF COLUMBIA(1)	70.00%	9.00%	79.00%
FLORIDA	55.65%	13.31%	68.96%
GEORGIA	60.84%	11.75%	72.59%
GUAM	50.00%	15.00%	65.00%
HAWAII	50.00%	15.00%	65.00%
IDAHO	69.59%	9.12%	78.71%
ILLINOIS	50.00%	15.00%	65.00%
INDIANA	61.41%	11.58%	72.99%
IOWA	63.75%	10.88%	74.63%
KANSAS	59.71%	12.09%	71.80%
KENTUCKY	70.37%	8.89%	79.26%
LOUISIANA	70.03%	8.99%	79.02%
MAINE	66.04%	10.19%	76.23%
MARYLAND	50.00%	15.00%	65.00%
MASSACHUSETTS	50.00%	15.00%	65.00%
MICHIGAN	53.58%	13.93%	67.51%
MINNESOTA	52.14%	14.36%	66.50%
MISSISSIPPI	77.09%	6.87%	83.96%
MISSOURI	60.68%	11.80%	72.48%
MONTANA	70.56%	8.83%	79.39%
NEBRASKA	61.17%	11.65%	72.82%
NEVADA	50.00%	15.00%	65.00%
NEW HAMPSHIRE	50.00%	15.00%	65.00%
NEW JERSEY	50.00%	15.00%	65.00%
NEW MEXICO	72.61%	8.22%	80.83%
NEW YORK	50.00%	15.00%	65.00%
NORTH CAROLINA	63.09%	11.07%	74.16%
NORTH DAKOTA	70.43%	8.87%	79.30%
NORTHERN MARIANA IS.	50.00%	15.00%	65.00%
OHIO	58.14%	12.56%	70.70%
OKLAHOMA	70.51%	8.85%	79.36%
OREGON	61.46%	11.56%	73.02%
PENNSYLVANIA	53.39%	13.98%	67.37%
PUERTO RICO	50.00%	15.00%	65.00%
RHODE ISLAND	53.17%	14.05%	67.22%
SOUTH CAROLINA	70.23%	8.93%	79.16%
SOUTH DAKOTA	67.75%	9.68%	77.43%
TENNESSEE	63.36%	10.99%	74.35%
TEXAS	62.28%	11.32%	73.60%
UTAH	72.58%	8.23%	80.81%
VERMONT	62.18%	11.35%	73.53%
VIRGIN ISLANDS	50.00%	15.00%	65.00%
VIRGINIA	51.49%	14.55%	66.04%
WASHINGTON	52.15%	14.36%	66.51%
WEST VIRGINIA	73.67%	7.90%	81.57%
WISCONSIN	58.84%	12.35%	71.19%
WYOMING	63.02%	11.09%	74.11%
Footnote: (1) FMAP as specified in Section 4725 of the Balanced Budget Act of 1997			

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VI. Impact Statement

HCFA has examined the impact of this notice as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rules are necessary, to select regulatory approaches that maximize net benefits (including potential economic environments, public health and safety, other advantages, distributive impacts, and equity). We believe that this notice is consistent with the regulatory philosophy and principles identified in the Executive Order.

This notice merely provides advance notification of the reserved FY 1998 State allotments available to provide Federal funding to individual States, Commonwealths, and Territories for expenditures in the new Children's Health Insurance Program and the assumption and methodology that HCFA used to determine these reserved allotments. The formula for State allotments is specified in the statute. This notice by itself has no economic impact. Final allotments will be calculated using the statutory formula and may vary from these reserved amounts depending upon the number of States that submit approved State plans under title XXI. (As noted above, the allotment process will be set forth in more detail in future rule making.)

We believe this notice will have an overall positive impact by informing States of the extent to which they will be permitted to expend funds under approved State child health plans in FY 1998. States will be able to conduct advance planning necessary for implementation of the State Child Health Insurance Program if they choose, beginning October 1, 1997.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

(Section 1102 of the Social Security Act (42 U.S.C. 1302)

Dated: September 8, 1997.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: September 9, 1997.

Donna E. Shalala,

Secretary.

[FR Doc. 97–24324 Filed 9–10–97; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Request for Nominations of Candidates To Serve on the National Vaccine Advisory Committee, Department of Health and Human Services

The Public Health Service (PHS) is soliciting nominations for possible membership on the National Vaccine Advisory Committee (NVAC). This committee studies and recommends ways to encourage the availability of an adequate supply of safe and effective vaccination products in the States; recommends research priorities and other measures the Director of the National Vaccine Program should take to enhance the safety and efficacy of vaccines; advises the Director of the Program in the implementation of sections 2102, 2103, and 2104, of the PHS Act; and identifies annually, for the Director of the Program, the most important areas of government and non-government cooperation that should be considered in implementing sections 2102, 2103, and 2104, of the PHS Act.

Nominations are being sought for individuals engaged in vaccine research or the manufacture of vaccines or who are physicians, members of parent organizations concerned with immunizations, or representatives of State or local health agencies or public health organizations. Federal employees will not be considered for membership. Members may be invited to serve a four-year term.

Close attention will be given to minority and female representation; therefore nominations from these groups are encouraged.

The following information is requested: name, affiliation, address, telephone number, and a current curriculum vitae. Nominations should be sent, in writing, and postmarked by September 26, 1997, to: Felecia D. Pearson, Committee Management Specialist, NVAC, National Vaccine Program Office, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, M/S D50, Atlanta, Georgia 30333. Telephone and facsimile submissions cannot be accepted.

Dated: September 4, 1997.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–24192 Filed 9–11–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Supplement to the Cooperative Agreement With the National Association of State Alcohol and Drug Abuse Directors, Inc.

AGENCY: Substance Abuse and Mental Health Services Administration (SAMHSA), HHS.

ACTION: Notice of a revision to a previous **Federal Register** Notice regarding a planned single source supplemental award.

SUMMARY: SAMHSA's **Federal Register** notice (Vol. 62, No. 133), dated July 11, 1997, regarding a planned single source supplemental award is revised as follows:

In the third paragraph, revise the first sentence to read:

In view of the above considerations, SAMHSA has determined that a supplement to the existing cooperative agreement is the most effective way to assist the States by developing a detailed inventory of prevention activities, an inventory and analysis of each State's data capability, and a project to further the development of existing mentoring programs for youth and build on the existing infrastructure of mentoring programs throughout the country.

Following the fifth paragraph add the following:

The supplement related to mentoring is intended to assist the States in strengthening existing mentoring programs for youth and building on the existing infrastructure of mentoring programs throughout the development of Statewide mentoring initiatives. This project is not intended to recreate or compete with the mentoring network, but rather to focus existing resources to support, strengthen, promote and enhance the ability of the current mentoring network to accomplish its goals. Experience has shown the strength of mentoring in reducing alcohol and drug use, teen pregnancy, academic failure and gang participation and its associated violent behavior. Further, mentoring is a key prevention strategy that can be implemented across multiple service systems to target specific problems that affect society. This mentoring project is intended to provide certain State alcohol and drug agencies with the support and guidance through training and technical assistance to initiate and/or grow their own Statewide mentoring initiatives,

which will in turn support and guide the State's existing mentoring programs. As a result of their participation in the project, it is expected that these States will become catalysts in a new paradigm of prevention collaboration at the State and community levels.

Availability of Funds: At the end of the first sentence add: ''and up to $350,000 will be available for the mentoring project.

FOR FURTHER INFORMATION CONTACT: Stephen G. Wing, SAMHSA Office of Policy and Program Coordination, Room 12C–05, Parklawn Building (301–443–0593). The mailing address is: 5600 Fishers Lane, Rockville, Maryland 20857.

Dated: September 5, 1997.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 97–24169 Filed 9–11–97; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4286–D–01]

Redelegation of Authority

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Redelegation of authority.

SUMMARY: This notice amends the field reorganization Revocation and Redelegation of Authority for the Office of Housing, published on December 6, 1994, at 59 FR 62739. In this notice, the Assistant Secretary for Housing-Federal Housing Commissioner redelegates nationwide authority to perform all functions related to the Multifamily Coinsurance Program, to the Director, Multifamily Housing Division, in the Greensboro, North Carolina field office. Thus, the authority of the Director, Multifamily Housing Division in the Greensboro, North Carolina field office is extended to include properties located not only in the Greensboro geographic area, but throughout the nation.

EFFECTIVE DATE: September 5, 1997.

FOR FURTHER INFORMATION CONTACT: William Harris, Acting Director, Operations Division, Office of Multifamily Asset Management and Disposition, Department of Housing and Urban Development, 451 Seventh Street, S.W., Room 6186, Washington, D.C. 20410, (Telephone No. (202) 708–0216), (HUD's TTY No. (202) 708–1455); or Daniel A. McCanless, Multifamily Housing Division Director, Department of Housing and Urban Development, North Carolina State Office, Koger Building, 2306 West Meadowview Road, Greensboro, North Carolina, 27407–3707, (Telephone No. (910) 547–4020), (HUD North Carolina State Office's TTY No. (910) 547–4055). Persons with hearing or speech impairments may also utilize the Federal Information Relay Service's TTY Number at (800) 877–8339. With the exception of the ''800'' number, all telephone and TTY numbers listed are not toll-free.

SUPPLEMENTARY INFORMATION: Section 307 of the Housing and Community Development Act of 1974 amended the National Housing Act by adding a new section 244, entitled ''Coinsurance.'' *See* 12 U.S.C. § 1715z–9. The Multifamily Coinsurance Program was intended to function as a joint venture between the private and public sectors, in which lenders and HUD would share mortgage insurance risk, thereby providing an alternative to traditional HUD full insurance financing. The Multifamily Coinsurance Program experienced an unacceptably high level of loan defaults and losses to the FHA General Insurance Fund, and was ultimately terminated in October of 1990. *See* 55 FR 41312, published October 10, 1990.

In 1990, the Coinsurance Management Division was established in the Office of Multifamily Asset Management and Disposition to provide oversight of the coinsured and formerly coinsured (i.e., coinsured loans converted to full insurance due to the failure of the coinsuring lender) portfolios. In September, 1995, with the decline of the coinsured mortgage portfolio, the Coinsurance Management Division was abolished and the coinsurance management workload was absorbed by the Operations Division within the Office of Multifamily Asset Management and Disposition.

On December 6, 1994, at 59 FR 62739, the Department published a Notice of Revocation and Redelegation of Authority which granted authority to carry out the Multifamily Coinsurance Program to various specified field offices. That field reorganization redelegation has been amended on several occasions and remains in effect, as amended.

Based upon a thorough analysis of the coinsured and formerly coinsured mortgage portfolio workload, in order to best utilize its finite resources, and to ensure that the Department is able to most effectively service its coinsured and formerly coinsured portfolio, the Assistant Secretary for Housing-Federal Housing Commissioner has determined to redelegate nationwide authority to perform all functions related to the Multifamily Coinsurance Program, to the Director, Multifamily Housing Division, in the Greensboro, North Carolina field office.

Additionally, the coinsurance regulations, at 24 CFR 251.3, 252.3 and 255.3, were revised to provide for the conversion of individual coinsured loans to full insurance, in conjunction with either a full or partial claim payment. *See* 61 FR 49036, published September 17, 1996. Under this revision, coinsuring lenders were given the option of requesting that a coinsured mortgage be converted to full insurance. Under the coinsurance regulations, as cited above, the Federal Housing Commissioner has authority to endorse such conversions from coinsurance to full insurance. In this notice, the Federal Housing Commissioner also redelegates the authority to endorse such requests, on a nationwide basis, to the Director, Multifamily Housing Division, in the Greensboro, North Carolina field office.

Accordingly, the Assistant Secretary for Housing-Federal Housing Commissioner redelegages authority as follows:

Section A. Authority Redelegated

The Assistant Secretary for Housing-Federal Housing Commissioner redelegates authority to the Director, Multifamily Housing Division in the Greensboro, North Carolina field office, and modifies the field reorganization Revocation and Redelegation of Authority, published December 6, 1994 at 59 FR 62739, as follows:

1. The Director, Multifamily Housing Division, Greensboro, North Carolina is redelegated nationwide authority with regard to the Multifamily Coinsurance Program (Section 244 of the National Housing Act, 12 U.S.C. § 1715z–9).

2. The Director, Multifamily Housing Division, Greensboro, North Carolina, is redelegated the authority to perform all functions on a nationwide basis relating to the Multifamily Coinsurance Program. This authority includes but is not limited to performing the functions relating to multifamily coinsurance that are listed within the field reorganization redelegation at 59 FR 62739; in addition, with regard to the function listed at B., III., (a), (iii), A., 24, 59 FR 62743, the Director is herein redelegated the authority to execute second mortgage documents without first obtaining Headquarters approval of partial payment of claims. Also, the Director, Multifamily Housing Division, Greensboro, North Carolina is herein specifically redelegated the authority to perform the function of endorsing

requests for conversion from coinsurance to full insurance, as per the coinsurance regulations at 24 CFR 251.3, 252.3, and 255.3.

Section B. Authority To Further Redelegate

The authority redelegated above, in Section A of the instant document, may be further redelegated in writing to appropriate field office staff. In cases where authority is redelegated to staff not reporting to the redelegating field office official, prior concurrence of the Assistant Secretary for Housing-Federal Housing Commissioner, is required.

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. § 3535(d).

Dated: September 5, 1997.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 97–24189 Filed 9–11–97; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–00–P; AA–10960]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(h)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(1), will be issued to Chugach Alaska Corporation for approximately .14 acre. The lands involved are in the vicinity of Glacier Island, Alaska.

U.S. Survey No. 6936, Alaska

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Anchorage Daily News. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until October 14, 1997 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Chris Sitbon,

Land Law Examiner, ANCSA Team, Branch of 962 Adjudication.

[FR Doc. 97–24190 Filed 9–11–97; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–060–1310–00]

Notice of Texaco Road Opening

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Texaco Road Opening.

SUMMARY: On June 20, 1997 (page 33671), Vol. 62, No. 119 the BLM published a **Federal Register** notice closing the main road and the Texaco roads leading to the Muddy Mountain Outdoor Education Area, and the use of the campground and facilities within that area. This notice amends that notice by opening the Texaco road and the main road from the junction of the Texaco road to the outdoor education area. All other closures in that notice still remain in effect. Landowner permission is still required for the private portion of the Texaco road.

DATES: This opening will remain in effect until further notice.

ADDRESSES: Questions or concerns should be addressed to Mike Karbs, Area Manager, Platte River Resource Area, PO Drawer 2420, 815 Connie, Casper, Wyoming 82644–2420.

FOR FURTHER INFORMATION CONTACT: Mike Karbs or Don Whyde at (307) 261–7500.

Dated: September 3, 1997.

William H. Mortimer,

Acting District Manager.

[FR Doc. 97–24176 Filed 9–11–97; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 6, 1997. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by September 29, 1997.

Carol D. Shull,

Keeper of the National Register.

CALIFORNIA

Kern County

Wasco Union High School Auditorium, 1900 Seventh St., Wasco, 97001188

San Francisco County

Gibb, Daniel, & Co. Warehouse, 855 Front St., and 101 Vallejo St., San Francisco, 97001189

Santa Clara County

Alviso, Jose Maria, Adobe, 92 Piedmont Rd., Milpitas, 97001190

COLORADO

Denver County

Roth, Henry, House, 5, 7, and 9 S. Fox St., Denver, 97001192

St. Paul's English Evangelical Lutheran Church, 1600 Grant St., Denver, 97001191

GEORGIA

De Kalb County

Zuber-Jarrell House, 810 Flat Shoals Ave., SE, Atlanta, 97001194

Sumter County

Campbell Chapel AME Church, 429 N. Jackson St., Americus, 97001195

Thomas County

B'nai Israel Synagogue and Cemetery, 210 S. Crawford St., Thomasville, 97001193

NEW JERSEY

Burlington County

Beverly National Cemetery (Civil War Era National Cemeteries MPS), Bridgeboro Rd., jct. of Mt. Holly, and Bridgeboro Rds., Edgewater Park Township vicinity, 97001201

NEW YORK

Suffolk County

Southold Historic District, Along Main Rd., roughly bounded by Jockey Creek Dr., Griswold St., Long Island RR tracks, and Wells Rd., Southold, 97001202

Tioga County

St. Paul's Church (Historic Churches of the Episcopal Diocese of Central New York MPS) 117 Main St., Owego, 97001204

Washington County

Congdon, Hiram, House, NE of jct. of NY 22 and B Rd., Putnam, 97001203

NORTH CAROLINA

Buncombe County

Buncombe County Boys' Training School, (Former), 177 Erwin Hills Rd., Asheville vicinity, 97001197

St. Luke's Episcopal Church, 219 Chunn's Cove Rd., Asheville, 97001198

Cabarrus County

South Union Street Courthouse and Commerical Historic District, Along Union St., bounded by Corban and Cabarrus Aves., Concord, 97001196

Stokes County

George, R. W., Mill, NC 89, 0.6 mi NE of jct. of NC 89 and NC 66, Francisco vicinity, 97001199

NORTH DAKOTA

Mercer County

Beulah School, 205 2nd St., NW, Beulah, 97001200

SOUTH CAROLINA

Beaufort County

Beaufort National Cemetery (Civil War Era National Cemeteries MPS), 1601 Boundary St., Beaufort, 97001208

Florence County

Florence National Cemetery (Civil War Era Cemeteries National Cemeteries MPS), 803 E. National Cemetery Rd., Florence, 97001207

Richland County

Bellevue Historic District, Roughly bounded by Sumter St., Anthony Ave., Bull St., and Elmwood Ave., Columbia, 97001206

York County

Brattonsville Historic District (Boundary Increase), Roughly bounded by S. Fork Fishing Cr., Percival, Brattonsville, and Bookout Rds., McConnells vicinity, 97001205

TEXAS

Kent County

First National Bank Building, 402 Donoho St., Jayton, 97001209

[FR Doc. 97–24198 Filed 9–11–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Unassociated Funerary Objects From San Diego County, CA, in the Possession of Southwestern College, Chula Vista, CA

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (d), of the completion of an inventory of human remains and unassociated funerary objects from San Diego County, CA, in the possession of Southwestern College, Chula Vista, CA.

A detailed assessment of the human remains was made by Southwestern College professional staff and contracted specialists in consultation with representatives of the Barona Group of the Capitan Grande Band of Mission Indians, the Campo Band of Mission Indians, the Cuyapaipe Band of Mission Indians, the Inaja Band of Mission Indians, the Jamul Indian Village, the La Jolla Band of Mission Indians, the La Posta Band of Mission Indians, the Los Coyotes Band of Mission Indians, the Manazita Band of Mission Indians, the Mesa Grande Band of Mission Indians, the Pala Band of Mission Indians, the Rincon Band of Mission Indians, the San Pasqual Band of Mission Indians, the Santa Ysabel Band of Mission Indians, the Sycuan Band of Mission Indians, the Viejas Band of Mission Indians.

During 1972–1983, human remains representing a minimum of two individuals were recovered from site CSUSD F:5:1 during a archeology field school conducted by Southwestern College. No known individuals were identified. No associated funerary objects are present.

Approximately 150 associated cultural items including burned animal, bird, and sting ray bones, olivella shell beads, quartz crystals, ceramic pipe fragments, glass trade beads, a piece of galena, incised stones, and one incised ''turtle'' fetish were also recovered from site CSUSD F:5:1 during this period. The presence of these objects are consistent with known Kumeyaay funerary objects, however, due to the extreme disturbance of the site and scattered condition of the human remains, these objects are being considered unassociated funerary objects based on site reports and consultation with the Campo Band of Mission Indians.

These individuals have been identified as Native American based on manner of internment and types of unassociated funerary objects present. Site CSUSD F:5:1 has been identified as a Kumeyaay occupation area (possibly the historic village of Otay mentioned in the records of Mission San Diego de Alcala) based on historical documents, continuity of funerary practice, and cultural items at the site. Consultation evidence presented by representatives of the Campo Band of Mission Indians indicates Kumeyaay people used this site into the 1930s.

Based on the above mentioned information, officials of Southwestern College have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of two individuals of Native American ancestry. Officials of Southwestern College have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the approximately 150 cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of an Native American individual. Lastly, officials of Southwestern College 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 Native American human remains and unassociated funerary objects and the Campo Band of Mission Indians.

This notice has been sent to officials of the Barona Group of the Capitan Grande Band of Mission Indians, the Campo Band of Mission Indians, the Cuyapaipe Band of Mission Indians, the Inaja Band of Mission Indians, the Jamul Indian Village, the La Jolla Band of Mission Indians, the La Posta Band of Mission Indians, the Los Coyotes Band of Mission Indians, the Manazita Band of Mission Indians, the Mesa Grande Band of Mission Indians, the Pala Band of Mission Indians, the Rincon Band of Mission Indians, the San Pasqual Band of Mission Indians, the Santa Ysabel Band of Mission Indians, the Sycuan Band of Mission Indians, the Viejas Band of Mission Indians.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and unassociated funerary objects should contact Charlotte McGowan, Professor of Archaeology, or Marcie Sinclair, Special Assistant to the Superintendent/President for Human Resources & Legal Affairs, Southwestern College, 900 Otay Lakes Road, Chula Vista, CA 91910; telephone: (619) 421–6700 or (619) 482–6328, before October 14, 1997.

Repatriation of the human remains and unassociated funerary objects to the Campo Band of Mission Indians may begin after that date if no additional claimants come forward.

Dated: September 5, 1997.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 97–24196 Filed 9–11–97; 8:45 am]

BILLING CODE 4310–70–F

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Overseas Private Investment Corporation

Submission for OMB Review; Comment Request

AGENCY: Overseas Private Investment Corporation, IDCA.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), Agencies are required to publish a Notice in the **Federal Register** notifying the public that the Agency has prepared an information collection request for OMB review and approval and has requested public review and comment on the submission. OPIC published its first **Federal Register** Notice on this information collection request on July 9, 1997, in 62 FR 36843, at which time a 60-day comment period was announced. This comment period ended on September 8, 1997. No comments were received in response to this Notice.

This information collection submission has now been submitted to OMB for review. Comments are again being solicited on the need for the information, its practical utility, the accuracy of the Agency's burden estimate, and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology.

The proposed form under review is summarized below.

DATES: Comments must be received on or before October 14, 1997.

ADDRESSES: Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer: Lena Paulsen, Manager, Information Center, Overseas Private Investment Corporation, 1100 New York Avenue, N.W., Washington, D.C. 20527; 202/336–8565.

OMB Reviewer: Victoria Wassmer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10102, 725 17th Street, N.W., Washington, D.C. 20503, 202/395–5871.

SUMMARY OF FORM UNDER REVIEW:

Type of Request: Revised form.

Title: Application for Political Risk Investment Insurance.

Form Number: OPIC–52.

Frequency of Use: Once per investor per project.

Type of Respondents: Business or other institutions (except farms); individuals.

Standard Industrial Classification Codes: All.

Description of Affected Public: U.S. companies or citizens investing overseas.

Reporting Hours: 6 hours per project.

Number of Responses: 160 per year.

Federal Cost: $4,000 per year.

Authority for Information Collection: Sections 231, 234(a), 239(d), and 240A of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The application is the principal document used by OPIC to determine the investor's and project's eligibility, assess the environmental impact and developmental effects of the project, measure the economic effects for the United States and the host country economy, and collect information for underwriting analysis.

Dated: September 9, 1997.

James R. Offutt,

Assistant General Counsel, Department of Legal Affairs.

[FR Doc. 97–24236 Filed 9–11–97; 8:45 am]

BILLING CODE 3210–01–M

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Office of Justice Programs; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under emergency review; a 1-minute survey on curfews.

The Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency prevention has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Emergency review and approval of this collection has been requested from OMB by September 12, 1997. If granted, the emergency approval is only valid for 180 days. All comments should be directed to OMB, Office of Information and Regulatory Affairs: Attention: Mr. Patrick Boyd, 202–395–5871, Department of Justice Desk Officer, Washington, DC 20503.

During the first 60 days of this same period, a regular review of this information collection is also being undertaken. Comments are encouraged and will be accepted until November 12, 1997. The Department of Justice request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

Enhance the quality, utility, and clarity of the information to be collected; and

Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to Eileen M. Garry (phone number and address listed below). If you have additional comments or suggestions or if you need a copy of the proposed information collection instrument with instructions or additional information, please contact Eileen M. Garry (202–307–5911), Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice, 633 Indiana Avenue, NW, Washington, DC 20531.

Overview of this information collection:

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* A 1-Minute Survey on Curfews.

(3) Agency form number, if any, and the applicable component of the Department sponsoring the collection: Form, None; Sponsoring component, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary, State and local governments; Other, Not-for-profit institutions. The purpose of this data

collection is to gather information from jurisdictions on the use of juvenile curfew and its effectiveness as a tool to reduce juvenile crime and victimization. The survey form will be sent to all those who were mailed a copy of an OJJDP Bulletin on the topic of juvenile curfew.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 2,000 respondents at 1 minute per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 33.3 annual burden hours.

If additional information is required, contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: September 8, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–24173 Filed 9–11–97; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

September 9, 1997.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Theresa M. O'Malley (202) 219–5096 ext. 143) or by E-Mail to OMalley-Theresa@dol.gov. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday–Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316, within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Bureau of Labor Statistics.

Title: Consumer Price Index Housing Survey.

OMB Number: 1220–0034 (revision).

Frequency: Semi-annually.

Affected Public: Individuals or households; Business or other for-profit.

Number of Respondents: 38,000.

Estimated Time Per Respondent: 6 minutes.

Total Burden Hours: 7,600.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: This request is for a one-year revision of the collection of housing information based on 1980 Census data. In order to facilitate a smooth transition and continuity of the housing indexes into the revision sample, the current sample will be collected through calendar year 1998.

Agency: Employment and Training Administration.

Title: Attestations by Employers Using Alien Crewmembers for Longshore Activities at Locations in the State of Alaska (extension).

OMB Number: 1205–0352.

Frequency: Annually.

Affected Public: Business or other for-profit.

Number of Respondents: 350.

Estimated Time Per Respondent: 3 hours.

Total Burden Hours: 1,050.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The information provided on this form by employers seeking to use alien crewmembers to perform longshore activities at locations in the State of Alaska will permit the Department to meet Federal responsibilities for program administration, management and oversight.

Agency: Mine Safety and Health Administration.

Title: Application for Use of Explosive Materials and Blasting Units (30 CFR 57,22606).

OMB Number: 1219–0095 (reinstatement without change).

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 7.

Estimated Time Per Respondent: 1 hour.

Total Burden Hours: 7.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: In the absence of permissible explosives or blasting units having adequate blasting capacity for metal and nonmetal gassy mines, this standard provides procedures by which mine operators shall notify MSHA of all non-approved explosive materials and blasting units to be used prior to their use in underground gassy metal and nonmetal mines.

MSHA uses this information to determine that the explosive and procedures to be used are safe for blasting in a gassy underground mine.

Agency: Occupational Safety and Health Administration.

Title: Permit-Required Confined Spaces (29 CFR Part 1910.146).

OMB Number: 1218-0203 (extension).

Frequency: On occasion.

Affected Public: Business or other for-profit; Federal Government; State, Local or Tribal Government.

Number of Respondents: 1,135,071.

Estimated Time Per Respondent: .60 hours.

Total Burden Hours: 1,515,511.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The 29 CFR Part 1910.146 prescribes standards for protecting employees from the hazards associated with entry into permit-required confined spaces. The standard requires the creation of a written permit entry plan and the use of written permits to enter permit spaces. Employees risk exposure to hazards such as: toxic and explosive

atmospheres, oxygen deficient atmospheres, electric and mechanical energy, inwardly sloping walls and immersion in flowing material.

Theresa M. O'Malley,

Departmental Clearance Officer.

[FR Doc. 97–24227 Filed 9–11–97; 8:45 am]

BILLING CODE 4510–24–M

DEPARTMENT OF LABOR

Employment and Training Administration

JTPA Annual Summary Program Report (JASPR); Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its, continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension collection of the JTPA Annual Summary Program Report (JASPR).

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Writteen comments must be submitted to the office listed in the addressee section below on or before November 12, 1997.

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Haskel Lowery, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW., Room N4463, Washington, DC 20210; Internet Address: LOWERYH@DOLETA.GOV; telephone number (202) 219–5305 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Under the Job Training Partnership Act program, Title II–B, the Summer Youth Employment and Training Program, has been established to: (1) Enhance the basic skills of youth; (2) encourage school completion or enrollment in supplementary or alternative school programs; (3) provide eligible youth with exposure to the world of work; and (4) enhance the citizenship skills of youth. The Department of Labor is responsible for overseeing these programs. In order to carry out that responsibility, the Department is extending the reporting requirements and instructions.

II. Current Actions

The Department is requesting to continue reporting of this information on an annual basis. This information will permit the Department to fulfill its oversight requirements as well as to respond to requests from the U.S. Congress, the Administration, the media, and the public for program information.

Type of Review: Reinstatement (with change).

Agency: Employment and Training Administration.

Title: JTPA Annual Summary Program Report (JASPR).

OMB Number: 1205–0200.

Agency Number: ETA 9040.

Recordkeeping: Retention for 3 years.

Affected Public: State, Local or Tribal Government.

Cite/Reference/Form/etc.: 29 U.S.C. P.L. 97–300, 20 CFR 627.425, 627.460, 627.455.

Total Respondents: 59.

Frequency: Annual.

Total responses: 118.

Average Time per Response: 2 hours.

Estimated Total Burden Hours: 236.

(59 respondents × 2 responses × 2 hours per response = 236 burden hours)

Total Burden Cost (operation/maintaining): $3,540.00 Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: September 9, 1997.

Charles Atkinson,

Deputy Administrator Office of Job Training Programs.

[FR Doc. 97–24226 Filed 9–11–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue

current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

New General Wage Determination Decisions

The number of the decisions added to the Government Printing Office document entitled ''General Wage Determination Issued Under the Davis-Bacon and related Acts'' are listed in Volume and States:

Volume IV

Michigan
MI970066 (Sep. 12, 1997)
MI970067 (Sep. 12, 1997)
MI970068 (Sep. 12, 1997)
MI970069 (Sep. 12, 1997)
MI970070 (Sep. 12, 1997)
MI970071 (Sep. 12, 1997)
MI970072 (Sep. 12, 1997)
MI970073 (Sep. 12, 1997)
MI970074 (Sep. 12, 1997)
MI970075 (Sep. 12, 1997)
MI970076 (Sep. 12, 1997)
MI970078 (Sep. 12, 1997)
MI970079 (Sep. 12, 1997)
MI970080 (Sep. 12, 1997)

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis—Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Massachusetts
MA970001 (Feb. 14, 1997)
MA970002 (Feb. 14, 1997)
MA970003 (Feb. 14, 1997)
MA970005 (Feb. 14, 1997)
MA970017 (Feb. 14, 1997)
MA970018 (Feb. 14, 1997)
MA970019 (Feb. 14, 1997)
MA970020 (Feb. 14, 1997)
MA970021 (Feb. 14, 1997)

Volume II

District of Columbia
DC970001 (Feb. 14, 1997)
DC970003 (Feb. 14, 1997)
Delaware
DE970002 (Feb. 14, 1997)
DE970004 (Feb. 14, 1997)
DE970005 (Feb. 14, 1997)
DE970009 (Feb. 14, 1997)
Maryland
MD970034 (Feb. 14, 1997)
MD970036 (Feb. 14, 1997)
MD970048 (Feb. 14, 1997)
MD970056 (Feb. 14, 1997)
MD970057 (Feb. 14, 1997)
MD970059 (Feb. 14, 1997)
Virginia
VA970022 (Feb. 14, 1997)
VA970025 (Feb. 14, 1997)
VA970042 (Feb. 14, 1997)
VA970048 (Feb. 14, 1997)
VA970050 (Feb. 14, 1997)
VA970052 (Feb. 14, 1997)
VA970058 (Feb. 14, 1997)
VA970078 (Feb. 14, 1997)
VA970079 (Feb. 14, 1997)
VA970104 (Feb. 14, 1997)
VA970105 (Feb. 14, 1997)

Volume III

None

Volume IV

Indiana
IN970002 (Feb. 14, 1997)
IN970006 (Feb. 14, 1997)
Michigan
MI970001 (Feb. 14, 1997)

Volume V

Iowa
IA970003 (Feb. 14, 1997)
Kansas
KS970006 (Feb. 14, 1997)
KS970007 (Feb. 14, 1997)
KS970009 (Feb. 14, 1997)
KS970011 (Feb. 14, 1997)
KS970012 (Feb. 14, 1997)
KS970016 (Feb. 14, 1997)
KS970018 (Feb. 14, 1997)
KS970019 (Feb. 14, 1997)
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KS970025 (Feb. 14, 1997)
KS970026 (Feb. 14, 1997)
KS970055 (Feb. 14, 1997)
KS970061 (Feb. 14, 1997)
KS970063 (Feb. 14, 1997)
Nebraska
NE970001 (Feb. 14, 1997)
NE970019 (Feb. 14, 1997)

Volume VI

Idaho
ID970003 (Feb. 14, 1997)
Oregon
OR970017 (Feb. 14, 1997

Volume VII

Arizona
AZ970004 (Feb. 14, 1997)
California
CA970049 (Feb. 14, 1997)
CA970050 (Feb. 14, 1997)
CA970051 (Feb. 14, 1997)
CA970052 (Feb. 14, 1997)
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CA970070 (Feb. 14, 1997)
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CA970077 (Feb. 14, 1997)
CA970078 (Feb. 14, 1997)
CA970079 (Feb. 14, 1997)
CA970080 (Feb. 14, 1997)
CA970081 (Feb. 14, 1997)
CA970082 (Feb. 14, 1997)
CA970083 (Feb. 14, 1997)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the county.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 5th day of September 1997.

