8–20–98
Vol. 63 No. 161
Pages 44537–44772

Federal Register

Thursday
August 20, 1998

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Rules and Regulations

Federal Register
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Thursday, August 20, 1998

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 98–084–1]

Mexican Fruit Fly Regulations; Removal of Regulated Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations to remove the quarantined portion of Los Angeles County, CA, from the list of areas regulated because of the Mexican fruit fly. We have determined that the Mexican fruit fly has been eradicated from Los Angeles County, CA, and that restrictions on the interstate movement of regulated articles from Los Angeles County, CA, are no longer necessary to prevent the spread of the Mexican fruit fly into noninfested areas of the United States. This action relieves unnecessary restrictions on the interstate movement of regulated articles from the previously regulated area.

DATES: Interim rule effective August 15, 1998. Consideration will be given only to comments received on or before October 19, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 98–084–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 98–084–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247; or e-mail: michael.b.stefan@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The Mexican fruit fly, *Anastrepha ludens* (Loew), is a destructive pest of citrus and other types of fruit. The short life cycle of the Mexican fruit fly allows rapid development of serious outbreaks that can cause severe economic losses in commercial citrus-producing areas. The Mexican fruit fly regulations, contained in 7 CFR 301.64 through 301.64–10 (referred to below as the regulations), quarantine infested States, designate regulated areas, and restrict the interstate movement of specified fruits and other regulated articles from regulated areas in order to prevent the spread of the Mexican fruit fly to noninfested areas of the United States. Quarantined States are listed in § 301.64(a), and regulated areas are listed in § 301.64–3(c).

In an interim rule effective November 10, 1997, and published in the **Federal Register** on November 17, 1997 (62 FR 61213–61215, Docket No. 97–113–1), we quarantined the State of California and designated a portion of Los Angeles County, CA, as a regulated area due to an infestation with the Mexican fruit fly.

Based on insect trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service, we have determined that the Mexican fruit fly has been eradicated from Los Angeles County, CA. The last finding of Mexican fruit fly thought to be associated with the infestation in this area was made on October 22, 1997.

Since then no evidence of Mexican fruit fly infestations has been found in this area. Therefore, we are removing this area from the list of areas in § 301.64–3(c) regulated because of the Mexican fruit fly.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is warranted to remove unnecessary restrictions on the public. The area in California affected by this document was regulated due to the possibility that the Mexican fruit fly could be spread to noninfested areas of the United States. Since this situation no longer exists, the continued regulated status of this area would impose unnecessary restrictions.

Because prior notice and other public procedures with respect to this action are contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this action effective less than 30 days after publication. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This rule removes restrictions on the interstate movement of regulated articles from a portion of Los Angeles County, CA. Within this regulated area, there are approximately 804 small entities that may be affected by this rule. These include 1 farmers' market, 2 community gardens, 298 distributors, 1 food bank, 440 fruit sellers, 5 growers, 4 haulers, 27 nurseries, 11 packers, 7 processors, 1 swap meet, and 7 transient load carriers. These 804 entities comprise less than 1 percent of the total number of similar entities operating in the State of California. Additionally, these small entities sell regulated articles primarily for local intrastate, not interstate movement, and the distribution of these articles was not affected by the regulatory provisions we are removing. Many of these entities also handle other items in addition to the previously regulated articles. The effect on those few entities that move regulated articles interstate was minimized by the availability of various

treatments that, in most cases, allowed these small entities to move regulated articles interstate with very little additional cost. Therefore, the effect, if any, of this rule on these entities appears to be minimal.

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

Executive Order 12372

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

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This document contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Incorporation by reference, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

§ 301.64–3 [Amended]

2. In § 301.64–3, paragraph (c), the entry for California is amended by removing the entry for Los Angeles County.

Done in Washington, DC, this 13th day of August 1998.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–22459 Filed 8–19–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 97–056–15]

Mediterranean Fruit Fly; Removal of Quarantined Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mediterranean fruit fly regulations by removing the quarantined area in Lake and Marion Counties, FL, from the list of quarantined areas. The quarantine was necessary to prevent the spread of Medfly to noninfested areas of the United States. We have determined that the Mediterranean fruit fly has been eradicated from this area and that restrictions on the intrastate and interstate movement of regulated articles from this area are no longer necessary. This action relieves unnecessary restrictions on the intrastate and interstate movement of regulated articles from this area.

DATES: Interim rule effective August 13, 1998. Consideration will be given only to comments received on or before October 19, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–056–15, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–056–15. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247; or e-mail: mstefan@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables. The Mediterranean fruit fly (Medfly) can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

The Mediterranean fruit fly regulations (contained in 7 CFR 301.78 through 301.78–10 and referred to below as the regulations) restrict the movement of regulated articles from quarantined areas to prevent the spread of Medfly to noninfested areas of the United States. Since an initial finding of Medfly infestation in a portion of Dade County, FL, in April 1998, the quarantined areas in Florida have included portions of Dade, Highlands, Lake, Manatee, and Marion Counties.

In an interim rule effective on April 17, 1998, and published in the **Federal Register** on April 23, 1998 (63 FR 20053–20054, Docket No. 98–046–1), we added a portion of Dade County, FL, to the list of quarantined areas and restricted the intrastate and interstate movement of regulated articles from the quarantined area. In a second interim rule effective on May 5, 1998, and published in the **Federal Register** on May 11, 1998 (63 FR 25748–25750, Docket No. 97–056–11), we expanded the quarantined area in Dade County, FL. In a third interim rule effective May 13, 1998, and published in the **Federal Register** on May 19, 1998 (63 FR 27439–27440, Docket No. 97–056–12), we added a portion of Lake and Marion Counties, FL, to the list of quarantined areas and restricted the intrastate and interstate movement of regulated articles from the quarantined area. In a fourth interim rule effective on June 5, 1998, and published in the **Federal Register** on June 11, 1998 (63 FR 31887–31888, Docket No. 98–056–13), we added a portion of Manatee County, FL, to the list of quarantined areas and restricted the intrastate and interstate movement of regulated articles from the quarantined area. In a fifth interim rule effective August 7, 1998, we added a portion of Highlands County, FL, to the list of quarantined areas and restricted the intrastate and interstate movement of regulated articles from the quarantined area.

We have determined, based on trapping surveys conducted by the

Animal and Plant Health Inspection Service (APHIS) and Florida State and county agency inspectors, that the Medfly has been eradicated from the quarantined area in a portion of Lake and Marion Counties, FL. The last finding of Medfly thought to be associated with the infestation in that portion of Lake and Marion Counties, FL, was June 17, 1998. Since that time, no evidence of infestation has been found in this area. We are, therefore, removing that portion of Lake and Marion Counties, FL, from the list of areas in § 301.78–3(c) quarantined because of the Medfly. Portions of Dade, Highlands, and Manatee Counties remain quarantined.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. The portion of Lake and Marion Counties, FL, affected by this document was quarantined to prevent the Medfly from spreading to noninfested areas of the United States. Because the Medfly has been eradicated from this area, and because the continued quarantined status of that portion of Lake and Marion Counties, FL, would impose unnecessary regulatory restrictions on the public, immediate action is warranted to relieve restrictions.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this action effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This interim rule amends the Medfly regulations by removing a portion of Lake and Marion Counties, FL, from quarantine for Medfly. This action affects the intrastate and interstate movement of regulated articles from this area. There are approximately 85 entities that could be affected, including 15 commercial growers, 1 transportation terminal, 8 fruit stands, 5 flea markets, 5 processing plants, 1 farmer's market, 25 nurseries, 10 apiaries, 12 mobile vendors, and 3 food stores. The number of these entities that meet the U.S. Small Business Administration's (SBA) definition of a small entity is unknown, since the information needed to make that determination (i.e., each entity's gross receipts or number of employees) is not currently available. However, it is reasonable to assume that most of the 85 entities are small in size, since the overwhelming majority of businesses in Florida, as well as the rest of the United States, are small entities by SBA standards.

The effect of this action on small entities should be minimally positive, as they will no longer be required to treat articles to be moved intrastate and interstate for Medfly.

Therefore, termination of the quarantine of that portion of Lake and Marion Counties, FL, should have a minimal economic effect on the small entities operating in this area. We anticipate that the economic impact of lifting the quarantine, though positive, will be no more significant than was the minimal impact of its imposition.

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

Executive Order 12372

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

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Incorporation by reference, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

§ 301.78–3 [Amended]

2. In § 301.78–3, paragraph (c), the entry for Florida is amended by removing the entry for Lake and Marion Counties.

Done in Washington, DC, this 13th day of August, 1998.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–22456 Filed 8–19–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 98–083–1]

Mediterranean Fruit Fly; Addition to Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mediterranean fruit fly regulations by adding a portion of San Diego County, CA, to the list of quarantined areas and restricting the interstate movement of regulated articles from the quarantined area. This action is necessary on an emergency basis to prevent the spread of the Mediterranean fruit fly into noninfested areas of the United States.

DATES: Interim rule effective August 13, 1998. Consideration will be given only to comments received on or before October 19, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 98–083–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 98–083–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street

and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247; or e-mail: michael.b.stefan@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables. The Mediterranean fruit fly (Medfly) can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The sort life cycle of this pest permits the rapid development of serious outbreaks.

The Mediterranean fruit fly regulations (7 CFR 301.78 through 301.78–10; referred to below as the regulations) restrict the interstate movement of regulated articles from quarantined areas to prevent the spread of Medfly to noninfested areas of the United States.

Recent trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS) have revealed that an infestation of Medfly has occurred in a portion of San Diego County, CA.

The regulations in § 301.78–3 provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State, in which the Medfly has been found by an inspector, in which the Administrator has reason to believe that the Medfly is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which the Medfly has been found.

Less than an entire State will be designated as a quarantined area only if the Administrator determines that the State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are equivalent to those imposed on the interstate of regulated articles, and the designation of less than the entire State as a quarantined area will prevent the interstate spread of the Medfly. The boundary lines for a portion of a State being designated as quarantined are set up approximately four-and-one-half miles from the detection sights. The boundary lines may vary due to factors such as the location of Medfly host material, the location of transportation centers such as bus stations and airports, the patterns of persons moving in that State, the number and patterns of distribution of the Medfly, and the use of clearly identifiable lines for the boundaries.

In accordance with these criteria and the recent Medfly findings described above, we are amending § 301.78–3 by adding a portion of San Diego County, CA, to the list of quarantined areas. The new quarantined area is described in the rule portion of this document.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the Medfly from spreading to noninfested areas of the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this action effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register.** After the comment period closes, we will publish another document in the **Federal Register.** The document will include a discussion of any comments we received and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This rule amends the Medfly regulations by adding a portion of San Diego County, CA, to the list of quarantined areas. This action is necessary on an emergency basis to prevent the spread of the Medfly into noninfested areas of the United States.

This rule also restricts the interstate movement of regulated articles from the quarantined area of San Diego County, CA. We estimate that there are 26 entities in the quarantined area of San Diego County, CA, that sell, process, handle, or move regulated articles. This estimate includes 18 fruit sellers and 8 nurseries. The number of these entities that meet the U.S. Small Business Administration's (SBA) definition of a small entity is unknown, since the information needed to make that determination (i.e., each entity's gross receipts or number of employees) is not currently available. However, it is reasonable to assume that most of these entities are small in size, since the overwhelming majority of businesses in California, as well as the rest of the United States, are small entities by SBA standards.

Few, if any, of the 26 entities will be significantly affected by the quarantine action taken in this interim rule because few of those entities move regulated articles outside the State of California during the normal course of their business. Nor do consumers of products purchased from those entities generally move those products interstate. The effect on any small entities that do move regulated articles interstate from the quarantined area will be minimized by the availability of various treatments that, in most cases, will allow those small entities to move regulated articles interstate with very little additional costs. Also, many of those small entities sell other items in addition to regulated articles, so the effect, if any, of the interim rule should be minimal.

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

Executive Order 12372

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

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this rule. The site specific environmental assessment and programmatic medfly environmental impact statement provide a basis for our conclusion that implementation of integrated pest management to achieve

eradication of the Medfly would not have a significant impact on human health and the natural environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection of USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Incorporation by reference, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.78–3, paragraph (c) is amended by adding an entry for San Diego County, CA, in alphabetical order, to read as follows:

§ 301.78–3 Quarantined areas.

* * * * *

(c) * * *

California

San Diego County. That portion of San Diego County in the La Jolla area bounded by a line beginning at the intersection of North Torrey Pines and La Jolla Village Drive; then east along La Jolla Village Drive to Genesee Avenue; then southeast along Genesee Avenue to State Highway 274 (Balboa Avenue); then southwest along State Highway 274 (Balboa Avenue) to Clairemont Drive; then southwest along Clairemont Drive to Interstate Highway 5; then south along Interstate Highway 5 to Sea World Drive; then southwest along Sea World Drive to Sunset Cliffs Boulevard; then southwest along Sunset Cliffs Boulevard to West Point Loma Boulevard; then northwest along West Point Loma Boulevard to Voltaire Street; then west along Voltaire Street to the Pacific Ocean coastline; then north along the Pacific Ocean coastline to Scripps Pier; then east along an imaginary line to the intersection of Biological Grade and La Jolla Shores Drive; then northeast along La Jolla Shores Drive to North Torrey Pines; then south along North Torrey Pines to the point of beginning.

* * * * *

Done in Washington, DC, this 13th day of August, 1998.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–22457 Filed 8–19–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[Docket No. FV98–920–3 IFR]

Kiwifruit Grown in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule decreases the assessment rate and changes the assessable unit from $0.0225 per tray or tray equivalent to $0.05 per 22-pound volume fill container or equivalent of kiwifruit established for the Kiwifruit Administrative Committee (Committee) under Marketing Order No. 920 for the 1998–99 and subsequent fiscal periods. The assessment rate of $0.0225 per tray or tray equivalent approximates $0.0675 per 22-pound volume fill container. Thus, the assessment rate of $0.05 per 22-pound volume fill container is less than the assessment rate currently in effect. The Committee is responsible for local administration of the marketing order which regulates the handling of kiwifruit grown in California. Authorization to assess kiwifruit handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective August 21, 1998. Comments received by October 19, 1998, 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 to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; Fax: (202) 205–6632. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Toni Sasselli, Marketing Assistant or Rose M. Aguayo, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (209) 487–5901; Fax: (209) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 920, as amended (7 CFR part 920), regulating the handling of kiwifruit grown in California, hereinafter referred to as the ''order.'' The marketing order is 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 rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now

in effect, California kiwifruit handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable kiwifruit beginning August 1, 1998, and continuing until amended, suspended, or terminated. 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. Such 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 the date of the entry of the ruling.

This rule decreases the assessment rate and changes the assessable unit established for the Committee for the 1998–99 and subsequent fiscal periods from $0.0225 per tray or tray equivalent to $0.05 per 22-pound volume fill container or equivalent. The assessment rate of $0.0225 per tray or tray equivalent approximates $0.0675 per 22-pound volume fill container. Thus, the assessment rate of $0.05 per 22-pound volume fill container for the 1998–99 and subsequent fiscal periods is less than the assessment rate currently in effect.

The California kiwifruit marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers of California kiwifruit. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1997–98 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on July 8, 1998, and unanimously recommended 1998–99 expenditures of $135,250 and an assessment rate of $0.05 per 22-pound volume fill container or equivalent of kiwifruit. In comparison, last year's budgeted expenditures were $161,286, and the assessment rate was $0.0225 per tray equivalent, which approximates $0.0675 per 22-pound volume fill container. The assessment rate of $0.05 per 22-pound volume fill container is $0.0175 or 26 percent lower than the equivalent rate currently in effect. The Committee voted to reduce 1998–99 budgeted expenditures and the assessment rate to lessen the financial burden on California kiwifruit handlers.

The Committee recommended changing the assessable unit to a 22-pound volume fill container or equivalent basis because this container is now the predominant container being used by handlers within the industry. Tray packs had been the container of choice in previous seasons, but handlers have been switching gradually to volume fill containers.

The Committee owes $32,577 to the California Kiwifruit Commission (Commission) and plans to pay off the loan during the 1998–99 fiscal period. The Commission administers a State program utilized to promote kiwifruit grown in California. The Committee and Commission share staff and expenses pursuant to an agreement.

During the 1997–98 fiscal period, the Committee borrowed $32,577 from the Commission pursuant to § 920.41 of the order to cover a funding deficit. Handler assessments received were lower than expected because the 1997–98 crop of 9 million trays or tray equivalents and shipments of 8.5 million trays or tray equivalents were smaller than the Committee anticipated. The Committee had estimated that assessments would total $225,000 for the 1997–98 fiscal period, and that shipments for the period would total 10 million trays or tray equivalents.

The following table compares major budget expenditures (in thousands of dollars) recommended by the Committee for the 1998–99 and 1997–98 fiscal periods:

Budget expense categories	1998–99	1997–98
Administrative Staff & Field Salaries	44.2	102.2
Contingency Fund/ Operating Reserve	29.2	0
Travel, Food & Lodging	5	13.8
Accident & Health Insurance	3.8	12.2

The assessment rate recommended by the Committee was derived by considering anticipated expenses, expected shipments of California kiwifruit, and additional pertinent factors. Kiwifruit shipments for the year are estimated at 2,705,000 22-pound volume fill containers or equivalents of kiwifruit, which should provide $135,250 in assessment income. Income derived from handler assessments will be adequate to cover budgeted expenses, to reimburse the borrowed funds, and to fund an adequate reserve. It is anticipated that the assessment rate of $0.05 per 22-pound volume fill container or equivalent of kiwifruit handled will provide a reserve of $29,200 at the end of the fiscal year. Currently, there are no funds in the reserve. Reserve funds will be kept within 1 fiscal period's expenses, the maximum permitted under § 920.42 of the order.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1998–99 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of

this rule on small entities. Accordingly, AMS has prepared this initial 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 the 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 450 producers of kiwifruit in the production area and approximately 60 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. One of the 60 handlers subject to regulation has annual kiwifruit sales of at least $5,000,000, and the remaining 59 handlers have sales less than $5,000,000, excluding receipts from any other sources. Ten of the 450 producers subject to regulation have annual sales of at least $500,000, and the remaining 440 producers have sales less that $500,000, excluding receipts from any other sources. The majority of California kiwifruit producers and handlers may be classified as small entities.

This rule decreases the assessment rate and changes the assessable unit established for the Committee for the 1998–99 and subsequent fiscal periods from $0.0225 per tray or tray equivalent to $0.05 per 22-pound volume fill container or equivalent. The assessment rate of $0.0225 per tray or tray equivalent approximates $0.0675 per 22-pound volume fill container. Thus, the assessment rate of $0.05 per 22-pound volume fill container for the 1998–99 and subsequent fiscal periods is $0.0175 less than the assessment rate currently in effect. The Committee unanimously recommended 1998–99 expenditures of $135,250. The quantity of assessable kiwifruit for the 1998–99 fiscal period is estimated at 2,705,000, 22-pound volume fill containers. Thus, the $0.05 rate should provide $135,250 in assessment income and be adequate to meet this year's expenses.

The Committee recommended changing the assessable unit to a 22-pound volume fill container or equivalent basis because this container is now the predominate container being used by handlers within the industry. Tray packs had been the container of choice in previous seasons, but handlers have been switching gradually to volume fill containers.

The following table compares major budget expenditures (in thousands of dollars) recommended by the Committee for the 1998–99 and 1997–98 fiscal years:

Budget expense categories	1998–99	1997–98
Administrative Staff & Field Salaries	44.2	102.2
Contingency Fund/ Operating Reserve	29.2	0
Travel, Food & Lodging	5	13.8
Accident & Health Insurance	3.8	12.2

The Committee owes $32,577 to the California Kiwifruit Commission (Commission) and plans to pay off the loan during the 1998–99 fiscal period. The Commission administers a State program utilized to promote California kiwifruit. The Committee and Commission share staff and expenses through an agency agreement.

The Committee borrowed the money from the Commission pursuant to § 920.41 of the order to cover a fund shortage during the 1997–98 fiscal period. Handler assessments received were lower than expected because the 1997–98 crop of 9 million trays or tray equivalents and shipments of 8.5 million trays or equivalents were smaller than the Committee anticipated. The Committee had estimated that assessments would be $225,000 for the 1997–98 fiscal period and that kiwifruit shipments would be 10 million trays or equivalents.

To lessen the financial burden on handlers, the Committee voted to reduce 1998–99 expenditures and the assessment rate. The reduced rate will allow the Committee to meet its expenses, to reimburse the borrowed funds, and to establish an adequate reserve (estimated to be $29,200 at the end of the 1998–99 fiscal period). Currently, there are no funds in the reserve. Section 920.42 of the order provides for a maximum reserve equal to approximately 1 fiscal period's expenses.

Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Finance and Assessment Subcommittee. Alternative expense levels and assessment rates were considered at several industry strategic planning meetings. The assessment rate of $0.05 per 22-pound volume fill container or equivalent of assessable kiwifruit was determined by dividing the total recommended budget for 1998–99 by the quantity of assessable kiwifruit, estimated at 2,705,000 22-pound volume fill containers or equivalents.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for the 1998–99 season will be approximately $7.59 per 22-pound volume fill container or equivalent of kiwifruit. Therefore, the estimated assessment revenue for the 1998–99 fiscal period as a percentage of total grower revenue is estimated at 0.7 percent.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the California kiwifruit industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues.

Like all Committee meetings, the July 8, 1998, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action imposes no additional reporting or recordkeeping requirements on either small or large California kiwifruit handlers. 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.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

After consideration of all relevant material presented, including the information and recommendation 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.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest 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**

because: (1) The 1998–99 fiscal period began on August 1, 1998, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable kiwifruit handled during such fiscal period; (2) this action decreases the assessment rate for assessable kiwifruit beginning with the 1998–99 fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements.

For the reasons set forth in the preamble, 7 CFR part 920 is amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 920 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 920.213 is revised to read as follows:

§ 920.213 Assessment rate.

On and after August 1, 1998, an assessment rate of $0.05 per 22-pound volume fill container or equivalent of kiwifruit is established for kiwifruit grown in California.

Dated: August 13, 1998.

Eric M. Forman,

Acting Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–22454 Filed 8–19–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 98–014–2]

Brucellosis in Cattle; State and Area Classifications; Florida

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Florida from Class Free to Class A. We have determined that Florida no longer meets the standards for Class Free status. This action imposes certain restrictions on the interstate movement of cattle from Florida.

DATES: Interim rule effective August 13, 1998. Consideration will be given only to comments received on or before October 19, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 98–014–2, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 98–014–2. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. R.T. Rollo, Jr., Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231, (301) 734–7709; or e-mail: rrollo@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a contagious disease affecting animals and humans, caused by bacteria of the genus *Brucella.*

The brucellosis regulations, contained in 9 CFR part 78 (referred to below as the regulations), provide a system for classifying States or portions of States according to the rate of *Brucella* infection present and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or areas that do not meet the minimum standards for Class C are required to be placed under Federal quarantine.

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the 12 months preceding classification as Class Free. The Class C classification is for States or areas with the highest rate of brucellosis. Class B and Class A fall between these two extremes. Restrictions on moving cattle interstate become less stringent as a State approaches or achieves Class Free status.

The standards for the different classifications of States or areas entail (1) maintaining a cattle herd infection rate not to exceed a stated level during 12 consecutive months; (2) tracing back to the farm of origin and successfully closing a stated percent of all brucellosis reactors found in the course of Market Cattle Identification (MCI) testing; (3) maintaining a surveillance system that includes testing of dairy herds, participation of all recognized slaughtering establishments in the MCI program, identification and monitoring of herds at high risk of infection (including herds adjacent to infected herds and herds from which infected animals have been sold or received), and having an individual herd plan in effect within a stated number of days after the herd owner is notified of the finding of brucellosis in a herd he or she owns; and (4) maintaining minimum procedural standards for administering the program.

Before the effective date of this interim rule, Florida was classified as a Class Free State because there had been no known brucellosis in cattle in Florida for at least 12 consecutive months. However, as of August of 1998, two cattle herds in Florida were identified as infected with brucellosis.

To attain and maintain Class A status, a State or area must (1) not exceed a cattle herd infection rate, due to field strain *Brucella abortus,* of 0.25 percent or 2.5 herds per 1,000 based on the number of reactors found within the State during any 12 consecutive months, except in States with 10,000 or fewer herds; (2) trace to the farm of origin at least 90 percent of all brucellosis reactors found in the course of MCI testing; (3) successfully close at least 95 percent of the MCI reactor cases traced to the farm of origin during the 12 consecutive month period immediately prior to the most recent anniversary of the date the State or area was classified Class A; and (4) have a specified surveillance system, as described above, including an approved individual herd plan in effect within 15 days of locating a source herd or recipient herd.

After reviewing the brucellosis program records for Florida, we have concluded that this State meets the standards for Class A status. Therefore, we are removing Florida from the list of Class Free States or areas in § 78.41(a) and adding it to the list of Class A States or areas in 78.41(b). This action imposes certain restrictions on the interstate movement of cattle from Florida.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is warranted to

prevent the interstate spread of brucellosis.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this action effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the brucellosis status of Florida from Class Free to Class A increases testing requirements governing the interstate movement of cattle. However, testing requirements for cattle moved interstate for immediate slaughter or to quarantined feedlots are not affected by this change. Cattle from certified brucellosis-free herds moving interstate are not affected by this change.

The groups affected by this action will be herd owners in Florida, as well as buyers and importers of cattle from this State.

There are an estimated 20,000 cattle herds in Florida that will be affected by this rule. All of these are owned by small entities. Test-eligible cattle offered for sale interstate from other than certified brucellosis-free herds must be tested for brucellosis under Class A status regulations, but not under regulations concerning Class Free status. If such testing were distributed equally among all animals affected by this rule, the change to Class A status would cost approximately $4 per head.

Therefore, we believe that changing the brucellosis status of Florida will not have a significant economic impact on the small entities affected by this interim rule.

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

Executive Order 12372

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

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 9 CFR part 78 as follows:

PART 78—BRUCELLOSIS

1. The authority citation for part 78 continues to read as follows:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

§ 78.41 [Amended]

2. In § 78.41, paragraph (a) is amended by removing ''Florida,''.

3. In § 78.41, paragraph (b) is amended by adding ''Florida,'' immediately before ''Kansas,''.

Done in Washington, DC, this 13th day of August, 1998.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–22462 Filed 8–19–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–27–AD; Amendment 39–10713; AD 98–17–11]

RIN 2120–AA64

Airworthiness Directives; Textron Lycoming and Teledyne Continental Motors Reciprocating Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Textron Lycoming and Teledyne Continental Motors reciprocating engines that had crankshafts repaired by Nelson Balancing Service, Repair Station Certificate No. NB7R820J, Bedford, Massachusetts, that requires removal from service of affected crankshafts, or a visual inspection, magnetic particle inspection, and dimensional check of the crankshaft journals, and, if necessary, rework or removal from service of affected crankshafts and replacement with serviceable parts. This amendment is prompted by reports of crankshafts exhibiting heat check cracking of the nitrided bearing surfaces which led to crankshaft cracking and subsequent failure. The actions specified by this AD are intended to prevent crankshaft failure due to cracking, which could result in an inflight engine failure and possible forced landing.

DATES: Effective October 19, 1998.

FOR FURTHER INFORMATION CONTACT: Rocco Viselli, Aerospace Engineer (assigned to Textron Lycoming), New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 10 Fifth St., 3rd Floor, Valley Stream, NY 11581–1200; telephone (516) 256–7531, fax (516) 568–2716; or Jerry Robinette, Aerospace Engineer (assigned to Teledyne Continental Motors), Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate, 1895 Phoenix Boulevard, One Crown Center, Suite 450, Atlanta, GA 30349; telephone (770) 703–6096, fax (770) 703–6097.

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 Textron Lycoming and Teledyne Continental Motors (TCM) reciprocating engines that had crankshafts repaired by Nelson Balancing Service, Repair Station

Certificate No. NB7R820J, Bedford, Massachusetts, was published in the **Federal Register** on May 11, 1998 (63 FR 25781). That action proposed to require removal from service of affected crankshafts, or a visual inspection, magnetic particle inspection, and dimensional check of the crankshaft journals, and, if necessary, rework or removal from service of affected crankshafts and replacement with serviceable parts.

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 proposed AD is insufficiently researched; specific dates and serial numbers are needed for affected crankshafts. The commenter suggests that there were periods during the time frame of interest when the grinding was acceptable. The FAA does not concur. The FAA believes that this AD has been thoroughly researched. The failures/known cases of crankshaft nitride cracking occur throughout the time period. There is no way to isolate one specific time and determine that crankshafts during that time were satisfactorily repaired. Those crankshafts that are identified in the company's records are presented in the AD, but the FAA has determined that these records are incomplete. Therefore, the applicability of the AD must include all crankshafts identified in aircraft owners' and other repair station records as being repaired at Nelson during the suspect time period.

The same commenter questions how many TCM O–470 crankshafts have been determined to be bad and if there is a sufficient percentage to warrant tearing down all O–470 engines that Nelson repaired during this time period. The FAA does not concur. The available data indicates that crankshafts from O–470 engines were subject to the same improper repair procedures as crankshafts from other engines. Of the three related failure events, one occurred on an O–470–R engine. Therefore, the FAA has determined that all crankshafts repaired by Nelson Air Services during the suspect time period have the potential of causing an unsafe condition.