Carl Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 97–23983 Filed 9–11–97; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL WOMEN'S BUSINESS COUNCIL

Sunshine Act Meeting

SUMMARY: In accordance with the Women's Business Ownership Act, Public Law 100–403 as amended, the National Women's Business Council (NWBC) announces a forthcoming Council meeting and joint meeting of the NWBC and Interagency Committee on Women's Business Enterprise. These meetings will cover action items worked on by the National Women's Business Council and the Interagency Committee on Women's Business Enterprise including but not limited to increasing procurement opportunities, welfare-to-work and access to capital for women business owners.

DATES: September 30, 1997.

ADDRESSES:

Council Meeting—J.W. Marriott Hotel, 1331 Pennsylvania Avenue, NW, Washington, DC 20024, 8:00 a.m. to 10:30 a.m.

Joint Meeting—The White House, Old Executive Office Bldg., Indian Treaty Room, Washington, DC 20502, 11:00 a.m.–12:00 noon.

STATUS: Open to the public.

CONTACT: National Women's Business Council, 409 Third Street, S.W., Suite 5850, Washington, DC 20024, (202) 205–3850.

Note: No one will be allowed to attend the meeting without RSVP and security clearance.

Gilda Presley,

Administrative Officer, National Women's Business Council.

[FR Doc. 97–24423 Filed 9–10–97; 2:25 pm]

BILLING CODE 6820–AB–M

NUCLEAR REGULATORY COMMISSION

The Cleveland Electric Illuminating Company, the Toledo Edison Company, Duquesne Light Company, Ohio Edison Company, and Pennsylvania Power Company, Beaver Valley Power Station, Unit Nos. 1 and 2; Notice of Consideration of Approval of Application Regarding Proposed Corporate Restructuring

Notice is hereby given that the United States Nuclear Regulatory Commission (the Commission) is considering approval by issuance of an order under 10 CFR 50.80 of an application concerning a proposed merger between DQE, Inc. and Allegheny Power System, Inc. (Allegheny Power). DQE, Inc. is the parent holding company of Duquesne Light Company (DLC), which holds licenses to possess interests in and to use and operate Beaver Valley Power Station, Unit Nos. 1 and 2 (BVPS–1 and BVPS–2). The Cleveland Electric Illuminating Company, The Toledo Edison Company, and Ohio Edison Company and its subsidiary Pennsylvania Power Company also hold licenses to possess interests in the Beaver Valley Power Station, but are not involved in the proposed merger. By letter dated August 1, 1997, the Commission was informed that DQE, Inc., and Allegheny Power have entered into a merger agreement in which DQE, Inc., will become a wholly owned subsidiary of Allegheny Power. Allegheny Power will be renamed Allegheny Energy, Inc.

According to the application, the merger will have no effect on the operation of BVPS–1 and BVPS–2, or the provisions of their operating licenses. The Cleveland Electric Illuminating Company, The Toledo Edison Company, Ohio Edison Company, and Pennsylvania Power Company will remain licensees responsible for their possessory interests and related obligations. DLC will continue to operate BVPS–1 and BVPS–2 after the merger, as required by the operating license. No direct transfer of the license will result from the merger.

Pursuant to 10 CFR 50.80, the Commission may consent to the transfer of control of a license after notice to interested persons. Such consent is contingent upon the Commission's determination that the holder of the license following the transfer is qualified to hold the license and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders of the Commission.

For further details with respect to this proposed action, see the application from DLC dated August 1, 1997. The August 1, 1997, application is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC 20555, and at the local public document room located at the B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001.

Dated at Rockville, Maryland, this 4th day of September 1997.

For the Nuclear Regulatory Commission.

Donald S. Brinkman,

Senior Project Manager, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–24218 Filed 9–11–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–341]

Detroit Edison Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–43, issued to the Detroit Edison Company (DECo or the licensee), for operation of the Enrico Fermi Atomic Power Plant Unit 2 (Fermi 2) located in Monroe County, Michigan. This action is in response to the licensee's application dated September 5, 1997.

The proposed amendment would add Special Test Exception 3/4.10.7, ''Inservice Leak and Hydrostatic Testing,'' that allows the performance of pressure testing at a reactor coolant temperature up to 212 °F while remaining in Operational Condition 4. This special test exception would also require that certain Operational Condition 3 specifications for

Secondary Containment Isolation, Secondary Containment Integrity, Secondary Containment Automatic Isolation Dampers, and Standby Gas Treatment System operability be met. This change would also revise the Index, Table 1.2, ''Operational Conditions,'' and the Bases to incorporate the reference to the proposed special test exception.

During May of 1997, the licensee identified a small fuel leak based on increasing offgas radiation levels. As a result, the licensee began making plans for an outage to identify and replace the leaking fuel. This outage is currently scheduled to begin on October 3, 1997. A reactor coolant system inservice leak test (System Leakage Test) must be performed prior to startup from this outage. Compared to a typical refueling outage, this outage will be shorter in duration and will not include the replacement of as much fuel. Therefore, the System Leakage Test will be performed with a higher decay heat load than that encountered during a normal refueling outage. The licensee has indicated that during the final planning for the outage, it recently recognized that the anticipated decay heat levels would not allow sufficient time to conduct the System Leakage Test in a controlled, deliberate manner within the Technical Specifications limits governing test temperatures. Without the proposed Special Test Exception, the licensee has stated it is not confident that the System Leakage Test can be accomplished within the 200 °F reactor coolant temperature limit. The licensee has also stated that, once the need for the amendment was recognized, that the license amendment request was prepared and reviewed in an expeditious manner. In its September 5, 1997, application, the licensee requested that this amendment be reviewed under exigent circumstances.

The NRC staff has reviewed the circumstances related to this proposed amendment and has determined that the licensee could not have reasonably avoided the exigent circumstances and that the licensee used its best efforts to make a timely application for the amendment. In addition, the staff has determined that the failure to process this amendment request in a timely manner would result in the prevention of resumption of the operation of Fermi 2. Therefore, the NRC will process this proposal as an exigent amendment.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does this change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change allows the performance of inservice leak and hydrostatic testing at a reactor coolant temperature of greater than 200 °F but less than or equal to 212 °F while considering the plant to remain in OPERATIONAL CONDITION 4. This change to permit the average reactor coolant temperature to be increased above 200 °F, but not greater than 212 °F while performing inservice leak and hydrostatic testing will not significantly increase the probability of an accident previously evaluated. These tests are performed nearly water solid with all control rods fully inserted. Therefore, the stored energy in the reactor core and coolant will be very low and the potential for causing fuel failures with a subsequent increase in coolant activity is minimal. The restrictions provided in the proposed Special Test Exception, to require Secondary Containment Integrity and Standby Gas Treatment System OPERABILITY, provide assurance that any potential releases into secondary containment will be restricted from direct release to the environment and will be adequately filtered if released. With the reactor coolant temperature limited to 212 °F, there will be little or no flashing of coolant to steam, and any release of radioactive materials will be minimized. Therefore, this change will not significantly increase the consequences of an accident. In the event of a large primary system leak, the reactor vessel will rapidly depressurize allowing the low pressure Emergency Core Cooling Systems (ECCS) to operate. The capability of the required ECCS in OPERATIONAL CONDITION 4 is adequate to maintain the core flooded under these conditions. Small system leaks will be detected by leakage inspections, which are an integral part of the inservice leak and hydrostatic testing program, before any significant inventory loss can occur. Therefore, this change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does this change create the possibility of a new or different kind of accident from any accident previously evaluated?

Allowing the reactor to be considered to remain in OPERATIONAL CONDITION 4 during inservice leak and hydrostatic testing, with reactor coolant temperatures greater than 200 °F but less than or equal to 212 °F, is an exception to certain OPERATIONAL CONDITION 3 requirements including those associated with Primary Containment Integrity and full complement operability of the ECCS systems. The inservice leak and hydrostatic test conditions remain unchanged otherwise. The reactor coolant system is designed for temperatures exceeding 500 °F with similar pressures; and therefore, any leaks occurring will be bounded by the main steam line break outside containment analysis provided in Section 15.6.4 of the UFSAR [updated final safety analysis report]. Therefore, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change allows inservice leak and hydrostatic testing to be performed with reactor coolant temperatures of up to 212 °F, and the reactor to be considered to remain in OPERATIONAL CONDITION 4. The reactor vessel head will be in place, Secondary Containment Integrity will be maintained and the systems required in OPERATIONAL CONDITION 4 will be OPERABLE in accordance with the Technical Specifications; therefore, the proposed change will not have a significant impact on any design basis accident or safety limit. Inservice leak and hydrostatic testing is performed water solid, or nearly water solid with reactor coolant temperature [less than or equal to] 212 °F. The stored energy in the core and the coolant will be very low and the potential for failed fuel and a subsequent increase in coolant activity will be minimal. The reactor pressure vessel will rapidly depressurize in the event of a large primary system leak, and the low pressure ECCS systems

required to be OPERABLE in OPERATIONAL CONDITION 4 will be adequate to maintain the core flooded, thus ensuring that the fuel will not exceed the 2200 °F peak clad temperature limit. Additionally, requiring Secondary Containment Integrity will result in any potential airborne radiation being filtered through the SGTS [standby gas treatment system], thus ensuring that offsite doses remain well within the 10CFR100 limits. Small system leaks will be detected by leakage inspections before any significant inventory loss can occur. Therefore, this special test exception will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 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, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 14, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing.

The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with

the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan, 48226, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated September 5, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room, located at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan, 48161.

Dated at Rockville, Maryland, this 9th day of September 1997.

For the Nuclear Regulatory Commission.

Andrew J. Kugler,

Project Manager, Project Directorate III–1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97–24379 Filed 9–11–97; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Dockets Nos. 50–250, 50–251, 50–335, and 50–389]

Florida Power & Light Co.; St. Lucie Plant, Units 1 and 2; Turkey Point Station, Units 3 and 4; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has taken action with regard to a Petition dated April 23, 1997, as supplemented on May 11 and May 17, 1997, filed by Thomas J. Saporito, Jr., on behalf of himself and the National Litigation Consultants (Petitioners), pursuant to Section 2.206 of Title 10 of the *Code of Federal Regulations* (10 CFR 2.206). The Petitioners requested that the U.S. Nuclear Regulatory Commission (Commission or NRC) take action with regard to operations at the Florida Power & Light Company's (FPL's or licensee's) Turkey Point Station, Units 3 and 4, and St. Lucie Plant, Units 1 and 2.

The Petitioners requested that the Commission (1) take enforcement action to modify, suspend, or revoke FPL's operating licenses for these facilities until FPL can sufficiently demonstrate that employees at FPL nuclear facilities are exposed to a work environment that encourages employees to freely raise safety concerns directly to the NRC without being required to first identify their safety concerns to the licensee; (2) take escalated enforcement action in accordance with 10 CFR 2.202 because of discriminatory practices of the licensee in violation of NRC regulations in 10 CFR 50.7 and/or other NRC regulations and that the enforcement action be retroactive to the initial occurrence of the violation by the licensee; (3) conduct a public hearing through the Atomic Safety and Licensing Board and permit Petitioners leave to intervene to perfect an evidentiary record in consideration of whether the licensee has violated NRC requirements and/or regulations; (4) require the licensee to post a written notice alongside each NRC Form 3 currently posted at the licensee's nuclear facilities that alerts employees that they can directly contact the NRC about nuclear safety concerns without first identifying the safety concerns to the licensee; (5) require the licensee to provide a copy of the posted communication to all employees and ensure that all employees are made aware of those communications through the licensee's General Employee Training Program; and (6) require the licensee to provide the NRC with written documents authored by licensee officers under affirmation that the requirements described in items (4) and (5) have been fully complied with.

In the supplement of May 11, 1997, the Petitioners requested the imposition of a civil penalty in the amount of $100,000 against each of three former FPL managers and that the NRC refer the matter of the conduct of these managers to the U.S. Department of Justice (DOJ) for consideration of invoking criminal proceedings.

In the supplement of May 17, 1997, the Petitioners requested imposition of a civil penalty in the amount of $100,000 against each of six FPL employees and restriction of the licensed activities of these employees and revocation of their unescorted access to nuclear facilities; the imposition of a civil penalty in the amount of $100,000 against the International Brotherhood of Electrical Workers (IBEW) and that the IBEW be required to inform its members in writing that they have the right to report safety concerns directly to the NRC without fear of retribution and that the IBEW encourages and supports such action at the discretion of its members; and the imposition of a civil penalty in the amount of $100,000 against two ''agents'' or ''representatives'' of the licensee. The Petitioners also requested investigations of ''willful falsification'' of a company business record and the cause of ''transcripts found missing'' in a Department of Labor proceeding, and the referral of the matter of the conduct of the individuals and entities to the DOJ so that it can consider invoking criminal proceedings. Finally, it was requested that the NRC conduct an interview with the Petitioners regarding the substance of their 10 CFR 2.206 Petition.

The Director of the Office of Nuclear Reactor Regulation has granted the Petitioners' request for an interview in that, on July 14, 1997, the NRC held a public meeting with Mr. Saporito to provide Petitioners with the opportunity to provide additional information regarding the substance of their Petition. The Petitioners' additional requests have been denied for reasons that are explained in the ''Director's Decision Pursuant to 10 CFR 2.206'' (DD–97–20), the complete text of which follows this notice and is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

A copy of the Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance unless the Commission, on its own motion, institutes a review of the Decision within that time.

Dated at Rockville, Maryland, this 8th day of September 1997.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

Director's Decision Under 10 CFR 2.206

I. Introduction

By Petition dated April 23, 1997, (as supplemented May 11 and May 17,

1997), pursuant to Section 2.206 of Title 10 of the *Code of Federal Regulations* (10 CFR 2.206), Thomas J. Saporito, Jr., on behalf of himself and the National Litigation Consultants (Petitioners), requested that the Nuclear Regulatory Commission (Commission or NRC) take action with regard to operations at the Florida Power & Light Company's (FPL's or licensee's) Turkey Point Station, Units 3 and 4, and St. Lucie Plant, Units 1 and 2. Specifically, the Petitioners requested that the Commission: (1) Take enforcement action to modify, suspend, or revoke FPL's operating licenses for these facilities until FPL can sufficiently demonstrate that employees at FPL nuclear facilities are exposed to a work environment that encourages employees to freely raise safety concerns directly to the NRC without being required to first identify their safety concerns to the licensee; (2) take escalated enforcement action in accordance with 10 CFR 2.202, because of discriminatory practices of the licensee in violation of 10 CFR 50.7 and/or other NRC regulations, and that the enforcement action be retroactive to the initial occurrence of the violation by the licensee; (3) conduct a public hearing through the Atomic Safety and Licensing Board and permit Petitioners leave to intervene to perfect an evidentiary record in consideration of whether the licensee has violated NRC requirements and/or regulations; (4) require the licensee to post a written notice alongside each NRC Form 3 currently posted at the licensee's nuclear facilities that alerts employees that they can directly contact the NRC about nuclear safety concerns without first identifying the safety concerns to the licensee; (5) require the licensee to provide a copy of the posted communication to all employees and ensure that all employees are made aware of those communications through the licensee's General Employee Training Program; and (6) require the licensee to provide the NRC with written documents authored by licensee officers under affirmation that the requirements described in items (4) and (5) have been fully complied with.

In the supplement of May 11, 1997, the Petitioners requested the imposition of a civil penalty in the amount of $100,000 against each of three former FPL managers and that the NRC refer the matter of the conduct of these managers to the U.S. Department of Justice (DOJ) for consideration of invoking criminal proceedings.

In the supplement of May 17, 1997, the Petitioners requested imposition of a civil penalty in the amount of $100,000 against each of six FPL employees and restriction of the licensed activities of these employees and revocation of their unescorted access to nuclear facilities; the imposition of a civil penalty in the amount of $100,000 against the International Brotherhood of Electrical Workers (IBEW), and that the IBEW be required to inform its members in writing that they have the right to report safety concerns directly to the NRC without fear of retribution and that the IBEW encourages and supports such action at the discretion of its members; and the imposition of a civil penalty in the amount of $100,000 against two named individuals characterized in the Petition as licensee agents or representatives of the licensee. The Petitioners also requested investigations of ''willful falsification'' of a company business record and the cause of ''transcripts found missing'' in a Department of Labor (DOL) proceeding, and the referral of the matter of the conduct of the individuals and ''entities'' to the DOJ so that it can consider invoking criminal proceedings. Finally, it was requested that the NRC conduct an interview with the Petitioners regarding the substance of their 10 CFR 2.206 Petition.

By letter dated June 14, 1997, I informed the Petitioners that, pursuant to 10 CFR 2.206 of the Commission's regulations, the Petition, as supplemented, had been referred to me and that action on their requests would be taken in a reasonable amount of time. I further informed the Petitioners that with regard to their request for a meeting with the NRC staff, they could call to arrange a suitable day and time for such a meeting.

On May 27, 1997, FPL responded to the Petition. In its response, the licensee maintained that it was strongly committed to maintaining a work environment in which employees are free to raise nuclear safety concerns directly to the NRC and that the Petition lacked any factual basis and should be denied.

In response to the Petitioners' request for an ''interview'' regarding their Petition, the NRC staff held a public meeting with Mr. Saporito on July 14, 1997. During the meeting, Mr. Saporito elaborated upon the bases for the Petition and stated his concerns about reporting nuclear safety issues at the St. Lucie plant should the DOL Administrative Law Judge (ALJ) order his reinstatement as an employee of FPL.[1] During the meeting, Mr. Saporito also raised what he asserted were certain improprieties which occurred during the DOL hearing and specifically requested that the NRC investigate an additional concern that the licensee or its attorneys may have ''whited out'' a page of a document he had requested during the DOL proceeding. Mr. Saporito stated that he was adding this request to the Petition.

On August 13, 1997, FPL submitted an additional response to the Petition. In this response, FPL stated that it was responding in opposition to the supplemental petitions filed by the Petitioners dated May 11 and May 17, 1997, and to assertions made by Mr. Saporito during the July 14, 1997, public meeting.

II. Background

As a basis for the requests described above, the Petitioners asserted in their Petition of April 23, 1997, that the NRC's failure to take enforcement action against the licensee on the basis of the Secretary of Labor's finding that FPL violated the Energy Reorganization Act (ERA) when it discharged an employee (i.e., Mr. Saporito) for raising safety concerns has resulted in a ''chilling effect'' at FPL and continued discrimination against employees by FPL in violation of 10 CFR 50.7.[2] In

[1] In response to this concern, the staff referred Mr. Saporito to 10 CFR 50.7 and various NRC policy statements and other documents that describe the protection to individuals who raise nuclear safety concerns to the NRC or to their employers, and offered to provide Mr. Saporito copies of relevant documents. The staff provided Mr. Saporito these documents by letter dated July 28, 1997.

[2] This proceeding, DOL Case 89–ERA–7 and 89–ERA–17 (hereafter 89–ERA–7/17), involved two complaints by Mr. Saporito in which he alleged, respectively, that he was disciplined and harassed in retaliation for engaging in protected activity and that he was discharged for engaging in protected activity. On June 30, 1989, a DOL ALJ issued a Recommended Decision and Order Denying Complaint, which dismissed both cases. Among other things, the ALJ found that FPL had legitimately terminated Mr. Saporito for acts of insubordination, which included Mr. Saporito's refusal to reveal safety concerns to the licensee and his insistence that he raise them to the NRC instead. In a Decision and Remand Order issued June 3, 1994, the Secretary held that an employee who refuses to reveal his safety concerns to management and asserts his right to bypass the ''chain of command'' to speak directly with the NRC is engaging in protected activity and remanded the case to the ALJ to review the record in light of this decision and submit a new recommendation to the Secretary as to whether FPL would have discharged Mr. Saporito for unprotected aspects of his conduct. By letter to the Secretary of Labor from then NRC Chairman Ivan Selin, the NRC expressed concern about the Secretary's broad statement, noting that licensees, not the NRC, are in the best position to deal effectively with safety concerns. In a subsequent Order issued February 16, 1995, denying reconsideration of his June 3 decision, the Secretary clarified his June 3 decision by stating that it would not be accurate to interpret the decision as providing an employee an ''absolute right'' to refuse to report safety concerns to the plant operator. Rather, the Secretary stated that the right of an employee to protection for bringing

Continued

addition, in the Petitioners' supplement of May 11, 1997, to their Petition, they asserted that Mr. Saporito's ''Damages Brief'' in the DOL proceeding mentioned above established that the licensee and its managers are liable for creating a hostile work environment at Turkey Point and have failed to stop harassment and discrimination against Mr. Saporito. The Petitioners further stated that the record in this case contains evidence showing direct participation of Mr. Saporito's ''chain of command'' in the retaliatory actions taken against Mr. Saporito.

In their supplement of May 17, 1997, to the Petition, the Petitioners asserted that certain pleadings and transcripts in this DOL proceeding set out a chronology of events surrounding missing record transcripts and the falsification of a licensee company business record and establish that licensee employees and union members played a role in discriminating against Mr. Saporito. The Petitioners further stated that additional evidence exists that necessitated a meeting between the NRC and the Petitioners.

III. Discussion

Because of the numerous requests and interrelated nature of the issues raised and the bases provided by the Petitioners, the requests in the Petition and supplements previously described have been considered together and are categorized as follows: (1) NRC should take escalated enforcement action against the licensee and certain individuals employed by the licensee and refer this matter to the DOJ; (2) NRC should take escalated enforcement and other action against the IBEW; (3) NRC should initiate investigations into matters regarding the DOL proceeding, including willful falsification of a company business record, willful falsification of the DOL transcript, and alleged ''whiting out'' of a page of a document by the licensee's attorneys; and (4) miscellaneous requests.

1. Petitioners' Request for Enforcement Action Against the Licensee and Certain Employees of the Licensee

As previously stated, the Petitioners request that the NRC take enforcement action to modify, suspend, or revoke FPL's operating licenses until FPL can sufficiently demonstrate that employees at FPL's nuclear facilities are ''exposed to a work environment'' that encourages these employees to freely raise safety concerns directly to the NRC without being required to first identify their safety concerns to the licensee. In addition, the Petitioners request that the NRC take escalated enforcement action against the licensee because of the licensee's discriminatory practices in violation of 10 CFR 50.7 and that this enforcement action be retroactive to the initial occurrence of the violation by the licensee.

As a basis for this request, the Petitioners assert that the Secretary of Labor found in 89–ERA–7/17 that FPL violated the ERA when it discharged Mr. Saporito but that the NRC failed to take any enforcement action against the licensee for this violation, and that as a direct result of the NRC's failure to take such action, a ''chilling effect'' was instilled at the licensee's facilities that continues to dissuade employees from raising safety concerns. The Petitioners cite numerous cases in support of their assertion that the licensee has continued to discriminate against employees who engage in protected activity.

This request is similar to a request made by Mr. Saporito in an earlier Petition, which was addressed in a Director's Decision issued on May 11, 1995 (DD–95–7, 41 NRC 339). As previously described herein, and as explained in DD–95–7, contrary to the Petitioners' assertion, the Secretary of Labor has not yet made a finding on the merits in 89–ERA–7/17 as to whether the licensee violated the ERA in discharging Mr. Saporito. Rather, in an Order issued on June 3, 1994, the Secretary directed the ALJ to submit a new recommendation on whether FPL would have discharged Mr. Saporito absent his engaging in protected activities. Therefore, the Order of June 3, 1994, does not constitute a final decision by the Secretary of Labor, and because there is no DOL finding of discrimination, there is no basis to justify enforcement action by the NRC at this time.[3] As further explained in that Director's Decision, the NRC will monitor the DOL proceeding and determine on the basis of further DOL findings and rulings whether enforcement action against the licensee is warranted.

With regard to the Petitioners' assertion that the NRC's failure to take enforcement action has resulted in a ''chilling effect'' at the licensee's facilities, the Petitioners have offered no evidence to substantiate this claim. Over the past two years (July 1995—June 1997), 89 allegations from FPL employees or contractors have been submitted to the NRC, of which six have been allegations related to discrimination. Of these allegations, the staff was unable to evaluate two allegations because the alleger would not reveal his or her identity. With regard to the remaining allegations, in two cases, discrimination was not substantiated. The remaining two allegations are still being evaluated. Should these allegations be substantiated, the NRC will determine at that time whether enforcement action against the licensee is warranted. Nonetheless, even if these allegations are substantiated, there is presently no indication that there has been a ''chilling effect'' at the licensee's facilities. The NRC staff has conducted inspections of FPL's Nuclear Safety Speakout Program (Employees Concerns Program) and has examined the safety-conscious work environment at FPL's nuclear facilities. The results of the last two inspections, conducted in April-May 1996 and June 1997,[4] indicate that the Speakout Program has been effective in handling and resolving individuals' concerns. The Speakout Program has been readily accessible, and employees are familiar with the various avenues available by which to express their concerns.

The Petitioners have relied upon 89–ERA–7/17 and eight additional cases to demonstrate both widespread discrimination by FPL against its employees and a lack of NRC enforcement action to deal with this alleged discrimination.[5] With regard to

information directly to the NRC and his duty to inform management of safety concerns are independent and do not conflict but that the employer's motivation should be reviewed on a case-by-case basis, pursuant to a ''dual motive'' analysis, to ensure that the employer would have taken the same action regardless of whether an employee insisted on his right to speak first to the NRC. The Secretary specifically noted that his June 3 Order had not decided the ultimate question regarding the appropriate outcome of the dual motive analysis to the facts of this case.

[3] As of this date, the ALJ has not issued a new Recommended Decision.

[4] NRC Inspection Reports 50–250/96–05, 50–251/96–05, 50–335/96–07, and 50–389/96–07, dated May 31, 1996, and 50–335/97–08 and 50–389/97–08, dated July 16, 1997.

[5] The other eight cases and their disposition are as follows:

(1) *Pillow* v. *Bechtel*, 87–ERA–35: The Secretary found that discrimination by Bechtel had occurred and ordered compensation for damages. The NRC issued Notices of Violation on February 11, 1994 to FPL and Bechtel, for violations that occurred in 1987 and that were based on both 87–ERA–35 and 87–ERA–44 (EA 93–199 and EA 93–200).

(2) *Diaz-Robainas* v. *FPL*, 92–ERA–10: Although the Secretary of Labor found that discrimination occurred, he remanded the case to the ALJ for a determination of the appropriate remedy, so that the Secretary's decision was not a final decision by DOL. The case settled before the ALJ issued his decision. The NRC issued a Notice of Violation and Proposed Civil Penalty of $100,000 against FPL for the violation, which occurred in 1992 (EA 96–051). The licensee paid the civil penalty on December 3, 1996.

(3) *Phipps* v. *FPL*, 95–ERA–53: The DOL Wage and Hour Assistant Area Director concluded that

89–ERA–7/17, as previously stated, no final determination that discrimination occurred has yet been made by DOL. A close examination of the remaining cases does not support Petitioners' assertion that the NRC's ''lax attitude'' caused a pattern and practice of discrimination at FPL's nuclear facilities. All of the cases cited by the Petitioners, except for two cases (*Pillow* v. *Bechtel*, 87–ERA–35, and *Diaz-Robainas* v. *FPL*, 92–ERA–10), were either settled, voluntarily dismissed at the request of the Complainant, or otherwise dismissed by DOL before a final determination was made by the Secretary of Labor. Two of the cases relied upon by the Petitioners did not involve FPL, but other companies (and one of these cases did not involve matters under NRC jurisdiction). With regard to *Pillow*, the discrimination that was the subject of this case occurred before the case involving Mr. Saporito. Therefore, such discrimination is neither indicative of FPL's current performance nor could have resulted from the lack of NRC's enforcement action in the present case.[6] The only additional cases cited by the Petitioners in which any finding was made by DOL that discrimination occurred were *Phipps* v. *FPL*, 95–ERA–53, and Diaz-Robainas. In *Phipps*, the DOL Wage and Hour Assistant Area Director concluded that Mr. Phipps' engaging in protected activities was a factor in FPL's decision to prohibit him from working during plant outages. FPL appealed the decision; however the case was dismissed on the basis of a voluntary stipulation by the parties prior to a hearing before an ALJ. The NRC Office of Investigations investigated this case and did not substantiate that discrimination had occurred. In the *Diaz-Robainas* case, the Secretary of Labor did determine that discrimination had occurred. This one example, however, for which the NRC took appropriate enforcement action,[7] does not support the Petitioners' assertion that the NRC has a ''lax attitude'' which has caused a pattern or practice of discrimination at FPL's facilities.

For all of these reasons, the Petitioners have not set forth a sufficient basis that would warrant the NRC to take escalated enforcement action against the licensee at this time. Therefore, this request by the Petitioners is denied.

The Petitioners also request that the NRC impose a civil penalty in the amount of $100,000 against each of three former FPL managers; a civil penalty in the amount of $100,000 against six current FPL employees and restriction of the licensed activities of these employees and revocation of their unescorted access to nuclear facilities; and a civil penalty in the amount of $100,000 against two named individuals characterized in the Petition as licensee ''agents'' or ''representatives.'' As a basis for this request, the Petitioners allege that these individuals were involved in the discrimination against Mr. Saporito, which is the subject of DOL Case 89–ERA–7/17. Because a final determination has not been made by DOL or NRC that discrimination occurred against Mr. Saporito, the requested enforcement action against these individuals is not warranted at this time.

In addition, the Petitioners request that the NRC refer the matter of the conduct of various FPL managers and other individuals and ''entities'' (i.e., the licensee and the IBEW) to the DOJ so that it can consider invoking criminal proceedings against these persons and entities.[8] As discussed in this section, DOL has not made a final determination in this case as to whether discrimination occurred. Therefore, the Petitioners' request is denied pending a final decision by DOL as to whether discrimination occurred in DOL Case 89–ERA–7/17. The NRC will monitor the DOL proceeding on remand to the ALJ and determine on the basis of further DOL findings and rulings in this case whether a violation of NRC requirements has occurred, whether enforcement action against the licensee or its employees is warranted, and whether this matter warrants referral to the DOJ.

2. Petitioners' Request for Action Against the IBEW

The Petitioners request that the NRC impose a civil penalty in the amount of $100,000 against the IBEW and that the IBEW be required to inform its members in writing that they have the right to report safety concerns directly to the NRC without fear of retribution and that the IBEW encourages and supports such action at the discretion of its members.

The Petitioners request that the NRC take such action because they allege that IBEW officials conspired with FPL management to have Mr. Saporito's site access revoked at Turkey Point Station. The basis for this request was clarified at the meeting between Mr. Saporito and the NRC staff on July 14, 1997. During that meeting, Mr. Saporito stated that two licensee officials testified during the DOL hearing that a comment was made by union officials to licensee management that Mr. Saporito could potentially sabotage the plant, and that, as a result of that comment, his access to the site was revoked.

The testimony of these licensee officials is a part of the record that is currently before the DOL ALJ. As previously stated, the NRC will monitor the DOL proceeding on remand to the ALJ and determine on the basis of further DOL findings and rulings in this case whether any violation of NRC requirements has occurred that would warrant enforcement action by the NRC. For this reason, this request by the Petitioners is denied.

Mr. Phipps' engaging in protected activities was a factor in FPL's decision to prohibit him from working during plant outages. FPL appealed the decision, and a hearing was scheduled before a DOL ALJ. Before the hearing, the parties entered into a settlement agreement. A final DOL Order, dated February 21, 1996, dismissed the case with prejudice on the basis of a voluntary stipulation by the parties. There was no finding for discrimination by DOL.