The same commenter believes that the proposed AD is based on failures of aerobatic engines. The commenter suggests that the AD is an overly reactive extrapolation from highly stressed aerobatic crankshafts to comparatively mildly stressed non-aerobatic engines. The FAA does not concur. The FAA is unaware of any information that indicates that the safety analysis presented in the NPRM is biased by aerobatic engine data. There is only one aerobatic engine listed. The other engines are used in normal or utility category applications. The data indicates that nitride cracking of the crankshafts is not limited to specific flight operations but rather a matter of an improper grinding procedure that can result in heat check cracking of the nitride surface.

The same commenter states that the AD should not be issued as written, but only imposed on those who have a reasonable likelihood of having a bad crankshaft, due to expense required to tear down an engine. The FAA does not concur. The expense of the AD was certainly considered as evidenced by the NPRM economic impact statement. However, it must be emphasized that the FAA has made a determination that an unsafe condition is likely to exist on crankshafts repaired by Nelson during the suspect time period. The FAA determined that an AD was necessary after consideration of both the severity of the potential unsafe condition and the economic impact of the action.

One commenter states that the AD should not apply to crankshafts which were in the Nelson shop for balancing, it should only apply to those which had the journals ground. The FAA does not concur. The data indicates that deficient process controls existed at Nelson Balancing Service during the suspect time period and therefore all crankshafts which were repaired in the Nelson shop during that time are suspect. However, if an individual can substantiate that any given crankshaft should be exempt from the requirements of the AD based on the extent of repairs performed by Nelson, then this data can be presented through an FAA Airworthiness Inspector as an Alternative Method of Compliance with the AD.

This commenter further states that the AD should reaffirm that only those work order numbers noted in the AD are affected. The FAA does not agree. The work orders listed in the AD are intended as guidance only as the FAA can not be absolutely sure that all crankshafts are accounted for in the listing.

One commenter states that the AD should apply only to those crankshafts repaired after September 1995, arguing that date represented the earliest repair date for the crankshaft that demonstrated a problem in service after being serviced by Nelson. The FAA does not concur. The crankshaft with the earliest repair date to have exhibited a problem in service was repaired in February 1995 and failed after only 30 hours in service. The repair station was certificated in September 1994. Thus, the FAA has limited this AD to only those engines with crankshafts on which this unsafe condition either exists or is likely to develop.

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

There are approximately 250,000 engines of the designs listed in the applicability section of this AD in the worldwide fleet. The FAA estimates that 200,000 of those engines are installed on aircraft of U.S. registry. Of these it is estimated that 30% or 60,000 engines will have had an overhaul in the time frame of interest; however, only 291 would be required to take compliance action. Of this 60,000 it is estimated that 10,000 will require removal of the propeller spinner to determine applicability of the AD. The cost associated with the spinner removal/replacement is estimated to be $60 per work hour average labor rate times one hour. It will take approximately 90 work hours per engine to accomplish the proposed action and the average labor rate is $60 per work hour. Required parts would cost $115 per engine for gaskets, seals, etc. In addition, it is estimated that half of the 291 affected engines can be reworked at a cost of $1,800 per engine and that the other half of the 291 affected engines will be rejected, plus purchasing another crankshaft which will cost $4,000 per engine. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $3,048,765.

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, 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:

98–17–11 Textron Lycoming and Teledyne Continental Motors: Amendment 39–10713. Docket 98–ANE–27–AD.

Textron Lycoming (LYC) O–235, O–235–C1, O–235–C2C, O–235–L2C, O–235–N2C, O–290, O–290–D2, O–320, O–320–A, O–320–A1A, O–320–A2B, O–320–B2B, O–320–B2C, O–320–D2J, O–320–D3G, O–320–E2A, O–320–E2D, O–320–E2G, O–320–E3D, O–320–H2AD, O–360, O–360A1A, O–360–A1D, O–360–A3A, O–360–A4A, O–360–A4K, O–360–B1B, IO–360–F1A6, AEIO–320–E1B, HIO–360–C1A, IO–320, IO–320–B1A, IO–360, IO–360–A1A, IO–360–A1B6, IO–360–B1E, IO–360–C, IO–360–C1C, IO–360–C1C6, IO–360–C1D6, IO–360–D, O–540–A1B5, O–540–A1D5, O–540–R2AD, IO–540, IO–540–C4B5, IO–540–S1A5, TIO–540–A2, LIO–320–C1A, LIO–360–C1E6, and IO–720 reciprocating engines; and Teledyne Continental Motors (TCM) A–65, A65–3, A65–8, A75, A75–8, C75–12, C85, C85–8, C85–12, C90–8FJ, C90–12, O–200, O–200–A, O–300, O–300–D, IO–360–C, E–185–4, E–225–8, O–470, O–470–K, O–470–L, O–470–R, O–470–11, IO–470, IO–470–N, IO–470–S, IO–520, IO–520–D, GTSIO–520, and TSIO–520–VB reciprocating engines, with installed crankshafts repaired by Nelson Balancing Service, Bedford, Massachusetts, Repair Station Certificate No. NB7R820J, between February 1, 1995, and December 31, 1997, inclusive, as listed (by work order (W/O)) in Table 1 of this AD.

TABLE 1

Engine and model	W/O	Date	Engine Ser. No.
LYC:			
AEIO–320–E1B	1134	2/17/96	L–5653–55A
HIO–360–C1A	1155	2/7/96	L–12126–51A
IO–320	1141	1/17/96	
IO–320–B1A	1525	11/14/97	
IO–360	1314	12/17/96	
IO–360	IN6137	8/7/97	
IO–360–A1A	1230	6/10/96	L–474–51
IO–360–A1A	1289	10/23/96	L–4085–5174
IO–360–A1A	1415b	5/23/97	RL–3920–51A
IO–360–A1B6	1463	7/31/97	
IO–360–B1E	1312	12/12/96	L–4453–51A
IO–360–C	1146	1/23/96	R–51448–9–C
IO–360–C1C	1336	2/10/97	
IO–360–C1C	1518	12/9/97	
IO–360–C1C6	1530	11/25/97	
IO–360–C1C6	1537	12/9/97	L–19294–51A
IO–360–C1D6	1286	4/28/97	
IO–360–D	1540	12/2/97	
IO–360–F1A6	1176	3/7/96	L–27423–36A
IO–540	1014	2/8/95	
IO–540	1056	6/13/95	
IO–540	1302	12/5/96	
IO–540–C4B5	1313	12/17/96	L–19547–48
IO–540–S1A5	1513	10/27/97	L–19597–48A
IVO–435–G1A	1271	10/1/96	
LIO–320–C1A	1158	2/8/96	
LIO–360–C1E6	1280	10/7/96	
LIO–360–C1E6	1281	10/9/96	
O–235	1013	2/21/95	
O–235	1051	6/2/95	
O–235	1054	6/9/95	
O–235	1057	6/14/95	L–9041–15
O–235	1058	6/29/95	
O–235	1060	6/30/95	
O–235	1069	8/10/95	
O–235	1110	2/20/96	
O–235	1145	1/23/96	
O–235	1151	1/25/96	
O–235	1160	2/9/96	RL–24636–15
O–235	1305	12/5/96	L–22542–15
O–235	1329	2/11/97	
O–235	1332	2/11/97	
O–235	1481	9/2/97	
O–235–C1	1089	10/8/95	L–6475–15
O–235–C1	1188	4/2/96	L–7143–15
O–235–C1	1335	3/12/97	L–5569–15
O–235–C1	1367	3/24/97	
O–235–C2C	1019	2/24/95	L–12284–15

TABLE 1—Continued

Engine and model	W/O	Date	Engine Ser. No.
O–235–C2C	1040	5/8/95	
O–235–C2C	1105	12/1/95	L–12273–15
O–235–L2C	1030	4/6/95	L–14545–15
O–235–L2C	1036	4/24/95	
O–235–L2C	1037	4/24/95	L–23012–15
O–235–L2C	1050	6/2/95	L–15542–15
O–235–L2C	1062	7/5/95	L–18306–15
O–235–L2C	1067	8/8/95	
O–235–L2C	1070	8/10/95	L–160015–15
O–235–L2C	1095	11/14/95	RL–023227–15
O–235–L2C	1101	11/4/95	L–15300–15
O–235–L2C	1102	11/15/95	L–20183–15
O–235–L2C	1162	2/14/96	L–16114–15
O–235–L2C	1179	3/11/96	L–21215–15
O–235–L2C	1219	5/16/96	L–21215–15
O–235–L2C	1251	8/22/96	
O–235–L2C	1285	10/19/96	
O–235–L2C	1365	3/24/97	
O–235–L2C	1400	4/28/97	
O–235–L2C	1414	8/5/97	
O–235–L2C	1417	12/5/97	
O–235–L2C	1433	6/26/97	L–17074–15
O–235–L2C	1435	6/9/97	
O–235–L2C	1504	10/31/97	
O–235–L2C	1508	11/18/97	
O–235–L2C	1524	11/12/97	
O–235–L2C	1536	11/24/97	
O–235–L2C	2010	11/19/97	
O–235–N2C	1511	10/29/97	L–23857–15
O–290	1257	9/4/96	
O–290	1326	3/26/97	
O–290–D2	1082	9/26/95	L–6019–21
O–320	1018	2/22/95	
O–320	1024	3/17/95	
O–320	1038	5/13/95	L–39272–27A
O–320	1045	5/24/95	
O–320	1084	9/28/95	
O–320	1116	1/8/95	
O–320	1125	1/8/96	
O–320	1169	2/28/96	
O–320	1175	3/7/96	
O–320	1184	3/28/96	
O–320	1189	8/27/96	
O–320	1202	4/30/96	
O–320	1212	5/10/96	
O–320	1283	10/17/96	
O–320	1316	12/21/96	
O–320	1340	2/25/97	L–24367
O–320	1347	2/18/97	
O–320	1360	3/10/97	
O–320	1361	3/10/97	
O–320	1436	5/29/97	
O–320	1468	8/14/97	
O–320	1474	8/22/97	L–13130–39A
O–320	1477	9/13/97	
O–320	1477	9/13/97	
O–320	1507	11/18/97	
O–320	1519	11/21/97	
O–320	1546	12/7/97	
O–320	1171	3/1/06	
O–320–A	1192	4/13/96	
O–320–A	1194	4/13/96	
O–320–A	1196	4/13/96	
O–320–A1A	1244	8/13/96	L–5270–27
O–320–A2B	1081	9/22/95	
O–320–A2B	1461	9/9/97	L–12626–27
O–320–B2B	1452	7/10/97	L–2977–39
O–320–B2C	1315	12/17/96	
O–320–D2J	1172	3/4/96	L–13039–39A
O–320–D2J	1173	3/7/96	L–123412–39A
O–320–D2J	1253	9/4/96	
O–320–D2J	1534	11/25/97	

TABLE 1—Continued

Engine and model	W/O	Date	Engine Ser. No.
O–320–D2J	1539	12/3/97	
O–320–D3G	1077	9/17/95	
O–320–D3G	1114	1/8/96	L–10983–39A
O–320–D3G	1354	2/25/97	
O–320–D3G	1370	3/26/97	H45247
O–320–D3G	1544	12/3/97	
O–320–E2A	1103	11/10/95	L–26363–27A
O–320–E2A	1191	4/13/96	L–19377–27A
O–320–E2A	1317	12/21/96	L–15219–27A
O–320–E2A	1439	6/9/97	L–38003–55A
O–320–E2D	1068	8/10/95	L–35528–27A
O–320–E2D	1078	9/17/95	
O–320–E2D	1177	3/9/96	L–44732–27A
O–320–E2D	1181	3/14/96	
O–320–E2D	1241	8/9/96	L–42691–27A
O–320–E2D	1245	8/13/96	L–40483–27A
O–320–E2D	1260	9/9/96	L–15300–15
O–320–E2D	1343	2/17/97	
O–320–E2D	1346	3/2/97	L–44320–27A
O–320–E2D	1385	4/16/97	
O–320–E2D	1458	7/18/97	
O–320–E2D	1533	11/25/97	
O–320–E2D	1549	12/12/97	
O–320–E2G	1338	3/10/97	L–38264–27A
O–320–E3D	1034	4/18/95	L–29668–27A
O–320–E3D	1074	8/24/95	L–29495–27A
O–320–E3D	1431	6/9/97	L–33770–27A
O–320–E3D	1444	6/13/97	
O–320–E3D	1500	10/7/97	L–33841–27A
O–320–H2AD	1322	1/22/97	L–1530–78T
O–360	1025	3/17/95	
O–360	1157	2/7/96	
O–360	1199	4/18/96	
O–360	1362	3/10/97	
O–360	1386	4/17/97	
O–360	1394	5/6/97	
O–360	1528	11/19/97	
O–360–A1A	1170	2/28/96	L–20677–36A
O–360–A1A	1214	5/14/96	L–20190–36A
O–360–A1A	1239	8/5/96	
O–360–A1D	1411	5/5/97	
O–360–A3A	1531	11/25/97	
O–360–A4A	1270	9/27/96	L–14008–36A
O–360–A4A	1464	7/30/97	L–24796–36A
O–360–A4A	1486	9/6/97	
O–360–A4A	1529	11/25/97	
O–360–A4K	1166	2/22/96	L–26455–36A
O–360–B1B	1262	9/9/96	L–5261–51A
O–540–A1B5	1129	12/29/95	
O–540–A1B5	1132	1/9/96	L–1165–40
O–540–A1D5	1462	7/28/97	L–5661–40
IO–720	1510	10/26/97	
TIO–540–A2	1064	7/13/95	
TIO–540–A2	1111	1/10/96	
TIO–540–R2AD	1106	11/27/95	L–5949–61A
TCM:			
A–65	1152	1/25/96	
A–65	1154	2/27/96	7187
A–65	1183	2/22/96	
A–65	1185	3/28/96	
A–65	1233	6/23/96	
A–65	1290	10/29/96	
A–65	1296	11/14/96	4933868
A–65	1299	11/19/96	
A–65	1325	3/26/97	
A–65	1326	3/26/97	
A–65	1376	4/29/97	
A–65	1438	6/17/97	5890178
A–65–3	1243	8/13/96	324993
A–65–8	1541	12/2/97	
A–65–8	1276	10/5/96	5762568
A75	1156	2/7/96	5321868

TABLE 1—Continued

Engine and model	W/O	Date	Engine Ser. No.
A75	1255	9/3/96	
A75	1256	9/4/96	
A75–8	1275	10/5/96	5162868
C75–12F	1293	11/4/96	3316–6–12
C85	1088	10/4/95	
C85	1092	10/18/95	
C–85	1198	4/17/96	29652–7–8
C–85	1297	11/14/96	
C–85	1352	3/10/97	
C–85	1381	4/28/97	
C–85	1391	4/19/97	
C–85	1392	4/19/97	
C–85	1484	9/4/97	28487–6–12
C–85–8FJ	1139	1/17/96	29845–7–8
C–85–8FJ	1420	5/12/97	29465–7–8
C–85–12	1031	4/6/95	
C85–12	1182	3/18/96	21596–6–12
C–85–12	1217	5/15/96	
C85–12	1265	9/12/96	14657
C–85–12	1298	11/14/96	23610–6–12
C–90–8F	1471	9/6/97	42838–1–8
C–90–12	1279	10/7/96	44747–6–12
E–185–4	1124	1/16/96	25700D–1–9
E–225–8	1505	10/28/97	35477–D–9–8–P
GTSIO–520	1208	5/7/96	210114–70H
IO–360–C	1126	12/28/95	F–51439–9–C
IO–470	1028	3/23/95	87329–R
IO–470–N	1421	5/13/97	95271–1–N
IO–470–S	1331	3/11/97	102412–2–S–I
IO–520	1174	3/4/96	
IO–520–D	1167	2/22/96	
O–200	1033	4/18/95	
O–200	1043	5/12/95	
O–200	1049	6/2/95	
O–200	1076	9/11/95	214668–27A
O–200	1104	11/21/95	213830–71A
O–200	1131	1/5/96	
O–200	1142	1/18/96	265349–R
O–200	1147	1/23/96	
O–200	1190	4/13/96	
O–200	1193	4/13/96	
O–200	1195	4/13/96	
O–200	1197	4/17/96	
O–200	1213	5/13/96	
O–200	1261	9/9/96	
O–200	1303	12/5/96	
O–200	1321	2/7/97	28115
O–200	1324	2/6/97	
O–200	1344	3/2/97	
O–200	1393	5/5/97	
O–200	1413	5/7/97	61001–5–4
O–200	1430	5/23/97	
O–200	1437	6/17/97	255759A–48
O–200	1488	9/7/97	
O–200	1506	11/18/97	
O–200	1522	11/11/97	
O–200–A	1052	6/21/95	254150–A–48
O–200–A	1085	9/29/95	
O–200–A	1120	12/29/95	253971
O–200–A	1161	2/9/96	24R–469
O–200–A	1215	5/15/96	
O–200–A	1240	8/5/96	69589–8–A
O–200–A	1254	9/3/96	6105–71–A–R
O–200–A	1264	9/12/96	
O–200–A	1356	3/10/97	
O–300	1027	3/20/95	
O–300	1042	5/12/95	34012–D–6–D
O–300	1083	9/26/95	
O–300	1096	10/23/95	464481
O–300	1137	1/17/96	
O–300	1259	9/4/96	
O–300	1387	4/22/97	

TABLE 1—Continued

Engine and model	W/O	Date	Engine Ser. No.
O–300	1397	4/26/97	5928–9A
O–300	1403	4/28/97	
O–300	1423	6/9/97	3834D8Z
O–300	1555	1/13/98	
O–300–A	1446	6/27/97	
O–300–D	1022	3/17/95	35110–D–6–D
O–300–D	1079	9/17/95	24276–D–0–D
O–300–D	1487	9/6/97	
O–300–D	1543	12/3/97	
O–470	1046	6/1/95	
O–470	1383	4/4/97	
O–470–11	1017	2/22/95	
O–470–11	1491	10/19/97	
O–470–11	1492	10/19/97	
O–470–11	1493	10/19/97	
O–470–11	1494	10/19/97	
O–470–F	1236	7/25/96	76956–4–F
O–470–K	1087	10/3/95	47172–6–K
O–470–L	1128	1/10/96	68681–8–L
O–470–L	1359	5/19/97	68245–8–L
O–470–L	1399	4/28/97	
O–470–R	1016	2/10/95	133087–6–R
O–470–R	1086	10/3/95	
O–470–R	1165	2/22/96	
O–470–R	1178	3/10/96	
O–470–R	1201	6/2/96	83164–1–R
O–470–R	1319	1/6/97	459408
TSIO–520–VB	1055	6/9/95	

Note 1: Blank spaces indicate unknown data. Where the engine serial number is blank in this table, it is either unknown or the crankshaft may not be installed in an engine.

Note 2: This airworthiness directive (AD) applies to each engine 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 engines 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 crankshaft failure due to cracking, which could result in an inflight engine failure and possible forced landing, accomplish the following:

(a) Within 10 hours time in service after the effective date of this AD, determine if this AD applies, as follows:

(1) Determine if any repair was conducted on the engine that required crankshaft removal during the February 1, 1995, to December 31, 1997, time frame; if the engine was not disassembled for crankshaft removal and repair in this time frame, no further action is required.

(2) If the engine and crankshaft was repaired during this time frame, determine from the maintenance records (engine log book), and Table 1 of this AD if the crankshaft was repaired by Nelson Balancing Service, Repair Station Certificate No. NB7R820J, Bedford, Massachusetts. The maintenance records should contain the Return to Service (Yellow) tag for the crankshaft that will identify the company performing the repair. Also the work order number contained in Table 1 of this AD was etched on the crankshaft propeller flange, adjacent to the closest connecting rod journal. Because some etched numbers will be difficult to see, if necessary, use a 10X magnifying glass with an appropriate light source to view the work order number. In addition, the propeller spinner, if installed, will have to be removed in order to see this number.

(3) A person with a private pilot or higher rated certificate may make the determination of applicability of this AD provided the propeller spinner does not have to be removed.

(4) If it cannot be determined who repaired the crankshaft, compliance with this AD is required.

(5) If the engine and crankshaft were not repaired during the time frame specified in (a)(1), or if it is determined that the crankshaft was not repaired by Nelson Balancing Service, no further action is required.

(b) Within 10 hours time in service after the effective date of this AD, accomplish the following:

(1) Perform a visual inspection as defined in paragraph (b)(2) of this AD, magnetic particle inspection, and a dimensional check of the crankshaft journals, or remove from service affected crankshafts and replace with serviceable parts.

(2) For the purpose of this AD, a visual inspection of the crankshaft is defined as the inspection of all surfaces of the crankshaft for cracks which include heat check cracking of the nitrided bearing surfaces, cracking in the main or aft fillet of the main bearing journal and crankpin journal, including checking the bearing surfaces for scoring, galling, corrosion, or pitting.

Note 3: Further guidance on all inspection and acceptance criteria is contained in applicable TCM or LYC Overhaul or Maintenance Manuals, or other FAA-approved data.

(3) Replace any crankshaft that fails the visual inspection, magnetic particle inspection, or the dimensional check with a serviceable crankshaft, unless the crankshaft can be reworked to bring it in compliance with:

(i) All the overhaul requirements of the appropriate TCM or LYC Overhaul/Maintenance Manuals; or

(ii) All of the FAA-approved requirements for any repair station which currently has approval for limits other than those in the appropriate TCM or LYC Overhaul/Maintenance Manuals.

(4) For the purpose of this AD, a serviceable crankshaft is one which meets the requirements of paragraph (b)(3)(i) or (b)(3)(ii) of this AD.

Note 4: Crankshafts removed from TCM engine models IO–360, IO–520, and TSIO–520 series engines are also subject to compliance with AD 97–26–17.

(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, New York (LYC) or Atlanta (TCM) Aircraft Certification Offices. Operators shall submit their requests through an appropriate FAA Airworthiness Inspector, who may add comments and then send it to the Manager, New York or Atlanta Aircraft Certification Offices.

Note 5: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Atlanta Aircraft Certification or New York Aircraft Certification Office, as applicable.

(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 aircraft to a location where the requirements of this AD can be accomplished.

(e) This amendment becomes effective on October 19, 1998.

Issued in Burlington, Massachusetts, on August 11, 1998.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98–22240 Filed 8–19–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–36–AD; Amendment 39–10716; AD 98–16–02]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model SA 3180, SA 318B, SA 318C, SE 3130, SE 313B, SA.315B, SA.316B, SA.316C, SA.319B, and SE.3160 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 98–16–02 which was sent previously to all known U.S. owners and operators of Eurocopter France Model SA 3180, SA 318B, SA 318C, SE 3130, SE 313B, SA.315B, SA.316B, SA.316C, SA.319B, and SE.3160 helicopters by individual letters. This AD requires an initial and recurring visual inspections of the upper and lower surfaces of the tail rotor blade (blade) skin for cracks. If a crack is found, replacing the blade with an airworthy blade is required. This amendment is prompted by a report of a crack on the blade skin near an attachment bolt on the blade cuff stem. This condition, if not corrected, could result in fatigue failure of a blade and subsequent loss of control of the helicopter.

DATES: Effective September 4, 1998, to all persons except those persons to whom it was made immediately effective by priority letter AD 98–16–02, issued on July 22, 1998, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before October 19, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–36–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Mr. Shep Blackman, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5296, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: On July 22, 1998, the FAA issued priority letter AD 98–16–02, applicable to Eurocopter France Model SA 3180, SA 318B, SA 318C, SE 3130, SE 313B, SA.315B, SA.316B, SA.316C, SA.319B, and SE.3160 helicopters, which requires, within 10 hours time-in-service (TIS), and thereafter, at intervals not to exceed 10 hours TIS, visually inspecting the blade skin near the attachment bolts on the blade cuff stem for cracks on the upper and lower surfaces using an 8-power or higher magnifying glass. If a crack is found, replacing the blade with an airworthy blade is necessary. That action was prompted by a report of a crack on the lower surface of the blade skin near an attachment bolt on the blade cuff stem. This condition, if not corrected, could result in fatigue failure of a blade and subsequent loss of control of the helicopter.

The FAA has reviewed Eurocopter France Service Telexes No. 05.36, No. 05.94, and No. 05.95, as transmitted by Information Telex 00068, dated July 10, 1998, which describes procedures for visually checking the blade skin for cracks using an 8-power magnifying glass.

These helicopter models are manufactured in France and are 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 these type designs that are certificated for operation in the United States.

Since the unsafe condition described is likely to exist or develop on other Eurocopter France Model SA 3180, SA 318B, SA 318C, SE 3130, SE 313B, SA.315B, SA.316B, SA.316C, SA.319B, and SE.3160 helicopters of the same type design, the FAA issued priority letter AD 98–16–02 to prevent fatigue failure of a blade and subsequent loss of control of the helicopter. The AD requires, within 10 hours time-in-service (TIS), and thereafter, at intervals not to exceed 10 hours TIS, visually inspecting the blade skin near the attachment bolts on the blade cuff stem for cracks on the upper and lower surfaces using an 8-power or higher magnifying glass. If a crack is found, replacing the blade with an airworthy blade is necessary.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on July 22, 1998 to all known U.S. owners and operators of Eurocopter France Model SA 3180, SA 318B, SA 318C, SE 3130, SE 313B, SA.315B, SA.316B, SA.316C, SA.319B, and SE.3160 helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

The FAA estimates that 106 helicopters of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per helicopter to inspect each blade and 3 work hours to replace it, if necessary, and that the average labor rate is $60 per work hour. Required parts will cost approximately $8780 per blade. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $956,120, assuming one blade replacement for each helicopter.

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 should 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 No. 98–SW–36–AD.'' The postcard will be date stamped and returned to the commenter.

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, 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:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

98–16–02 Eurocopter France: Amendment 39–10716. Docket No. 98–SW–36–AD.

Applicability: Model SA 3180, SA 318B, SA 318C, SE 3130, SE 313B, SA.315B, SA.316B, SA.316C, SA.319B, and SE.3160 helicopters, with tail rotor blades, part number (P/N) 3160S–34–10000-all dash numbers, or P/N 3160S–34–11000-all dash numbers, 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 (b) 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 within 10 hours time-in-service (TIS), and thereafter at intervals not to exceed 10 hours TIS, unless accomplished previously.

To prevent fatigue failure of a tail rotor blade (blade), and subsequent loss of control of the helicopter, accomplish the following:

(a) With the blade installed on the helicopter:

(1) Clean the blade root skin area using Teepol or an equivalent product.

(2) Using an 8-power or higher magnifying glass, visually inspect the blade skin near the attachment bolts on the blade cuff stem for cracks on the upper and lower surfaces.

(3) If a crack is found, replace the blade with an airworthy blade.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, 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 Standards Staff.

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

(c) 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.

(d) This amendment becomes effective on September 4, 1998, to all persons except those persons to whom it was made immediately effective by Priority Letter AD 98–16–02, issued July 22, 1998, which contained the requirements of this amendment.

Issued in Fort Worth, Texas, on August 12, 1998.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–22365 Filed 8–19–98; 8:45 am]

BILLING CODE 4910–13–U

FEDERAL TRADE COMMISSION

16 CFR Part 253

Guides for the Feather and Down Products Industry

AGENCY: Federal Trade Commission.

FINAL ACTION: Rescission of the Guides for the Feather and Down Products Industry; announcement of enforcement policy.

SUMMARY: On April 15, 1994, the Commission published a **Federal Register** notice initiating the regulatory review of the Federal Trade Commission's (''Commission'') Guides for the Feather and Down Products Industry (''Guides'') and seeking public comment. On October 28, 1996, the Commission published a second **Federal Register** notice seeking additional information. In the 1996 notice, the Commission indicated that it had made a preliminary determination to retain but modify the Guides and sought comment on several issues. The Commission has now completed its review, and this notice announces the Commission's decision to rescind the Guides. In addition, the notice provides a general enforcement policy statement with respect to misrepresentations concerning feather and down-filled products.

EFFECTIVE DATE: August 20, 1998.

ADDRESSES: Requests for copies of this notice should be sent to the Consumer Correspondence Center, Room 130, Federal Trade Commission, 6th St. and Pennsylvania Ave., N.W., Washington, DC 20580. The notice is available on the Internet at the Commission's website, http://www.ftc.gov.

FOR FURTHER INFORMATION CONTACT: Alice Au, Attorney, Federal Trade Commission, New York Regional Office, 150 William Street, Suite 1300, New York, NY 10038, (212) 264–1210 or Carol Jennings, Attorney, Federal Trade Commission, Division of Enforcement, 6th St. and Pennsylvania Ave., N.W., Washington, DC 20580, (202) 326–3010.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Guides for the Feather and Down Products Industry addressed claims for the advertising, labeling, and sale of products that are wholly or partially filled with feathers or down, and all bulk stocks of processed feathers or down intended for use or used in the manufacture of such products. The Guides specifically addressed, among other things, the use of trade names, symbols, and depictions; the tolerances for filling material; and the cleanliness of filling material.

As part of the Commission's ongoing review of all current Commission rules and guides, the Commission published a **Federal Register** notice on April 15, 1994, 59 FR 18006, seeking comments about the regulatory and economic costs and benefits of the Guides.[1] The Commission published a second notice on October 28, 1996, 61 FR 55589, setting forth a preliminary determination to retain the Guides and seeking comments on several issues. Of particular interest in this review proceeding was the issue of tolerances recognized by the Guides for filling materials in feather and down products. Section 253.6(f) of the Guides permitted the unqualified term ''down'' to be used to designate a product containing the following fill mixture:

80% Down Portion consisting of

1. 70% down and plumules (minimum)
2. 10% down fiber (maximum)

20% Remainder Portion consisting of (any or all of the following items)

1. Down fiber
2. Waterfowl feather fiber
3. Waterfowl feathers
4. 2% maximum of nonwaterfowl feathers and nonwaterfowl feather fibers
5. 2% maximum residue

This standard created, in effect, a 30% tolerance for the down and plumules content of down-filled products.