(4) *Dysert* v. *FPL*, 92–ERA–26: The DOL Wage and Hour Area Director determined that there was no discrimination. The complainant appealed, but then requested that the case be dismissed prior to a determination by an ALJ as to whether discrimination occurred. A final Order affirming the dismissal of the complaint was issued by the Secretary on June 28, 1993.

(5) *Kleiman* v. *FPL*, 91–ERA–50: The DOL Wage and Hour Area Director determined that there was no discrimination. The complainant appealed, but then requested that the case be dismissed prior to a determination by an ALJ as to whether discrimination occurred. A final Order affirming the dismissal of the complaint was issued by the Secretary on February 21, 1992.

(6) *Young* v. *FPL*, 93–ERA–30: The DOL Wage and Hour Area Director determined that there was no discrimination. The complainant appealed, but then requested that the case be dismissed prior to a determination by an ALJ as to whether discrimination occurred. A final Order affirming the dismissal of the complaint was issued by the Secretary on July 13, 1995.

(7) *Fry* v. *Atlantic Construction Fabrics, Inc.*, 96–STA–7: This case did not involve FPL or any NRC licensee, did not involve the raising of nuclear safety concerns or any other matters under NRC jurisdiction, and did not arise under the Energy Reorganization Act, but under the Surface Transportation Act.

(8) *Collins* v. *FPL*, 91–ERA–47 (actually *Collins* v. *FPC*): The Secretary of Labor issued an Order on May 15, 1995, finding that no discrimination occurred. In addition, the respondent in this case was actually Florida Power Corporation, not FPL.

[6] In addition, the NRC has taken enforcement action in the *Pillow* case. *See* footnote 5.

[7] As noted in footnote 5, the NRC issued a Notice of Violation and Proposed Civil Penalty of $100,000 to FPL for this violation.

[8] The Petitioners assert as a basis for their request that enforcement action be taken against licensee employees and union officials that certain pleadings they have filed in the DOL case, as well as transcript records, provide evidence of retaliation by these individuals. It should be noted that the pleadings and transcripts in a DOL proceeding are not, by themselves, conclusive that discrimination occurred.

3. Petitioners' Request for Initiation of NRC Investigations

The Petitioners request that the NRC investigate the ''willful falsification'' of a company business record and the cause of ''transcripts found missing'' in the DOL proceeding.[9] During the meeting held with the NRC on July 14, 1997, Mr. Saporito also raised what he asserted were certain improprieties which occurred during the DOL hearing and specifically requested that the NRC investigate an additional concern that the licensee or its attorneys may have ''whited out'' a page of a document he had requested during the DOL proceeding. Mr. Saporito stated that he was adding this request to his Petition.

This matter relates solely to the conduct of a DOL proceeding. The NRC staff has, therefore, referred these issues to DOL. The Petitioners' request that the NRC investigate these matters is denied.

4. Other Petition Issues

The Petitioners request that the NRC require the licensee to post a written notice alongside each NRC Form 3 currently posted at the licensee's nuclear facilities that alerts employees that they can directly contact the NRC about nuclear safety concerns without first identifying the safety concerns to the licensee. In addition, the Petitioners request that the NRC require the licensee to provide a copy of this posted communication to all employees and ensure that all employees are made aware of those communications through the licensee's General Employee Training Program. Finally, the Petitioners request that the NRC require the licensee to provide the Commission with documents authored by an officer of the licensee under affirmation affirming that the licensee has complied with these requests.

This request is similar to a request made by Mr. Saporito in a Petition filed on March 8, 1995, and responded to in a Director's Decision issued on May 25, 1995 (DD–95–8, 41 NRC 346 (1995)). In that Petition, Mr. Saporito requested that each licensee be required to report to the Commission under oath or affirmation that it had completed a review of its station operating procedures to determine whether those procedures included restrictions that would prevent an employee from bringing safety concerns directly to the NRC and that it had communicated to its employees that they were free to bring concerns directly to the NRC without following the normal chain of command. As explained in that Director's Decision, the Secretary of Labor did not hold in his decision of June 3, 1994, that employees have an ''absolute right'' to refuse to inform licensee management of public health and safety concerns and to bypass the licensee's management in order to bring safety concerns directly to the NRC. Although an employee may not be discriminated against by the employer for coming directly to the NRC with safety concerns, an employee may also be required by the employer to bring these same concerns to the employee's management. Whether an employee must bring issues to licensee management is dependent on the facts of each specific case.

As further explained in DD–95–8, the NRC requires in 10 CFR 19.11(c) that all licensees and applicants for a specific license post NRC Form 3, ''Notice to Employees,'' which describes employee rights and protections. In addition, 10 CFR 50.7 and associated regulations were amended in 1990 to prohibit agreements and/or conditions of employment that would restrict, prohibit, or otherwise discourage employees from engaging in protected activity. Finally, in November 1996, the NRC issued a brochure, ''Reporting Safety Concerns to the NRC'' (NUREG/BR–0240), which provided information to nuclear workers on how to report safety concerns to the NRC, the degree of protection that was afforded the worker's identity, and the NRC process for handling a worker's allegations of discrimination. These measures are sufficient to (1) alert employees in the nuclear industry that they may take their concerns to the NRC and (2) alert licensees that they shall not take adverse action against an employee who exercises the right to take concerns directly to the NRC.

The NRC staff believes that these existing requirements for posting and making other information available to workers are adequate. The Petitioners have not provided a sufficient basis for requiring their suggested additional measures. Therefore, Petitioners' requests related to a supplemental posting are denied.

As previously stated, a public meeting was held with Mr. Saporito enabling him to fully present information regarding the issues raised in the Petition. In addition, the NRC will monitor the DOL proceeding referenced in the Petition to determine whether there has been a violation of NRC regulations. In view of these facts, there is no basis to hold any hearing at this time. Therefore, the Petitioners' requests related to a public hearing are denied.

III. Conclusion

For the reasons discussed above, no basis exists for taking the enforcement actions requested in the Petition and its supplements. Nonetheless, as previously described, on July 14, 1997, a public meeting was held between Mr. Saporito and representatives of the NRC staff, the purpose of which was to provide Mr. Saporito with the opportunity to provide additional information regarding the substance of this Petition. Therefore, to the extent that the Petitioners have requested that the NRC conduct an interview with the Petitioners regarding the substance of their 10 CFR 2.206 Petition, the Petition has been granted. With regard to all other aspects of the Petition, the Petition has been denied.

A copy of this Decision will be filed with the Secretary of the Commission for the Commission to review in accordance with 10 CFR 2.206(c). As provided by that regulation, the Decision will constitute the final action of the Commission 25 days after issuance, unless the Commission, on its own motion, institutes a review of the decision within that time.

Dated at Rockville, Maryland, this 8th day of September 1997.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 97–24220 Filed 9–11–97; 8:45 am]

BILLING CODE 7590–01–P

[9] Mr. Saporito elaborated on these alleged falsifications at the meeting held on July 14, 1997. Specifically, Mr. Saporito asserted, with regard to the missing transcript pages, that 20 pages containing testimony by the licensee's vice president were missing from the initial copy of the transcript that he was provided (although the record was eventually amended to contain these pages). With regard to the falsification of a business record, he asserted that minutes of a meeting held between him and licensee officials did not accurately reflect the real reason that his site access was being revoked; that is, that union officials had told licensee management officials that he might sabotage the plant.

NUCLEAR REGULATORY COMMISSION

Appointments to Performance Review Boards for Senior Executive Service

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Appointment to Performance Review Boards for Senior Executive Service.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has announced the following appointments to the NRC Performance Review Boards. The appointments were recently published

but are being republished to indicate several changes in the membership.

The following individuals are appointed as members of the NRC Performance Review Board (PRB) responsible for making recommendations to the appointing and awarding authorities on performance appraisal ratings and performance awards for Senior Executives:

Patricia G. Norry, Deputy Executive Director for Management Services
Richard L. Bangart, Director, Office of State Programs
Stephen G. Burns, Associate General Counsel, Office of the General Counsel
Guy P. Caputo, Director, Office of Investigations
James E. Dyer, Deputy Regional Administration, Region IV
Jesse L. Funches, Chief Financial Officer
Edward L. Halman, Director, Office of Administration
Malcolm R. Knapp, Deputy Director, Office of Nuclear Material Safety and Safeguards
Joseph A. Murphy, Division Director, Office of Nuclear Regulatory Research
Marylee M. Slosson, Deputy Division Director, Office of Nuclear Reactor Regulation
Roy P. Zimmerman, Associate Director for Projects, Office of Nuclear Reactor Regulation

The following individuals will serve as members of the NRC PRB Panel that was established to review appraisals and make recommendations to the appointing and awarding authorities for NRC PRB members:

Hugh L. Thompson, Jr., Deputy Executive Director for Regulatory Programs
Karen D. Cyr, General Counsel, Office of the General Counsel
Ashok C. Thadani, Acting Deputy Executive Director for Regulatory Effectiveness

All appointments are made pursuant to Section 4314 of Chapter 43 of Title 5 of the United States Code.

EFFECTIVE DATE: September 12, 1997.

FOR FURTHER INFORMATION CONTACT: Carolyn J. Swanson, Secretary, Executive Resources Board, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 415–7103.

Dated at Rockville, Maryland, this 2nd day of September 1997.

For the U.S. Nuclear Regulatory Commission.

Carolyn J. Swanson,

Secretary, Executive Resources Board.

[FR Doc. 97–24217 Filed 9–11–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Notice of Board Meeting

Board Meeting: *October 22 (beginning 9:30 a.m.) & 23, 1997—Fairfax, Virginia:* Department of Energy (DOE) program update, underground repository design, waste package (design, performance, and modeling), repository concept of operations, and DOE-owned spent fuel.

Pursuant to its authority under section 5051 of Public Law 100–203, the Nuclear Waste Policy Amendments Act of 1987, the Nuclear Waste Technical Review Board will hold its fall meeting on Wednesday and Thursday, October 22–23, 1997, in Fairfax, Virginia. The meeting, which is open to the public, will be held at the Hyatt Fair Lakes, 12777 Fair Lakes Circle, Fairfax, Virginia 22033; Tel (703) 818–1234; Fax (703) 818–3140. Reservations for accommodations must be made by October 16, 1997, and you must indicate that you are attending the Nuclear Waste Technical Review Board meeting to receive the preferred rate.

The meeting will include an update on the DOE's nuclear waste management program and activities at Yucca Mountain, Nevada, and sessions on the underground repository design; waste package design, performance, and modeling; repository concept of operations; and DOE-owned spent fuel. A detailed agenda will be available approximately two weeks prior to the meeting by fax or email, or at the Board's website, www. nwtrb.gov.

Time has been set aside for public comment and questions on both days. Those wishing to speak are encouraged to sign the Public Comment Register at the check-in table. A time limit may have to be set on the length of individual remarks; however, written comments of any length may be submitted for the record.

Transcripts of this meeting will be available via e-mail, on computer disk, or on a library-loan basis in paper format from Davonya, Barnes, Board staff, beginning November 18, 1997. For further information, contact Frank Randall, External Affairs, 2300 Clarendon Boulevard, Suite 1300, Arlington, Virginia 22201–3367; (Tel) 703–235–4473; (Fax) 703–235–4495; (E-mail) info@nwtrb.gov.

The Nuclear Waste Technical Review Board was created by Congress in the Nuclear Waste Policy Amendments Act of 1987 to evaluate the technical and scientific validity of activities undertaken by the DOE in its program to manage the disposal of the nation's commercial spent nuclear fuel and defense high-level waste. In the same legislation, Congress directed the DOE to characterize a site at Yucca Mountain, Nevada, for its suitability as a potential location for a permanent repository for the disposal of that waste.

Dated: September 9, 1997.

William Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 97–24200 Filed 9–11–97; 8:45 am]

BILLING CODE 6820–AM–M

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Notice of Panel Meeting

Panel meeting: *October 21, 1997—Fairfax, Virginia:* Biosphere modeling and the Yucca Mountain performance standard currently being used by the Department of Energy.

Pursuant to its authority under section 5051 of Public Law 100–203, the Nuclear Waste Policy Amendments Act of 1987, the Nuclear Waste Technical Review Board's Panel on the Environment, Regulations, and Quality Assurance will hold a meeting October 21, 1997, beginning at 8:30 a.m. The meeting, which is open to the public, will cover biosphere modeling and the Yucca Mountain performance standard. The Department of Energy currently is using this standard until the Environmental Protection Agency standard is announced and a Nuclear Regulatory Commission rule promulgated. A detailed agenda will be available approximately two weeks prior to the meeting by fax or email, or on the Board's website at www.nwtrb.gov.

The meeting will be held at the Hyatt Fair Lakes, 12777 Fair Lakes Circle, Fairfax, Virginia 22033; (Tel) 703–818–1234; (Fax) 703–818–3140. Reservations for accommodations must be made by October 16, 1997, and you must indicate that you are attending the Nuclear Waste Technical Review Board meeting to receive the preferred rate.

Time has been set aside on the agenda for comments and questions from the public. Those wishing to speak are encouraged to sign the Public Comment Register at the check-in table. A time limit may have to be set on the length of individual remarks; however, written comments of any length may be submitted for the record.

Transcript of this meeting will be available on computer disk, via e-mail, or on a library-loan basis in paper format from Davonya Barnes, Board staff, beginning November 18, 1997. For further information, contact Frank

Randall, External Affairs, 2300 Clarendon Boulevard, Suite 1300, Arlington, Virginia 22201–3367; (Tel) 703–235–4473; (Fax) 703–235–4495; (E-mail) info@nwtrb.gov.

The Nuclear Waste Technical Review Board was created by Congress in the Nuclear Waste Policy Amendments Act of 1987 to evaluate the technical and scientific validity of activities undertaken by the DOE in its program to manage the disposal of the nation's high-level radioactive waste and commercial spent nuclear fuel. In that same legislation, Congress directed the DOE to characterize a site at Yucca Mountain, Nevada, for its suitability as a potential location for a permanent repository for the disposal of that waste.

Dated: September 9, 1997.

William Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 97–24201 Filed 9–11–97; 8:45 am]

BILLING CODE 6820–AM–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26758]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

September 5, 1997.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The applicant(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 29, 1997, the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

New England Electric System, et al. (70–9089)

New England Electric System (''NEES''), a registered holding company, and its subsidiary companies, Massachusetts Electric Company (''Mass. Electric''), Narragansett Energy Resources Company (''NERC''), New England Electric Transmission Corporation (''NEET''), New England Energy Incorporated (''NEEI''), New England Hydro-Transmission Electric Company, Inc. (''Mass. Hydro''), New England Hydro-Transmission Corporation (''NH Hydro''), New England Power Company (''NEP''), and New England Power Service Company (''NEPSCO''), all of 25 Research Drive, Westborough, Massachusetts 01582, and Granite State Electric Company (''Granite''), 407 Miracle Mile, Suite 1, Lebanon, New Hampshire 03766, Nantucket Electric Company (''Nantucket''), 25 Fairgrounds Road, Nantucket, Massachusetts 02554, and the Narragansett Electric Company (''Narragansett''), 280 Melrose Street, Providence, Rhode Island 02901 (collectively, ''Applicants''), have filed an application-declaration under sections 6(a), 7, 9,(a), 10, and 12(b) of the Act and rules 43 and 45 under the Act.

Applicants propose, for the period from November 1, 1997 through October 31, 2001, that: (i) Mass. Electric, Nantucket, Narragansett, Mass. Hydro, NEP, and NEPSCO (''Borrowing Companies'') borrow from the NEES intrasystem money pool (''Money Pool''); (ii) any one Applicant, or a combination of several Applicants, loan money to one or more of the Borrowing Companies through the Money Pool under the current terms of the Money Pool; (iii) the Borrowing Companies borrow from banks; and/or (iv) Mass. Electric, Narragansett, and NEP issue commercial paper. The Borrowing Companies propose to borrow money and/or issue commercial paper up to the following amounts: Mass. Electric—$150 million; Nantucket—$5 million; Narragansett—$100 million; Mass. Hydro—$25 million; NEP—$375 million; and NEPSCO—$12 million. In addition, Applicants state that the following subsidiary companies plan to incur, through exempt transactions, short-term debt in amounts that will not exceed: for Granite, $10 million; for NEET, $10 million; and, for NH Hydro, $25 million.[1]

The proceeds from the borrowings will be used: (i) To pay outstanding bank notes, dealers in commercial paper, and/or borrowings from the Money Pool, (ii) to provide new money and/or reimburse the treasury for capital expenditures, and (iii) for other corporate purposes, including working capital and the financing of construction and property acquisitions.

Applicants propose to lend surplus funds to the Money Pool. The interest rate will be 108% of the monthly average of the rate, as published in the Wall Street Journal, for high grand 30-day commercial paper issued by major corporations and sold through dealers. Although there are no stated maturities, the loans made by the Money Pool are payable on demand, and may be prepaid by the borrower without penalty. Borrowings may, but do not need to be evidenced by notes.

The Borrowing Companies will issue notes for the bank loans that mature in less than one year, and the notes will have a negotiated interest rate. The Borrowing Companies will pay fees to the banks instead of making compensating balance arrangements. The effective interest cost of bank loans will not exceed the greater of the bank's base or prime lending rate, or the rate published in the Wall Street Journal as the high federal funds rate, plus, in either case, one percent. Some borrowings may be without prepayment privileges. Payment of any short-term promissory note before maturity will be made on the basis most favorable to the Borrowing Company, taking into account fixed maturities, interest rates, and other relevant financial considerations.

In addition, Mass. Electric, Narragansett, and NEP (''CP Issuers'') propose to issue and sell commercial paper to one or more nationally recognized commercial paper dealers (''CP Dealer''). Initially, the CP Issuers will use two CP Dealers, CS First Boston Corporation and Merrill Lynch Money Markets Incorporated, but this may change.

The CP Issuers will issue commercial paper in the form of unsecured promissory notes with varying maturities that will not exceed 270 days. Actual maturities will be determined by market conditions, the effective interest cost to the issuer, and the issuer's cash

[1] Granite, NEET, and NH Hydro have received express authorization for these borrowings from the New Hampshire Public Utilities Commission, the state in which these utility companies are organized and doing business. These borrowings are exempt under rule 52 because of the state authorization.

requirements at the time of issuance. The commercial paper will be in denominations of $50,000 or higher. The terms of the commercial paper will not provide for prepayment before maturity. The commercial paper will be purchased by the CP Dealer from the issuer at a discount, which will not exceed the discount then prevailing for commercial paper of comparable quality and maturity sold by public utility issuers to commercial paper dealers. The commercial paper will be further discounted, but not more than ⅛th of 1% per year less than this prevailing discount rate, when the CP Dealer reoffers the commercial paper.

The CP Issuer's effective interest cost generally will not exceed the effective interest cost of BankBoston's base lending rate. However, if necessary, commercial paper will be issued that matures within 90 days with an interest cost above BankBoston's lending rate.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–24175 Filed 9–11–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39026; File No. SR–CBOE–97–33]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by Chicago Board Options Exchange, Incorporated Relating to Suspensions for Failure To Pay Debts Owed to the Exchange

September 8, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice if hereby given that on July 24, 1997, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend Rule 2.23, which permits the Exchange to suspend CBOE members and associated persons who fail to pay debts owed to the Exchange in a timely manner. The proposed rule change would clarify the application of Rule 2.23 to former CBOE members and associated persons. The proposed rule change would also provide for the reporting to the Central Registration Depository (''CRD'') operated by the NASD, Inc. of any suspensions or bars imposed by the CBOE pursuant to Rule 2.23.

The text of the proposed rule change is as follows [new text is italicized; deleted text is bracketed]:

Chicago Board Options Exchange, Incorporated Rules

* * * * *

Chapter II

Organization and Administration

Part C—Dues, Fees and Other Charges; Liability for Payment

* * * * *

Rule 2.23. A member *or associated person* that does not pay any dues, fees, assessments, charges, fines or other amounts due to the Exchange within 30 days after the same has become payable shall be reported to the Chairman of the Executive Committee, who may, after giving reasonable notice to the member *or associated person* of such arrearages, suspend the member *or associated person from membership and association with any member* until payment is made. Should payment not be made *by a member* within 6 months after payment is due, *any memberships owned by that member* [a regular membership] may be disposed of by the Exchange [for a special membership may be disposed of or cancelled by the Exchange,] in accordance with Rule 3.14(b). [A person associated with a member who fails to pay any fine or other amounts due to the Exchange within 30 days after such amount has become payable and after reasonable notice of such arrearages, may be suspended from association with a member until payment is made.] *A former member or associated person that does not pay any dues, fees, assessments, charges, fines or other amounts due to the Exchange within 30 days after the same has become payable shall be reported to the Chairman of the Executive Committee, who may, after giving reasonable notice to the former member or associated person of such arrearages, bar the former member or associated person from becoming a member and associated person until payment is made.*

*** * * Interpretations and Policies:**

.01 Reasonable notice under Rule 2.23 shall include, but is not limited to, service on a member or associated person's address as it appears on the books and records of the Exchange either by: (1) Hand delivery or (2) deposit in the United States post office, postage prepaid via registered or certified mail.

.02 The Exchange shall report to the Central Registration Depository operated by the National Association of Securities Dealers, Inc. (''CRD'') any suspension or bar imposed pursuant to this Rule.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 2.23 is designed to provide procedures to ensure that debts owed to the Exchange are paid promptly. Presently, Rule 2.23 provides the members or associated persons who fail to pay any debts owed to the Exchange within 30 days after they become due may be suspended from membership or association with a member by the Chairman of the Executive Committee until payment is made. The purpose of the proposed rule change is to clarify that pursuant to Rule 2.23, former members and associated persons who fail to pay debts owed to the Exchange may be barred from becoming a member and associated person by the Chairman of the Executive Committee until payment is made.

It is not unusual for an Exchange member or associated person to terminate membership with the Exchange without having paid a fine or other debt owed to the Exchange. By clarifying that the Chairman of the Executive Committee may bar former members and associated persons for failing to pay debts owed to the Exchange until payment is made, the

[1] 15 U.S.C. § 78s(b)(1).

Exchange will be better able to ensure that all debts are paid promptly.

The Exchange also proposes to add new Interpretation .02 to provide that the Exchange will report any suspension or bar imposed pursuant to Rule 2.23 to CRD. This new paragraph is similar to CBOE Rule 17.14 which provides for the reporting by the Exchange to CRD of information concerning pending formal Exchange disciplinary proceedings. Thus, the proposed rule change would expand the information available to the public concerning suspensions or bars imposed by the CBOE upon its members and associated persons.

The Exchange proposes to delete references to a regular membership and special membership in the current Rule 2.23, as CBOE no longer has any special memberships, and to add language clarifying that if a member fails to pay an Exchange debt within 6 months, the Chairman of the Executive Committee may dispose of any memberships owned by that member in accordance with Rule 3.14(b).

Finally the proposed rule change includes several nonsubstantive language changes.

2. Statutory Basis

The Exchange anticipates that this rule change will improve the CBOE's ability to ensure that debts owed to the Exchange by members and associated persons are paid in a timely manner. The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5) in particular, in that it is designed to promote just and equitable principles of trade, and to protect investors and the public interest by enhancing the public's access to information regarding suspensions and bars imposed by the CBOE upon its members and associated persons.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–97–33 and should be submitted by October 3, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–24210 Filed 9–11–97; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection(ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describes the nature of the information collection and their expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on July 7, 1997 (62 FR 36330).

DATES: Comments must be submitted on or before October 14, 1997.

FOR FURTHER INFORMATION CONTACT: Judith Street, ABC–100; Federal Aviation Administration; 800 Independence Avenue, SW.; Washington, DC 20591; Telephone number (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Survey of Community Response to Aircraft Noise.

OMB Control Number: 2120–NEW.

Type of Request: New collection.

Affected Public: 1000 individual residents of an airport area.

Abstract: Information for predicting the impact of an abrupt change in noise environment is required by FAA as part of an assessment process. Predicting the impact of an abrupt change in an aircraft noise environment is an essential part of the assessment of the environmental impact of constructing new airports, increasing the capacity of existing airports through the construction of new runways and modifying operations existing airports. The information will be used by the FAA and airport authorities to estimate the changes in numbers of people that will be impacted to varying degrees by proposed changes in airport configuration, airport operations, and aircraft routing.

Frequency: One time study.

Estimated Annual Burden Hours: 460 hours.

Addressee: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer.

Comments are Invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC on September 5, 1997.

Vanester M. Williams,

Clearance Officer, United States Department of Transportation.

[FR Doc. 97–24170 Filed 9–11–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings, Agreements Filed During the Week Ending September 5, 1997

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–97–2874.
Date Filed: September 2, 1997.
Parties: Members of the International Air Transport Association.
Subject: Telex COMP Reso 024f—Local Currency Fare Change, Hungary, Intended effective Date: October 1, 1997.

Docket Number: OST–97–2875.
Date Filed: September 2, 1997.
Parties: Members of the International Air Transport Association.
Subject: PTC12 CAN-EUR 0019 dated August 15, 1997, Canada-Europe Resolutions r1–33, Minutes—PTC12 Can-Eur 0020 dated August 22, 1997, Tables—PTC12 Can-Eur Fares 0005 dated August 29, 1997, Intended effective date: January 1, 1998.

Docket Number: OST–97–2882.
Date Filed: September 4, 1997.
Parties: Members of the International Air Transport Association.
Subject: PTC23 EUR-SASC 0019 dated September 2, 1997 r1–3, PTC23 EUR-SASC 0020 dated September 2, 1997 r4–6, Expedited Europe-Southasian Subcontinent Resolutions Intended effective date: as early as October 15, 1997.

Paulette V. Twine,

Documentary Services.

[FR Doc. 97–24249 Filed 9–11–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Notice of Application for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending September 5, 1997

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–97–2886.
Date Filed: September 5, 1997.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: October 3, 1997.
Description: Application of I.M.P. Group Limited c.o.b.a. Air Atlantic, a Division of I.M.P. Group Limited (Air Atlantic), pursuant to 49 U.S.C. Section 40109(c) and Subpart Q of the Regulations, applies for a Foreign Air Carrier Permit authorizing Air Atlantic to provide scheduled and charter foreign air transportation of persons, property and mail between any point or points in Canada, on the one hand, and any points or points in the United States, on the other hand, without restriction of limitation. Air Atlantic also requests that it be granted authority to perform 5th freedom charters between points in the United States and points outside of the United States, subject to compliance with applicable DOT Regulations, including Part 212 of the Economic Regulations.

Paulette V. Twine,

Documentary Services.

[FR Doc. 97–24250 Filed 9–11–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–97–46]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before October 1, 1997.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 10591.

Comments may also be sent electronically to the following internet address: 9–NPRM–CMNTS@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rule Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3231.

FOR FURTHER INFORMATION CONTACT: Heather Thorson (202) 267–7470 or Angela Anderson (202) 267–9681 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, D.C., on September 5, 1997.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 28972.
Petitioner: Samoa Aviation, Inc.
Sections of the FAR Affected: 14 CFR 121.641.
Description of Relief Sought: To permit Samoa, a part 121 flag air carrier, to operate under the domestic operations fuel supply provisions of § 121.639 in lieu of the flag operations fuel supply provisions of § 121.641.

Dispositions of Petitions

Docket No.: 27307.
Petitioner: Comair Airlines, Inc.
Sections of the FAR Affected: 14 CFR 61.57(e), 121.433(c)(1)(iii), 121.411 (a)(1) and (b)(1), and appendix F.
Description of Relief Sought/ Disposition: To permit Comair to combine recurrent flight and ground

training and proficiency checks for its pilots in a single annual training and proficiency evaluation program.

Grant, August 29, 1997, Exemption No. 5734B.

Docket No.: 28840.

Petitioner: United States Coast Guard.

Sections of the FAR Affected: 14 CFR 91.119(c) and 91.209(a).

Description of Relief Sought/ Disposition: To permit the USCG to conduct air operations over other-than-congested areas at an altitude less than 500 feet above ground level and, for operations over open water or sparsely populated areas, at a distance closer than 500 feet to any person, vessel, vehicle or structure in support of the following maritime law enforcement missions: interdicting illegal migrants at sea, ensuring compliance with vessel safety laws, enforcing environmental protection statutes, and responding to vessel incidents involving violent acts or criminal activity. In support of these missions, the proposed exemption also would permit the USCG to operate aircraft between sunset and sunrise without lighted position lights.

Grant, August 29, 1997, Exemption No. 5231C.

Docket No.: 28884.

Petitioner: Aero Sky.

Sections of the FAR Affected: 14 CFR 145.37(b).

Description of Relief Sought/ Disposition: To permit Aero Sky to obtain an FAA repair station certificate without having suitable permanent housing facilities for at least one of the heaviest aircraft within the weight class of the rating it seeks.

Grant, August 25, 1997, Exemption No. 6673.

Docket No.: 28985.

Petitioner: United States Parachute Association and Fourth World Cup of Canopy Formation.

Sections of the FAR Affected: 14 CFR 105.43(a).

Description of Relief Sought/ Disposition: To permit nonstudent parachutists who are foreign nationals to participate in the Fourth World Cup of Canopy formation in Gillette, Wyoming, on August 23, 1997, through September 6, 1997, without complying with the parachute equipment and packing requirements of the Federal Aviation Regulations.

Grant, August 21, 1997, Exemption No. 6670.

Docket No.: 26302.

Petitioner: FlightSafety International.

Sections of the FAR Affected: 14 CFR 135.293; 135.297; 135.299; 135.337(a) (2) and (3), and (b)(2); 135.339(a)(2), (b), and (c); and appendix H to part 121.

Description of Relief Sought/ Disposition: To permit FSI to use its qualified instructor pilots or pilot check airmen in approved simulators to train and check the pilots of part 135 certificate holders that contract with FSI for training.

Grant, August 21, 1997, Exemption No. 5241H.

Docket No.: 26067.

Petitioner: SimuFlite Training International.

Sections of the FAR Affected: 14 CFR 135.293; 135.297; 135.299; 135.337(a) (2) and (3), and (b)(2); 135.339(a)(2), (b), and (c); and appendix H to part 121.

Description of Relief Sought/ Disposition: To permit SimuFlite to use its qualified instructor pilots or pilot check airmen in approved simulators to train and check pilots of part 135 certificate holders that contract with SimuFlite for training.

Grant, August 21, 1997, Exemption No. 5187F.

Docket No.: 28973.

Petitioner: Gene F. Kenneford.

Sections of the FAR Affected: 14 CFR 91.109 (a) and (b)(3).

Description of Relief Sought/ Disposition: To permit petitioner to conduct certain flight instruction and simulated instrument flights to meet recent instrument experience requirements in certain Beechcraft airplanes equipped with a functioning throwover control wheel in place of functioning dual controls.

Grant, August 21, 1997, Exemption No. 6671.

Docket No.: 28242.

Petitioner: Trans World Airlines, Inc.

Sections of the FAR Affected: 14 CFR 121.574(a) (1) and (3).

Description of Relief Sought/ Disposition: To permit the use of portable oxygen-dispensing equipment by passengers on flights operated by TWA that has not been furnished by TWA, nor maintained by TWA in accordance with TWA's maintenance program.

Denial, August 28, 1997, Exemption No. 6672.

[FR Doc. 97–24172 Filed 9–11–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Aircraft Certification Procedures Issues

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public of a meeting of the FAA Aviation Rulemaking Advisory Committee to discuss Aircraft Certification Procedures Issues.

DATES: The meeting will be held on October 23, 1997, from 9:00 a.m. to 12:00 noon. Arrange for presentations by October 10, 1997.

ADDRESSES: The meeting will be held at the General Aviation Manufacturers Association, 1400 K Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT:

Ms. Brenda Courtney Federal Aviation Administration, Office of Rulemaking (ARM–200), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8461; fax (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to § 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to be held on October 23, 1997, from 9:00 a.m. to 12:00 noon at the General Aviation Manufacturers Association, 1400 K Street, NW., Washington, DC 20005. The agenda will include:

1. Presentation of the Parts and Production Certification Notice of Proposed Rulemaking and Advisory Circular for discussion and possible vote.

2. Presentation of the Delegation System Notice of Proposed Rulemaking and Advisory Circular for discussion and possible vote.

3. A status report from the Type Certification Procedures for Changed Products working group.

4. Discussion of future meeting dates, locations, activities, and plans.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by October 10, 1997, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Executive Director, or by bringing the copies to the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC, on September 8, 1997.