Section 253.6(c) of the Guides addressed percentage down claims. Section 253.6(c)(1) stated that a product may not be called ''100% down'' or ''pure'' or ''all down'' unless the product in fact contains only down without regard to any tolerance. Section 253.6(c)(2) stated that a product ''should not be represented to contain a certain percentage of feathers or down unless it in fact contains the stated percentage with due regard to the tolerances set forth in this section.'' The same section of the Guides stated in paragraph (f) that ''[t]he tolerances . . . are not to be construed to permit intentional adulteration.''

All of the comments to the second **Federal Register** notice supported retaining the Guides to maintain quality and an industry standard.[2] In general, the commenters recommended preserving the Guides ''as is'' with suggestions that the Commission make small changes to various allowances permitted by the Guides. None of the comments addressed the Commission's concerns regarding deception and competition.

After extensive review of the Guides and their effect on the feather and down industry, the Commission has decided that the Guides have not promoted compliance with Section 5 of the FTC Act[3] and in fact may have hindered compliance. For the reasons set forth below, the Commission has concluded that consumers would be better served by rescission of the Guides.

II. Reasons for Rescission of the Guides

The Commission has decided to rescind the Guides for several reasons. First, the Guides did not appear to be working as intended to promote truth in labeling and advertising. The Guides' tolerances were intended to accommodate the imprecise nature of processing and manufacturing and were ''not to be construed to permit intentional adulteration.'' Section 253.6(f). Instead, the 30% tolerance afforded by the Guides appears to have become an industry manufacturing standard, not simply a margin for error. The Commission understands that a filling material at the edge of the tolerance for the stated down content, i.e. containing 30% less down than its stated down content, is referred to in the industry as ''FTC down.'' The fact that the Guides have resulted in the situation where products contain 30% less down than stated suggests that the Guides did not promote truth in labeling or advertising and should be rescinded.

Second, it appears that the Guides were confusing to industry members attempting compliance. For example, FTC staff has received queries from industry members who know the exact composition of a product's filling contents, based on lab analysis, but nonetheless inquire how the product should be labeled under the FTC's tolerances. This situation suggests that rather than creating clarity, these Guides have caused confusion in this industry.

Third, the Guides set forth detailed standards that can be better established by private standards-setting organizations or others with expertise in technical measurement issues and industry practices. Market forces may also effectively set standards as long as the fill mixture is truthfully disclosed.

Fourth, the Guides' content disclosure principles may have had unintended anticompetitive effects, distorting consumer demand and related production decisions. Because manufacturers of 70% down products could advertise and label their products as ''down,'' manufacturers of competing products with significantly greater down and plumules content could not readily distinguish their products. For example, if a product were advertised and labeled ''85% down and plumules,'' it might appear inferior to a product labeled ''down.'' As a result, down product producers were unlikely to bear the increased cost to bring higher down content products to market, and consumers were denied access to some down products that they otherwise might choose.

Fifth, the Guides provided unwarranted special treatment not given to other industries. In particular, a 30% tolerance for percentage claims appears overly generous when compared to the 3% tolerance for blended fiber claims afforded by the Rules and Regulations under the Textile Fiber Products Identification Act.[4]

These Guides have not served the general purpose of Guides, which is to increase industry compliance with

[1] Comments received in response to the first **Federal Register** notice were discussed in the second **Federal Register** notice. All of the comments were from industry, and all supported retaining the Guides.

[2] The Commission's second request for public comment elicited nine comments from the industry and none from consumers or consumer groups: (1) J.C. Penney Company, Inc., (2) Blue Ridge Home Fashions, Inc., (3) The Canadian Down and Feather Products Association, (4) Pillowtex Corporation, (5) Pacific Coast Feather Company, (6) American Down Association, (7) International Down and Feather Testing Laboratory, (8) Eurasia Feather Inc./Down Inc., and (9) Hollander Home Fashions Corp. These comments are on the public record and available for viewing in Room 130 at the Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, from 8:30 am to 5 pm, Monday–Friday.

[3] Section 5 of the FTC Act, 15 U.S.C. 45(a)(1) states: ''Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful.''

[4] 16 CFR 303.43 and 303.27, promulgated under the Textile Fiber Products Identification Act, 15 U.S.C. 70–70k.

Section 5 of the FTC Act. Therefore, rescission is appropriate.

III. The Commission's Future Enforcement Policy

The rescission of the Guides does not leave the industry without guidance as to how to comply with the law. Moreover, it does not signal an FTC withdrawal from efforts to prevent deception in the labeling and advertising of these products. The rescission of the Guides does mean, however, that the FTC will no longer maintain detailed specifications for the feather and down industry.

In rescinding the Guides, the Commission directs the industry's attention to the principles of law articulated in the FTC's Deception Statement and pertinent Commission and court decisions on deception, both of which are generally applicable to all industries.[5] As articulated in the Deception Statement, the Commission ''will find deception if there is a representation, omission, or practice that is likely to mislead the consumer acting reasonably in the circumstances, to the consumer's detriment.''[6]

Applying these principles, and in the absence of further evidence of consumer interpretation of unqualified ''down'' claims, the Commission expects down content to reflect the use of appropriately calibrated, modern mass production techniques. The Commission understands that, at the present time, application of those production techniques should yield down content of more than 70% for products labeled ''down.'' With respect to percentage down claims, producers of down products generally have acknowledged that it is quite practicable, using present production methods, to produce down blend goods having a down content that is plus or minus 2–5% of a targeted number, rather than a 30% variation. Other aspects of down product composition addressed in the former Guides also should be governed by deception law, market forces, and the application of modern production techniques.

Rescission of the Guides should provide greater incentives for industry itself to create effective standards and develop methods of product differentiation. The Commission hopes that market forces will foster truthful labeling and advertising practices. Industry members are encouraged to be vigilant in monitoring both their own and their competitors' practices. If, in the future, deceptive practices prove to be a problem in this industry, further FTC enforcement actions may be warranted.

[5] *Cliffdale Associates, Inc., et al.,* 103 F.T.C. 110, 175 (including Deception Statement as Appendix) (1984).

[6] *Id.* at 176.

List of Subjects in 16 CFR Part 253

Advertising, Labeling, Filling Material, Trade Practices.

PART 253—[REMOVED]

The Commission, under authority of sections 5(a)(1) and 6(g) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1) and 46(g), amends Chapter I of Title 16 of the Code of Federal Regulations by removing part 253.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 98–22445 Filed 8–19–98; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

16 CFR Part 425

Trade Regulation Rule Regarding Use of Negative Option Plans by Sellers in Commerce

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') has completed its regulatory review of the Trade Regulation Rule regarding the Use of Negative Option Plans by Sellers in Commerce (''the Negative Option Rule'' or ''the Rule''). Pursuant to this review, the Commission concludes that the Negative Option Rule continues to be of value to consumers and firms, and is functioning well in the marketplace at minimal cost. This document summarizes and discusses the comments received in response to a request for public comment regarding the overall costs and benefits of the Rule, and announces the Commission's decision to retain the Rule in its present form. This document also announces several technical, non-substantive amendments to clarify the Rule and conform its language to amendments in the Federal Trade Commission Act (''FTC Act'').

EFFECTIVE DATE: August 20, 1998.

FOR FURTHER INFORMATION CONTACT: Edwin Rodriguez, Attorney, Federal Trade Commission, Washington, DC 20580, (202) 326–3147.

SUPPLEMENTARY INFORMATION:

Introduction

As part of a systematic review of its Rules and Guides, on March 31, 1997, the Commission solicited comments on whether there is a continuing need for the Negative Option Rule, 61 FR 15135. It also requested comments on the benefits and costs of the Rule to consumers and firms, and whether the Rule should be changed to increase its benefits or to reduce its costs or other burdens. The Commission sought comments about any abuses occurring in the promotion or operation of negative option plans that are not addressed by the Rule, and alternatives—such as consumers education, industry self-regulation, or rule amendment—for dealing with such abuses, including the benefits and burdens any change would have on industry and consumers. The Commission also sought comments on the effect on the Rule of changes in technology or economic conditions, such as the use of e-mail and the Internet. The Commission was also interested in learning about any overlap or conflict with other federal, state, or local laws or regulations.

The Commission received 19 comments in response to this request.[1]

[1] The comments have been filed on the Commission's public record as Document Nos. B21944500001, B21944500002, etc. The comments are cited in this notice by the name of the commenter, a shortened version of the comment number, and the relevant page(s) of the comment, e.g., DMA, #018, at 5. All written comments submitted are available for public inspection on normal business days between the hours of 8:30 a.m. to 5 p.m. at the Public Reference Room, Room 130, Federal Trade Commission, 6th St. and Pennsylvania Ave., NW, Washington, DC 20580. The commenters are: Jerome S. Lamet, Jerome S. Lamet & Associates (''Lamet''), #001; Stephen L. Bair, Book-of-the-Month Club, Inc. (''BOMC''), #002; A. Thomas Niebergall (''Niebergall''), #003; Joseph A. Greenberg, Professor of Education, George Washington University (''Greenberg''), #004; Owen R. Phillips, Professor of Economics, University of Wyoming (''Phillips''), #005; Charles Jacobina, Professor of Marketing, George Washington University (''Jacobina''), #006; Lydia Proctor, Ontario Ministry of Consumer and Commercial Relations (''Ontario''), #007; Robert L. Sherman, Direct Marketing Association (''DMA''), #008; William L. Oemichen, Administrator, Division of Trade and Consumer Protection, Wisconsin Department of Agriculture (''Wisconsin/Agriculture''), #009; A Courtney Yell, Director/Chief Sealer, County of Bucks, Pennsylvania, Department of Consumer Protection/Weights & Measures (''Bucks County''), #010; Robert J. Posch, Jr., Vice President, Legal Affairs, Doubleday Direct (''Doubleday''), #011; James E. Doyle, Attorney General, State of Wisconsin Department of Justice (''Wisconsin AG''), #012; Barry Jay Reiss, Senior Vice President, Business & Consumer Affairs, Columbia House (''Columbia House''), #013; Clifton B. Knight, Jr., Senior Vice President, Business Affairs, BMG Direct, Inc. (''BMG''), #014; Mark T. Spriggs, Assistant Professor of Marketing, University of Oregon, and John R. Nevin, Grainger Wisconsin Distinguished Professor, School of Business, University of Wisconsin-Madison (''Spriggs & Nevin''), #015; Anne Darr, DeHart and Darr Associates, Inc. (''DeHart and Darr''), #016; Bruce A. Craig (''Craig''), #017; Mark Bressler

Continued

These included comments from consumers, industry members, state and local government representatives, and academicians. Below, the Commission explains how the Rule regulates negative option plans, summarizes and discusses the comments received, discusses the Rule's application to negative option plans advertised on the Internet and by other electronic means, and adopts technical, non-substantive amendments to the Rule.

II. Requirements of the Negative Option Rule

A. Negative Option Plans Covered by the Rule

The Commission issued the Negative Option Rule in 1973 to protect consumers from potentially unfair or deceptive acts or practices in the promotion and operation of prenotification negative option plans for the sale of goods, such as the failure to disclose in promotional materials the terms and conditions of membership.[2] The Commission promulgated the Rule under section 5 of the FTC Act, 15 U.S.C. 45, which declares unfair or deceptive acts or practices in or affecting commerce to be unlawful. The Rule became effective on June 7, 1974.[3]

The Rule regulates only a subset of all negative option sales—those made under ''prenotification negative option plans'' for the sale of goods. Because the Rule's coverage is often misunderstood, and because the comments recommend extending the Rule to other negative option selling techniques, or to the negative option sale of services, the Commission believes some prefatory discussion of negative option sales and the Negative Option Rule would be helpful.[4]

Broadly speaking, a ''negative option'' is any type of sales term or condition that imposes on consumers the obligation of rejecting goods or services that sellers offer for sale. A negative option allows a seller to interpret the failure of a consumer to reject goods or services as the acceptance of a sales offer, when, under traditional contract law, an affirmative response accepting the offer would be necessary. A consumer must agree to allow the seller to interpret his failure to reject goods or services as the acceptance of a sales offer. If the consumer has not agreed to this condition, the shipment of goods or the performance of services following the consumer's failure to reject the goods or services may be unlawful under unordered merchandise statutes and other laws, including Section 5 of the FTC Act.[5]

Pursuant to their agreement with consumers, sellers may make discrete, isolated negative option sales offers or periodic negative option offers as a part of a program or plan. Sellers also may make negative option offers incidentally, as a secondary part of a primary contract for some other good or service. In this context, sellers may make negative option offers at irregular intervals. Alternatively, sellers may make negative option offers as the primary object of the agreement with the consumer, for example, when a consumer subscribes to a negative option plan. By subscribing to a negative option plan, a consumer assumes the responsibility of affirmatively ''negating'' or rejecting all subsequent sales offers for goods or services made under the plan. Negative option plans usually involve the delivery of goods or services at regular intervals.

There are different types of negative option plans; for example, ''prenotification'' negative option plans and ''continuity'' negative option plans (which are more commonly referred to simply as continuity plans). Under prenotification plans, sellers and consumers agree that, for each sales offer, sellers will send consumers an announcement describing the goods or services offered, along with a prenotification form that subscribers can return to the sellers to reject the goods or services. Under continuity plans (also known by terms such as subscription shipments, library standing order arrangements, or annual series arrangements), subscribers agree, when they join or subscribe, to receive periodic shipments of goods or the performance of services without receiving prior announcements from sellers describing the goods or services, and without receiving prenotification forms.[6] Depending on the terms of the specific continuity or service sales plan, subscribers may have the right to return goods or reject services they decide they do not want.[7]

In the case of both prenotification negative option plans and continuity plans, sellers often market their plans by offering introductory goods or services on a trial basis. A consumer who fails to return the trail merchandise or who otherwise fails to cancel the subscription by the time the trial period expires often is automatically enrolled in the seller's plan.

(''Bressler''), #018; D.B. Mansion, (''Mansion''), #019. Three commenters submitted journal articles as comments. They are: Phillips, #005, Negative Option Contracts and Consumer Switching Costs, Southern Economic Journal, Vol. 60, No. 2 (October 1993); Spriggs & Nevin, #015, Negative Option Selling Plans: Current Forms Versus Existing Regulations, Journal of Public Policy & Marketing, Vol. 15, No. 2 (Fall 1996); and Craig, #017, Negative-Option Billing: Understanding the Stealth Scams of the '90s, Loyola Consumer Law Reporter, Vol. 7, No. 1 (Autumn 1994).

[2] Regulations Pertaining to the Use of Negative Option Plans (''Statement of Basis and Purpose'' or ''SBP''), 38 FR 4896.

[3] In 1986, the Commission conducted a review of the Negative Option Rule pursuant to section 610 of the Regulatory Flexibility Act, 5 U.S.C. 610, to determine the impact of the Rule on small entities. In a notice published on November 21, 1986, 51 FR 42087, the Commission announced the results of that review, concluding that ''there is a continued need for the Rule; there is no reason to believe that the Rule has had a significant economic impact on as substantial number of small entities; and the rule should not be changed.''

[4] Lamet, #001, stated at 1, that lawbook publishers have sent him publication updates without first sending him prenotification forms. He described this as a negative option abuse. Bucks County, #010, stated at 1, that sellers of yearly calendars who do not provide prenotification before shipping the calendars are violating the Negative Option Rule. If the legal publications and the calendars are sold by continuity plans, however, the Negative Option Rule would not regulate the sales and would consequently not require prenotification. As discussed below, the FTC Act and other laws protect consumers from potentially deceptive practices regarding continuity sales.

[5] 15 U.S.C. 45, See Part IV.B., *infra*, for a discussion of the prohibition against shipping unordered merchandise.

[6] A typical characteristic of continuity plans is that the goods sold often relate to a single topic (e.g., a book series about the Civil War) or are for items that are consumed or used up and need to be replaced periodically (e.g., hosiery). Because of these characteristics, costly returns are less likely. In contrast, prenotification plans often span a wide array of topics (one month a biography may be featured, another month a mystery). Because of the high cost of mailing goods to subscribers and allowing them to reject the goods they did not want, some sellers moved to sending ''announcements'' describing the goods they would be sending, along with forms that subscribers could return to reject the items—hence, the term ''prenotification.'' The Commission considered and rejected assertions that it should ban prenotification negative option plans as being inherently unfair. SBP, 38 FR at 4902–04.

[7] The Commission notes that the provision of services differs substantially in character from the selling of goods. In the sale of goods, consumers are likely to consider purchases, even if made as part of a continuity plan, as discrete occurrences. In some instances, services may be performed periodically or seasonally, for example, landscaping or pest control. But in many cases, consumers may likely expect that a given service—household security or cable television, for example—will continue uninterrupted until it is canceled. Whether services continue uninterrupted or are performed periodically, they are commonly regulated by service contracts or plans, which in the context of this Notice could be characterized as continuity plans for services.

Negative option techniques have been used in selling services. For example, a cable television provider may separate a channel from a group of channels previously offered as a ''bundle'' and offer the channel separately to cable subscribers using a negative option. Or a service provider—such as an Internet service provider—may make a free trial offer for a service that becomes an extended service contract unless the consumer exercises a negative option and expressly rejects the service contract when the free trial period expires. Service plans may also employ negative option contract renewal provisions.

As previously stated, the Negative Option Rule applies only to prenotification plans for the sale of goods. In promulgating the Rule, the Commission determined in its Statement of Basis and Purpose that it was in the public interest to prescribe regulations for the operation of prenotification negative option plans because various acts and practices associated with these plans were found to affect consumers adversely.[8] The Commission also stated that the Rule does not apply to negative option marketing arrangements under which marketers optionally tender merchandise to subscribers without previously sending a prenotification announcement. The Commission determined that negative option selling plans, such as continuity plans, subscription shipments, library standing order arrangements, or annual and series arrangements, in which subscribers agree to receive goods without prenotification of each shipment, warranted separate treatment by the Commission if and when consumer complaints justified Commission attention.[9]

B. Disclosures in Certain Kinds of Advertising

To ensure that consumers are not misled about the terms of these plans before they subscribe, the Rule requires sellers to disclose the material terms of the plans in ads that contain a means consumers can use to subscribe. The Rule requires that sellers disclose clearly and conspicuously the material terms of membership in any advertisement or other promotional material that provides a method the consumer may use to enroll in the plan, including the following disclosures: (i) The aspect of the plan (the negative option) that requires subscribers to notify the seller, in the manner provided for by the seller, if they do not wish to purchase a selection, and that failure to notify the seller signifies assent; (ii) any obligation assumed by subscribers to purchase a minimum quantity of merchandise; (iii) the right of contract-complete subscribers [10] to cancel their membership at any time; (iv) whether billing charges will include an amount for postage and handling; (v) a disclosure indicating that subscribers will be provided with at least ten days in which to mail any form to the seller to reject merchandise; (vi) that the seller will credit the return of any selections sent to a subscriber, and guarantee to the Postal Service or the subscriber postage to return such selections to the seller, when the subscriber does not have at least ten days in which to return the prenotification form to the seller; and (vii) the frequency with which the seller will send announcements and forms to the subscriber and the maximum number of announcements and forms the seller will send during a 12-month period.

C. Operation of Prenotification Negative Option Plans

The Rule also requires sellers to follow certain procedures in operating prenotification negative option plans for the sale of goods. Many prenotification negative option plans provide introductory offers to encourage consumers to become members. The Rule requires that a seller must ship any introductory and bonus merchandise due a subscriber within four weeks after receiving an order, unless it is unable to do so because of unanticipated circumstances beyond its control. In such an event, the seller may make an equivalent alternative offer, which the subscriber has the right to decline. Subscribers may then cancel their membership provided they return to the seller any introductory merchandise received.

Once a consumer becomes a subscriber, the Rule requires the seller to mail an announcement to the subscriber in advance identifying any merchandise the seller plans to send. The Rule also requires the seller to mail the subscriber a form, with the announcement, instructing the subscriber how to use the form to reject the merchandise. The form must tell the subscriber that the merchandise will be sent unless the subscriber tells the seller not to send it and must identify the date by which the subscriber must return or mail the form back to the seller. The Rule sets out timing provisions for the mailing of the announcements and forms. At a minimum, the seller must give a subscriber at least 10 days in which to return or mail a form to the seller. When the subscriber orders merchandise, either by failing to return the prenotification form or by affirmatively ordering a selection, the seller may not substitute merchandise for the specific merchandise ordered, unless the subscriber has expressly consented to the substitution.

Under certain circumstances (e.g., when the subscriber does not have at least 10 days to mail the prenotification form), a seller must credit the return of any selection sent to a subscriber for the full invoiced amount and pay for return postage. When the seller is aware that these circumstances exist, it must notify subscribers that they may return the merchandise with return postage guaranteed and receive a credit to their accounts. Finally, the seller must terminate promptly the membership of subscribers who request cancellation of membership in writing after fulfilling any minimum purchase obligation under the negative option agreement.

III. Summary of the Comments

A. Costs and Benefits of the Rule

Several comments state that the Rule establishes a balance between the needs of consumers and industry, benefiting both.[11] Ten of the 19 comments submitted support the Rule as is, without change.[12] Several comments state that the Rule has worked effectively in regulating prenotification negative option plans.[13] Eleven of the comments state that there is a continuing need for the Rule.[14] None of

[8] The Commission found that: (1) Marketers of prenotification negative option plans had failed to disclose adequately the provisions of such plans to the detriment of their subscribers; (2) subscribers had encountered difficulties in substantiating that they were not given adequate time to respond to the negative option notice supplied by the merchandiser; (3) marketers of prenotification negative option plans had delivered unordered or substituted merchandise in the place of merchandise specifically ordered by subscribers, without their subscribers' prior consent; (4) marketers of prenotification negative option plans had failed to honor proper cancellation notices from contract-complete subscribers and continued to send them merchandise; (5) subscribers had been dunned or billed for unordered merchandise, and sellers had failed to provide meaningful service to a large number of their subscribers in connection with complaints involving operations, particularly in regard to billing problems; and (6) marketers of prenotification negative option plans had operated their entire systems in such a manner as to place the burden for correcting ''errors'' on their subscribers. SBP, 38 FR at 4899–4902.

[9] Id. at 4908.

[10] ''Contract-complete subscriber'' refers to a subscriber who has purchased the minimum quantity of merchandise required by the terms of membership in a negative option plan.

[11] BMOC, #002, at 1; Jacobina, #006, at 1; DMA, #008, at 3; Columbia House, #013, at 2; BMG, #014, at 1, 2; DeHart and Darr, #016, at 1.

[12] Lamet, #001, at 1; BOMC, #002, at 1, 2; Niebergall, #003, at 1; Greenberg, #004, at 1; DMA, #008, at 3, 6; Doubleday, #011, at 1; Columbia House, #013, at 2; BMG, #014, at 1, 2; DeHart & Darr, #016, at 1, 3; Mansion, #019, at 1. Niebergall, #003, at 1, stated that full, first-class postage should not be required for the return of prenotification forms by consumers when the post-card rate would be sufficient. The Rule does not contain a first-class postage requirement. Consumers may return prenotification forms using any postage required by the U.S. Postal Service.

[13] BOMC, #002, at 1, 2; Greenberg, #004, at 1–2; Doubleday, #011, at 1; Wisconsin AG, #012, at 2; BMG, #014, at 2; DeHart & Darr, #016, at 1.

[14] Lamet, #001, at 1; BMOC, #002, at 1; Niebergall, #003, at 1; Greenberg, #004, at 1; DMA, #008, at 2; Doubleday, #011, at 1, 2; Wisconsin AG, #012, at 2, 3, 4; Columbia House, #013, at 1–2; BMG, #014, at 1, 2; Spriggs, #015, at cover letter p.1; DeHart and Darr, #016, at 1.

the comments suggest rescinding the Rule.

Several comments address the benefits to consumers from prenotification negative option plans as a selling technique, as opposed to benefits arising from the Rule itself. Five comments state that negative option plans provide many benefits to consumers, including the opportunity to build a long-term relationship with sellers who provide a large array of product choices, greater accessibility to products and shopping convenience, and expert advice and recommendations about products.[15] One comment states that negative option contracts impose some costs on consumers, but nevertheless possess economic efficiency advantages over standard contractual relationships.[16]

Three comments state that the Rule does not impose any costs on purchasers.[17] Others state that the Rule protects consumers adequately by requiring their consent,[18] requiring disclosure of the terms and conditions of membership,[19] or providing guidelines for the operation of negative option plans.[20] One comment, however, recommends that the Commission establish a design standard, setting forth specific type-size requirements, to make the required negative option disclosures clearer and more conspicuous to consumers.[21]

Industry comments overwhelmingly support the Rule. They state that the Rule functions in the best interests of sellers by providing well-established, concrete guidance to industry that helps establish good business practices.[22] The Rule thereby contributes to consumer confidence in negative option marketing and allows sellers to establish continuing, repeat customers.[23] A few industry members state that the Rule enables them to establish national uniformity in marketing[24] and helps them avoid customer service problems because the disclosure requirements of the Rule educate consumers about the way prenotification negative option plans work.[25] Three comments state that the Rule imposes considerable costs on industry, for example, because of vagaries of delivery dates and deadlines.[26] These comments, however, do not recommend any changes to reduce costs; but instead, conclude that the Rule benefits industry and recommend that the Commission retain the Rule without any substantive change.[27] According to one comment, significantly weakening the Rule could lead consumers to lose confidence in negative option buying, which should not be desired by the FTC, consumers, or the businesses which service them.[28]

B. Recommendations To Expand the Rule To Cover Marketing Techniques Other Than Prenotification Negative Option Plans and To Cover Services

One comment recommends extending the Rule to cover continuity plans for goods, and requiring prenotification for each shipment made under a continuity plan.[29] Another comment states that continuity plans for goods should not be regulated in the same way that the Rule regulates prenotification plans, but that sellers using continuity plans should be required to disclose the material terms of membership before consumers subscribe.[30] One comment recommends amending the Rule to declare that billing for unordered merchandise is an unfair practice.[31]

Several comments state that the negative option sales techniques has been used in the sale of various services by some firms.[32] A few comments recommend expanding the Negative Option Rule to require that service providers notify consumers each time they intend to provide services, and notify consumers before they enroll consumers in service plans after a free trail period expires, and before they renew service contracts.[33]

None of the comments that support expanding the Rule addresses the costs that such changes to the Rule might impose on firms. Further, none submitted specific evidence (beyond a few examples) of the extent of any current abuses in the use of negative option plans not covered by the Rule or in the sale of services.

Some of the comments expressly oppose expanding the Rule, stating that negative option marketing techniques that are different from prenotification negative option plans should be addressed separately, such as through a cooperative education project with industry that could help educate the public about such techniques.[34] One comment notes that the Postal Reorganization Act (also referred to as the ''unordered merchandise statue''), 39 U.S.C. 3009, has already addressed some problems with negative option selling of products.[35]

C. Commission's Determinations

Based on the comments received and on other information, the Commission concludes that the Rule adequately balances the interests of both consumers and firms that are subject to it. It appears that the Rule is working effectively to protect consumers, without imposing significant costs on industry members, small or large. Based on the comments submitted, and other research and investigation performed by the Commission's staff regarding negative option marketing, the Commission has determined to retain the Rule in its present form.

First, the Commission has determined not to propose amending the Rule to specify a design standard for the required disclosures, as suggested by one commenter. The Commission believes that the performance standard in the Rule, which mandates ''clear and conspicuous'' disclosures, has worked

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[15] Jacobina, #006, at 1; DMA, #008 at 2; Doubleday, #011, at 1; BMG, #014, at 2; DeHart and Darr, #016, at 2.

[16] Phillips, #005, at 305, 309 (negative option plans impose two types of transactional costs on consumers—the cost of rejecting goods offered by a seller, and the cost of canceling membership in a negative option plan to end the product flow; despite these costs, ''negative option contracts, compared to positive option, are a more efficient means by which to accept or reject pieces of a product flow'' and are consequently weakly economically superior to positive option agreements).

[17] BOMC, #002, at 1; DMA, #008 at 2; BMG, #014, at 2.

[18] DMA, #008, at 2, 6; Wisconsin AG, #012, at 2.

[19] Greenberg, #004, at 1; DMA, #008, at 2; BMG, #014, at 1, 2; DeHart and Darr, #016, at 1.

[20] Greenberg, #004, at 1; DMA, #008, at 2, 6; Wisconsin AG, #012, at 2; Columbia House, #013, at 1; BMG, #014, at 1, 2; DeHart and Darr, #016, at 1.

[21] Bucks County, #010, at 1.

[22] BMOC, #002, at 2; DMA, #008, at 2, 5; Doubleday, #011, at 1; Columbia House, #013, at 1; BMG, #014, at 1; DeHart and Darr, #016, at 2.

[23] Jacobina, #006, at 1; DMA, #008, at 3; Doubleday, #011, at 1–2; Columbia House, #013, at 1; BMG, #014, at 1.

[24] Doubleday, #011, at 1.

[25] BMG, #014, at 1.

[26] DMA, #008, at 3; Columbia House, #013, at 1; BMG, #014, at 2.