Brian Yanez,

Assistant Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 97–24257 Filed 9–11–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Inc., Joint RTCA Special Committee 180 and EUROCAE Working Group 46 Meeting; Design Assurance Guidance for Airborne Electronic Hardware

Puruant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a joint RTCA Special Committee 180 and EUROCAE Working Group 46 meeting to be held September 30–October 2, 1997, starting at 8:30 a.m. on September 30. The meeting will be held at EUROCAE Headquarters, 17 rue Hamelin, Paris, France.

The agenda will be as follows: (1) Chairman's Introductory Remarks; (2) Review and Approval of Meeting Agenda; (3) Review and Approval of minutes of Previous Joint Meeting; (4) Leadership Team Meeting Report; (5) Review Action Items; (6) Review Issue Logs; (7) Issue Team Status; (8) Break into Teams; (9) Issue Team Reports; (10) New Items for Consensus; (11) Special Committee 190 Committee Activity Report; (12) Other Business; (13) Establish Agenda for New Meeting; (14) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC, 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 5, 1997.

Janice L. Peters,

Designated Official.

[FR Doc. 97–24252 Filed 9–11–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Inc., Special Committee 186; Automatic Dependent Surveillance—Broadcast (ADS–B)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 186 meeting to be held September 29-October 3, 1997. The meeting will start at 9:00 a.m. on Monday, September 29, and will continue through Friday, October 3. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC, 20036.

The agenda will include: (1) Chairman's Introductory Remarks/ Review of Meeting Agenda; (2) Review and Approval of Minutes of the Previous Meeting; (3) Report of Working Group Activities: a. Editorial Committee Report; b. Progress Update on the 1090 MHz MOPS; c. CDTI Working Group Report; (4) Formation of Working Group 4 to Explore Using ADS–B Information for Collision Avoidance; (5) Ballot Review and Approval of the ADS–B MASPS (Only Written Comments Will Be Considered); (6) Other Business; (10) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 5, 1997.

Janice L. Peters,

Designated Official.

[FR Doc. 97–24253 Filed 9–11–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Inc., RTCA Special Committee 188; Minimum Aviation System Performance Standards for High Frequency Data Link

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for an RTCA Special Committee 188 meeting to be held September 29–October 2, 1997, starting at 9:30 a.m. on Monday, September 29. The meeting will be held at RTCA, Inc., 1130 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036.

September 29: Working Group 1 MASPS; September 30: Continue Working Group 1; October 1: Working Group 2 MOPS; October 2: Plenary Session.

The agenda of the Plenary Session will be as follows: (1) Introductory Remarks; (2) Review and Approval of Meeting Agenda; (3) Approval of the Summary of the Previous Meeting; (4) Review of Working Group 1 (MASPS) Work; (5) Review of Working Group 2 (MOPS) Work; (6) Review Activities of Other Standards Groups; (7) Open Discussion; (8) Dates and Places of Next Meetings.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 5, 1997.

Janice L. Peters,

Designated Official.

[FR Doc. 97–24254 Filed 9–11–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (#97–05–U–00–PDX) To Use the Revenue From a Passenger Facility Charge (PFC) at Portland International Airport, Submitted by the Port of Portland, Portland, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use PFC revenue at Portland International Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before October 14, 1997.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: J. Wade Bryant, Manager; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW, Suite 250; Renton, WA 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. John Brockley, Director of Aviation, at the following address: Port of Portland, 7000 N.E. Airport Way, Portland, Oregon 97218.

Air carriers and foreign air carriers may submit copies of written comments previously provided to Portland International Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Mary E. Vargas, (425) 227–2660; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW, Suite 250; Renton, WA 98055–4056. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (#97–05–U–00–PDX) to Use PFC revenue at Portland International Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On September 5, 1997, the FAA determined that the application to use the revenue from a PFC submitted by the Port of Portland, Portland International Airport, Portland, Oregon, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 4, 1997.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Actual charge effective date: November 1, 1994.

Proposed charge expiration date: August 31, 1999.

Total requested for use approval: $12,824,000.00.

Brief description of proposed project: Taxiway ''A'' and connectors rehabilitation; Runway 3/21 rehabilitation; Taxiway ''F'' rehabilitation.

Class or classes of air carriers which the public agency has requested not be required to be collect PFC's: On demand, non scheduled Air Taxi/Commercial Operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue S.W., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Portland International Airport.

Issued in Renton, Washington on September 5, 1997.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 97–24256 Filed 9–11–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly notice of PFC Approvals and Disapprovals. In August 1997, there were five applications approved. Additionally, three approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph d of section 158.29.

PFC Application Approved

Public Agency: Rhode Island Airport Corporation, Warwick, Rhode Island.

Application Number: 97–02–C–00–PVD.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in this Decision: $3,892,980.

Earliest Charge Effective Date: August 1, 2013.

Estimated Charge Expiration Date: May 1, 2014.

Class of Air Carriers not Required to Collect PFC's: Air taxi.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at T.F. Green State Airport.

Brief Description of Project Approved for Collection and Use: Terminal leasehold acquisition.

Decision Date: August 1, 1997.

FOR FURTHER INFORMATION CONTACT: Priscilla Scott, New England Region Airports Division, (617) 238–7614.

Public Agency: Walker Field Airport Authority, Grand Junction, Colorado.

Application Number: 97–03–C–00–GJT.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in this Decision: $2,157,000.

Earliest Charge Effective Date: March 1, 1998.

Estimated Charge Expiration Date: September 1, 2004.

Class of Air Carriers not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use: Rehabilitate Taxiway C., Construct aircraft rescue and firefighting/snow removal equipment building. Acquire snow removal equipment.

Decision Date: August 6, 1997.

FOR FURTHER INFORMATION CONTACT: Christopher Schaffer, Denver Airports District Office, (303) 342–1258.

Public Agency: Clearfield-Jefferson Counties Regional Airport Authority, BuBois, Pennsylvania.

Application Number: 97–02–U–00–DUJ.

Application Type: Use PFC revenue.

PFC Level: $3.00.

Total PFC Revenue to be Used in this Decision: $40,550.

Charge Effective Date: June 1, 1995.

Estimated Charge Expiration Date: March 1, 1998.

Class of Air Carriers not required to Collect PFC's: No change to previous decision.

Brief Description of Projects Approved for Use: Sewage/water system. Emergency generator.

Decision Date: August 12, 1997.

FOR FURTHER INFORMATION CONTACT: L.W. Walsh, Harrisburg Airports District Office, (717) 730–2831.

Public Agency: City of Lebanon, New Hampshire.

Application Number: 97–02–C–00–LEB.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in this Decision: $22,350.

Earliest Charge Effective Date: October 1, 1999.

Estimated Charge Expiration Date: December 1, 1999.

Class of Air Carriers not Required to Collect PFC's: None.

Brief Description of Project Approved for Collection and Use:

Installation of airport perimeter fencing.

Decision Date: August 20, 1997.

FOR FURTHER INFORMATION CONTACT: Priscilla Scott, New England Region Airports Division, (617) 238–7614.

Public Agency: City of Quincy, Illinois.

Application Number: 97–02–C–00–UIN.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $298,153.

Earliest Charge Effective Date: November 1, 1997.

Estimated Charge Expiration Date: June 1, 2003.

Class of Air Carriers not Requested to Collect PFC's: Charters.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Quincy Municipal Airport—Baldwin Field.

Brief Description of Projects Approved for Collection and Use:

PFC application (94–01–C–00–UIN).
Aerial mapping for airport layout plan.
Reconstruction of sanitary sewer line.
Terminal roof reconstruction.
PFC application (97–02–C–00–UIN).
Reconstruction runway 13/31.
Bituminous overlay on the T-hanger access road.

Brief Description of Projects Approved in Part for Collection and Use:

Phase I reconstruction of runway 4/22.

Determination: The approved amount was reduced from that contained in the application due to reduced costs and a change in financing. The actual bid costs were less than the estimated costs contained in the application. In addition, the public agency's received an Airport Improvement Program grant (3–17–0085–11) to pay a portion of the project costs after submission of the PFC application.

Phase II reconstruction of runway 4/22

Determination: The approved amount was reduced from that contained in the application due to reduced costs and a change in financing. The actual bid costs were less than the estimated costs contained in the application. In addition, the public agency's received an Airport Improvement Program grant (3–17–0085–12) to pay a portion of the project costs after submission of the PFC application.

Decision Date: August 28, 1997.

FOR FURTHER INFORMATION CONTACT: Philip M. Smithmeyer, Chicago Airports District Office, (847) 294–7435.

Amendments to PFC Approvals

Amendment No. city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
96–04–C–01–ORD Chicago, IL	08/12/97	$957,757,792	$957,411,292	06/01/04	06/01/04
92–01–C–01–GRB Green Bay, WI	08/12/97	8,140,000	5,062,462	03/01/03	09/01/99
95–03–C–01–PHX Phoenix, AZ	08/19/97	80,978,000	106,966,000	02/01/98	10/01/98

Issued in Washington, DC on September 5, 1997.

Eric Gabler,

Manager, Passenger Facility Charge Branch.

[FR Doc. 97–24255 Filed 9–11–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Tyler Pounds Field Airport, Tyler, Texas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Tyler Pounds Field Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before October 14, 1997.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, Fort Worth, Texas 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to the Manager of Tyler Pounds Field Airport at the following address: Mr. Davis Dickson, Airport Manager, Tyler Pounds Field Airport, 150 Airport Drive, Suite 201, Tyler, Texas 75704.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under Section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, Fort Worth, Texas 76193–0610, (817) 222–5614.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Tyler Pounds Field Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On August 27, 1997, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Airport was substantially complete within the requirements of Section 158.25 of Part 157. The FAA will approve or disapprove the application, in whole or in part, no later than December 18, 1997.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00

Proposed charge effective date: March 1, 1998
Proposed charge expiration date: January 1, 1998
Total estimated PCF revenue: $976,449
PFC application number: 97–02–C–00–TYR
Brief description of proposed projects:

Projects To Impose and Use PFCs

Terminal Area Study,
Overlay Taxiway F,
ARFF Building and Wind Cones,
PFC Administrative Costs,
Seal Coat Runway 13–31 and Associated Taxiways A, C, and D, and Airport Sanitary Sewer Capacity Improvements.

Proposed class or classes of air carriers to be exempted from collecting PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, 2601 Meacham Boulevard, Fort Worth, Texas 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Tyler Pounds Field Airport.

Issued in Fort Worth, Texas on August 28, 1997.

Naomi L. Sanders,

Manager, Airports Division.

[FR Doc. 97–24259 Filed 9–11–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33426]

Dallas, Garland & Northeastern Railroad, Inc.—Lease Exemption—Union Pacific Railroad Company

Dallas, Garland & Northeastern Railroad, Inc. (DGNO), a Class III rail common carrier, has filed a notice of exemption under 49 CFR 1150.41 to lease and operate 2 sections of rail line totaling approximately 7.5 miles from Union Pacific Railroad Company (UP) between (1) DGNO milepost 753.7 and the end of the line near Oakland Avenue in Garland, TX, and (2) UP milepost 214.8 and the end of the line near Westmorland Road in Dallas, TX.

In conjunction with the lease of these lines, DGNO will acquire by assignment UP's local trackage rights over .626 miles of rail line owned by the Dallas Area Rapid Transit between milepost 210.078, at MP Junction, and milepost 210.704, at East Dallas Yard in Dallas, TX.

The transaction was expected to be consummated on or after September 2, 1997.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33426, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Karl Morell, Esq., Ball, Janik LLP, 1455 F Street, N.W., Suite 225, Washington, DC 20005.

Decided: September 5, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–24233 Filed 9–11–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33447]

Omaha Public Power District—Acquisition Exemption—The Burlington Northern and Santa Fe Railway Company

Omaha Public Power District (OPPD), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire 56.75 miles of rail line (Acquired Line) and associated assets of The Burlington Northern and Santa Fe Railway Company (BNSF) between milepost 56.30, at Collegeview, NE, and milepost 6.1, at Arbor, NE. In addition, OPPD will acquire 4.53 miles of incidental overhead trackage rights over the BNSF line from milepost 56.3, in the Nebraska City Sub-division, and milepost 61.38, in the St. Joe Sub-Division.

The transaction is expected to be consummated on or about October 1, 1998.[1]

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33447, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas W. Wilcox, Esq., Donelan, Cleary, Wood & Maser, P.C., 1100 New York Avenue, N.W., Suite 750, Washington, DC 20005.

Decided: September 4, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–24232 Filed 9–11–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33434]

Track Tech, Inc.—Acquisition and Operation Exemption—The Burlington Northern and Santa Fe Railway Company

Track Tech, Inc. (TTI), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from The Burlington Northern and Santa Fe Railway Company and to operate approximately 19.70 miles of rail line between Creston, IA, milepost 1.45, and the end of the line at Greenfield, IA, milepost 21.15.

TTI reports that it purchased the line on June 11, 1997, but the earliest the transaction could be consummated pursuant to the exemption was August 29, 1997, the effective date of the exemption (7 days after the August 22, 1997 filing date).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33434, must be filed with

[1] OPPD states that it does not intend to provide common carrier rail service on the Acquired Line and that common carrier service is expected to be provided by a third party to be selected by OPPD. OPPD indicates that the operator would file its own verified notice of exemption to permit it to operate over the line. BNSF will retain trackage rights over the Acquired Line to provide rail transportation service to OPPD until December 31, 1998.

the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on T. Scott Bannister, 1300 Des Moines Building, 405 6th Avenue, Des Moines, IA 50309.

Decided: September 5, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–24231 Filed 9–11–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–491X]

R.J. Corman Railroad Company/ Pennsylvania Lines, Inc.—Abandonment Exemption—in Cambria County, PA

On August 25, 1997, R.J. Corman Railroad Company/Pennsylvania Lines, Inc. filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a line of railroad known as the Blacklick Secondary line, extending from railroad milepost 6.4 at Ebensburg Junction to the end of the track at railroad milepost 16, east of Nanty Glo, a distance of 9.6 miles, in Cambria County, PA. The line traverses U.S. Postal Service Zip Codes 15931, 15943 and 15948.

The line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it. The interest of railroad employees will be protected by *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by December 12, 1997.

Any offer of financial assistance under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $900. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than October 2, 1997. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–491X and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street NW., Washington, DC 20423–0001, and (2) Kevin M. Sheys, Oppenheimer Wolff & Donnelly, 1020 Nineteenth Street NW., Suite 400, Washington, DC 20036.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Decided: September 4, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–24234 Filed 9–11–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 97–78]

Revocation of Gauger Approval and Revocation of Laboratory Accreditations of a Core Laboratory Facility Located in Long Beach, CA

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of accreditation of a Customs commercial and laboratory.

SUMMARY: Corelab Petroleum Testing Services, a Customs approved gauger and accredited laboratory under Section 151.13 of the Customs Regulations (19 CFR 151.13), has closed its Long Beach California laboratory and merged that site's operations with Saybolt, Inc.'s Customs accredited and approved Carson, California site. Accordingly, pursuant to 151.13(f) of the Customs Regulations, we hereby give notice that the Customs laboratory accreditations for the Corelab Long Beach facility have been revoked without prejudice.

EFFECTIVE DATE: August 28, 1997.

FOR FURTHER INFORMATION CONTACT: Ira S. Reese, Senior Science Officer, Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Ave., NW, Washington, D.C. 20229 at (202) 927–1060.

Dated: September 5, 1997.

George D. Heavey,

Director, Laboratories and Scientific Services.

[FR Doc. 97–24206 Filed 9–11–97; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 941, 941–PR, 941–SS, Schedule B (Form 941), and Schedule B (Form 941–PR)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Forms 941 (Employer's Quarterly Federal Tax Return), 941–PR (Planilla Para La Declaracion Trimestral Del Patrono-La Contribucion Federal Al Seguro Social Y Al Seguro Medicare), 941–SS (Employer's Quarterly Federal Tax Return—American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands), Schedule B (Form 941)(Employer's Record of Federal Tax Liability), and Schedule B (Form 941–PR)(Registro Suplementario De La Obligacion Contributiva Federal Del Patrono).

DATES: Written comments should be received on or before November 12, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Employer's Quarterly Federal Tax Return.

OMB Number: 1545–0029.

Form Number: 941, 941–PR, 941–SS, Schedule B (Form 941) and Schedule B (Form 941–PR).

Abstract: Form 941 is used by employers to report payments made to employees subject to income and social security/Medicare taxes and the amounts of these taxes. Form 941–PR is used by employers in Puerto Rico to report social security and Medicare taxes only. Form 941–SS is used by employers in the U.S. possessions to report social security and Medicare taxes only. Schedule B is used by employers to record their employment tax liability.

Current Actions: There are no changes being made to these forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, not-for-profit institutions, Federal government, and state, local or tribal governments.

Estimated Number of Respondents: 12,494,773.

Estimated Time Per Respondent: 25 hrs., 31 min.

Estimated Total Annual Burden Hours: 318,978,543.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 5, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–24267 Filed 9–11–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8816

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8816, pecial Loss Discount Account and Special Estimated Tax Payments for Insurance Companies.

DATES: Written comments should be received on or before November 12, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Special Loss Discount Account and Special Estimated Tax Payments for Insurance Companies.

OMB Number: 1545–1130.

Form Number: 8816.

Abstract: Form 8816 is used by insurance companies claiming an additional deduction under Internal Revenue Code section 847 to reconcile their special loss discount and special estimated tax payments, and to determine their tax benefit associated with the deduction. The information is needed by the IRS to determine that the proper additional deduction was claimed and to insure the proper amount of special estimated tax was computed and deposited.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 3,000.

Estimated Time Per Respondent: 8 hr., 26 min.

Estimated Total Annual Burden Hours: 25,290.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital

or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 5, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–24268 Filed 9–11–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8818

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8818, Optional Form To Record Redemption of Series EE U.S. Savings Bonds Issued After 1989.

DATES: Written comments should be received on or before November 12, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Optional Form To Record Redemption of Series EE U.S. Savings Bonds Issued After 1989.

OMB Number: 1545–1151.

Form Number: 8818.

Abstract: Under Internal Revenue Code section 135, if an individual redeems U.S. savings bonds issued after 1989 and pays qualified higher education expenses during the year, the interest on the bonds is excludable from income. Form 8818 can be used to keep a record of the bonds cashed so that the taxpayer can claim the proper interest exclusion.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Responses: 50,000.

Estimated Time Per Response: 26 min.

Estimated Total Annual Burden Hours: 21,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 5, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–24269 Filed 9–11–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[CO–46–94]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, CO–46–94 (T.D. 8594), Losses on Small Business Stock (§ 1.1244(e)–1).

DATES: Written comments should be received on or before November 12, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Losses on Small Business Stock.

OMB Number: 1545–1447.

Regulation Project Number: CO–46–94.

Abstract: Section 1.1244(e)–1(b) of the regulation requires that a taxpayer claiming an ordinary loss with respect to section 1244 stock must have records sufficient to establish that the taxpayer satisfies the requirements of section 1244 and is entitled to the loss. The records are necessary to enable the Service examiner to verify that the stock qualifies as section 1244 stock and to determine whether the taxpayer is entitled to the loss.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 10,000.

Estimated Time Per Respondent: 12 minutes.

Estimated Total Annual Burden Hours: 2,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to

respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 4, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–24270 Filed 9–11–97; 8:45 am]

BILLING CODE 4830–01–U

Corrections

Federal Register

Vol. 62, No. 177

Friday, September 12, 1997

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 TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, 125, and 135

[Docket No. 28109; Amendment No. 121-266, 125-30, 129-27, 135-69]

RIN 2120-AF76

Revisions to Digital Flight Data Recorder Rules

Correction

In rule document 97–18514, beginning on page 38362, in the issue of Thursday, July 17, 1997, make the following corrections:

1. On page 38363, in the first column, in the 14th line, insert a period after ''Recommendations A–95–26 and –27''.

2. On page 38366, in the second column, in the eighth line, ''SA227.TT'' should read ''SA227–TT''.

3. On page 38374, in the second column, in the second line above paragraph (4), ''alternatively'' should read ''alternately''.

4. On page 38377, in the second column, in the eighth line from the bottom, ''or'' should read ''of''.

§ 121.344 [Corrected]

5. On page 38378, in the third column, in § 121.344(a), in the second line ''(1)'' should read ''(l)''.

6. On page 38379, in the third column, in § 121.344(b)(3), in the sixth line ''August 20, 1997'' should read ''August 20, 2001''.

7. On page 38380, in the first column:

a. In § 121.344(c)(1), in the 10th and the 11th lines, ''August 18, 2001'' should read ''August 20, 2001''.

b. In § 121.344(c)(2), in the last line, ''August 18, 2001'' should read ''August 20, 2001''.

§ 121.344a [Corrected]

8. On page 38380, in the third column, in § 121.344a(a):

a. In the seventh line from the bottom, ''August 18, 2001'' should read ''August 20, 2001''.

b. In the second to last and last line, ''August 18, 2001'' should read ''August 20, 2001''.

9. On page 38381:

a. In the second column, in § 121.344a(b)(2), in the last line, ''August 18, 2001'' should read ''August 20, 2001''.

b. In the third column, in § 121.344a(f), in the second line, ''July 17, 1997'', should read ''August 18, 1997''.

Appendix M to Part 121 [Corrected]

10. On page 38382:

a. In entry line 2., in the Remarks column, in the second line, ''operation'' should read ''operator''.

b. In entry line 3., in the Range column, the entry should read: ''50 KIAS or minimum value to Max V_{so}, to 1.2 $V._{D}$''.

c. In entry line 6., in the Range column,''+/-7°'' should read ''+/-75°''.

11. On page 38383, in entry line 18., in the Range column, ''+/-lg'' should read ''+/-1g''.

12. On page 38384, in entry line 28., in the Remarks column, in the second line, ''by'' should read ''but''.

§ 125.226 [Corrected]

13. On page 38387, in the first column, in § 125.226(a), in the second line, ''(1)'' should read ''(l)''.

14. On page 38387, in the third column:

a. In § 125.226(a)(72), in the first line, ''and'' should read ''or''.

b. In § 125.266(b), in the last line, ''August 18, 2001—'' should read ''August 20, 2001—''.

15. On page 38388, in the first column:

a. In § 125.266(b)(3), in the sixth line, ''August 18, 2001.'' should read ''August 20, 2001.''.

b. In § 125.266(c)(1), in the 10th and 11th lines, ''August 18, 2001'' should read ''August 20, 2001''.

c. In § 125.266(c)(2), in the last line ''August 18, 2001.'' should read ''August 20, 2001.''.

16. On page 38388, in the second column:

a. In § 125.266(d)(1), in the sixth line, ''August 18, 2001'' should read ''August 20, 2001''.

b. In § 125.266(d)(2), in the last line, ''August 18, 2001.'' should read ''August 20, 2001.''.

Appendix E to Part 125 [Corrected]

17. On page 38390:

a. In entry line 3., in the Range column, the entry should read: ''50 KIAS or minimum value to Max V_{so}, to 1.2 $V._{D}$''.

b. In entry line 12a., in the Parameters column, in the third line, insert an end parenthesis after, ''systems.''

18. On page 38391, in entry line 24., in the Range column, ''-50°C to -90°C'' should read ''-50°C to +90°C''.

19. On page 38392:

a. In entry line 27., in the Accuracy (sensor input) column, add leaders at the end of the entry ''As installed +/-3% recommended''.

b. In entry line 28., in the Range column, remove the period after ''to''.

20. On page 38393:

a. In entry line 44., in the Resolution column, remove the entire entry and insert it into the Remarks column for the same entry line.

b. In entry lines 61. through 67., in the Seconds per sampling interval column, remove all periods and add leaders.

21. On page 38394:

a. In entry lines 70. through 72. and 78. through 81., in the Seconds per sampling interval column, remove all periods and add leaders.

b. In the entry line 84., in the Accuracy (sensor input) column, ''+/5%'' should read ''+/-5%''

§ 135.152 [Corrected]

22. On page 38396:

a. In the first column, in § 135.152(a), in the seventh line, ''crewmembers'' should read ''crewmember''.

b. In the third column, in § 135.152(h), in the seventh line, ''indicated'' should read ''indicates''.

Appendix F to Part 135 [Corrected]

23. On page 38398:

a. In entry line 9., in the Remarks column, in the first line, ''sufficient'' should read ''Sufficient''.

b. In entry line 10., in the Seconds per sampling interval column, after ''1'' remove the period and add leaders.

c. In entry line 12a., in the Parameters column, in the third line, insert an end parenthesis after, ''systems.''

d. In entry line 12b., in the Accuracy (sensor input) column, in the second line, after ''Accuracy'' insert ''Uniquely Required.''.

24. On page 38399, in entry line 15., in the Remarks column, in the third line, ''spearately.'' should read ''separately.''.

25. On page 38401, in entry line 54., in the Accuracy (sensor input) column, ''+/-%5'' should read ''+/-5%''.

26. On page 38402, in entry line 88., in the Remarks column, in the second line from the bottom, ''second'' should read ''seconds''.

BILLING CODE 1505-01-D

Friday
September 12, 1997

Part II

Department of Justice

Immigration and Naturalization Service
8 CFR Part 214

Department of State

Bureau of Consular Affairs
22 CFR Part 41

Nonimmigrant Classes; Treaty Aliens; E Classification; Visas; Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended; Business and Media Visas; Treaty Trader and Treaty Investors; Final Rules

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS 1427–93]

RIN 1115–AC51

Nonimmigrant Classes; Treaty Aliens; E Classification

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the Immigration and Naturalization Service (''the Service'') regulations by codifying existing policy guidelines related to the ''E'' nonimmigrant treaty trader and treaty investor visa classification. This rule closely tracks a rule being published simultaneously by the Department of State (''State'') and is intended to ensure consistent adjudication of applications for ''E'' nonimmigrant visa classification by the Service and State. It also furthers Congress' intent to facilitate trade and investment between the United States and countries with whom the United States has treaties and agreements.

DATES: This final rule is effective November 12, 1997.

FOR FURTHER INFORMATION CONTACT: Katharine Auchincloss-Lorr, Senior Adjudications Officer, Immigration and Naturalization Service, 425 I Street, NW, Room 7215, Washington, DC 20536, telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION:

Background.

The Service and State share responsibility for implementing section 101(a)(15(E) of the Act. That section of the Act provides authority for the ''E'' nonimmigrant treaty trader and treaty investor visa classification. On August 30, 1991, the Service published a proposed rule and request for comments (due October 15, 1991) by parties interested in this subject in the **Federal Register**. See 56 FR 42952–57. On September 3, 1991, State published a proposed rule and request for comments (due November 4, 1991) on the same subject matter. State is publishing its final rule on ''E'' nonimmigrant visa classification, 22 CFR 41.51, simultaneously with this rule.

In response to the proposed rule, the Service received and reviewed 15 detailed comments, many covering extremely varied issues. In addition, the Service reviewed 11 comments to State's proposed rule, some identical or similar to those it received. Many of these commenters noted that discrepancies in language between the two proposed rules might lead to inconsistent adjudication and deviation from established law and policy. These comments are well-taken. The final rules of the Service and State have been drafted to be as uniform in form and substance as possible.

In this regard, both agencies have harmonized their information and documentation requirements for determining eligibility for E nonimmigrant visa classification. The Service will in the future issue a revised Form I–129, which will incorporate State's Form, the E Visa Supplemental application Form, OF–156E, for determining eligibility for E nonimmigrnat visa classification. Until that action occurs, this rule implements use of the existing Form I–129 with E Supplement by nonimmigrants seeking to change to or extend E classification in the United States.

General Changes From the Proposed Rule

The Service has revised the format of its proposed rule to conform with State's final rule. In addition, in response to comments, the Service has modified the substance and language of its proposed rule where appropriate. Substantive differences between the Service's proposed rule and this final rule are explained in the discussion of the comments.

Jurisdictional Issues

Some commenters argued that differences in Service and State regulatory language and terminology could lead to substantial discrepancies in interpretation and inconsistent adjudication, thereby inhibiting trade and investment in contravention of the United States' treaty obligations. These commenters urged the Service to defer to State on treaty alien issues, noting that eligibility for E nonimmigrant visa classification is based on treaties negotiated by State, raising foreign policy concerns more appropriately addressed by that agency. On the other hand, some commenters encouraged State consular officers to facilitate the international travel and entry of E nonimmigrnat visa holders by accepting automatically a Service-approved change of status to E classification.

Under section 104 of the Act, State has exclusive jurisdiction over visa issuance and, therefore, is not bound by Service determinations of eligibility for E nonimmigrant classification. As State noted in its proposed rule, it may not, under this provision, automatically approve an application for an E nonimmigrant visa based on the Service's approval of an application for change of nonimmigrant status to, or an extension of stay in, E nonimmigrnat classification. Rather, State must examine anew the alien's eligibility for E nonimmigrnat visa classification, in accordance with current law and procedure, which is applicable to other nonimmigrnat classifications, as well. For example, an alien admitted into the United States in B–2 (visitor) status, who subsequently applies for and is granted a change of nonimmigrant status to F–1 (student) status, cannot depart and seek reentry as an F–1 unless a United States consular officer has determined the alien's eligibility for an F–1 visa.

Conversely, under section 103 of the Act, the service has exclusive jurisdiction to adjudicate applications for admission to this country, as well as applications for change of nonimmigrant status to, or extensions of stay in, E nonimmigrant classification. In this regard, it should be noted that, unlike other employment-driven classifications, E nonimmigrant visa classification is not conferred by means of a petition, but instead by an application. Upon receipt of such applications, the Service is required to recheck independently an E nonimmigrnat visa-holder's qualifications for admission into the E nonimmigrant visa classification. Moreover, consistent with section 103 of the Act, the Service may, but is not required to, consult with State in adjudicating applications for E nonimmigrnat classification made following entry to the United States.

Some commenters also inferred from the language of section 101(a)(45) of the Act, which delegates to State responsibility for establishing what constitutes a ''substantial'' amount of trade or capital, that congress intended to recognize State's ''primary'' jurisdiction over E nonimmigrant visa status eligibility. As previously indicated, the Service does not share such a view of the Act. Section 101(a)(45) of the Act reflects congress' understanding that, because of State's central role in negotiating, executing, and interpreting Bilateral Investment Treaties, it is the appropriate agency for interpreting this statutory term. Section 101(a)(45) is not intended, however, to limit the Service's authority under section 103 of the Act to adjudicate and determine requests for E nonimmigrant classification in cases within its jurisdiction.

Table Comparing the Service's and State's Final E Rules

The following table provides a comparison of State's and the Service's final E nonimmigrant treaty trader and investor visa classification rules. An asterisk next to a State heading indicates that it is different from the Service's heading. State's headings that treat the same matter as those of the Service are marked ''SAME.'' An asterisk next to a Service heading indicates there is no parallel State heading.

Service rule— 8 CFR 214.2(e)	State rule— 22 CFR 41.51
(1) Treaty trader (TT)	(a) SAME
(2) Treaty investor (TI)	(b) SAME
(3) Employee of TT or TI	(c) SAME
(4) Spouse/Children of TT and TI	(d) SAME
(5) Nonimmigrant intent	(e) Representative of Foreign Information Media*
(6) Treaty country (TC)	(f) SAME
(7) Nationality of the TC	(g) SAME
(8) Terms and conditions of E status*	(h) Trade*
(9) Trade—definitions	(i) Item of Trade*
(10) Substantial trade	(j) SAME
(11) Principal trade	(k) SAME
(12) Investment	(l) SAME
(13) Bona fide enterprise	(m) SAME
(14) Substantial amount of capital	(n) SAME
(15) Marginal enterprise	(o) SAME
(16) Solely to direct and develop	(p) SAME
(17) Executive or supervisory character	(q) SAME
(18) Special qualifications	(r) SAME
(19) Period of admission*	
(20) Extensions of stay*	
(21) Change of status*	
(22) Denial of treaty trade or investor status to citizens of Canada or Mexico in the case of certain labor disputes*.	

Definitions

Unlike the proposed rule, this final rule does not contain a separate paragraph on definitions. Instead, terms are defined throughout the regulations.

Treaty Trader and Treaty Investor, 8 CFR 214.2(e) (1) and (2) (Corresponds With 22 CFR 41.51 (a) and (b))

The proposed rule's definition of ''primary treaty alien'' at § 214.2(e)(2)(i), has now been broken into separate definitions of ''treaty trader'' and ''treaty investor'' in this final rule at § 214.2(e) (1) and (2). In response to commenters' concerns, the term ''primary,'' used in the proposed rule, has been replaced in the final rule by the term ''principal'' for purposes of clarifying the treaty alien's relationship to his or her spouse or children.