[27] DMA, #008, at 3 (because the lifetime value of a repeat customer is so important to sellers, these costs will make this method of doing business worthwhile); Columbia House, #013, at 2 (Rule has achieved an acceptable and commendable balance between the needs and concerns of industry and the need to protect the public from unscrupulous and fraudulent practices); BMG, #014, at 2 (while the costs of compliance with the Rule are substantial in staff time, energy and dollars, the investment is worthwhile).

[28] Doubleday, #011, at 2.

[29] Wisconsin AG, #012, at 5–6.

[30] Wisconsin/Agriculture, #009, at 2.

[31] Wisconsin AG, #012, at 5.

[32] Phillips, #005, at 305; Ontario, #007, at 1; Wisconsin/Agriculture, #009, at 2; Bucks County, #010, at 1; Spriggs & Nevin, #015, at 227, Bressler, #018, at 1–2; Wisconsin AG, #012, at 1; Craig, #017, at 6. These comments state that negative option marketing has been used to sell cable television, Internet services, inside telephone wire maintenance, telephone call waiting, lawn care, pest control, home security, travel discount clubs, credit card protection programs, and other services.

[33] Wisconsin/Agriculture, #009, at 2; Bucks County, #010, at 1; Bressler, #018, at 1–2.

[34] DMA, #008, at 5; BMG, #014, at 2; DeHart and Darr, #016, at 2.

[35] DeHart and Darr, #016, at 2.

well. Although the Commission has used design standards in various contexts, there is no evidence that such a standard is necessary for promotional materials for prenotification negative option plans. The clear and conspicuous standard allows sellers greater flexibility when making the required disclosures, which is important in light of the varied promotional materials used by sellers who operate prenotification negative option plans.

Second, the Commission has determined not to propose expanding the Rule to apply to additional types of negative option marketing techniques, such as continuity plans, or to the sale of services. There is insufficient evidence that unfair to deceptive acts or practices are prevalent in the use of additional types of negative option marketing techniques or in the sale of services, and application of the Rule to these areas may not be justified. Requiring sellers to provide consumers with prenotification before each shipment of merchandise under continuity plans, or each performance of a service, or the continuation of a service, may be unwarranted or unnecessary. For example, in some cases continuity or service plans may distribute goods or perform services for which consumers do not reasonably expect prenotification before each instance of delivery or performance—e.g., the monthly shipment of volumes of an encyclopedia or a book series, or providing home security services.[36] In the case of services, consumers may normally expect that many services will continue uninterrupted until canceled. Requiring prenotification for each billing cycle of such service plans is unreasonable. Even when services are performed periodically or seasonally, prenotification before each performance of a service may not be necessary if consumers have been informed in advance about the material terms and conditions of the service contract.

If sellers adequately disclose the terms and conditions of continuity and service plans to consumers, and if consumers agree to these terms and conditions—including the receipt of merchandise or the performance of services without prenotification—it is unlikely that any consumer injury will result. The Commission has determined that, if there is inadequate disclosure and injury occurs, existing laws and regulations—such as the FTC Act, the unordered merchandise statute, and state consumer protection laws and regulations—provide adequate protections against unfair or deceptive negative option marketing practices that fall outside of the purview of the Negative Option Rule. As discussed in Part IV below, both the Commission and state Attorneys General have brought enforcement actions against marketers that have allegedly employed unfair or deceptive negative option marketing techniques, such as the failure to disclose clearly and conspicuously material facts about membership in continuity plans and other types of sales plans or clubs. The Commission will continue to take action on a case-by-case basis in any problem areas.

IV. Existing Alternatives to Expanding the Rule

A. The Federal Trade Commission Act

Section 5 of the FTC Act empowers the Commission to prohibit unfair or deceptive acts or practices in or affecting commerce. The Commission has promulgated trade regulation rules, such as the Negative Option rule, when it has found that unfair or deceptive acts or practices in specific industries were prevalent. For example, the systematic failure on the part of sellers to make clear and conspicuous necessary pre-purchase disclosures to consumers justified promulgation of the Negative Option Rule. But the Commission does not need to adopt a trade regulation rule to prosecute unfair or deceptive acts or practices. Rather, the Commission can prosecute such practices, for example, the failure clearly and conspicuously to disclose material facts about continuity plans, as unfair or deceptive acts or practices that violate section 5 of the FTC Act.[37]

Under the FTC Act, the Commission may seek administrative or federal district court orders against companies or individuals who engage in unfair or deceptive practices, prohibiting future violations, and providing other relief such as consumer redress, disgorgement of ill-gotten gains, consumer notification, and civil penalties, in some cases.[38] The Commission has pursued cases challenging alleged unfair or deceptive practices in the operation of continuity plans for both goods and services. For example, the Commission has challenged continuity plans under which merchandise was shipped without consumers' prior consent to receive the merchandise.[39] It has also required that promotional materials for continuity plans disclose clearly and conspicuously material facts about the plans—including the risks and obligations that subscribers assume by subscribing to them.[40] For example, the Commission has required sellers who use continuity plans to disclose the fact that consumers who become subscribers will receive shipments of goods or will be billed for services without further action by the consumer.[41] These cases illustrate the Commission's ability to prevent consumer injury associated with unfair or deceptive negative option practices without expanding the Negative Option Rule.

B. Unordered Merchandise

The Commission has also determined that there is no need to amend the Rule to prohibit billing for unordered merchandise, as recommended by one

[36] E.g., Wisconsin/Agriculture, #009, at 2 (no compelling need for regulation of contracts pursuant to which consumers make an up-front decision to purchase, such as newspaper and magazine subscriptions).

[37] In determining whether a practice is deceptive, the Commission must determine whether there is a misrepresentation, omission, or other practice, that misleads consumers acting reasonably in the circumstances and causes consumer injury. See Federal Trade Commission Policy Statement on Deception, appended to Cliffdale Assocs., Inc., 103 F.T.C. 110, 174–184 (1984); and Federal Trade Commission Policy Statement on Unfairness, appended to International Harvester Co., 104 F.T.C. 949, 1070–76 (1984).

[38] The Commission can seek civil penalties from companies that violate administrative orders issued against them by the Commission, and from companies not subject to previous administrative orders if they have actual knowledge that the Commission has determined in prior cases that certain acts or practices are unfair or deceptive and they engage in those acts or practices. 15 U.S.C. 45(l) and 45(m)(1)(B).

[39] See Synchronal Corp. 116 F.T.C. 1189, 1222 (1993) (consent order prohibited respondents from selling any product through a continuity program without first obtaining consumers' expressed consent).

[40] See FTC v. Hosiery Corp. of America, 3 Trade Reg. Rep. (CCH) ¶ 22,187 (E.D. Pa. 1984) (in connection with continuity plan for hosiery, federal district court consent decree required company to pay a $200,000 civil penalty and to make clear and conspicuous disclosure of conditions and obligations attendant upon acceptance of free introductory offer); Grolier, Inc., 91 F.T.C. 315, 454–55, 483 n.37, 497 (1978) (Commission found that promotional materials that did not tell consumers that they would receive a bulk shipment of books, rather than single volumes, failed to disclose a material fact about respondents' continuity plans; Commission ordered respondents to disclose conditions and terms of continuity plans, the method of sales or distribution and the subscriber risks and obligations); Crowell Collier & Macmillan, Inc., 82 F.T.C. 1292, 1305 (1973) (order required respondents to disclose clearly and conspicuously the conditions and terms of any program providing for the delivery of books or other products or services serially, at intervals, on an approval basis.)

[41] See Synchronal, 116 F.T.C. at 1222 (Commission ordered required the disclosure of all material terms and conditions of the continuity program, including the fact that periodic shipments of the product would be made without further action by the consumer, a description of the product included in each shipment, the approximate interval between each shipment, the billing procedure to be employed, the minimum number of purchases required under the program, if any, and a description of the terms and conditions under which and the procedures by which a subscriber may cancel further shipments).

commenter.[42] Section 3009(a) of the Postal Reorganization Act of 1970, 39 U.S.C. 3009, declares that mailing, and billing for, unordered merchandise constitutes a violation of section 5 of the FTC Act.[43] Under this standard, sellers, other than charitable organizations soliciting contributions, may not ship unordered merchandise to consumers unless the recipient has expressly agreed to receive it or unless it is clearly identified as a gift, free sample, or the like. In addition, sellers may not try to obtain payment for or the return of the unordered merchandise. Consumers who receive unordered merchandise are legally entitled to treat the merchandise as a gift.

Under the Negative Option Rule, shipments sent to subscribers of prenotification negative option plans are not considered unordered merchandise because subscribers have agreed to receive shipments of merchandise unless they reject them by returning prenotification forms.[44] Shipping goods to consumers who have not expressly agreed to take on the obligation of rejecting goods by means of a prenotification form, however, violates the prohibition against sending unordered merchandise.[45] Similarly, shipments sent to subscribers of continuity plans are not considered unordered merchandise because subscribers to these plans agree to receive the shipments. Sending goods other than those a continuity plan subscriber has agreed to receive, however, is prohibited.[46] Cases brought by the Commission indicate that sellers who use prenotification negative option plans or continuity plans to sell goods may not unilaterally impose a negative option, requiring consumers to reject goods offered for sale; consumers must agree to such a term, so that the shipping of goods without this consent constitutes the shipping of unordered merchandise. The cases show that the unordered merchandise statute and section 5 of the FTC Act provide adequate authority for the Commission to protect consumers from unordered merchandise.

C. Negative Option Marketing of Services and Unordered Services

A few of the comments stated that the Negative Option Rule should be amended to apply to services.[47] As with product sales techniques not covered by the Rule, the Commission can bring enforcement actions against those who use unfair or deceptive acts or practices to promote, sell or bill for services. For example, the Commission has brought enforcement actions against companies that bill consumers for unordered services[48] and companies that use negative options to enroll consumers automatically in service plans upon the expiration of free trial offers, without disclosing this material condition clearly and conspicuously to consumers.[49] The Commission will continue to monitor the marketplace to identify problem areas and bring enforcement actions when appropriate.

Regarding cable television channel subscriptions, which some of the comments mentioned as an area in which negative option selling has been used,[50] some states have brought legal action to challenge potentially deceptive negative option practices. In this area, the Cable Television Consumer Protection and Competition Act of 1992 (''Cable Act of 1992'')[51] provides protections by prohibiting negative option billing for ''any service or equipment that the subscriber has not affirmatively requested by name,'' and by directing the Federal Communications Commission (''FCC'') to issue implementing regulations. No evidence has been submitted to the FTC to indicate that the Cable Act of 1992 and the FCC's regulations are not sufficient to protect consumers from unfair or deceptive acts or practices in the use of negative option marketing techniques in connection with the sale of cable television services.[52]

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[42] Wisconsin AG, #012, at 5.

[43] See 35 FR 14328 (1970). In a notice published on January 31, 1978, 43 FR 4113, the Commission stated that the standard under section 5 of the FTC Act was not limited to unordered merchandise sent by U.S. mail. The Commission explained that it might, for example, prosecute as a violation of section 5 a nonmail shipment of merchandise that fails to meet the standard of 39 U.S.C. 3009.

[44] The Negative Option Rule provides, however, that all shipments the seller sends to a subscriber—except for the first—after the seller receives written notice that a subscriber who has met his minimum purchase obligation wishes to cancel his membership, is considered unordered merchandise.

[45] E.g., Hachette Book Group USA, Inc, No. 39CV00116 (D. Conn. 1994) (settlement in which FTC charged that defendants failed to notify consumers that they would receive yearbooks or supplements unless they returned a mail cancellation card, failed to obtain consumers' agreement to return cancellation cards if they did not want the merchandise, and mailed merchandise and bills to consumers who had not placed orders); Standard Reference Library, Inc., 77 F.T.C. 969, 976 (1970) (consent order prohibited respondents from representing that consumers' failure to return rejection cards or take any affirmative action to prevent the shipment of merchandise constituted a request to receive merchandise where consumers had not agreed to take on that obligation).

Spriggs & Nevin, #015, at 228, expressed concern that sellers that enter into contracts with consumers may include provisions in their contracts allowing them to make negative option offers to consumers as a part of the contract even though the primary subject matter of the contract is not related to the negative option offers. In some cases, consumers may agree to receive the secondary negative option offers because they have no choice but to do so if they wish to receive the goods or services that are part of the primary agreement. The Commission believes that such practices must be evaluated on a case-by-case basis to determine whether they are unfair or deceptive.

[46] E.g., Field Publications Ltd. Partnership, No. H–90–932 PCD (D. Conn. 1990) (settlement in which FTC charged that Field shipped unordered books to subscribers who had agreed to receive another series of books as part of a continuity plan; settlement required Field to pay a $175,000 civil penalty).

[47] Wisconsin/Agriculture, #009, at 2; County of Buck, #010, at 1; Wisconsin AD, #012, at 5. Ontario, #007, stated at 1–2, that Ontario has considered amending its Consumer Protection Act to provide safeguards against the deceptive negative option marketing of services. See also Dennis D. Lamont, Negative Option Offers in Consumer Service Contracts: A Principled Reconciliation of Commerce & Consumer Protection, UCLA Law Review, Vol. 42, No. 5 (June 1995).

[48] Southwest Marketing Concepts, Inc., No. H–97–1070 (S.D. Tex. May 29, 1998) (consent decree, settling claim that company billed for unordered advertising, prohibited defendants from making false or misleading representations in connection with the sale, distribution, marketing or sponsorship of any advertisement); Image Sales & Consultants, Inc., No. 1:97CV0131 (N.D. Ind. filed Jun. 9, 1998) (same); The Century Corp., No. 1:97CV0130 (N.D. Ind. Apr. 8, 1998) (same); Dean Thomas Corp., No. 1:97CV0129 (N.D. Ind. Jan. 19, 1998) (same); AKOA, Inc., No. CV 97–7084 (LGB) (C.D. Cal. Mar. 17, 1998) (consent decree prohibited company from billing for unordered computer repair service contracts); Travel World International, Inc., No. 88–113–CIV–FTM–15C (M.D. Fla. Nov. 2, 1989) (consent decree prohibited defendants from using negative option billing for renewals or initial purchases of any travel club membership, vacation certificate, travel service, contract for vacation services, or any other product or service); Trade Union Courier, 51 F.T.C. 1275, 1299–1300 (1955) (litigated order; newspaper billed for ads without prior authorization); A&R Agency, 86 F.T.C. 103 (1975) (consent order; same).

[49] America Online, Inc., C–3787; Prodigy Servs. Corp., C–3788; CompuServe, Inc., C–3789 (March 16, 1998) (consent orders required online service providers, when offering a ''free trial'' with automatic membership enrollment or renewal upon the expiration of the free trial period, to disclose clearly and prominently any obligation to cancel after the free trial period to avoid charges, and to provide at least one reasonable means of canceling, to prevent enrollment or renewal).

[50] Phillips, #005, at 304; Ontario, #007, at 1; Wisconsin/Agriculture, #009, at 2; Wisconsin AG, #010, at 1–2; Spriggs & Nevin, #015, at 227; Craig, #017, at 6–8.