In determining whether an applicant is a treaty trader, commenters urged the Service to consider conditions in the treaty alien's home country which affect the alien's ability to carry on trade in accordance with State's proposed rule. The final rule incorporates this consideration as a factor in determining what constitutes substantial trade, although obviously at some point country conditions, in and of themselves, can become restrictive to trade that treaty eligibility must be denied. The portion of this paragraph concerning consideration of country conditions is adopted from State's definition of treaty trader at 22 CFR 41.51(a)(1).

Employee of Treaty Trader and Treaty Investor, 8 CFR 214.2(e)(3) (Corresponds With 22 CFR 41.51(c))

The terms ''manager'' and ''managerial'' used in the proposed rule at 8 CFR 214.2(e) (2)(ii) and (6)(ii) are replaced in the final rule by ''supervisor'' and ''supervisory'' in response to comments indicating confusion with the term ''managerial'' as it is used in the context of section 101(a)(15)(L) of the Act.

Although the term ''treaty company'' was defined in the proposed rule to describe entities capable of employing an alien in E–1 or E–2 nonimmigrant visa status, State's regulation contains no such definition. In the interests of clarity, this final rule adopts State's use of the term ''organization,'' as well as the statutory word ''enterprise,'' to refer to such entities. This change reflects the fact that such an organization or enterprise derives the ability to employ aliens in E nonimmigrant visa classification directly and exclusively from its treaty trader or treaty investor owner.

Because employees derive E nonimmigrant visa status solely by virtue of their employment for an E–1 or E–2 nonimmigrant visa employer, or for an organization or enterprise qualified by reason of its ownership, it is the Service's position that an employee cannot be classified under section 101(a)(15)(E) of the Act if the employer is lawfully classified under another nonimmigrant status at the time E nonimmigrant visa classification is requested. For this reason, as provided in the proposed regulation, a permanent resident may not be the employer of a treaty alien, and the treaty alien status of an employee terminates when the E nonimmigrant visa employer becomes a permanent resident. It follows that the Service cannot adopt one commenter's suggestion that individual owners of an enterprise should be able to change to another nonimmigrant category without jeopardizing the employee's eligibility for E treaty status.

Spouse and Children of Treaty Trader and Treaty Investor, 8 CFR 214.2(e)(4) (Corresponds With 22 CFR 41.51(d))

The definition of spouse and dependent children, in the proposed rule at § 214.2(e)(2)(iii), is now contained in this final rule at

§ 214.2(e)(4). Nonimmigrant Intent, 8 CFR 214.2(e)(5)

Note: This does not corresponds with 22 CFR 41.51(3), Representatives of Foreign Information Media

The concept of dual intent found in the proposed rule at § 214.2(e)(10) (i)

and (ii) has been moved to § 214.2(e)(5) and retitled ''Nonimmigrant intent.'' This provision reflects the agencies' understanding that, under section 101(a)(15) of the Act, aliens in E nonimmigrant visa classification need not maintain a foreign residence but must indicate a clear intent to depart upon termination of status.

Although not specifically part of this final rule, the Service shares State's position that representatives of foreign information media should be considered for classification as nonimmigrants under the provisions of section 101(a)(15)(I) of the Act before consideration will be given to classifying such persons as nonimmigrants under the provisions of section 101(a)(15)(E) of the Act. See 22 CFR 41.51(e).

Treaty Country, 8 CFR 214.2(e)(6) (Corresponds With 22 CFR 41.51(f))

The definition in the proposed rule at § 214.2(e)(1) has been moved to this paragraph.

Treaty Country Nationality, 8 CFR 214.2(e)(7) (Corresponds With 22 CFR 41.51(g))

The Service's final rule incorporates the substance of its proposed rule. The proposed rule at 8 CFR 214.2(e)(6)(i), in turn, was based on State's Notes to its Foreign Affairs Manual (FAM) at 9 FAM 41.51. Some commenters urged the Service to consider the following major departures from existing policy. As discussed below, the Service is unable to adopt these suggestions.

One commenter indicated that the definition of corporate nationality contained in the proposed rule was both unworkable and in conflict with the law. The commenter argued that, by basing corporate nationality on whether nationals of a particular country own 50 percent of a corporation's shares, the proposed definition failed to account for difficulties in proving foreign corporate ownership which arise due to corporate ownership of shares, transfer of shares, and corporate shareholder lists of identity which do not always disclose shareholder's nationality. The commenter argued that requiring full search and disclosure would encourage dishonesty regarding the true owners of a company. Other commenters expressed their belief that a corporation's nationality should be determined by location of incorporation. In support of this argument, they cited certain International Court of Justice rulings, in which large multi-national corporations unable to trace nationality were permitted to look to their country of incorporation to determine nationality. They expressed the opinion that a definition based on control and ownership rather than location of incorporation could discriminate against corporations of treaty countries controlled by nationals of a third country. For these reasons, the commenters argued that a test focusing on the corporation's location would provide a more simple and enforceable guideline.

It is the Service's position that, in the great majority of cases, nationality based on ownership is the only appropriate way to determine the nationality of an organization or enterprise. Section 101(a)(15)(E) of the Act focuses on the efforts of individual nonimmigrants, as opposed to organizations, to further treaty-sanctioned activity. Consequently, simple registration in a jurisdiction to engage in business activities, rather than stock ownership, is normally not an acceptable standard for determining corporate nationality. Similarly, the country of incorporation is, in most cases, irrelevant for purposes of determining corporate nationality. On the other hand, because ownership, and not corporate location, is critical, the Service agrees with commenters who argued that domestically incorporated, but foreign-owned, corporations can be deemed eligible for E nonimmigrant visa classification. Accordingly, the reference to ''foreign'' corporations in the proposed rule has been removed.

The Service recognizes a limited exception to the nationality-by-ownership rule in the case of large, multi-national corporations that are unable to determine ownership by stock ownership. See current 9 FAM 22 CFR 41.51, N3.2. Under this exception, corporations whose stock is sold exclusively in the country of incorporation may be presumed to have the nationality of the location of the exchange. Because the burden, in all cases, remains on the applicant to demonstrate an enterprise's treaty nationality, this presumption must be supported by the best evidence available. In determining corporate nationality, the Service will consider all the circumstances in each case.

Several commenters recommended an expanded definition of ''nationality'' so that individual owners or shareholders in immigrant status, or in a nonimmigrant visa classification other than E, could be counted toward meeting the 50 percent nationality requirement set forth in 8 CFR 214.2(e)(3)(ii). The Service cannot adopt this suggestion. As noted earlier, nonimmigrant employees in E classification in an organization or enterprise derive their status directly from the employing E nonimmigrant's ownership and treaty-based nationality. Such classification, therefore, cannot be afforded to these employees if less than 50 percent of the owners are persons who are in E nonimmigrant visa classification if in the United States (or, if not in the United States, would be classifiable as E treaty traders and investors).

Terms and Conditions of E Treaty Status, 8 CFR 214.2(e)(8) (There is no Corresponding State Rule)

The Service and State will determine the terms and conditions of E treaty status, including any employment activity, at the time classification under section 101(a)(15)(E) of the Act is granted. For this reason, this paragraph incorporates proposed 8 CFR 214.2(e)(13). Among other issues, procedures and responsibilities related to transfers of employees among subsidiaries have been clarified in the paragraph of the final rule. While the final rule allows an employee in E nonimmigrant visa classification, under certain circumstances, to move among subsidiaries, the rule does not relieve the employer from compliance with all relevant regulations. Thus, in the case of such a transfer, the alien's employer is responsible for compliance with the employment eligibility verification requirements specified at 8 CFR part 274a.

It has long been the policy of the Service that a treaty trader or treaty investor, under certain circumstances, may engage in compensable activities which are incidental to the terms and conditions of the alien's E nonimmigrant visa classification. Acceptable incidental activities are those which are reasonably related to and a necessary outgrowth of the treaty employment forming the basis of the alien's E nonimmigrant visa classification. For example, it would be reasonable to expect that, during an emergency, a manager might be required to perform temporarily the duties of those persons he or she supervises as an incident to his or her managerial functions. To facilitate a determination of what constitutes incidental activity, State has agreed to request that consular officers overseas annotate E visas in a manner sufficient to inform the Service and the alien of the terms and limitations of the authorized employment activity.

An E nonimmigrant who wishes to change the terms of his or her E status, for example, to change employers or work on terms substantively different than those for which he or she was accorded entry, must obtain prior

Service approval by filing Form I–129 with the E Supplement in accordance with the instructions on, or attached to, that form. In the alternative, an E nonimmigrant may obtain a new E visa from State reflecting the new employment. Where the alien obtains Service approval of the change in status, the treaty alien must obtain a new E visa from State reflecting this change in order to return from travel abroad. The only exceptions to this new visa requirement are where the alien is applying for readmission to engage in the new treaty activity after an absence not exceeding 30 days solely in contiguous territory, pursuant to 22 CFR 41.112(d), or where an alien seeking admission presents a Form I–797, Approval Notice, indicating prior Service approval of the change in E treaty employment, together with his or her E visa.

Prior Service approval is not required if there is no fundamental change that affects the underlying terms of the treaty status forming the basis of initial E nonimmigrant visa classification. A non-substantive change may occur when there is a mere change in name of the treaty company, where one treaty national owner is replaced by another, or in some mergers and acquisitions where there is no effect on the alien's employment or relationship to the approved treaty activity. What constitutes a non-substantive change necessarily will depend on the specific facts of each case. To facilitate admission after such a non-substantive change, the Service has provided the options set forth at 8 CFR 214.2(e)(8)(iv). To determine if the change is non-substantive, the Service has provided its customers with a process for seeking advice at 8 CFR 214.2(e)(8)(v). Accordingly, an alien may file with the Service Center Form I–129, with fee, and a complete description of the change, to request a new Form I–797, Approval Notice, reflecting the non-substantive change, or appropriate advice.

As noted previously, the Service plans to publish a revised Form I–129, with the E Visa Supplemental Application Form. Until the revised Form I–129 is approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act, and issued, applicants will continue to use the existing Form I–129 and E Supplement. The revised form will provide for the derivative spouse and minor children of the trader and investor and eliminate the need for separate requests when the trader or investor seeks to change the terms and conditions of classification, extend status in, or change to E nonimmigrant classification. The option of filing the Form I–539, with a copy of the principal E visa-holder's Form I–94, will remain available, if the family member will be seeking an extension of status at a time other than the principal E nonimmigrant.

Trade—Definitions, 8 CFR 214.2(e)(9) (Corresponds With 22 CFR 41.51 (h) and (i))

The final rule modifies the proposed definition of trade by eliminating the separate definitions of ''goods'' and ''services'' and includes them as ''items of trade.'' This modification is not intended to be substantive in nature, but is meant to bring the regulation into conformity with that of State. The Service intends that the term ''service'' continue to be interpreted in an expansive fashion. In addition, in response to the concerns of commenters, the final rules of both the Service and State incorporate language recognizing trade where binding contracts ''call for the immediate exchange of items of trade.'' In response to comments that the definition of ''trade'' failed to include ''news gathering,'' an activity not precluded under section 101(a)(15)(E) of the Act but inadvertently omitted from the proposed rule, the Service has included this activity in the final regulation. As discussed earlier, representatives of foreign information media should first, however, be considered for classification pursuant to section 101(a)(15)(I) of the Act before consideration is given to possible classification under section 101(a)(15)(E) of the Act.

Substantial Trade, 8 CFR 214.2(e)(10) (Corresponds With 22 CFR 41.51(j))

Section 101(a)(15)(E) of the Act requires that, in order to qualify for E–1 nonimmigrant visa classification, the underlying business must be engaged in ''substantial trade.'' Several commenters felt strongly that the proposed requirement of continued and frequent business transactions, including business commitments scheduled for a future time, was too restrictive and inconsistent with Congressional intent and current guidelines. Section 101(a)(45) of the Act requires the Service to defer to State's definition of substantial trade. Accordingly, the Service incorporates in full State's position, as set forth in its final rule and the preamble thereto, with respect to what constitutes substantial trade for purposes of the E nonimmigrant visa classification.

It bears emphasizing that E nonimmigrant visa classification cannot be granted on the basis of a single transaction, even if that transaction is of considerable value. Trade between partners foresees long-term benefits and dedicated, ongoing activity, and is contrary to the notion of a single transaction (however protracted or complex) and the expiration of commercial activity.

In accordance with current practice, substantial trade may be demonstrated by evidence from many sources including, but not limited to, bills of lading, customs receipts, letters of credit, insurance papers documenting commodities imported, purchase orders, carrier inventories, trade brochures, and sales contracts, insurance papers documenting commodities imported, purchase orders, carrier inventories, trade brochures, and sales contracts.

Principal Trade, 8 CFR 214.2(e)(11) (Corresponds With 22 CFR 41.51(k))

With respect to what, for purposes of section 101(a)(15)(E) of the Act, constitutes trade ''principally between the United States and the foreign state'' of which the treaty trader is a national, several commenters urged the Service to adopt State's proposed phraseology ''that over 50% of the volume of *international* trade of the trader must be conducted between the United States and the treaty country of the treaty trader's nationality.'' (Emphasis added). See proposed rule § 41.51(k), 56 FR 43569 (September 3, 1991). The Service has adopted this language at 8 CFR 214.2(e)(11). Thus, for purposes of the principal trade requirement, the Service will look only at the volume of the enterprise's international, as opposed to total, trade.

Investment, 8 CFR 214.2(e)(12) (Corresponds With 22 CFR 41.51(l))

Investments are for-profit commercial efforts to generate funds. This final regulation is consistent with the proposed rule and State's regulation. On the question of risk, commenters questioned the requirement that funds dedicated for the investment business be irrevocably committed. They suggested that, by failing to protect the investor in the event a visa was not issued, the regulation discouraged alien investors unwilling to take such risk. investment was irrevocable upon visa issuance. The final rule, like State's, explicitly permits the use of mechanisms such as escrow to protect the investor if a visa is not issued. In addition, the Service will apply FAM guidelines for E–2 nonimmigrant visa classification when enterprises are still in the pre-operational activity stage.

It is clear that investment funds may not have been obtained, either directly or indirectly, from activities which are, under United States law, criminal in nature. A clear example of this would be funds obtained either directly through the trafficking of narcotics, or through the laundering or funds received through the sale of such controlled substance. On the other hand, it must be emphasized that this rule is not meant to penalize certain activities which would be recognized as lawful in the United States, but are deemed by a foreign jurisdiction to be criminal in nature. For example, a foreign jurisdiction may deem it to be illegal to transfer currency abroad, while the same activity might be deemed to be perfectly legal in the United States. Depending on the specific facts of such a case, an examiner may be required to apply United States standards, and not those of the foreign jurisdiction. In short, a determination of whether funds were obtained by criminal means must always be made on a case-by-case basis.

A number of commenters expressed the belief that the proposed regulation's failure to count towards the ''substantial investment'' requirement loans that are secured with the assets of the investment enterprise is inconsistent with modern financing practices. Commenters stated that such loans should be counted toward the ''substantial investment'' requirement if there is ultimate recourse to the investor in the event of failure, and recommended that the final rule contain the following language: ''Loans secured exclusively by the assets of the investment enterprise itself, without ultimate recourse to the investor, may not be counted toward the actual amount of capital invested.''

The final rule reflects the positions of the Service and State that assets of the treaty enterprise may not be used as collateral to secure loans and, therefore, does not contain this suggested language. The purpose of the risk provision is to place the risk of the investment exclusively on the shoulders of the investor. Such risk would be diluted if the assets of the business itself could be used as collateral, since an investor lacking adequate capital to fully repay a debt could simply ''walk away'' from a failure. The final rule, therefore, adopts State's proposed definition of ''investment'' and provides that only investments funded by capital for which the investor is personally liable may be counted as investment funds. Loans secured by the assets of the investment enterprise, such as mortgage debt or commercial loans, may not be used to meet the investment requirement. On the other hand, acceptable investment funds include such personal assets as a second mortgage on a home, unsecured or unencumbered loans or assets, and loans on the alien's personal signature.

State and the Service will determine the value of the investment capital by the same means. The FAM notes continue to provide guidance in this regard. See current 9 FAM N7.2–1 and N7.2–2. Accordingly, such value may include payments in the form of leases or rents for property or equipment in an amount limited to the funds devoted to that item in any 1 month. Such value may also include payments for the purchase of equipment and inventory on hand, provided that the alien can demonstrate that the goods or equipment are being, or will be, put to use in the investment enterprise and are for commercial, not personal, use.

Bona Fide Enterprise, 8 CFR 214.2(e)(13) (Corresponds With 22 CFR 41.51(m))

Under this final rule, to be deemed a ''bona fide enterprise,'' the enterprise may not be a paper organization or an idle, speculative investment held for potential appreciation in value, such as undeveloped land for stocks. Neither can the investment be in a nonprofit enterprise or constitute merely an intent to invest at a future time.

Some commenters argued that the effect of proposed 8 CFR 214.2(e)(5)(i)(A) was to improperly deem research facilities, market research facilities and non-profit organization to be idle and speculative investments. The commenters argued that such facilities are viable, active, profitable, and growing, albeit at a slower pace than other industries. They further argued that many multi-million-dollar research laboratories add to marketing and product knowledge and indirectly generate goods and services. The commenters concluded that Congress intended to bring such research, which is vital to larger enterprises, within the scope of the statute.

The Service recognizes the legitimacy of these arguments in the final regulation as they relate to for-profit market and research facilities. However, nonprofit institutions, such as colleges and associations, are, and have been, historically ineligible for E nonimmigrant visa status. The Service does not question the value of such nonprofit institutions but, because the focus of the E nonimmigrant visa classification is on commercial, for-profit institutions that trade or invest, nonprofit institutions are not included.

Substantial Amount of Capital, 8 CFR 214.2(e)(14) (Corresponds With 22 CFR 41.51(n))

Twelve commenters raised objections to the proportionality scale set forth in the proposed rule. They were concerned that use of a ''bright line test etched in stone'' would preclude a case-by-case analysis of whether the business was properly capitalized at a level of funds appropriate for the particular industry and type of enterprise. They further argued for elimination of the proportionality scale with respect to small investors since, under the scale, very profitable small businesses, particularly those where the investment was below $500,000, might fail to meet the high minimum-investment requirements, thereby rendering previously qualified investors ineligible for E nonimmigrant visa classification.

Some of these commenters further noted that, under the proposed rule, some joint ventures and large scale investors would not qualify under the requirement that the investment be at least 75 percent of a business valued at under $500,000. They urged the Service to consider expanding eligibility for E nonimmigrant visa status to large companies involved in sizeable joint ventures and major investments in United States business operations

As previously noted, in enacting section 101(a)(45) of the Act, Congress assigned State responsibility for determining, after consultation with the Service and other appropriate agencies, what constitutes ''substantial'' investment for purposes of E nonimmigrant visa classification. For this reason, the Service is bound by State's interpretation of ''substantiality'' as set forth in its final rule and the preamble thereto. Consistent with section 101(a)(45) of the Act, the Service, therefore adopts the guidelines set forth by State in its preamble to its final regulation. The Service wishes to emphasize that, under this interpretation, no minimum dollar figures can or should be established for meeting the substantiality requirement. Instead, the regulation requires a flexible, case-by-case assessment and provides a very straightforward 3-part test for determining substantiality.

One commenter commended the Service for exempting large corporations from the application of the ''inverted sliding scale,'' which is simply another way of describing the proportionality test that was described in the proposed rule at 8 CFR 214.2(e)(5)(iii). However, large corporations are not exempt from that analysis. Under such a determination, the percentage of an

investment (in relation to total cost) necessary to meet the substantiality requirement decreases gradually as the cost of start-up or operating the business increases, to a point where the sheer magnitude of an investment is considered substantial. Multi-million-dollar investments by large corporations, therefore, would usually be substantial even where the dollar amount invested is a relatively small percentage of the total cost of starting up or developing the enterprise.

In determining whether an investment is substantial, the Service may consider all financial and other documents of the sort presented to investors, banks, lenders, or financial analysts to assess an investment. In weighing the probative value of such documents, the Service will consider size and commercial value of the business and the circumstances of each case. For instance, the originator of a document may be relevant to an evaluation of the sufficiency of the proof. An audit conducted by a relative may be of less value than one conducted by a recognized, independent accounting firm and/or may need to be scrutinized for accuracy and to determine if generally accepted accounting principles were utilized.

Marginal Enterprise, 8 CFR 214.2(e)(15) (Corresponds With 22 CFR 41.51(o))

A number of commenters criticized the marginality test historically used by State and the Service because it inhibits small business investors, whose investments are the most likely to have been made solely to provide a living, from investing in this country. The commenters reasoned that, as a result of this policy, the nonimmigrant investor visa classification has effectively been limited to wealthy aliens with other major sources of income and foreign business interests.

The purpose of the marginality requirement is to weed out commercial enterprises, regardless of size, which will fail to become viable, that is to grow and become profitable. Of relevance to this question is the enterprise's prior commercial track record. Investors who allow an investment to subside into marginality have not maintained a fundamental condition of the investor's E–2 nonimmigrant visa classification. The final rule provides adjudicatory guidelines for evaluating what is a marginal enterprise. The determination of whether an investment is marginal depends, in all cases, on the specific circumstances and facts involved.

The proposed rule provided that ''a business may generate a minimal income and still meet the marginality test if it offers employment opportunities for United States workers and if the investor is not and will not be primarily self-employed as a skilled or unskilled worker.'' See proposed rule at 8 CFR 214.2(e)(5). One commenter argued that the question of whether an investor is or is not primarily employed as a skilled or unskilled laborer bears no relationship to the question of an enterprise's marginality. Instead, the marginality question, it was argued, relates merely to whether the investment has an impact on potential job-creation or the economy as a whole. The Service agrees with this comment. Accordingly, the final rule deletes references to skilled and unskilled labor, and provides that the capacity of an enterprise to make a significant economic contribution is an appropriate consideration in a marginality determination.

Both State's and the Service's proposed regulations were criticized for defining as marginal those enterprises which lack the capacity ''to generate more than enough income to provide a minimal living for the alien and family,'' since such enterprises may employ American workers and may involve a significant investment of capital. Although this definition is retained, the final rule precludes a finding of marginality where an enterprise demonstrates a present or future capacity to make a significant economic contribution, such as providing substantial employment.

Consistent with Congress' focus on the commercial nature of the investment, the final rule requires that an applicant demonstrate that an investment will generate a positive income within a reasonable period of time. The burden is on the alien to demonstrate the enterprise's capacity to become a viable commercial entity by presenting a business plan showing that the business will provide more than a subsistence living for the investor, within 5 years from the onset date of normal business activities. This business plan will assist the Service in determining whether the alien's intention in making the investment is to establish a viable enterprise

The 5-year business plan enables the Service to gauge progress toward tangible goals after the enterprise is in place. It recognizes the business reality that often, in situations involving start-up, change of ownership/management, or acquisitions, businesses may show little actual initial profit, but with proper planning, development, and direction, the business should generate more than enough income to provide a minimal living for the investor and his or her family. The Service must continue to assess whether the investor's enterprise is marginal at every E adjudication, even after the initial 5-year period is completed.

Solely to Develop and Direct, 8 CFR 214.2(e)(16) (Corresponds With 22 CFR 41.51(p))

Two commenters preferred State's language that an alien can meet the ''develop and direct'' requirement of section 101(a)(15)(E) of the Act by: (a) Controlling the enterprise through ownership of at least 50 percent, rather than more than 50 percent, of the business; (b) possessing operational control through a managerial position or other corporate device, or; (c) being in a position to control the enterprise by other means. The final rule adopts this reasonable interpretation.

Some commenters stated that demanding a demonstration of actual control would undermine United States treaty obligations to further trade and investment by imposing the ''unworkable'' requirement that the applicant present copies of stock certificates, rather than permitting him or her to submit for review corporate records and stock ledgers. These commenters argued that an investor who operates that company alone and does all ''routine work'' without other employees should be recognized for purposes of meeting the control requirement, and that the form of the business organization should not be determinative.

The requirement that an investor's entry be ''solely to develop and direct the operations of an enterprise'' is statutory and cannot be waived. Accordingly, the final rule permits an alien to demonstrate that he or she (or his or her employer, in the case of an essential employee) controls or will control the enterprise within a reasonable period of time. In cases where the individual is in the process of investing, at the time the investment attaches (e.g., the investment funds are released from escrow) the individual must be in control of the investment. In the final rule, the Service defines control broadly to include operational control, ownership, management responsibility, or use of other corporate devices for controlling the enterprise. The Service recognizes that what constitutes control may vary depending on factors such as the structure of the enterprise involved.

Given the control requirement, the Service cannot adopt the suggestion that E nonimmigrant visa classification be accorded automatically to large

companies involved in joint ventures since, often, no company ''controls'' the venture. E nonimmigrant visa classification for joint-venture participants is inappropriate unless the applicant can demonstrate operational control. Such operational control may be demonstrated through ''negative control.'' See current 9 FAM 41.51, N11.1. In all cases, the Service will adjudicate applications involving joint ventures in a manner consistent with State.

Finally, it should be noted that, because of the requirement that a treaty investor be entering ''solely to develop and direct'' the operations of an enterprise, an alien who is seeking admission in order to engage primarily in skilled or unskilled labor will be ineligible for E nonimmigrant visa classification. Such an investor may, however, perform ''hands on'' duties, provided they are purely incidental to his or her developing and directing the operations of the enterprise.

Executive and Supervisory Character, 8 CFR 214.2(e)(17) (Corresponds With 22 CFR 41.51(q)

With the exception of the change noted in the discussion of final 8 CFR 214.2(e)(3), there were no other comments on, or substantive changes, to this paragraph.

Special Qualifications, 8 CFR 214.2(e)(18) (Corresponds With 22 CFR 41.51(r)

Thirteen commenters expressed an array of opinions on the proposed requirements for establishing an employee's essentiality for purposes of E nonimmigrant visa classification. Some commenters stated that requiring specialized knowledge, unique skills, and a high level of expertise or proprietary knowledge of the business operations was overly stringent and included outmoded or discredited concepts. These commenters noted that the term ''unique,'' previously used with respect to the L nonimmigrant visa classification, was subsequently rejected by both Congress and the Service.

It should be emphasized that there is no relationship between the E and L nonimmigrant visa classifications. For this reason, the statutory term ''specialized knowledge,'' found at section 101(a)(15)(L) of the Act, is inappropriate in describing whether an alien employee is ''essential'' for purposes of E nonimmigrant visa classification. Although section 101(a)(15)(E) of the Act is silent on whether employees may be admitted in E nonimmigrant visa classification, the Service has historically deemed appropriate the admission of non-executive or supervisory employees having special qualifications which make their skills essential, i.e., indispensable to the success of the investment. The overriding consideration in the context of E nonimmigrant visa classification is an employee's essentiality to the enterprise.

The final rule does not require an essential employee's skills to be ''unique'' or ''one of a kind.'' The possession of unique skills, however, can usually be considered essential and, therefore, can be a positive factor in determining whether the applicant is essential for purposes of section 101(a)(15)(E) of the Act.

Some commenters expressed the opinion that the proposed essentiality requirement would hinder the ability of international companies to transfer personnel to critical projects in the United States. These commenters argued that knowledge of foreign language, culture, and country conditions should be considered in determining an alien's essentiality. They also argued that requiring prior employment or experience with the company abroad (i.e., ''transferred from an overseas office'') violated treaty obligations which require only that the employee be essential.

The Service adopts in full State's criteria, as set forth in its final rule and the preamble thereto, for determining whether an applicant is ''essential.'' There is no bright-line test for determining whether an alien is essential to an enterprise. What constitutes essentiality must be determined on the basis of the particular facts of each case. Accordingly, skills such as knowledge of a foreign language and culture, knowledge of conditions in the foreign country that are unique to his or her nationality, and previous employment with the enterprise in question, must be analyzed for their essentiality to the investment enterprise and would not, by themselves, meet the essential skills requirement.

Much comment was received regarding the requirement in the proposed rule that a treaty trader or investor seeking an essential employee demonstrate that qualified United States workers are unavailable to do the job. Some commenters urged that the Service require treaty traders or investors to provide statements from relevant public or private sources or otherwise adopt a process of assessing United States worker availability and obtaining input from labor organizations. Such public or private sources may include, among others, chambers of commerce, labor organizations, industry trade sources, or state employment agencies.

Other commenters opposed requiring such a labor market test, arguing that such a requirement was outside the scope of section 101(a)(15)E) of the Act, inconsistent with prior policy, and contrary to United States treaty obligations. The commenters also argued that a labor market test would have no application to cases where treaty aliens create jobs. These commenters expressed concern that, in actual practice, the Service would condition a finding of essentiality on the existence of a labor shortage and/or an employer's commitment to train United States workers to fill the position. These commenters noted that the employing enterprise is in a better position than the Government to determine the essentiality of particular employees.

The Service agrees that a labor shortage clearance requirement would be tantamount to a labor certification process and there is no legal authority for such a change. The final rule adopts a more flexible process by requiring the adjudicator to consider whether the needed skills are ''commonplace'' or readily available. This requirement does not constitute a veiled labor certification test. Rather, consideration of whether United States workers are available to perform the duties in question is relevant to determining how essential or indispensable the employee is to the enterprise. Although not required, documentation from outside sources may prove helpful in establishing the alien's essentiality.

As State has noted in its final rule at 22 CFR 41.51(r)(2), a skill that is unique or essential at one point may become commonplace at a later date. Consequently, while an applicant may be able to demonstrate in a particular instance that his or her skills are essential for an unspecified period of time, the alien is required to demonstrate his or her essentiality in any subsequent application for E nonimmigrant visa classification.

The proposed rule required that businesses develop training and education programs for United States workers in areas where such United States workers lack the requisite skill to fill the position offered. The proposed rule further provided that businesses must, in the alternative, demonstrate that the transfer of such skills is not feasible. These proposals were the subject of 11 comments. Some commenters suggested that such training regulations departed from prior law and were beyond the scope of the Service's statutory authority. The

commenters also argued the proposed training requirement was economically irresponsible, since many businesses can more easily and cost effectively transfer an employee possessing such skills from abroad. In addition, they noted that training would not be feasible if a skill was needed only temporarily and the need for the skill disappeared prior to completion of United States worker training. Some commenters suggested that training requirements should be applied only to companies which repeatedly request foreign technicians and, that even in such cases, the absence of a training program should merely be looked at as a negative, but not a determinative, factor in considering future applications.

The Service has decided not to impose a training requirement for E nomimmigrant visa classification exept in cases where the purpose of the E nonimmigrant visa employee's entry is to train United States workers. The question of the trainability of Untied States workers, however, goes directly to whether the alien employee is essential to the enterprise. If the skills are readily transferable to Untied States workers, it is reasonable to conclude that the enterprise could use a United States worker instead of the alien and skill function without significant disruption.

It is the position of the Service that an alien's possession of otherwise easily transferable skills typically can be deemed essential only in certain cases involving a start-up or a new enterprise, or an established enterprise which is undergoing expansion. An adjudicating officer, therefore, may request traders or investors employing essential start-up employees to set up a reasonable time frame within which the enterprise must replace such alien workers with locally hired United States employees. In this way, the Service can be assured that the employer will not artificially prolong the essentiality of employees by failing to plan for their replacement by locally hired United States employes. The above procedure remains consistent with current policy, as expressed in State's FAM notes.

The Service will monitor industry changes as necessary to determine essentiality and ensure that employees have the skills essential to the efficient operation of their ongoing investment enterprises. State and the Service will continue to work together to ensure that applications within given industries receive similar treatment.

Period of Admission, Extensions of Stay, Change of Status, 8 CFR 214.2(e)(19), (20), and (21) (There Are No Corresponding State Regulations)

The final rule incorporates numerous changes from the proposed regulation with regard to period of admission, extensions of stay, and change of status.

The final regulation creates a 2-year period for an initial admission and an unlimited number of 2-year extensions of status in E nonimmigrant visa classification. This change is intended to alleviate the confusion due to the different periods of time authorized for initial admissions and extensions under the previous policy.

Procedures for requesting extensions of stay are clarified at 8 CFR 214.2(e)(20). The revised Form I–129, when published, will simplify the procedures for requesting extensions of stay and, in this way, will assist traders and investors in the United States.

The paragraph on change of status at 8 CFR 214.2(e)(21) is consistent with the proposed rule.

Denial of Treaty Trader or Investor Status to Citizens of Canada or Mexico in the Case of Certain Labor Disputes, 8 CFR 214.2(e)(22) (There is no Corresponding State Regulation)

This paragraph has been added to clarify that the strike provisions of the North American Free Trade Agreement (''NAFTA'') are applicable to citizens of Canada and Mexico who seek nonimmigrant treaty trader or treaty investor visa status. Since these work stoppage and labor dispute provisions have the effect of law, see NAFTA Implementation Act, Pub. L. 103–182, December 8, 1993, there is no need for pre-publication notice and comment. However, the presence of these provisions in this regulation promotes awareness of their applicability to NAFTA visa holders in E nonimmigrant visa classification.

The Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service has reviewed this regulation in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule amends Service regulations by codifying existing policy guidelines related to the ''E'' nonimmigrant treaty trader and treaty investor visa classification. The economic impact of this rule, and its affect on small entities, will not be significantly different from that of the current regulation. This rule clarifies existing policy guidelines and ensures consistency with the similar rule of the Department of State, and will not, by itself, significantly increase or decrease the number of aliens in this classification, or their economic impact on the United States.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. accordingly, this regulation has been reviewed by the Office of Management and Budget.

Executive Order 12612

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

Executive Order 12988

This final rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, ''Civil Justice Reform''.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more. In addition, this rule will not result in a major increase in costs or prices or in significant adverse effects on competition, employment, investment, productivity, or innovation. This rule will not have significant adverse effects on the ability of United States-based companies to compete with foreign-based companies in domestic

and export markets. Moreover, this rule allows citizens of countries with which the United States has treaties and agreements (such as NAFTA) to enter this country in E classification to engage in trade and investment. Such treaties and agreements permit the smooth and efficient entry of traders and investors, in accordance with reasonable standards provided by the Service and the Department of State as set forth in this regulation, so that United States citizens are accorded reciprocal rights to trade and invest in the country of the treaty or agreement partner.

Paperwork Reduction Act

This final rule does not impose any new reporting or recordkeeping requirements. The information collection requirements contained in this rule have been cleared by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. Clearance numbers for these collections are contained in 8 CFR 299.5, Display of control numbers.

List of Subjects in 8 CFR Part 214

Administrative practice and procedure, Aliens, Authority delegation (Government agencies), Employment.

Accordingly, part 214 of chapter I of title 8 of the Code of Federal Regulations is amended as follows.

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282; 8 CFR part 2.

2. Section 214.2 is amended by revising paragraph (e) to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(e) *Treaty traders and investors*—(1) *Treaty trader.* An alien, if otherwise admissible, may be classified as a nonimmigrant treaty trader (E–1) under the provisions of section 101(a)(15)(E)(i) of the Act if the alien:

(i) Will be in the United States solely to carry on trade of a substantial nature, which is international in scope, either on the alien's behalf or as an employee of a foreign person or organization engaged in trade principally between the United States and the treaty country of which the alien is a national, taking into consideration any conditions in the country of which the alien is a national which may affect the alien's ability to carry on such substantial trade; and

(ii) Intends to depart the United States upon the expiration or termination of treaty trader (E–1) status.

(2) *Treaty investor.* An alien, if otherwise admissible, may be classified as a nonimmigrant treaty investor (E–2) under the provision of section 101(a)(15)(E)(ii) of the Act if the alien:

(i) Has invested or is actively in the process of investing a substantial amount of capital in a bona fide enterprise in the United States, as distinct from a relatively small amount of capital in a marginal enterprise solely for the purpose of earning a living;

(ii) Is seeking entry solely to develop and direct the enterprise; and

(iii) Intends to depart the United States upon the expiration or termination of treaty investor (E–2) status.

(3) *Employee of treaty trader or treaty investor.* An alien employee of a treaty trader, if otherwise admissible, may be classified as E–1, and an alien employee of a treaty investor, if otherwise admissible, may be classified as E–2 if the employee is in or is coming to the United States to engage in duties of an executive or supervisory character, or, if employed in a lesser capacity, the employee has special qualifications that make the alien's services essential to the efficient operation of the enterprise. The employee must have the same nationality as the principal alien employer. In addition, the employee must intend to depart the United States upon the expiration or termination of E–1 or E–2 status. The principal alien employer must be:

(i) A person in the United States having the nationality of the treaty country and maintaining nonimmigrant treaty trader or treaty investor status or, if not in the United States, would be classifiable as a treaty trader or treaty investor; or

(ii) An enterprise or organization at least 50 percent owned by persons in the United States having the nationality of the treaty country and maintaining nonimmigrant treaty trader or treaty investor status or who, if not in the United States, would be classifiable as treaty traders or treaty investors.

(4) *Spouse and children of treaty trader or treaty investor.* The spouse and child of a treaty trader or treaty investor accompanying or following to join the principal alien, if otherwise admissible, may receive the same classification as the principal alien. The nationality of a spouse or child of a treaty trader or treaty investor is not material to the classification of the spouse or child under the provisions of section 101(a)(15)(e) of the Act.

(5) *Nonimmigrant intent.* An alien classified under section 101(a)(15)(E) of the Act shall maintain an intention to depart the United States upon the expiration or termination of E–1 or E–2 status. However, an application for initial admission, change of status, or extension of stay in E classification may not be denied solely on the basis of an approved request for permanent labor certification or a filed or approved immigrant visa preference petition.

(6) *Treaty country.* A treaty country is, for purposes of this section, a foreign state with which a qualifying Treaty of Friendship, Commerce, or Navigation or its equivalent exists with the United States. A treaty country includes a foreign state that is accorded treaty visa privileges under section 101(a)(15)(E) of the Act by specific legislation.

(7) *Treaty country nationality.* The nationality of an individual treaty trader or treaty investor is determined by the authorities of the foreign state of which the alien is a national. In the case of an enterprise or organization, ownership must be traced as best as is practicable to the individuals who are ultimately its owners.

8. *Terms and conditions of E treaty status*—(i) *Limitations on employment.* The Service determines the terms and conditions of E treaty status at the time of admission or approval of a request to change nonimmigrant status to E classification. A treaty trader, treaty investor, or treaty employee may engage only in employment which is consistent with the terms and conditions of his or her status and the activity forming the basis for the E treaty status.

(ii) *Subsidiary employment.* Treaty employees may perform work for the parent treaty organization or enterprise, or any subsidiary of the parent organization or enterprise. Performing work for subsidiaries of a common parent enterprise or organization will not be deemed to constitute a substantive change in the terms and conditions of the underlying E treaty employment if, at the time the E treaty status was determined, the applicant presented evidence establishing:

(A) The enterprise or organization, and any subsidiaries thereof, where the work will be performed; the requisite parent-subsidiary relationship; and that the subsidiary independently qualifies as a treaty organization or enterprise under this paragraph;

(B) In the case of an employee of a treaty trader or treaty investor, the work to be performed requires executive, supervisory, or essential skills; and

(C) The work is consistent with the terms and conditions of the activity forming the basis of the classification.

(iii) *Substantive changes.* Prior Service approval must be obtained where there will be a substantive change in the terms or conditions of E status. In such cases, a treaty alien must file a new application on Form I–129 and E supplement, in accordance with the instructions on that form, requesting extension of stay in the United States. In support of an alien's Form I–129 application, the treaty alien must submit evidence of continued eligibility for E classification in the new capacity. Alternatively, the alien must obtain from a consular officer a visa reflecting the new terms and conditions and subsequently apply for admission at a port-of-entry. The Service will deem there to have been a substantive change necessitating the filing of a new Form I–129 application in cases where there has been a fundamental change in the employing entity's basic characteristics, such as a merger, acquisition, or sale of the division where the alien is employed.

(iv) *Non-substantive changes.* Prior approval is not required, and there is no need to file a new Form I–129, if there is no substantive, or fundamental, change in the terms or conditions of the alien's employment which would affect the alien's eligibility for E classification. Further, prior approval is not required if corporate changes occur which do not affect the previously approved employment relationship, or are otherwise non-substantive. To facilitate admission, the alien may:

(A) Present a letter from the treaty-qualifying company through which the alien attained E classification explaining the nature of the change;

(B) Request a new Form I–797, Approval Notice, reflecting the non-substantive change by filing with the appropriate Service Center Form I–129, with fee, and a complete description of the change, or;

(C) Apply directly to State for a new E visa reflecting the change. An alien who does not elect one of the three options contained in paragraph (e)(8)(iv)(A) through (C) of this section, is not precluded from demonstrating to the satisfaction of the immigration officer at the port-of-entry in some other manner, his or her admissibility under section 101(a)(15)(E) of the Act.

(v) *Advice.* To ascertain whether a change is substantive, an alien may file with the Service Center Form I–129, with fee, and a complete description of the change, to request appropriate advice. In cases involving multiple employees, an alien may request that a Service Center determine if a merger or other corporate restructuring requires the filing of separate applications by filing a single Form I–129, with fee, and attaching a list of the related receipt numbers for the employees involved and an explanation of the change or changes. Where employees are located within multiple jurisdictions, such a request for advice must be filed with the Service Center in Lincoln, Nebraska.

(vi) *Approval.* If an application to change the terms and conditions of E status or employment is approved, the Service shall notify the applicant on Form I–797. An extension of stay in nonimmigrant E classification may be granted for the validity of the approved application. The alien is not authorized to begin the new employment until the application is approved. Employment is authorized only for the period of time the alien remains in the United States. If the alien subsequently departs from the United States, readmission in E classification may be authorized where the alien presents his or her unexpired E visa together with the Form I–797, Approval Notice, indicating Service approval of a change of employer or of a change in the substantive terms or conditions of treaty status or employment in E classification, or, in accordance with 22 CFR 41.112(d), where the alien is applying for readmission after an absence not exceeding 30 days solely in contiguous territory.

(vii) An unauthorized change of employment to a new employer will constitute a failure to maintain status within the meaning of section 237(a)(1)(C)(i) of the Act. In all cases where the treaty employee will be providing services to a subsidiary under this paragraph, the subsidiary is required to comply with the terms of 8 CFR part 274a.

(9) *Trade—definitions.* For purposes of this paragraph: *Items of trade* include but are not limited to goods, services, international banking, insurance, monies, transportation, communications, data processing, advertising, accounting, design and engineering, management consulting, tourism, technology and its transfer, and some news-gathering activities. For purposes of this paragraph, goods are tangible commodities or merchandise having extrinsic value. Further, as used in this paragraph, services are legitimate economic activities which provide other than tangible goods.

Trade is the existing international exchange of items of trade for consideration between the United States and the treaty country. Existing trade includes successfully negotiated contracts binding upon the parties which call for the immediate exchange of items of trade. Domestic trade or the development of domestic markets without international exchange does not constitute trade for purposes of section 101(a)(15)(E) of the Act. This exchange must be traceable and identifiable. Title to the trade item must pass from one treaty party to the other.

(10) *Substantial trade.* Substantial trade is an amount of trade sufficient to ensure a continuous flow of international trade items between the United States and the treaty country. This continuous flow contemplates numerous transactions over time. Treaty trader status may not be established or maintained on the basis of a single transaction, regardless of how protracted or monetarily valuable the transaction. Although the monetary value of the trade item being exchanged is a relevant consideration, greater weight will be given to more numerous exchanges of larger value. There is no minimum requirement with respect to the monetary value or volume of each individual transaction. In the case of smaller businesses, an income derived from the value of numerous transactions which is sufficient to support the treaty trader and his or her family constitutes a favorable factor in assessing the existence of substantial trade.

(11) *Principal trade.* Principal trade between the United States and the treaty country exists when over 50 percent of the volume of international trade of the treaty trader is conducted between the United States and the treaty country of the treaty trader's nationality.

(12) *Investment.* An investment is the treaty investor's placing of capital, including funds and other assets (which have not been obtained, directly or indirectly, through criminal activity), at risk in the commercial sense with the objective of generating a profit. The treaty investor must be in possession of and have control over the capital invested or being invested. The capital must be subject to partial or total loss if investment fortunes reverse. Such investment capital must be the investor's unsecured personal business capital or capital secured by personal assets. Capital in the process of being invested or that has been invested must be irrevocably committed to the enterprise. The alien has the burden of establishing such irrevocable commitment. The alien may use any legal mechanism available, such as the placement of invested funds in escrow pending admission in, or approval of, E classification, that would not only irrevocably commit funds to the enterprise, but might also extend personal liability protection to the treaty investor in the event the application for E classification is denied.

(13) *Bona fide enterprise.* The enterprise must be a real, active, and operating commercial or entrepreneurial undertaking which produces services or goods for profit. The enterprise must meet applicable legal requirements for doing business in the particular jurisdiction in the United States.

(14) *Substantial amount of capital.* A substantial amount of capital constitutes an amount which is:

(i) Substantial in relationship to the total cost of either purchasing an established enterprise or creating the type of enterprise under consideration;

(ii) Sufficient to ensure the treaty investor's financial commitment to the successful operation of the enterprise; and

(iii) Of a magnitude to support the likelihood that the treaty investor will successfully develop and direct the enterprise. Generally, the lower the cost of the enterprise, the higher, proportionately, the investment must be to be considered a substantial amount of capital.

(15) *Marginal enterprise.* For purposes of this section, an enterprise may not be marginal. A marginal enterprise is an enterprise that does not have the present or future capacity to generate more than enough income to provide a minimal living for the treaty investor and his or her family. An enterprise that does not have the capacity to generate such income, but that has a present or future capacity to make a significant economic contribution is not a marginal enterprise. The projected future income-generating capacity should generally be realizable within 5 years from the date the alien commences the normal business activity of the enterprise.

(16) *Solely to develop and direct.* An alien seeking classification as a treaty investor (or, in the case of an employee of a treaty investor, the owner of the treaty enterprise) must demonstrate that he or she does or will develop and direct the investment enterprise. Such an applicant must establish that he or she controls the enterprise by demonstrating ownership of at least 50 percent of the enterprise, by possessing operational control through a managerial position or other corporate device, or by other means.

(17) *Executive and supervisory character.* The applicant's position must be principally and primarily, as opposed to incidentally or collaterally, executive or supervisory in nature. Executive and supervisory duties are those which provide the employee ultimate control and responsibility for the enterprise's overall operation or a major component thereof. In determining whether the applicant has established possession of the requisite control and responsibility, a Service officer shall consider, where applicable:

(i) That an executive position is one which provides the employee with great authority to determine the policy of, and the direction for, the enterprise;

(ii) That a position primarily of supervisory character provides the employee supervisory responsibility for a significant proportion of an enterprise's operations and does not generally involve the direct supervision of low-level employees, and;

(iii) Whether the applicant possesses executive and supervisory skills and experience; a salary and position title commensurate with executive or supervisory employment; recognition or indicia of the position as one of authority and responsibility in the overall organizational structure; responsibility for making discretionary decisions, setting policies, directing and managing business operations, supervising other professional and supervisory personnel; and that, if the position requires some routine work usually performed by a staff employee, such functions may only be of an incidental nature.

(18) *Special qualifications.* Special qualifications are those skills and/or aptitudes that an employee in a lesser capacity brings to a position or role that are essential to the successful or efficient operation of the treaty enterprise. In determining whether the skills possessed by the alien are essential to the operation of the employing treaty enterprise, a Service officer must consider, where applicable:

(i) The degree of proven expertise of the alien in the area of operations involved; whether others possess the applicant's specific skill or aptitude; the length of the applicant's experience and/or training with the treaty enterprise; the period of training or other experience necessary to perform effectively the projected duties; the relationship of the skill or knowledge to the enterprise's specific processes or applications, and the salary the special qualifications can command; that knowledge of a foreign language and culture does not, by itself, meet the special qualifications requirement, and;

(ii) Whether the skills and qualifications are readily available in the United States. In all cases, in determining whether the applicant possesses special qualifications which are essential to the treaty enterprise, a Service officer must take into account all the particular facts presented. A skill that is essential at one point in time may become commonplace at a later date. Skills that are needed to start up an enterprise may no longer be essential after initial operations are complete and running smoothly. Some skills are essential only in the short-term for the training of locally hired employees. Under certain circumstances, an applicant may be able to establish his or her essentiality to the treaty enterprise for a longer period of time, such as, in connection with activities in the areas of product improvement, quality control, or the provision of a service not yet generally available in the United States. Where the treaty enterprise's need for the applicant's special qualifications, and therefore, the applicant's essentiality, is time-limited, Service officers may request that the applicant provide evidence of the period for which skills will be needed and a reasonable projected date for completion of start-up or replacement of the essential skilled workers.

(19) *Period of admission.* Periods of admission are as follows:

(i) A treaty trader or treaty investor may be admitted for an initial period of not more than 2 years.

(ii) The spouse and minor children accompanying or following to join a treaty trader or treaty investor shall be admitted for the period during which the principal alien is in valid treaty trader or investor status. The temporary departure from the United States of the principal trader or investor shall not affect the derivative status of the dependent spouse and minor unmarried children, provided the familial relationship continues to exist and the principal remains eligible for admission as an E nonimmigrant to perform the activity.

(iii) Unless otherwise provided for in this chapter, an alien shall not be admitted in E classification for a period of time extending more than 6 months beyond the expiration date of the alien's passport.

(20) *Extensions of stay.* Requests for extensions of stay may be granted in increments of not more than 2 years. A treaty trader or treaty investor in valid E status may apply for an extension of stay by filing an application for extension of stay on Form I–129 and E Supplement, with required accompanying documents, in accordance with § 214.1 and the instructions on that form.

(i) For purposes of eligibility for an extension of stay, the alien must prove that he or she:

(A) Has at all times maintained the terms and conditions of his or her E nonimmigrant classification;

(B) Was physically present in the United States at the time of filing the application for extension of stay; and

(C) Has not abandoned his or her extension request.

(ii) With limited exceptions, it is presumed that employees of treaty enterprises with special qualifications who are responsible for start-up operations should be able to complete their objectives within 2 years. Absent special circumstances, therefore, such employees will not be eligible to obtain an extension of stay.

(iii) Subject to paragraph (e)(5) of this section and the presumption noted in paragraph (e)(22)(ii) of this section, there is no specified number of extensions of stay that a treaty trader or treaty investor may be granted.

(21) *Change of nonimigrant status.* (i) An alien in another valid nonimmigrant status may apply for change of status to E classification by filing an application for change of status on Form I–129 and E Supplement, with required accompanying documents establishing eligibility for a change of status and E classification, in accordance with 8 CFR part 248 and the instructions on Form I–129 and E Supplement.

(ii) The spouse or minor children of an applicant seeking a change of status to that of treaty trader or treaty investor alien shall file concurrent applications for change of status to derivative treaty classification on the appropriate Service form. Applications for derivative treaty status shall:

(A) Be approved only if the principal treaty alien is granted treaty alien status and continues to maintain that status;

(B) Be approved for the period of admission authorized in paragraph (e)(20) of this section.

(22) *Denial of treaty trader or treaty investor status to citizens of Canada or Mexico in the case of certain labor disputes.* (i) A citizen of Canada or Mexico may be denied E treaty trader or treaty investor status as described in section 101(a)(15)(E) of the Act and section B of Annex 1603 of the NAFTA if:

(A) The Secretary of Labor certifies to, or otherwise informs, the Commissioner that a strike or other labor dispute involving a work stoppage of workers is in progress at the place where the alien is or intends to be employed; and

(B) Temporary entry of that alien may adversely affect either:

(*1*) The settlement of any labor dispute that is in progress at the place or intended place of employment, or

(*2*) The employment of any person who is involved in such dispute.

(ii) If the alien has already commenced employment in the United States and is participating in a strike or other labor dispute involving a work stoppage of workers, whether or not such strike or other labor dispute has been certified by the Department of Labor, the alien shall not be deemed to be failing to maintain his or her status solely on account of past, present, or future participation in a strike or other labor dispute involving a work stoppage of workers, but is subject to the following terms and conditions:

(A) The alien shall remain subject to all applicable provisions of the Act and regulations applicable to all other E nomimmigrants; and

(B) The status and authorized period of stay of such an alien is not modified or extended in any way by virtue of his or her participation in a strike or other labor dispute involving a work stoppage of workers.

(iii) Although participation by an E nonimmigrant alien in a strike or other labor dispute involving a work stoppage of workers will not constitute a ground for deportation, any alien who violates his or her status or who remains in the United States after his or her authorized period of stay has expired will be subject to deportation.

* * * * *

Dated: March 17, 1997.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 97–22314 Filed 9–11–97; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 41

[Public Notice 2594]

Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended; Business and Media Visas; Treaty Trader and Treaty Investors

AGENCY: Bureau of Consular Affairs, State Department.

ACTION: Final rule.

SUMMARY: This rule amends the nonimmigrant visa regulations, by adding a definition of the term ''substantial'' to section 41.51 in order to implement the provisions of section 204(c) of Pub. L. 101–649. This rule adds a new section 101(a)(45) to the Immigration and Nationality Act (INA) for purposes of defining this term as used in section 101(a)(15)(E) of the INA. Furthermore, this rule incorporates into regulation the underlying principles of the treaty trader/treaty investor visa classification which have been published in the form of interpretive note material in Volume 9 of the State Department's Foreign Affairs Manual.

EFFECTIVE DATE: November 12, 1997.

FOR FURTHER INFORMATION CONTACT: Stephen K. Fischel, Director, Legislation, Regulations and Advisory Assistance, 202–663–1184.

SUPPLEMENTARY INFORMATION: Public Notice 1468 at 56 FR 43565, September 3, 1991, proposed adding regulations to title 22, part 41, Code of the Federal Regulations. The proposed regulations were required to implement the provisions of section 204(c) of the Immigration Act of 1990, Pub. L. 104–649 which requires the Secretary of State to promulgate a regulatory definition of the term ''substantial'' after consultation with the appropriate agencies of the United States Government. The proposal was discussed in detail in Notice 1468, as were the Department's reasons for the regulations. The Department received 14 timely comments in responds to the Notice of Proposed Rulemaking.

Analysis of Comments

General Comment

The Department's proposed rule and the Immigration and Naturalization Service's proposed rule on the treaty visa classification were published within a few days of each other. Although the rules were intended to be identical in substance, each agency selected different language to articulate its rules. This difference in language led readers to reach the unintended conclusion that the rules were substantively different if not at odds with each other in a few critical ways.

Many commenters expressed their concern about the apparent differences in two ways. First, commenters requested that the agencies work together to publish rules that were clearly identical in substance. The agencies certainly recognize the need for one set of principles to administer the law and have worked together to achieve that goal. Furthermore, commenters suggested that, since the Department of State has the greatest amount of experience in administering treaty trader/investors visa rules, and since INS has been deferring to the Department of State's regulations and interpretations, the INS should continue to defer to the Department and to apply the Department's regulations. Such deference, it was suggested, could involve the specific reference, in the Immigration and Naturalization Service (Service) regulations, to the Department of State's regulations, or the publication of the Department's entire treaty visa

regulations in Title 8 of Code of Federal Regulations.

The two agencies agree in principle with these objectives. Although the Department and the Service are each publishing their own regulations, they are intended to be substantively the same. To further uniform application of these rules, the Service will be expressly authorized by the INS Operations Instructions to consult with the Advisory Opinions Division of the Visa Office of the Department of State on treaty visa issues.

The Advisory Opinions Division renders opinions on legal issues relating to visa law on behalf of the Visa Office to United States consular officers serving at United States embassies and consulates abroad. Opinions rendered by this division on questions of law, as opposed to the application of the law to the facts of a particular case, are generally binding on consular officers. (See 22 CFR 41.121(d)). A significant distinction is made between this current departmental practice and the projected consultation process with the Service. Guidance offered at the request of the Service will be purely advisory in nature and will not be binding on the Service in any way. The Service will continue to posses exclusive authority and responsibility for the adjudication of treaty visa cases submitted to them in accordance with applicable law and procedure.

This consultation process will merely constitute a means of sharing the Department's knowledge gained from the experience of adjudicating treaty visa cases for many years. The INS will possess the option of drawing upon such expertise, but will be under no obligation to consult with the Visa Office. The exercise of this option is left to the discretion of that agency.

One commenter had expressed the hope that not only the Service and the Department would promulgate the same regulations but that consular officers abroad would automatically accept a Service's change of status determination in an ''E'' visa case rather than subject the alien to readjudication of the visa application.

Consular officers posses exclusive authority to issue and refuse visas (INA 104). Not only must they determine an alien's eligibility under INA 212(a) but, in the case of all nonimmigrant visa classifications, they must assess whether the alien has met all the requirements of that particular nonimmigrant visa classification. Even in petition-based nonimmigrant visa classifications the consular officer retains the authority, and the responsibility, to review the petition to make sure the alien is appropriately and properly classified; this is not just because mistakes may happen, but because the consular officer may have access to information not available to the INS officer. If the review results in a finding that the officer knows or reasonably believes that the alien is not entitled to the given classification, the petition is returned pursuant to regulation to the appropriate office of the Immigration and Naturalization Service for appropriate action.

As treaty visa cases involve no INS approved petitions, the consular officer has the responsibility to adjudicate all aspects of the visa application. Under this regulation and these administrative procedures, the consular officer will continue to have that responsibility. It is anticipated, however, that in view of the newly adopted procedures more uniform application of these visa regulations will be achieved, thus reducing the possibility of disparate results.

Several commenters expressed disappointment that the Department proposed regulations on treaty visas without even mentioning the Board of Immigration Appeals decision in the *Matters of Walsh and Pollard*, Int. Dec. #3111 (BIA 1988). Since this case was not cited in the preamble to the proposed rule, some commenters inferred that the Department did not agree with the holding of the decision.

The Department finds this decision to be useful on at least two points. First, the Board followed the Department's interpretation that substantial investment is determined by application of the proportionality test, not by application of a set minimum dollar figure. Secondly, the Board agreed that the concept of ''develop and direct'' applies to the ''principal'' treaty investor, not to each employee of the treaty investor.

This decision unquestionably contributes significantly to the body of administrative case law on treaty visas, but it does have a shortcoming. The decision has been read to imply that the treaty investor visa classification is appropriate for the creation of certain ''job shop'' arrangements. The principles upon which the decision is founded to do support that inference. These regulations, likewise, do not endorse that inference.

As clear recognition of the significance of this case, special treatment is accorded this decision in the interpretive note material in the Foreign Affairs Manual. It should be noted, however, that the ''job shop'' inference is also accorded appropriate discussion.

Employee of Treaty Trader or Treaty Investor

The Department received one comment on the long-standing regulation at section 41.51(c), which requires the employer to hold treaty visa status or, if not in the United States, to be so classifiable. The commenter prefers removing the requirement that the employer hold treaty visa status and instead allowing the employer to be lawfully classified under any other nonimmigrant status. The purpose of this commenter's suggestion is to allow employees to qualify for treaty visas regardless of the nonimmigrant classification of the employer.

Although the Department recognizes the practicality of such a suggestion, we believe that the current regulation is to proper interpretation of the law. The statutory section addresses the conditions whereby the ''principal'' treaty traders and treaty investors may qualify for an E visa. No mention is made of employees. Employee status is the logical creation of regulation. Persons in that status derive that status directly and exclusively from ''principal'' treaty traders or treaty investors. Without a qualifying relationship to a principal which has been accorded treaty trader or treaty investor status, the alien cannot likewise be accorded treaty visa status. This derivative relationship is analogous to other relationships more explicitly defined in the Act such as the relationship of spouse and children to a principal accorded lawful immigration status under the INA. One can not derive status from a person who does not possess such status.

Nationality

One commenter expressed the hope that an easier method could be found to ''register'' large enterprises to qualify for ''E'' visa status. This issue is similar to that raised by two other commenters who expressed strenuous dissatisfaction with the proposed rules for determining the nationality of an incorporated entity. The problem arises in cases involving corporations that sell stocks on exchanges in more than one country.

The standard of practicability was adopted in recognition of this problem. This standard contemplates the applicant submitting the best evidence available and the consular officer reaching a reasonable decision considering the particular circumstances in each case. This is not intended to be an onerous paper production exercise.

The statute speaks of granting special treatment for ''nationals'' of treaty

partners. Nationality of enterprises based on ownership captures the essence of the statue and the bilateral relationship. Although registration of businesses in a jurisdiction to engage in business activities in that jurisdiction has been accorded recognition for national treatment in other contexts by other laws and some courts, mere registration has not been and is not accepted as the proper standard for determining nationality under INA 101(a)(15)(E).

This issue was addressed in *Matter of N---S---*, 7 I&N Dec. 426 (1957). Recognizing the Congress' review of this longstanding rule during the formulation of the Immigration and Nationality Act during the early 1950's, the decision states at Dec. 428 that, ''there being no substantial change in language between the present statute and regulations as compared with the preceding statute and regulations on the same subject, the rulings and principles previously enunciated and which are presumed to have been known to the Congress must be deemed to be presently applicable.'' For similar reasons, we believe that the regulations as proposed are consistent with Congressional intent.

Trade

Three commenters suggested that the Department incorporate the concept of ''business commitments'' in its definition of existing international trade. The proposed rule reiterated the statutorily mandated principle that the trade for treaty trader purposes must be in existence in order to qualify for such status. The Department agrees, however, that the concept of ''business commitments'' as described in *Matter of Seto*, 11 I&N Dec. 290 (1965), should be included within the definition of trade. Drawing from a Supreme Court decision and a Court of Appeals decision, this decision holds that ''existing trade includes successfully negotiated contracts which call'' for the exchange of goods within the meaning of INA 101(a)(15)(E)(i). But on the other hand, the decision states that transactions which are in the state of negotiation do not by themselves constitute trade for this purpose.

The Department not only agrees with this principle, but it has been incorporated into the regulation. Additionally, the appropriate guidance will be provided in the Foreign Affairs Manual.

Substantial trade

An identical comment was submitted in two letters concerning the definition of trade. The specific language of the proposed rule expressly prohibits a single transaction from qualifying as substantial trade. The underlying principle of substantial trade is that a continuing flow or exchange of trade items exist. The commenters expressed fear that this definitional language would be interpreted to exclude the circumstance of a single large transaction exchanged annually or periodically over extended periods of time.

The language of the regulation incorporated the essence of the language which has been used in the interpretive notes in the FAM. The wording was specifically selected to avoid the establishment of any specific time limitations. The thrust of the definition is to disqualify a ''one shot'' deal but to consider all other continuing exchanges of value. Determinations have been and will continue to be made upon case by case analysis. It appears that the meaning of this definition is exactly the meaning sought by the commenters. To further clarify the regulations, the Department has amended the language accordingly.

A commenter expressed disappointment that the Department did not incorporate into the regulations a certain note in the FAM describing substantial trade. That note states that for smaller businesses income derived from international trade which is sufficient to support the treaty trader and his or her family should be considered to be a favorable factor when assessing the substantiality of trade in a particular case. The Department adheres to this concept. The regulation has been amended to include this concept.

Treaty investment

Investment capital

Risk

Several commenters agreed with our statement in the preamble of the proposed regulation that the rule regarding risk did not square with business reality. A couple of commenters did offer the suggestion of amending the rule by use of the following language: ''loans secured exclusively by the assets of the investment enterprise itself, without ultimate recourse to the treaty investor, may not be counted toward the actual amount of capital investment''.

The purpose of the risk provision is to place the risk of the investment totally and exclusively on the shoulders of the treaty investor. As this suggested language would dilute the element of risk by including the possibility of using the business as collateral, the Department will retain the language as proposed. In addressing the issue of ''irrevocable commitment'', several commenters suggested that language be added to the regulations that would formally recognize the use of mechanisms such as escrow to protect the treaty investor if a visa were not issued in a certain case. Such mechanisms have long been recognized as proper safeguards by the Department. The Department's opinion has been published broadly, including in the Interrogatories in *Matters of Walsh and Pollard* which have been disseminated widely not only in the private sector but also within the Foreign Service as instructional material. The regulations have been amended to accommodate this request.

Substantial capital

One commenter expressed dislike for the proportionality test but failed to offer any suggestions for an alternative test. The commenter questioned why the proportionality test was selected in light of the Congressional mandate to define ''substantial'' investment, why a minimum investment amount was even considered in light of the *Matters of Walsh and Pollard*, Int. Dec. #3111 (BIA 1988), why no economic studies were undertaken in this exercise, and why the Immigration and Naturalization Service proposed a different formula when the Secretary of State was given authority to promulgate the regulatory definition.

The supplemental information portion of the proposed rule explained the entire exercise undertaken to reach a definition, as required by the statute. Comprehensive letters were prepared explaining the purpose and requirements of the treaty visa classification and soliciting comments and suggestions from each agency. The agencies, Department of Commerce, Labor, the Treasury, and the Small Business Administration, the U.S. Trade Representative, and, of course, the Immigration and Naturalization Service, each responded. All but one felt competent to provide constructive input into the analysis. The agencies overwhelmingly favored continued use of the proportionality test. The general conclusion was that this test appears to have worked successfully in the past and that no superior test could be devised which would capture the essence of this requirement.

The fact that Congress required that the definition be codified in regulatory form does not necessarily suggest, as stated by this commenter, that Congress was dissatisfied with the current test. Legislative history of this provision and predecessor versions in earlier bills

suggest that Congress sought primarily the establishment of a test to be applied uniformly by both agencies. Secondarily, the Congress accorded the Secretary of State the responsibility of preparing such regulations in light of the extensive experience in adjudicating treaty visa applications as well as the obvious jurisdictional tie to the treaty function.

The Congress did require the Secretary of State to consult ''with appropriate agencies of Government''. This requirement was carried out as described above and in the preamble of the proposed regulation. A great cross section of agencies was selected as indeed no independent economic study was either required by Congress or undertaken by the Department of State. It was anticipated that the agencies that monitor the pulse of the economy would provide relevant input into the formulation of the test. None of these agencies nor any of the others perceived the necessity to undertake an economic study. Based upon such responses from interested agencies, the Department was satisfied that sufficient avenues had been explored.

The establishment of a minimum amount of investment had to be considered during this review, as the Department bore the responsibility of considering all viable alternatives. A set minimum dollar figure is always the first test offered as an alternative to the proportionality test. While such a test has certain administrative advantages, the agencies overwhelmingly rejected it in favor of the proportionality test.

Lastly, the commenter suggested that INS' proposed regulations differed from the Department's on this issue of substantial investment. That issue has been rendered moot by the Service's decision to promulgate regulations consistent with the Department's regulations.

Three other commenters discussed the proportionality test. Two commenters expressed concern over the application of the ''inverted sliding scale'' thinking that it differs from the proportionality test now in use. The term ''inverted sliding scale'' is merely a descriptive characterization of the proportionality test. No substantive change is intended by the use of this term. The test is intended to apply as it has in the past.

Concern was expressed over the use of presumptions and that there were only three such benchmarks. It was feared that these percentages would be used in those designated ranges as bright line tests and not as guidelines as intended. In view of the lower cost needed to establish certain types of businesses, the commenters felt a need for a designation for a $100,000 investment or even lower. Several commenters felt that the third benchmark of 30% was too high for exceptionally large investment figures. It was opined that the sheer magnitude of such investments should be considered to be substantial regardless of the percentage.

In an attempt to avoid the use of the presumptive percentages as bright line tests, the three presumptive benchmarks have been removed. The regulation merely defines the test, whereas in the FAM note material examples will be provided. Any examples given are not intended to be binding but are intended to demonstrate to adjudicating officers and the public the general range of the proportionality test. The fear that the percentages used in such examples will be applied by adjudicators as bright line tests cannot be totally abated; however, through instructional material in the FAM, advisory opinions, and other relevant material, the adjudicating officers will be instructed to use these figures as flexible guidelines on a case by case basis.

The commenter also suggested that some of the descriptive language used in the FAM note material and/or language used in the supplemental information of the proposed rule should be incorporated into regulation. Although some of this descriptive language has been incorporated into regulation, the general definitional language has been somewhat rewritten to more prominently feature the underlying ingredients of ''substantial amount of capital''.

The language describing the application of the proportionality test has been altered for clarity. Although the preamble of the proposed regulation stated that the figure representing the actual cost of establishing a business must be used in arriving at the investment percentage, the proposed rule has been interpreted to permit the use of a figure of an amount of investment needed to establish a business of that nature, regardless of what the enterprise in question might cost. The regulation is amended to more accurately reflect the explanation in the preamble.

Marginality

The comments save one were generally favorable of the Department's treatment of marginality. The single negative comment essentially stated that the proposed language would bar viable enterprises from qualifying for treaty visa status thus shutting off the infusion of foreign investment. The commentary wrongly imparted this intent to the Department.

The Department has no desire to bar viable enterprises, but as the supplemental information provided with the proposed rule clearly lays out, the Department does have as one of its objectives to weed out those enterprises that are indeed nonviable. Recognizing that no rule is perfect, the Department attempted to craft the regulation to achieve its objective. Unfortunately, that commenter offered no alternative to the proposal.

The other comments, however, suggested that the rule be clarified so that the capacity to generate income be cast not only in the present tense but also in the future. Although the proposed rule was intended to address this very concern, more specific language has been added. By including the language of ''present and future'' to the capacity to generate income and to the capacity to make an economic contribution, the question now arises as to when in the future must such capacity be realized. Is it realistic to allow an treaty investor to realize this capacity 20 years in the future? We think not. A reasonable standard should be established.

When establishing entitlement to treaty investor classification the alien bears the burden of satisfying the consular officer that the enterprise is a viable commercial entity with the requisite income generating capacity. To demonstrate that capacity, a business plan of some sort is often presented. This plan projects the amount of income contemplated considering the expenses of establishing and/or using the enterprise and factoring in the marketability of the service or commodity to be provided or sold. The Department accepts the reality that many start-up businesses will not generate any profits initially. It is, also, the Department's understanding that a five year term is considered a standard period of time to gauge profitability of such a business. The Department finds it reasonable that from the date the principal treaty investor commences operation of normal business activities that the business is projected to be generating the requisite income or making the requisite economic contribution within a five year period. For further clarity, economic contribution replaces economic impact to signify that a positive economic impact is contemplated.

Develop and direct

One of the four comments received on this issue referred to the typographical error in the September 3, 1991 printing

of the proposed rule. The word ''marginal'' was intended to read as ''managerial'' and has been corrected.

A favorable comment was received which applauded the ability to meet the develop and direct requirement not just by ownership but by managerial or other corporate or structural means.

Another comment focused on the fact that the Department's proposed regulations required that the treaty investor be in a position to develop and direct rather than ''solely'' develop and direct the enterprise in which the alien had invested. The distinction made by the commenter lies in the possibility of being in a position to control without exercising such control.

The language used by the Department derives from *Matter of Lee,* 15 I&N Dec. 187 at 189 (1975). This decision cites the statutory language and then provides its interpretation. ''Section 101(a)(15(E)(ii) of the Act requires the treaty investor to be coming solely to develop and direct the operations of the enterprise in which substantial investment has been or is in the process of being made. In order for a treaty investor to develop and direct the operations of an enterprise, it must be shown he has a controlling interest; otherwise other individuals who do have the controlling interest are in a position to dictate how the enterprises is to be developed and directed.''

The observation made by the commenter was presented in the form of a question. The query focuses on whether the statutory language requires an alien personally to develop and direct an enterprise or whether the alien must be in a position to develop and direct an enterprise. In the latter case, the alien may not personally develop or direct the enterprise but may afford a third party the opportunity to do so. Although the Department has consistently interpreted the proposed regulation to mean that the treaty investor must demonstrate that his or her purpose of entry is to develop and direct the enterprise, the language has been amended to comport more directly with the statute and to remove any hint of ambiguity.

The last commenter made two suggestions. The first was to have the Department accord ''E'' visa status to large companies involved in joint ventures. In the opinion of the commenter no company ''controls'' the sizable joint venture, the develop and direct requirement should, therefore, be waived. As the develop and direct requirement is statutory and the law contains no authority for it to be waived, the Department cannot accede to this suggestion. (This does not mean, however, that this develop and direct requirement cannot be met by other means, such as through the concept of ''negative control''.)

The same result attaches to the second suggestion. The commenter proposed that treaty investors with investments of a minimum of $10,000,000 be exempt from the develop and direct requirement if the treaty investor otherwise met the ''E'' visa requirements. Although the Department understands the motivation behind this suggestion as well, the statute does not provide the authority to waive the requirement.

Employee: Executive or Supervisor

The Department received several comments on this proposed regulatory provision. As all the comments were favorable and no changes were recommended, the regulation stands as proposed.

Essential employee

The proposed language drew quite a few comments addressing different aspects of the proposal. The first comment took issue with the concept that the employer must demonstrate that replacement by a U.S. worker is not feasible or that the employer is making reasonable and good faith efforts to train U.S. workers. The commenter questioned the advisability and the legality of trying to modify our treaty obligations by administrative regulations. In light of the change we are making to this regulation the comment is rendered moot. On the other hand, the statute, regulations, and the treaty contain nothing that would prohibit the imposition of such regulatory requirements.

Three commenters objected to the requirement in proposed § 41.51(r)(2) that the alien must in *each case* affirmatively establish that the alien's eventual replacement by a U.S. worker is not feasible or that the employer is making reasonable and good faith efforts to recruit and/or train U.S. workers to perform the responsibilities of the alien's prospective position. Two commenters made reference to the interpretive note material in the FAM at 22 CFR 41.51 N4–3 and found these notes to be instructive. They suggested that perhaps this requirement should be imposed only on those aliens claiming to posses essential skills who will engage in activities which may involve manual duties as explained in § 41.51 N.4–3(b). This requirement should not be imposed across the board. These comments continued by recommending that the regulatory language be altered to expressly provide that aliens with special skills that have not become commonplace might remain in the United States indefinitely, and any training/recruitment/feasibility requirement should be expressly limited to the exceptions listed in the FAM notes.

The Department accepts and recognizes these suggestions as valid and having merit. The intent of the proposed regulation was to put the applicant and the applicant's employer on notice that indeed not all positions that require specialized skills might be considered ''essential'' on a continuing basis. It was thought that, through the usual application process of assessing ''essentiality'', this requirement of feasibility/training would be met. Certainly, aliens with skills unique to them or at least not commonplace in the United States would by the very nature of the activity establish *ipso facto* that such skills would be essential on a continuing basis and that training, etc. would not be feasible. The Department agrees that the proposed language appears more burdensome than intended.

Consequently, the Department has changed section 41.51(r)(2) to better capture the essence of the concept that the establishment of ''essentiality'' is an ongoing process. A key to this adjudication exercise is the determination of whether the specialized skills are commonplace in the United States. Certainly, some such skills will be found not to be commonplace on a continuing basis and other skills will be found to become commonplace at some point in time. When that point in time is reached, the alien may not qualify as an essential employee. The employer will than have to fill the position by other means.

In order to reflect more clearly this principle, the regulation has been amended to remove all references to affirmative responsibilities requiring a feasibility assessment or training requirements. The guidance in the FM note material cited above has been incorporated into the regulation. The operation of this regulation will follow the stated objective which comports with the two commenters' suggestions.

A commenter objected to the use of the term ''unique'' skills as a means to determine essential skills. The commenter stated that this was too high a standard to impose on aliens to qualify as an essential employee. Furthermore, while it is no longer used for L–1 adjudication, it should not be used in this context.

The characterization of a skill as ''unique'' has a long association with the E visa classification. This is descriptive of a skill which clearly is

one-of-a-kind and is, thus, not commonplace. It does not and never has been intended to constitute a minimum standard for meeting the requirement of essential skills. To the contrary, skills of unique character would so greatly exceed any minimum standard of ''essentiality'' that persons blessed with unique skills coming to fill positions requiring such unique skills would in the overwhelming number of cases be considered to be ''essential''. As ''unique'' continues to be a useful descriptive term in the adjudication process, the regulations and interpretive guidance in the FAM will continue to use it.

Final Rule

This final rule of § 41.51 would: provide a general definition of treaty trader (paragraph (a)); provide a definition of treaty investor (paragraph (b)); define an alien employee (paragraph (c)); extend treaty classification to the spouse and children of the principal alien (paragraph (d)); and authorize ''E'' status to certain foreign information media (paragraph (e)). The remaining paragraphs constitute definitional provisions.

This rule is not expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The information collection contained in this rule has been submitted to the Office of Management and Budget in compliance with provisions of the Paperwork Reduction Act of 1980. This rule has been reviewed as required by E.O. 12778 and certified to be in compliance therewith, and reviewed in light of E.O. 12866 and found to be consistent therewith.

List of Subjects in 22 CFR Part 41

Aliens, Treaty Trader or Investor.

In view of the legislative mandate of Pub. L. 101–649, Part 41 to Title 22 would be amended as follows:

PART 41—[AMENDED]

1. The authority citation for Part 41 is revised to read:

Authority: INA 104, 66 Stat. 174, 8 U.S.C. 1104; sec. 109(b)(1), 91 Stat. 847; sec. 204, 104 Stat. 5019, 8 U.S.C. 1101 note.

2. Part 41, Subpart F—Business and Media Visas, is amended by revising section 41.51 to read as follows:

§ 41.51 Treaty trader or treaty investor.

(a) *Treaty trader.* An alien is classifiable as a nonimmigrant treaty trader (E–1) if the consular officer is satisfied that the alien qualifies under the provisions of INA 101(a)(15)(E)(i) and that the alien:

(1) Will be in the United States solely to carry on trade of a substantial nature, which is international in scope, either on the alien's behalf or as an employee of a foreign person or organization engaged in trade, principally between the United States and the foreign state of which the alien is a national, (consideration being given to any conditions in the country of which the alien is a national which may affect the alien's ability to carry on such substantial trade); and

(2) Intends to depart from the United States upon the termination of E–1 status.

(b) *Treaty investor.* An alien is classifiable as a nonimmigrant treaty investor (E–2) if the consular officer is satisfied that the alien qualifies under the provisions of INA 101(a)(15)(E)(ii) and that the alien:

(1) Has invested or is actively in the process of investing a substantial amount of capital in *bona fide* enterprise in the United States, as distinct from a relatively small amount of capital in a marginal enterprise solely for the purpose of earning a living; and

(2) Is seeking entry solely to develop and direct the enterprise; and

(3) Intends to depart from the United States upon the termination of E–2 status.

(c) *Employee of treaty trader or treaty investor.* An alien employee of a treaty trader may be classified E–1 and an alien employee of a treaty investor may be classified E–2 if the employee is in or is coming to the United States to engage in duties of an executive or supervisory character, or, if employed in a lesser capacity, the employee has special qualifications that make the services to be rendered essential to the efficient operation of the enterprise. The employer must be:

(1) A person having the nationality of the treaty country, who is maintaining the status of treaty trader or treaty investor if in the United States or if not in the United States would be classifiable as a treaty trader or treaty investor; or

(2) An organization at least 50% owned by persons having the nationality of the treaty country who are maintaining nonimmigrant treaty trader or treaty investor status if residing in the United States or if not residing in the United States who would be classifiable as treaty traders or treaty investors.

(d) *Spouse and children of treaty trader or treaty investor.* The spouse and children of a treaty trader or treaty investor accompanying or following to join the principal alien are entitled to the same classification as the principal alien. The nationality of a spouse or child of a treaty trader or treaty investor is not material to the classification of the spouse or child under the provisions of INA 101(a)(15)(E).

(e) *Representative of foreign information media.* Representatives of foreign information media shall first be considered for possible classification as nonimmigrants under the provisions of INA 101(a)(15)(I), before consideration is given to their possible classification as nonimmigrants under the provisions of INA 101(a)(15)(E) and of this section.

(f) *Treaty country.* A treaty country is for purposes of this section a foreign state with which a qualifying Treaty of Friendship, Commerce, and Navigation or its equivalent exists with the United States. A treaty country includes a foreign state that is accorded treaty visa privileges under INA 101(a)(15)(E) by specific legislation (other than the INA).

(g) *Nationality of the treaty country.* The nationality of an individual treaty trader or treaty investor is determined by the authorities of the foreign state of which the alien claims nationality. In the case of an organization, ownership must be traced as best as is practicable to the individuals who ultimately own the organization.

(h) *Trade.* The term ''trade'' as used in this section means the existing international exchange of items of trade for consideration between the United States and the treaty country. Existing trade includes successfully negotiated contracts binding upon the parties which call for the immediate exchange of items of trade. This exchange must be traceable and identifiable. Title to the trade item must pass from one treaty party to the other.

(i) *Item of trade.* Items which qualify for trade within these provisions include but are not limited to goods, services, technology, monies, international banking, insurance, transportation, tourism, communications, and some news gathering activities.

(j) *Substantial trade.* Substantial trade for the purposes of this section entails the quantum of trade sufficient to ensure a continuous flow of trade items between the United States and the treaty country. This continuous flow contemplates numerous exchanges over time rather than a single transaction, regardless of the monetary value. Although the monetary value of the trade item being exchanged is a relevant consideration, greater weight is given to more numerous exchanges of larger value. In the case of smaller businesses, an income derived from the value of numerous transactions which is

sufficient to support the treaty trader and his or her family constitutes a favorable factor in assessing the existence of substantial trade.

(k) *Principal trade.* Trade shall be considered to be principal trade between the United States and the treaty country when over 50% of the volume of international trade of the treaty trader is conducted between the United States and the treaty country of the treaty trader's nationality.

(l) *Investment.* Investment means the treaty investor's placing of capital, including funds and other assets, at risk in the commercial sense with the objective of generating a profit. The treaty investor must be in possession of and have control over the capital invested or being invested. The capital must be subject to partial or total loss if investment fortunes reverse. Such investment capital must be the investor's unsecured personal business capital or capital secured by personal assets. Capital in the process of being invested or that has been invested must be irrevocably committed to the enterprise. The alien has the burden of establishing such irrevocable commitment given to the particular circumstances of each case. The alien may use any legal mechanism available, such as by placing invested funds in escrow pending visa issuance, that would not only irrevocably commit funds to the enterprise but that might also extend some personal liability protection to the treaty investor.

(m) *Bona fide enterprise.* The enterprise must be a real and active commercial or entrepreneurial undertaking, producing some service or commodity for profit and must meet applicable legal requirements for doing business in the particular jurisdiction in the United States.

(n) *Substantial amount of capital.* A substantial amount of capital constitutes that amount that is:

(1)(i) Substantial in the proportional sense, i.e., in relationship to the total cost of either purchasing an established enterprise or creating the type of enterprise under consideration;

(ii) Sufficient to ensure the treaty investor's financial commitment to the successful operation of the enterprise; and

(iii) Of a magnitude to support the likelihood that the treaty investor will successfully develop and direct the enterprise.

(2) Whether an amount of capital is substantial in the proportionality sense is understood in terms of an inverted sliding scale; i.e., the lower the total cost of the enterprise, the higher, proportionately, the investment must be to meet these criteria.

(o) *Marginal enterprise.* A marginal enterprise is an enterprise that does not have the present or future capacity to generate more than enough income to provide a minimal living for the treaty investor and his or her family. An enterprise that does not have the capacity to generate such income but that has a present or future capacity to make a significant economic contribution is not a marginal enterprise. The projected future capacity should generally be realizable within five years from the date the alien commences normal business activity of the enterprise.

(p) *Solely to develop and direct.* The business or individual treaty investor does or will develop and direct the enterprise by controlling the enterprise through ownership of at least 50% of the business, by possessing operational control through a managerial position or other corporate device, or by other means.

(q) *Executive or supervisory character.* The executive or supervisory element of the employee's position must be a principal and primary function of the position and not an incidental or collateral function. Executive and/or supervisory duties grant the employee ultimate control and responsibility for the enterprise's overall operation or a major component thereof.

(1) An executive position provides the employee great authority to determine policy of and direction for the enterprise.

(2) A position primarily of supervisory character grants the employee supervisory responsibility for a significant proportion of an enterprise's operations and does not generally involve the direct supervision of low-level employees.

(r) *Special qualifications.* Special qualifications are those skills and/or aptitudes that an employee in a lesser capacity brings to a position or role that are essential to the successful or efficient operation of the enterprise.

(1) The essential nature of the alien's skills to the employing firm is determined by assessing the degree of proven expertise of the alien in the area of operations involved, the uniqueness of the specific skill or aptitude, the length of experience and/or training with the firm, the period of training or other experience necessary to perform effectively the projected duties, and the salary the special qualifications can command. The question of special skills and qualifications must be determined by assessing the circumstances on a case-by-case basis.

(2) Whether the special qualifications are essential will be assessed in light of all circumstances at the time of each visa application on a case-by-case basis. A skill that is unique at one point may become commonplace at a later date. Skills required to start up an enterprise may no longer be essential after initial operations are complete and are running smoothly. Some skills are essential only in the short-term for the training of locally-hired employees. Long-term essentiality might, however, be established in connection with continuous activities in such areas as product improvement, quality control, or the provision of a service not generally available in the United States.

(s) *Labor disputes.* Citizens of Canada or Mexico shall not be entitled to classification under this section if the Attorney General and the Secretary of Labor have certified that:

(1) There is in progress a strike or lockout in the course of a labor dispute in the occupational classification at the place or intended place of employment; and

(2) The alien has failed to establish that the aliens entry will not affect adversely the settlement of the strike or lockout or the employment of any person who is involved in the strike or lockout.

Dated: May 13, 1994.

Editorial note: This document was received in the Office of the Federal Register on September 9, 1997.

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 97–24260 Filed 9–11–97; 8:45 am]

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Friday
September 12, 1997

Part III

Federal Trade Commission

Cigarette Testing; Request for Public Comment; Notice

FEDERAL TRADE COMMISSION

Cigarette Testing; Request for Public Comment

AGENCY: Federal Trade Commission.

ACTION: Request for public comment on proposed revisions to the Federal Trade Commission methodology for determining tar, nicotine, and carbon monoxide yields of cigarettes, and a proposed format for disclosing the resulting ratings in advertising.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') is soliciting comments on proposed revisions to the testing method used to determine the tar, nicotine, and carbon monoxide ratings of cigarettes, and the disclosure of those test results.

DATES: Written comments must be received by November 17, 1997.

INSTRUCTIONS: Six paper copies of each written comment should be submitted to the Office of the Secretary, Federal Trade Commission, Room 159, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580. To encourage prompt and efficient review and dissemination of the comments to the public, all comments also should be submitted, if possible, in electronic form, on either a 5¼ or a 3½ inch computer diskette, with a label on the diskette stating the name of the commenter and the name and version of the word processing program used to create the document. (If possible, documents in WordPerfect 6.1 or Word 6.0, or earlier generations of these word processing programs, are preferred. Files from operating systems other than DOS or Windows should be submitted in ASCII text format to be accepted.) Submissions should be captioned: ''FTC Cigarette Testing Methodology,'' FTC File No. P944509.

FOR FURTHER INFORMATION CONTACT: Shira D. Modell, Division of Advertising Practices, Federal Trade Commission, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, (202) 326–3116.

SUPPLEMENTARY INFORMATION: Cigarette ratings for tar, nicotine, and carbon monoxide are determined through testing conducted pursuant to what is generally referred to as the ''FTC cigarette testing methodology'' or, more simply, the ''FTC method''—a reference to a smoking machine testing protocol that the Commission adopted in 1967.

The Commission is seeking comment on proposed changes to that methodology. The proposed methodology would require that each cigarette variety be tested under two different sets of smoking conditions, rather than the single set used under the current system. The revised test method would produce tar, nicotine, and carbon monoxide yields using both the current testing parameters and more intensive smoking conditions, thus producing a range of potential yields for each cigarette. In addition, the Commission is requesting comment on the feasibility of generating the upper tier of tar, nicotine, and carbon monoxide ratings through mathematical formulas, rather than actual testing on a smoking machine. The Commission is also placing on the public record two different legends that could be used in advertising to disclose the ratings and is seeking comment on the usefulness and feasibility of these potential disclosure formats. Finally, the Commission is requesting comment on alternative approaches that were considered but are not being proposed by the Commission.

I. Cigarette Testing Methodology

A. History and Purpose of the Current Test Method

The current FTC system for tar and nicotine testing is an outgrowth of the Commission's authority to prohibit deceptive or unsubstantiated claims in advertising. *See* 15 U.S.C. 45. The Commission's earliest involvement in this area was in cases addressing competing tar and nicotine claims in cigarette advertising. One problem with these early claims was that the tar and nicotine numbers reported by different manufacturers were obtained using varying methodologies, and therefore were not comparable. In 1966, to provide a uniform basis for advertising claims, the Commission authorized establishment of a laboratory to analyze mainstream cigarette smoke (*i.e.*, the smoke that is drawn through the cigarette rod during puffing), and invited public comment on what modifications, if any, should be made to the ''Cambridge Filter Method'' for purposes of the laboratory's procedures, and how the test results should be expressed.[1]

The Commission's cigarette testing laboratory began operation in 1967.[2] The testing methodology adopted by the Commission called for cigarettes to be smoked by a smoking machine that was calibrated to take one puff of two seconds' duration and 35 milliliters volume every minute. Cigarettes were to be smoked to a butt length of 23 millimeters or the length of the filter and overwrap plus 3 millimeters, whichever was longer. One hundred cigarettes of each variety were to be smoked to determine the tar and nicotine ratings.[3]

In 1970, the Commission proposed a trade regulation rule that would have required disclosure of tar and nicotine ratings in all cigarette advertising.[4] The rulemaking was suspended indefinitely a short time later, when five of the major cigarette manufacturers and three small companies agreed voluntarily among themselves to disclose clearly and prominently the ratings produced by the Commission's protocol in certain types of advertising. That voluntary agreement, modified to reflect the closing of the Commission's laboratory in 1987, remains in effect today, and it forms the basis for current disclosure of tar and nicotine yield.[5]

The Commission's test method was not designed ''to determine the amount of 'tar' and nicotine inhaled by any human smoker, but rather to determine the amount of tar and nicotine generated when a cigarette is smoked by a machine in accordance with the prescribed method.'' [6] The purpose of the program was to provide smokers seeking to switch to lower tar cigarettes with a single, standardized measurement with which to choose among the existing brands.[7] This goal was consistent with the then-consensus of the scientific community that lower tar and nicotine cigarettes should be less harmful than higher tar and nicotine brands.[8]

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[1] 31 FR 14278 (Nov. 4, 1966). The Cambridge Filter Method had been described in Ogg , *Determination of Particulate Matter and Alkaloids (as Nicotine) in Cigarette Smoke.* 47 J. Ass'n. Official Agric. Chemists 356 (1964), although the actual parameters appear to have been identified 30 years earlier by researchers for The American Tobacco Company.

[2] 32 FR 11178 (Aug. 1, 1967).

[3] Testing for carbon monoxide was added to the protocol in 1980.

[4] 35 FR 12671 (Aug. 8, 1970).

[5] In early 1987, the Commission decided to close its cigarette testing laboratory. Since then, most of the tar, nicotine, and carbon monoxide ratings reported by the Commission are determined through testing conducted by the Tobacco Institute Testing Laboratory using the Commission's testing parameters. Thus, although some changes have been made, the modified Cambridge Filter Method adopted by the Commission in 1967 remains essentially in place today.

[6] FTC Press Release—Statement of Considerations 2 (Aug. 1, 1967).

[7] Indeed, since the adoption of the FTC test method, the sales-weighted average tar rating of cigarettes sold in the United States has declined from 21.6 mg. in 1968 to 12.1 mg. in 1994. Federal Trade Commission, *Tar, Nicotine and Carbon Monoxide of the Smoke of 1206 Varieties of Domestic Cigarettes for the Year 1994* Table 1 (1997).

[8] The year before the Commission's laboratory began cigarette testing, the Public Health Service stated that ''The preponderance of scientific evidence strongly suggests that the lower the tar and nicotine content of cigarette smoke, the less harmful would be the effect.'' U.S. Dept. of Health and Human Services, *The Health Consequences of*

B. Current Concerns About the FTC Cigarette Testing Methodology

Changes in cigarette design and increased knowledge about human smoking behavior have highlighted the limitations of the existing test method. In particular, research indicates that smokers switching to cigarettes at the lower end of the range of machine measured nicotine yields tend to take larger and more frequent puffs to satisfy their need for nicotine. This compensatory smoking behavior substantially reduces the informative value of the current ratings. As a result, public and private health groups and others have questioned the usefulness of the FTC ratings over the past few years, suggesting that they may mislead consumers with respect to the relative risks of smoking cigarettes with various levels of tar and nicotine ratings.

The Commission has been especially concerned that some consumers may believe that the existing machine measured yields are literal indicators of how much tar and nicotine they will get from particular brands of cigarettes. To the extent that smokers interpret current tar and nicotine disclosures in this manner, they may fail to understand that the amount of tar and nicotine they get from a cigarette depends in part on how that cigarette is smoked. In addition, smokers—especially those who engage in compensatory smoking—may underestimate the risk associated with lower rated brands by assuming that a very low tar yield necessarily translates into a correspondingly low health risk. In fact, even the lowest rated cigarette represents an important adverse health risk.

C. National Cancer Institute Conference: Its Conclusions and Recommendations for the FTC Cigarette Testing Methodology

In July 1994, due to many of these same concerns, the Commission requested that the National Cancer Institute (''NCI'') convene a consensus conference to address certain issues concerning the FTC's cigarette testing methodology and ratings system. On December 5 and 6, 1994, NCI conducted the requested conference before an Ad Hoc Committee of the President's Cancer Panel.

The Ad Hoc Committee heard presentations on such issues as changes in cigarette design over time, attitudes and beliefs about low-yield cigarettes, the relationship between tar and nicotine yields and the incidence of smoking related diseases, and smokers' perceptions of the meaning of the ratings produced by the current test method. Before adjourning, the Ad Hoc Committee issued a summary of its conclusions and recommendations.[9] The Committee concluded that significant changes should be made to the current FTC protocol and specifically reached the following conclusions, among others:

I. * * *

A. The smoking of cigarettes with lower *machine-measured* yields has a small effect in reducing the risk of cancer caused by smoking, no effect on the risk of cardiovascular diseases, and an uncertain effect on the risk of pulmonary disease. A reduction in *machine-measured* tar yield from 15 mg. to 1 mg. tar does not reduce relative risk from 15 to 1.

B. The FTC protocol was based on cursory observations of human smoking behavior. Actual human smoking behavior is characterized by wide variations in smoking patterns which result in wide variations in tar and nicotine exposure. Smokers who switch to lower tar and nicotine cigarettes frequently change their smoking behavior which may negate potential health benefits.

C. Accordingly, the committee recommends the following changes to the FTC protocol:

1. This system should also measure and publish information on the range of Tar, Nicotine, and Carbon Monoxide yields that most smokers should expect from each cigarette sold in the U.S.

2. This information should be clearly communicated to smokers.

* * * * *

4. The system must be accompanied by public education to make smokers aware that individual exposure depends on how the cigarette is smoked and that the benefits of switching to lower yield cigarettes are small compared with quitting.

* * * * *

F. The system should be re-examined at least every five years to evaluate whether the protocol is maintaining its utility to the smoker.

* * * * *

II. [T]he committee recommends that in order to avoid confusing smokers, no smoke constituents other than tar, nicotine and carbon monoxide be measured and published at the present time. * * *

III. * * *

C. The available data suggest that smokers misunderstand the FTC test data. This underscores the need for an extensive public education effort.[10]

D. The Proposed New Method

Consistent with the Ad Hoc Committee's conclusion that a ratings range would provide superior information to consumers than the unitary ratings generated by the current test method, the Commission seeks comment on a proposal to replace the existing FTC cigarette test method with a system that would provide information on the tar, nicotine, and carbon monoxide yields obtained under two different smoking conditions. As with the current system, these ratings would not be intended to convey to any individual smoker what he or she would get from any particular cigarette. Instead, they would be intended to convey: (1) That a cigarette's yield depends on how it is smoked; and (2) a range of yields for individual cigarettes smoked under less intensive and more intensive smoking conditions. In addition, the Commission intends to accompany the revised testing methodology with a consumer education campaign.

1. Proposed Testing Parameters for the New Test Method

The Commission is proposing the following modifications to its cigarette testing methodology:

(1) All current procedures for the collection, storage, and conditioning of cigarettes would remain in place, except that the 100 cigarettes selected for testing would be randomly divided into two groups of 50 cigarettes each;

(2) 50 cigarettes of each variety would be tested under the conditions called for by the current FTC test method (*i.e.*, a 2.0 second, 35 milliliter puff every 60 seconds);

(3) 50 cigarettes of each variety would be tested under conditions identical to those currently used, except that smoking machines would be calibrated to take a puff of 2.0 seconds duration and 55 milliliters volume every 30 seconds.

The puffing parameters used in the current test method would be retained as the less intensive of the two testing conditions. Retaining these parameters would preserve the historical continuity of the existing test method, and thus permit long term trends in ratings to be identified. Furthermore, because they reflect relatively low intensity smoking, at least for most of today's cigarettes,[11] they should—when coupled with

Smoking: The Changing Cigarette at 1 (1981) (quoting 1966 Public Health Service statement).

[9] The proceedings of that conference have been published by the National Institutes of Health. *Smoking and Tobacco Control Monograph 7—The FTC Cigarette Test Method for Determining Tar, Nicotine, and Carbon Monoxide Yields of U.S. Cigarettes: Report of the NCI Expert Committee* (1996) (''*NCI Monograph*'').

[10] *NCI Monograph* at vi–viii.

[11] The Surgeon General's 1988 report reviewed 33 smoking studies, determined the average puffing parameters observed in each study and then determined the medians of those averages: a 1.8 second, 43 milliliter puff every 28 seconds. U.S. Dept. of Health and Human Services, *The Health Consequences of Smoking: Nicotine Addiction* 156–57 (1988). The average puff volume seen in those surveys ranged from 21 milliliters to 66 milliliters; the average interpuff interval ranged from 18 to 64 seconds. *See also* NCI Monograph at 154 (Table 1).

additional ratings reflecting testing under more intensive smoking conditions—provide consumers meaningful information about the potential variability of their own tar and nicotine exposure.

The Commission and its staff considered whether the smoking conditions that would be used to generate the ratings at the upper end of the range should reflect the median puffing parameters identified in the Surgeon General's 1988 report. The Commission is proposing, however, that insofar as its goal is to provide meaningful information about the ''yields most smokers should expect,'' (*see NCI Monograph* at vii), the upper tier ratings should be determined using puffing parameters substantially more intensive than the ''average'' smoking conditions identified by the Surgeon General; a revised cigarette test method that had as its upper endpoint ratings produced by using the parameters identified in the Surgeon General's report would be skewed too low.

At the same time, the Commission does not believe the upper tier of its proposed two-tier test method needs to incorporate puffing conditions designed to produced the maximum yield possible from individual cigarettes, in order to inform consumers about the importance of their own smoking behavior in influencing what they get from their cigarettes. Even if some smokers might take even deeper and more frequent puffs than those reflected in the Commission's proposed upper tier smoking conditions (*i.e.*, a 2 second, 55 milliliter puff every 30 seconds), the dual ratings produced by the revised test method will still effectively communicate the impact of a smoker's own behavior in determining what he or she gets from any given cigarette.

The primary objective of the proposed parameters is to provide smokers with a strong message that the amount of tar and nicotine they get from a particular cigarette is not fixed, but rather can vary greatly according to the way they smoke. Coupled with an appropriate legend in advertising and public education, the new system is intended to alert smokers to the phenomenon of compensatory smoking and to reinforce the message that smoking even the lowest rated cigarettes poses a significant health risk.

2. Communication of Ratings Through Advertising

The Commission is also seeking comment on ways to improve the communication to consumers of tar and nicotine ratings, as well as the importance of individual smoking behavior. The Commission is also publishing two alternative disclosures for cigarette advertising (see Attachments A and B). Each would set out the ratings produced by the Commission's proposed new test method; the disclosures differ in the additional information they provide consumers about the importance of their own smoking behavior.[12] The Commission seeks comment on the merits of these two alternative disclosures, as well as comment on any other statements that commenters might deem appropriate for communication of this information.

3. Carbon Monoxide Ratings

The proposed disclosures do not include carbon monoxide ratings. The carbon monoxide ratings produced by the revised test method would continue to be published in the Commission's tar and nicotine report, however, and would be included in smoker education efforts. The Commission solicits comment on whether tar and nicotine ratings can serve as proxies for carbon monoxide ratings.

4. Use of ''Multipliers'' To Generate the Upper-Tier Ratings

An alternative to actual cigarette testing under the upper-tier parameters would be to approximate the ratings that would be produced under those new conditions by use of mathematical models or ''multipliers.'' The four largest cigarette manufacturers (Philip Morris Incorporated, R.J. Reynolds Tobacco Company, Brown & Williamson Tobacco Corporation, and Lorillard Tobacco Company) have done exploratory testing of a number of cigarette varieties using the Commission's proposed upper-tier smoking parameters, have plotted the resulting tar, nicotine, and carbon monoxide yields against the yields obtained for the same cigarettes using the current FTC method, and have computed quadratic equations that they believe define the resulting curves. A report summarizing this work is being placed on the public record.[13]

Based on its review of the report, the Commission believes that the equations proposed by the companies produce results that closely approximate the results of actually testing cigarettes under the new upper-tier parameters. Accordingly, the Commission proposes that the companies be permitted to use these equations to calculate the tar, nicotine, and carbon monoxide yields that otherwise would be obtained by testing under the new method. The Commission solicits comment on this issue.

5. Alternative Approaches That Were Considered

Under the Commission's proposed test method, all cigarettes are tested at the same puff intensities, even though smokers of lower rated cigarettes tend to smoke more intensively than smokers of higher rated brands and may engage in other behavior, such as filter vent blocking, that increases tar and nicotine yields. The Commission considered incorporating compensatory smoking behavior into its proposed protocol for the upper-tier by varying the puff parameters according to the type of cigarette being tested. Such a plan would use higher puffing parameters for lower tar cigarettes and lower puffing parameters for higher tar cigarettes. As a result, rating ranges would be proportionally larger for lower tar cigarettes, reflecting the effect of compensatory smoking. The Commission decided not to propose this approach at the present time.[14] Existing research on smoking behavior may not be sufficiently detailed to provide an adequate basis for specifying different puff parameters for different groups of cigarettes. In addition, using different puff parameters for different groups of cigarettes could artificially distort the rankings of brands near the dividing line between those groups.[15]

The Commission also considered including some degree of ventilation hole blocking in its new, more intensive smoking conditions, but decided not to do so at this time.[16] Instead, the

[12] The Commission is focusing at this time primarily on the contents of the disclosure, and not specifically on such questions as what types of advertising it should be included in and what size it should be in those advertising media.

[13] The report is entitled *An Experiment to Determine the General Relationship Between Cigarette Smoke Yields using an Alternative Puffing Regimen (55/30/2) and the Standard FTC Method* (June 23, 1997).

[14] The Commission also considered using the possibility of using a mathematical equation based on the pattern and magnitude of compensatory smoking behavior to approximate the effect of compensatory smoking on tar and nicotine yields.

[15] For example, if brands are assigned to different upper-tier puff parameters based on their ratings under the current test method, a brand just below the dividing line would be tested under more intensive upper-tier parameters than a brand just above that line. Use of the more intensive parameters could boost the upper-tier ratings of the first brand substantially higher than those of the second brand (even though their ratings under the current test method are nearly the same).

[16] Aeration holes in the filters of many brands reduce their ratings for tar, nicotine, and carbon monoxide by diluting the smoke with air before it reaches the smoking machine. Blocking these holes (which can be invisible) prevents dilution, and can greatly increase the yields of those smoke constituents. Research suggests that a significant number of smokers of ventilated ''low tar'' and

Commission intends to implement a consumer education program to inform smokers of the presence and function of aeration holes, the importance of not blocking them, and the magnitude of the effect that blocking them can have on exposure to harmful smoke constituents.[17]

Finally, the Commission considered keeping the current unitary rating system and adding disclosures warning smokers that the amount of tar and nicotine they get will vary depending on how a cigarette is smoked. This plan has the advantage of avoiding the costs and complexities involved in moving to a two-tier system. It would emphasize the artificial nature of the smoking machine measurements and the fact that ratings produced by machines do not indicate what smokers actually get from their cigarettes. The advertising disclosure, along with appropriate education efforts, could potentially inform smokers about compensation and ways to avoid it. The Commission believes, however, that unitary ratings will be less effective than a range of ratings in communicating to smokers the variability in potential smoke ingestion.

The Commission is seeking comment on the desirability and feasibility of these alternative approaches to revising the test method.

6. The Industry's Recent Agreement With the State Attorneys General

In June 1997, a proposed agreement between the four largest U.S. cigarette manufacturers and the Attorneys General of forty states was announced. The agreement contemplates that if Congress passes and the President signs legislation reflecting the terms of the agreement, responsibility for cigarette testing will be transferred from the Commission to the Food and Drug Administration (''FDA''). If FDA ultimately does receive the statutory authorization contemplated in the agreement, the agency would need time to review this area and promulgate rules setting forth its test method. In the interim, the Commission believes that it is important to improve the existing method, and that, in the confines of a voluntary system, the actions proposed in this notice are responsive to many of the concerns about the limitations of that method. The cigarette manufacturers' use of an improved advertising disclosure and accompanying consumer education efforts should advance consumer understanding about the important issue of compensatory smoking. Moreover, experience under the revised system will provide a basis for evaluating possible future changes to the system.

7. Conclusion

The Commission believes that the proposed changes can be implemented quickly by the industry within the existing voluntary system significantly in advance of other possible approaches, and these changes address many of the problems identified in the NCI Monograph.

Whatever changes are adopted, the Commission intends to review its test method every five years to assess the operation of the system and determine whether further changes to that method and/or the disclosure format are appropriate. The Commission encourages research that would provide additional data in all of the areas addressed by these revisions.

E. Request for Comments and Responses to Specific Questions

The Commission is seeking comment on the revisions to its current testing methodology proposed above. The Commission is also seeking comments on the following specific questions and on any other issues relevant to the potential modification of the testing methodology:

1. The Proposed New Testing Methodology

a. What effect, if any, are the dual ratings that would be provided by the Commission's proposed two-tier test method likely to have on consumers' purchases of cigarettes and/or their smoking behavior? Will this information affect smoking intensity, brand choice, and/or the decision whether to quit smoking, and if so, how?

b. If the proposal for testing all cigarettes under the same two sets of parameters is adopted, and if the parameters incorporated in the Commission's test method are intended to produce yields covering the range likely to be experienced by most smokers, are the proposed parameters appropriate? Why or why not? If not, what parameters would be more appropriate and why?

c. Should the butt length specified in the current FTC test method—that cigarettes be smoked to a length of 23 millimeters or to 3 millimeters beyond the filter and overwrap, whichever is longer—be changed? Is there evidence that smokers smoke more than 3 millimeters beyond the end of the overwrap? If so, what is the effect of that behavior in terms of the number of puffs they get from their cigarette?

d. What effect, if any, would reducing the sample size from 100 to 50 cigarettes, as proposed, have on both the reliability and the replicability of the machine yield estimates? If there is an effect on reliability, does the fact that consumers would be given dual ratings, rather than a unitary rating, lessen the importance of that reduction?

e. Can the machines presently used to smoke cigarettes pursuant to the FTC test method operate under the parameters in the Commission's proposed new protocol? If not, could they be modified to operate under those parameters or would new machines have to be purchased? What testing would be necessary to ensure the validity of the proposed modifications to the test method—that is, to ensure that the revised protocol will produce highly reliable and replicable results? How long would such validation take?

f. Could the ratings for the upper tier of the revised test method be obtained from mathematical equations or ''multipliers''? Why or why not? Would the continuing validity of the equations have to be reconfirmed periodically through actual machine smoking and, if so, how often?

g. Should the cigarette manufacturers be permitted to use the mathematical equations they submitted to the Commission to calculate the ratings that would be produced by testing under the proposed upper-tier parameters? Why or why not? If the industry is permitted to use such mathematical equations, should it continue to use 100 cigarettes, rather than 50, to determine the lower-tier ratings? Why or why not?

h. How much would the proposed two-tier testing system cost the cigarette industry to implement as compared to the current system? How much would the proposed two-tier testing system cost the cigarette industry to implement if 100 cigarettes, rather than 50, were smoked under each test condition? How much would the proposed revisions to the test method cost the industry to implement if mathematical equations were used to generate the upper-tier ratings?

2. Alternative Options for Revising the Test Method

a. Should the upper tier of the two-tier test method reflect the tendencies of smokers of lower rated and heavily aerated (*i.e.*, vented) cigarettes to smoke more intensively (by taking more puffs, bigger puffs, etc.) or to block some or all

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''ultra low tar'' cigarettes block some aeration holes some of the time.

[17] Research also shows that many smokers are unaware either of the existence of the vents or of the fact that vent blocking increases tar yield. *See* Kozlowski, *Smokers are Unaware of the Filter Vents Now on Most Cigarettes: Results of a National Survey*, Tobacco Control (forthcoming 1997). Thus, consumer education could also address this lack of knowledge.

of the ventilation holes while smoking? If so, how should the test protocol be modified in order to obtain tar and nicotine ratings that would accurately reflect the effect of these and other forms of compensatory smoking behavior? Would ratings generated by such a test protocol affect smoking intensity, brand choice, and/or the decision whether to quit smoking, and if so, how?

b. Could compensatory smoking behavior be incorporated into the test by using different test parameters for different groups of cigarettes (*i.e.* higher test parameters for lower rated cigarettes and lower test parameters for higher rated cigarettes)? If so, how many different groups of cigarettes should there be, and what parameters should be applied to each group? Where should the line(s) separating the groups be drawn? Would using different sets of parameters overemphasize differences in yields between brands on either side of the dividing line(s)? Would it cause cigarettes on either side of the dividing line(s) to ''switch rankings'' with respect to their upper tier ratings? If so, do these potential outcomes make the use of different parameters for different cigarettes undesirable?

c. Could the effect of compensatory smoking behavior be incorporated into the test by blocking some or all of the aeration vents during testing? What does the available evidence demonstrate about the prevalence of vent blocking and about the percentage of vents that are blocked by those smokers who do engage in vent blocking? What effect, if any, does vent blocking have on smokers' puff frequency, puff volume, and puff duration? If vent blocking were to be included in the upper tier of testing, how should that blocking be accomplished? If vent blocking were used to generate upper-tier tar and nicotine yields, would this lead cigarette companies to switch from filter aeration to some other method of creating lower yield cigarettes? If so, what would be the effect on the relevance of the upper-tier yields?

d. Could the effects of compensatory smoking behavior be incorporated into mathematical equations or multipliers that could be applied to the current FTC ratings to calculate ''compensation-adjusted'' ratings? Do existing studies of smoking behavior provide a sufficient basis to create an equation or set of multipliers that could be used to approximate the compensation effect? How closely could equations approximate the compensation effect? What degree of accuracy is necessary? Would an approximation be acceptable? Can existing studies measuring nicotine intake of smokers be used to make inferences about tar intake, or is the effect of compensation behavior likely to be different for tar and nicotine?

3. Advertising Disclosures and Consumer Education

a. Is the language of either of the proposed disclosures for cigarette advertising (Attachments A and B) likely to communicate effectively to consumers that their tar and nicotine intake from a cigarette will vary depending on how they smoke it?

b. Are the proposed disclosures likely to be more effective in conveying useful information to consumers than current advertising disclosures? What changes, if any, should be made to either the content (including the specific words used) or the layout of either of the disclosures? Are there other disclosure formats that would be more effective?

c. What effect, if any, is either of the proposed disclosures likely to have on consumers' purchases of cigarettes and/or their smoking behavior? Is there reason to believe this information will affect smoking intensity, brand choice, and/or the decision whether to quit smoking, and if so, how?

d. The proposed disclosures do not contain information regarding carbon monoxide ratings. Should information regarding carbon monoxide ratings be included in any disclosure format that is adopted? Why or why not? If such information is provided, how should it be done? How closely do carbon monoxide ratings obtained in smoking machine tests correlate with tar and nicotine ratings?

e. Should the disclosures include information concerning the ratio of the cigarette's tar and nicotine ratings? Would these ratios provide useful information to smokers?

f. Would it be necessary to require that the disclosures be printed in black text on a white background, or would it be sufficient to retain the standard embodied in the cigarette manufacturers' 1970 agreement—that is, that the disclosure be clear and prominent?

g. What kinds of disclosures and public education efforts should be undertaken to inform smokers about compensatory smoking? What evidence exists on the likelihood that smokers will change their behavior when advised of compensatory smoking techniques and how to avoid them? Can graphic techniques used by researchers to measure compensatory smoking (*e.g.*, color and stain pattern matching) be used by consumers to evaluate the extent of their own compensatory smoking?

h. What kinds of consumer education messages should be created to inform smokers of the presence of filter vents and of the importance of not blocking them with their fingers or lips?

i. What other kinds of consumer education messages should accompany the Commission's revision of the cigarette test method?

j. How would the proposed new testing method and each of the various alternative methods that were considered likely complement or detract from possible consumer education initiatives?

4. Other Possible Policy Options

a. Rather than move to a two-tier test method, would it be preferable to continue to test cigarettes under a single protocol and use consumer education and an advertising disclosure to inform consumers what the ratings do and do not represent, and that what smokers get from any particular cigarette depends in large part on how they smoke it? If so, should cigarettes continue to be tested under a protocol that uses a 2 second, 35 milliliter puff every minute, or should different smoking parameters be used? What form should such consumer education take (*e.g.*, informational materials at the point of purchase) and what should it say?

b. Rather than move to a two-tier test method, would it be preferable to drop all FTC approval of the tar and nicotine testing system? Are all potential ratings so inherently flawed and misleading, and the possibilities for improving the system so unlikely to succeed, that use of any numerical tar and nicotine ratings should be ended? Would such a change affect smoking intensity, brand choice, and/or the decision whether to quit smoking, and if so, how?

c. Should the cigarette test method attempt to measure or otherwise account for the bioavailability of the nicotine in different cigarettes? If so, how should it do so? Is the alkalinity of the nicotine a surrogate for bioavailability? Is there a mathematical model by which bioavailability can be computed from nicotine yield, alkalinity, and other information?

d. If the effect of compensatory smoking behavior is not incorporated in the tar and nicotine ratings, should a disclosure warning smokers about compensatory smoking behavior be required in all ads? Would such a disclosure likely be effective in reinforcing the consumer education efforts?

5. Other Issues

a. What available evidence exists concerning how consumers view

cigarettes with relatively low tar and nicotine ratings and their perception of the relative risks of smoking such cigarettes rather than full flavor cigarettes?

b. Do the biological markers used to estimate nicotine ingestion in human smoking studies provide adequate estimates of likely tar ingestion? If not, what other evidence can be used to predict tar intake?

c. Earlier this year, the National Institutes of Health issued *Smoking and Tobacco Control Monograph 8—Changes in Cigarette-Related Disease and Their Implication for Prevention and Control.* The Monograph, which presents the results of three large new epidemiological studies and additional follow-up data for two older studies from the 1950's, notes (pp. ix–x) that:

> When observations from the more contemporary studies are compared with those from the 1950's, one important but disturbing conclusion is apparent—mortality risks among continuing smokers, both males and females, have increased.

What effect, if any, do the findings reported in this Monograph have on the Ad Hoc Committee's conclusion that the smoking of ''cigarettes with lower *machine-measured* yields has a small effect in reducing the risk of cancer caused by smoking''?

II. Cigarette Descriptors

Cigarette manufacturers use a number of descriptive terms (such as ''low tar,'' ''light,'' ''medium,'' ''extra light,'' ''ultra light,'' ''ultra low,'' and ''ultima'') in advertising and labeling information about their cigarettes. The Ad Hoc Committee of the President's Cancer Panel concluded that ''[b]rand names and brand classifications such as ''light'' and ''ultra light'' represent health claims and should be regulated and accompanied, in fair balance, with an appropriate disclaimer.''

There are no official definitions for these terms but they appear to be used by the industry to reflect ranges of FTC tar ratings. Generally, the term ''low tar'' is used to mean tar ratings of 7 to 15 milligrams, and the term ''ultra low tar'' is used to mean tar ratings of 6 milligrams or less. The Commission is beginning the process of examining these questions by seeking comment on the following issues:

1. Is there a need for official guidance with respect to the terms used in marketing lower rated cigarettes? If yes, why? If no, why not?

2. What data, evidence or other relevant information on consumer interpretation and understanding of terms such as ''ultra low tar,'' ''ultra light,'' ''low tar,'' ''light,'' ''medium,'' ''extra light'' and ''ultima,'' as used in the context of cigarettes exists? Do consumers believe they will get significantly less tar from cigarettes described as ''light'' or ''low tar'' than from regular or full flavor cigarettes, and do they believe they will get significantly less tar from cigarettes described as ''ultra low tar'' or ''ultra light'' than from ''light'' or ''low tar'' cigarettes? Do the descriptors convey implied health claims?

3. Do consumers use descriptors, rather than the FTC tar and nicotine ratings, as their primary source of information about the tar and nicotine yields of different cigarette brands? What data or evidence examines this question? If consumers use descriptors as their primary source of information about tar and nicotine yields, what implications does this have for the proposed revisions to the test method and the advertising disclosure?

By direction of the Commission.

Donald S. Clark,

Secretary.

Attachment A

There's no such thing as a safe smoke. Even cigarettes with low ratings can give you high amounts of tar and nicotine. It depends on how you smoke.
2 mg.–6 mg. tar, 0.2 mg,–0.6 mg nicotine per cigarette by FTC method.

Attachment B

2 mg.–6 mg. tar, 0.2 mg. –0.6 mg. nicotine per cigarette by FTC method

How much tar and nicotine you get from a cigarette depends on how intensely you smoke it.

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Federal Register

Vol. 62, No. 177

Friday, September 12, 1997

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FEDERAL REGISTER PAGES AND DATES, SEPTEMBER

46175–46430 2
46431–46664 3
46665–46866 4
46867–47136 5
47137–47358 8
47359–47550 9
47551–47744 10
47745–47912 11
47913–48164 12

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7018 47911
Memorandums:
Presidential Determinations:
No. 97–31 of August 16, 1997 47907

5 CFR

338 46553
2423 46175
2429 46175
Proposed Rules:
532 46221

7 CFR

301 ..... 47551, 47553
441 47745
457 47745
500 46431
905 47913
1011 ..... 46665, 47923
1205 46412
1207 46175
1610 46867
1735 46867
1737 46867
1739 46867
1746 46867
Proposed Rules:
319 47770
400 47772
Ch. XIII 47156
1962 47384
1965 47384
1980 47384

8 CFR

214 48138
235 47749
274a 46553

9 CFR

94 46179
96 46179
Proposed Rules:
319 46450

10 CFR

50 47268
207 46181
218 46181
430 ..... 46181, 47536
490 46181
501 46181
601 46181
820 46181
1013 46181
1017 46181
1050 46181
Proposed Rules:
9 46922
50 ..... 47268, 47588

12 CFR

25 47728
208 47728
211 47728
369 47728
936 46872
Proposed Rules:
303 47969
337 47969
362 ..... 47969, 48025

14 CFR

11 46864
13 46864
15 46864
39 ..... 46184, 46186, 46189, 47359, 47360, 47362, 47364, 47753, 47754, 47927, 47930, 47931, 47933
71 ..... 46873, 46874, 47366, 47756, 47757, 47758, 47759
121 48135
125 48135
135 48135
185 46864
Proposed Rules:
39 46221
71 ..... 47776, 47777, 47778, 47779, 47780, 47781, 48025
255 47606

15 CFR

922 47137
Proposed Rules:
280 47240
911 47388
922 47611

16 CFR

1000 46666
1014 46666
1015 46192
1021 46666
1051 46666
1115 46666
1211 46666
1402 46666
1406 46666
1500 46666
1502 46666
1700 46666
1702 46666

17 CFR

200 47367
202 47934
230 47934
232 47934
239 47934
270 47934

274.....47934
Proposed Rules:
1.....47612
30.....47612
33.....47612
190.....47612

19 CFR

7.....46433
10.....46433, 46553
148.....46433
178.....46433
Proposed Rules:
351.....46451

20 CFR

222.....47137
229.....47137
Proposed Rules:
404.....46682

21 CFR

10.....47760
20.....47760
25.....47760
50.....46198
56.....46198
71.....47760
101.....47760
170.....47760
171.....47760
312 .....46198, 46875, 47760
314.....46198, 47760
511.....47760
514.....47760
520.....46668
558.....46443
570.....47760
571.....47760
601.....46198, 47760
812.....46198, 47760
814.....46198, 47760
Proposed Rules:
310.....46223, 47532
334.....46223
884.....46686

22 CFR

41.....48149
514.....46876

24 CFR

Ch. V.....47284
Proposed Rules:
968.....47740
1000.....47783
1003.....47783
1005.....47783

25 CFR

Proposed Rules:
502.....46227

26 CFR

1.....46876, 46877

28 CFR

Proposed Rules:
540.....47894

29 CFR

Proposed Rules:
2560.....47262

30 CFR

914.....47138
Proposed Rules:
100.....47330
773.....47617
870.....47617
917.....46933
934.....46695

31 CFR

103.....47141
344.....46443
357.....46860
Proposed Rules:
103.....47156
212.....46428

32 CFR

199.....46877
311.....46445
706.....47944

33 CFR

100.....46553, 46669
117.....46879, 46880
151.....46446
165.....46670, 46671
Proposed Rules:
117.....46697
334.....47166

36 CFR

Proposed Rules:
292.....47167

38 CFR

1.....47532
3.....47532
9.....47532

39 CFR

20.....47558
Proposed Rules:
20.....47394
111.....47178

40 CFR

9.....47114
32.....47149
52 .....46199, 46202, 46208, 46446, 46880, 47369, 47760, 47946
55.....46406
81.....46208
86.....47114
180 .....46882, 46885, 46888, 46894, 46900, 47560, 47561
185.....47561
186.....46900, 47561
271.....47947
300.....46211
Proposed Rules:
9.....46937
52 .....46228, 46229, 46451, 46938, 47399, 47784, 48026, 48027, 48033
60.....46453
63.....46804
70.....46451
79.....47400
81 .....46229, 46234, 46238
86.....46937
170.....47544
260.....47401
261.....47401, 47402
273.....47401
300 .....46938, 47619, 47784

41 CFR

Proposed Rules:
101–1.....47179
101–46.....47179

42 CFR

416.....47237
440.....47896
Proposed Rules:
416.....46698
1000.....47182
1001.....47182, 47195
1002.....47182
1005.....47182

43 CFR

1810.....47568

44 CFR

65.....47954
67.....47955

46 CFR

28.....46672
298.....47149

47 CFR

1.....47960
2.....47960
26.....47960
97.....47960
54.....47369
64 .....46447, 47152, 47237, 47369
68.....47371
69.....47369
73 .....47371, 47762, 47763
90.....46211
97.....47961
Proposed Rules:
1.....46241, 48034
54.....47404, 48042
64.....47404
69.....48042
73 .....46707, 46708, 47406, 47786, 47787
76.....46453
80.....46243
90.....46468

48 CFR

212.....47153
225.....47153
231.....47154
244.....47153
252.....47153
704.....47532
715.....47532
726.....47532
750.....47532
752.....47532
1602.....47569
1603.....47569
1604.....47569
1615.....47569
1616.....47569
1629.....47569
1631.....47569
1643.....47569
1644.....47569
1645.....47569
1649.....47569
1652.....47569
1653.....47569
Proposed Rules:
46.....47882
212.....47407
225.....47407
252.....47407
833.....47411
852.....47411

49 CFR

172.....46214
174.....46214
175.....46214
176.....46214
177.....46214
571.....46907
575.....46447
580.....47763
1002.....46217
1108.....46217
1121.....47583
1150.....47583
1206.....46919
Proposed Rules:
571.....47414

50 CFR

20.....46420
25.....47372
32.....47372
600.....47584
622 .....46677, 46679, 47765, 47766
648.....47767
660.....46920, 47587
679 .....46680, 46681, 47768
Proposed Rules:
17.....46709, 46710
20.....46801
630.....47416
648.....46470, 48047

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT SEPTEMBER 12, 1997

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Animal welfare:

Dogs, humane treatment; tethering; published 8-13-97

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Illinois; published 7-14-97

Massachusetts; published 7-14-97

Ohio; published 6-13-97

Clean Air Act:

State operating permits programs—

Iowa; published 7-14-97¶

RULES GOING INTO EFFECT SEPTEMBER 14, 1997

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Caribbean, Gulf, and South Atlantic fisheries—

Gulf of Mexico reef fish; published 9-11-97

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Pears (winter) grown in Oregon et al.; comments due by 9-19-97; published 8-20-97

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Interstate transportation of animals and animal products (quarantine):

Brucellosis in cattle—

State and area classifications; comments due by 9-16-97; published 7-18-97

AGRICULTURE DEPARTMENT

Commodity Credit Corporation

Export programs:

Payment guarantees; expanding export transactions; comments due by 9-15-97; published 8-15-97

AGRICULTURE DEPARTMENT

Food Safety and Inspection Service

Meat and poultry inspection:

Natural or regenerated collagen sausage casings; labeling requirements; comments due by 9-15-97; published 7-17-97

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Endangered and threatened species:

Coho salmon—

Southern Oregon/Northern California coast; comments due by 9-16-97; published 7-18-97

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

Crab; comments due by 9-15-97; published 7-15-97

Magnuson Act provisions

National standard guidelines; comments due by 9-18-97; published 8-4-97

Northeastern United States fisheries—

Northeast multispecies; comments due by 9-15-97; published 8-27-97

West Coast States and Western Pacific fisheries—

Northern anchovy; comments due by 9-15-97; published 8-21-97

Ocean and coastal resource management:

Marine sanctuaries—

Thunder Bay National Marine Sanctuary, MI; designation; comments due by 9-18-97; published 6-23-97

ENERGY DEPARTMENT

Acquisition regulations:

Management and operating contracts—

Performance-based management contracting, fines, penalties, etc.; comments due by 9-19-97; published 8-20-97

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Property and oil pipeline units accounting regulations; comments due by 9-15-97; published 7-31-97

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

California; comments due by 9-15-97; published 8-15-97

Iowa; comments due by 9-15-97; published 8-15-97

Missouri; comments due by 9-15-97; published 8-15-97

Pennsylvania; comments due by 9-17-97; published 8-18-97

South Carolina; comments due by 9-19-97; published 8-20-97

Tennessee; comments due by 9-15-97; published 8-15-97

Wisconsin; comments due by 9-15-97; published 7-10-97

Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:

Texas; comments due by 9-18-97; published 8-19-97

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Corn gluten; comments due by 9-16-97; published 7-18-97

Superfund program:

National oil and hazardous substances contingency plan—

National priorities list update; comments due by 9-15-97; published 8-15-97

FARM CREDIT ADMINISTRATION

Farm credit system:

Loan policies and operations—

Short- and intermediate-term credit; System and non-System lenders; comments due by 9-15-97; published 7-17-97

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Unauthorized changes of consumer's long distance carriers (slamming); policies and rules; comments due by 9-15-97; published 8-14-97

Frequency allocations and radio treaty matters:

Television channels 60—69; 746—806 MHz band; comments due by 9-15-97; published 7-31-97

Radio services, special:

Maritime services—

Licensing process simplification and flexibility for public coast stations; comments due by 9-15-97; published 9-2-97

Radio stations; table of assignments:

Kansas; comments due by 9-15-97; published 7-31-97

Pennsylvania et al.; comments due by 9-15-97; published 7-31-97

FEDERAL DEPOSIT INSURANCE CORPORATION

International banking regulations; consolidation and simplification; comments due by 9-15-97; published 7-15-97

FEDERAL TRADE COMMISSION

Trade regulation rules:

Leakproof, guaranteed leakproof, etc.; deceptive use as descriptive of dry cell batteries; comments due by 9-18-97; published 8-19-97

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Medical devices:

Class III preamendment devices; lung water monitor, powered vaginal muscle stimulator for therapeutic use, and stair-climbing wheelchair; comments due by 9-16-97; published 6-18-97

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Newcomb's snail; comments due by 9-19-97; published 7-21-97

INTERIOR DEPARTMENT

Minerals Management Service

Outer Continental Shelf; oil, gas, and sulphur operations:

Drilling and completion operations; blowout preventer testing requirements; comments due by 9-15-97; published 7-15-97

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
North Dakota; comments due by 9-19-97; published 9-4-97

SOCIAL SECURITY ADMINISTRATION
Freedom of Information Act; implementation; comments due by 9-15-97; published 8-14-97

TRANSPORTATION DEPARTMENT
Coast Guard
Anchorage regulations:
New York; comments due by 9-16-97; published 7-18-97

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Air carrier certification and operations:
Digital flight data recorder upgrade requirements; comments due by 9-15-97; published 7-17-97
Airworthiness directives:
Aerospatiale; comments due by 9-15-97; published 7-15-97
Airbus; comments due by 9-16-97; published 8-7-97
Boeing; comments due by 9-15-97; published 7-16-97
Bombardier; comments due by 9-15-97; published 7-17-97
British Aerospace; comments due by 9-15-97; published 7-16-97
Construcciones Aeronauticas; comments due by 9-16-97; published 8-7-97
Dassault; comments due by 9-15-97; published 8-5-97
McDonnell Douglas; comments due by 9-16-97; published 7-18-97
Airworthiness standards:
Special conditions—
Boeing model 747 series airplanes; comments due by 9-17-97; published 8-28-97

TRANSPORTATION DEPARTMENT
Federal Railroad Administration
Track safety standards:
Miscellaneous amendments; comments due by 9-15-97; published 7-3-97

VETERANS AFFAIRS DEPARTMENT
Loan guaranty:
Automatic processing authority, loan reporting, and retention requirements; comments due by 9-15-97; published 7-15-97

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**

Last List August 19, 1997

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