[51] Pub. L. No. 102–385, 106 Stat. 1460 (codified in scattered sections of 47 U.S.C.). See 47 U.S.C. 543(f) for prohibition against negative option billing for cable television.

[52] Time Warner Cable v. Doyle, 66 F.3d 867 (7th Cir. 1995) (FCC regulations pursuant to the Cable Act of 1992 permit a limited range of negative option billing and preempt state consumer protection statutes prohibiting negative option billing to extent they interfere with the execution of the FCC's rate rules); Time Warner Entertainment Co. v. Federal Communications Comm'n, 56 F.3d 151, 192–96 (D.C. Cir. 1995) (Cable Act of 1992 does not explicitly prohibit states from enforcing negative option billing regulations; issue whether Act preempts state negative option consumer protection laws insofar as they affect rate regulation is a factual question peculiar to the state law at issue).

D. State Laws

The states also enforce consumer protection laws that protect consumers against unfair or deceptive negative option marketing techniques or other marketing techniques that may not be covered by the Commission's Negative Option Rule.[53] Like the FTC Act, many of these state statutes include general, and far-ranging, prohibitions against unfair or deceptive acts or practices.[54] As evidenced by cable television and other cases, states are actively enforcing these state statutes.[55] The dual system of state and federal consumer protection laws should help limit the proliferation of deceptive negative option marketing techniques.

E. Industry Self-Regulation

Finally, industry self-regulation may provide an additional mechanism to police deceptive negative option marketing techniques that are not covered by the Commission's Rule. It is in the interest of the direct marketing industry to have products and services meet the consumer's expectations so that a company can establish a long-standing relationship with the consumer. The Direct Marketing Association, recognizing that consumers misled by direct marketing promotions may be reluctant to respond to such promotions in the future, has established a process for handling complaints about ethical business practices. Examples of matters handled by DMA's Committee on Ethical Business Practices include an offer made for a continuity program in which material details of the offer were not as conspicuous as other parts of the offer.[56]

V. The Negative Option Rule and New Technologies

Because many companies that operate negative option plans are now posting promotional materials on the Internet to solicit membership, the Commission solicited comment on the effect of changes in technology on the Rule, including the use of e-mail and the Internet. The Commission received five comments on this issue.[57] The comments stated that subscribers to prenotification negative option plans can now order or reject merchandise by telephone, e-mail, and the Internet, rather than by returning prenotification forms by mail.[58] The comments also stated that the Rule is ''media neutral'' or easily adaptable to these technologies.[59]

The Negative Option Rule covers all promotional materials that contain a means for consumers to subscribe to prenotification negative option plans, including those that are disseminated through newer technologies, such as the Internet, e-mail, or CD–ROM.

Promotional materials posted on the Internet, distributed via e-mail, or on CD–ROM must therefore, make all the disclosures required by the Rule in a clear and conspicuous manner. Sellers that operate prenotification negative option plans using these technologies must also comply with all other Rule requirements. The Commission is currently considering issues related to the Internet and other new technologies with respect to the Negative Option Rule, as well as other Commission rules and guides, including the factors it would consider in evaluating the effectiveness of advertising disclosures. The Commission will provide more information about the Rule's application to these new technologies at a later date.

VI. Technical, Non-Substantive Amendments to the Rule

The Commission has determined to adopt technical, non-substantive amendments to the Negative Option Rule. First, the Commission deletes the Note after section 425(b)(5). The Note simply referenced a separate proposed trade regulation rule involving billing practices arising out of the administration of customer accounts by credit card issuers and other retail establishments. That proposed rule was indefinitely postponed, and then withdrawn when it was superseded by the Fair Debt Collection Practices Act, 91 Stat. 874, 15 U.S.C. 1692–1692o, as amended. The reference is therefore obsolete. Second, the Commission amends two paragraphs of Section 425.1 of the Rule by changing references to ''in commerce'' to read ''in or affecting commerce'' to conform the language of the Rule with the current language of section 5 of the FTC Act, 15 U.S.C. 45, and by changing references to ''an unfair method of competition and an unfair to deceptive act or practice'' to ''an unfair or deceptive act or practice'' to conform the language of the Rule to the language of section 18 of the FTC Act, 15 U.S.C. 57a. Finally, the Commission amends the title of the Rule to read ''Use of Prenotification Negative Option Plans'' to make the title more accurately describe the Rule's coverage.

Because these amendments are purely technical and non-substantive, they are exempt from the rulemaking procedures specified in section 18 of the FTC Act.[60] Further, because the amendments simply delete an obsolete and unnecessary Note, conform the language of the Rule to the FTC Act, and clarify the Rule's coverage in the title of the Rule, the Commission has determined that notice and comment are unnecessary under the Administrative Procedure Act (''APA''). The Commission, therefore, has omitted notice and comment for good cause as provided by section 553(b)(B) of the APA, 5 U.S.C. 553(b)(B). The amendments are effective today. Because the amendments are technical, and non-substantive, section 553(d) of the APA, 5 U.S.C. 553(d), which requires publication or service of a substantive rule not less than 30 days before its effective date, does not apply.

VII. Regulatory Flexibility Act

Because these amendments are exempt from the notice and comment provisions of section 553(b) of the APA, the Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601 *et seq.*, does not apply. Nevertheless, the Commission has considered whether the amendments could have any effect on small entities. These technical, non-substantive amendments do not change the substantive requirements of the Rule in any manner, and do not impose any new requirements on sellers, large or small. Accordingly, this notice does not

[53] DMA, #008, at 4, commented that state negative option laws are sometimes inconsistent with the Commission's Negative Option Rule. DMA therefore proposed making the Rule preempt inconsistent state laws.

The Rule does not preempt state laws that regulate negative option marketing except to the extent that such laws directly conflict with the provisions of the Rule. Laws that provide consumers greater protection than that provided by the Rule do not necessarily conflict with the Rule even if they are inconsistent. Doubleday, #011, noted at 1, that the effectiveness of the Commission's Negative Option Rule has helped avoid a proliferation of conflicting state laws.

[54] Pennsylvania Consumer Protection Law, 73 P.S. 201–1, et seq.; Indiana Deceptive Consumer Sales Act, Ind. Code 24–5–0.5–1, et seq.; Texas Deceptive Trade Practices-Consumer Protection Act, Texas Bus. & Comm. Code Ann. 17.41, et seq.

[55] E.g., Hosiery Corp of America (multiple cites), e.g., No. CVOC9704299D (4th Judicial District of the State of Idaho, Ada County, Aug. 2, 1997) and No. 97–08373 (261st Judicial District of Travis County, Texas, July 23, 1997) (company signed Assurance of Discontinuance/Assurance of Voluntary Compliance settling allegations by eleven states that it failed to disclose clearly and conspicuously material conditions of free offer and continuity plan for hosiery).

[56] Case Report From The Direct Marketing Association's Committee on Ethical Business Practice, Vol. 1, No. 4 (December 1997).

[57] DMA, #008, at 5; Columbia House, #013, at 1; BOMC, #002, at 1–2; Doubleday, #011, at 1; BMG, #014, at 2.

[58] Columbia House, #013, at 1.

[59] BOMC, #002, at 1–2; DMA, #008, at 5; Doubleday, #011, at 1; Columbia House, #013, at 1; BMG, #014, at 2.

[60] 15 U.S.C. 57a(d)(2)(B), 16 CFR 1.15(b).

contain a regulatory analysis under section 604 of the RFA, 5 U.S.C. 604.

VIII. Paperwork Reduction Act

The Paperwork Reduction Act (''PRA''), 44 U.S.C. 3501 *et seq.*, requires government agencies, before promulgating rules or other regulations that require ''collections of information'' (i.e., recordkeeping, reporting, or third-party disclosure requirements), to obtain approval from the Office of Management and Budget (''OMB''), 44 U.S.C. 3502. The Commission currently has OMB clearance for the Rule's information collection requirements (OMB No. 3084–0104). The amendment will not impose any additional information collection requirements, so OMB approval is unnecessary.

List of Subjects in 16 CFR Part 425

Trade practices.

Text of Amendments

PART 425—USE OF PRENOTIFICATION NEGATIVE OPTION PLANS

1. The authority citation for part 425 continues to read as follows:

Authority: 15 U.S.C. 41–58.

2. The heading of Part 425 is revised to read as set forth above.

§ 425.1 [Amended]

3. In § 425.1, the Note following paragraph (b)(5) is removed.

4. Section 425.1 is amended by revising the introductory text of paragraphs (a) and (b) to read as follows:

§ 425.1 The rule.

(a) In connection with the sale, offering for sale, or distribution of goods and merchandise in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, it is an unfair or deceptive act or practice, for a seller in connection with the use of any negative option plan to fail to comply with the following requirements:

* * * * *

(b) In connection with the sale or distribution of goods and merchandise in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, it shall constitute an unfair or deceptive act or practice for a seller in connection with the use of any negative option plan to:

* * * * *

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 98–22446 Filed 8–19–98; 8:45 am]

BILLING CODE 6750–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS–50632; FRL–5788–7]

RIN 2070–AB27

Significant New Uses of Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating significant new use rules (SNURs) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for 73 chemical substances which were the subject of premanufacture notices (PMNs) and subject to TSCA section 5(e) consent orders issued by EPA. Today's action requires persons who intend to manufacture, import, or process these substances for a significant new use to notify EPA at least 90 days before commencing the manufacturing or processing of the substance for a use designated by this SNUR as a significant new use. The required notice will provide EPA with the opportunity to evaluate the intended use, and if necessary, to prohibit or limit that activity before it occurs. EPA is promulgating this SNUR using direct final procedures.

DATES: The effective date of this rule is October 19, 1998. This rule shall be promulgated for purposes of judicial review at 1 p.m. (e.s.t.) on September 3, 1998.

If EPA receives notice before October 19, 1998 that someone wishes to submit adverse or critical comments on EPA's action in establishing a SNUR for one or more of the chemical substances subject to this rule, EPA will withdraw the SNUR for the substance for which the notice of intent to comment is received and will issue a proposed SNUR providing a 30-day period for public comment.

ADDRESSES: Each comment or notice of intent to submit adverse or critical comment must bear the docket control number OPPTS–50632 and the name(s) of the chemical substance(s) subject to the comment. All comments should be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. G–099, East Tower, Washington, DC 20460.

Comments and data may also be submitted electronically to: oppt.ncic@epa.gov. Follow the instructions under Unit X. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this rulemaking. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each portion. This claim must be made at the time that the information is submitted to EPA . If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–531, 401 M St., SW., Washington, DC 20460, telephone: (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document are available from the EPA Home Page at the **Federal Register**-Environmental Documents entry for this document under ''Laws and Regulations'' (http://www.epa.gov/fedrgstr/).

This SNUR will require persons to notify EPA at least 90 days before commencing manufacturing or processing a substance for any activity designated by this SNUR as a significant new use. The supporting rationale and background to this rule are more fully set out in the preamble to EPA's first direct final SNURs published in the **Federal Register** of April 24, 1990 (55 FR 17376). Consult that preamble for further information on the objectives, rationale, and procedures for the rules and on the basis for significant new use designations including provisions for developing test data.

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2) of TSCA. Once EPA determines that a use of a chemical substance is a

significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. The mechanism for reporting under this requirement is established under 40 CFR 721.10.

II. Applicability of General Provisions

General provisions for SNURs appear under subpart A of 40 CFR part 721. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the final rule. Provisions relating to user fees appear at 40 CFR part 700. Persons subject to this SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of TSCA section 5(b) and 5(d)(1), the exemptions authorized by TSCA section 5 (h)(1), (2), (3), and (5), and the regulations at 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under TSCA section 5 (e), 5(f), 6, or 7 to control the activities on which it has received the SNUR notice. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret TSCA section 12(b) appear at 40 CFR part 707. Persons who intend to import a chemical substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28. Such persons must certify that they are in compliance with SNUR requirements. The EPA policy in support of the import certification appears at 40 CFR part 707.

III. Substances Subject to This Rule

EPA is establishing significant new use and recordkeeping requirements for the following chemical substances under 40 CFR part 721, subpart E. In this unit, EPA provides a brief description for each substance, including its PMN Number, chemical name (generic name if the specific name is claimed as CBI), CAS number (if assigned for non-confidential chemical identities), basis for the action taken by EPA in the TSCA section 5(e) consent order or as a non-section 5(e) SNUR for the substance (including the statutory citation and specific finding), toxicity concern, and the CFR citation assigned in the regulatory text section of this rule. The specific uses which are designated as significant new uses are cited in the regulatory text section of this document by reference to 40 CFR part 721, subpart E where the significant new uses are described in detail. Certain new uses, including production limits and other uses designated in the rule are claimed as CBI. The procedure for obtaining confidential information is set out in Unit VII. of this preamble.

Where the underlying TSCA section 5(e) consent order prohibits the PMN submitter from exceeding a specified production limit without performing specific tests to determine the health or environmental effects of a substance, the tests are described in this unit. As explained further in Unit VI. of this preamble, the SNUR for such substances contains the same production limit, and exceeding the production limit is defined as a significant new use. Persons who intend to exceed the production limit must notify the Agency by submitting a significant new use notice (SNUN) at least 90 days in advance. In addition, this unit describes tests that are recommended by EPA to provide sufficient information to evaluate the substance, but for which no production limit has been established in the TSCA section 5(e) consent order. Descriptions of recommended tests are provided for informational purposes.

Data on potential exposures or releases of the substances, testing other than that specified in the TSCA section 5(e) consent order for the substances, or studies on analogous substances, which may demonstrate that the significant new uses being reported do not present an unreasonable risk, may be included with significant new use notification. Persons submitting a SNUN must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs, as stated in 40 CFR 721.1(c), including submission of test data on health and environmental effects as described in 40 CFR 720.50.

EPA is not publishing SNURs for PMNs P–95–2040, P–97–77, P–97–118, P–97–214, P–98–5/6/7/8/9/10 which are subject to a final TSCA section 5(e) consent order. The TSCA section 5(e) consent orders for these substances are derived from an exposure finding based solely on substantial production volume and significant or substantial human exposure and/or release to the environment of substantial quantities. For these cases there were limited or no toxicity data available for the PMN substances. In such cases, EPA regulates the new chemical substances under TSCA section 5(e) by requiring certain toxicity tests. For instance, chemical substances with potentially substantial releases to surface waters would be subject to toxicity testing of aquatic organisms and chemicals with potentially substantial human exposures would be subject to health effects testing for mutagenicity, acute effects, and subchronic effects. However, for these substances, the short-term toxicity testing required by the TSCA section 5(e) consent order is usually completed within 1 to 2 years of notice of commencement. EPA's experience with exposure-based SNURs requiring short-term testing is that the SNUR is often revoked within 1 to 2 years when the test results are received. Rather than issue and revoke SNURs in such a short span of time, EPA will defer publication of exposure-based SNURs until either a notice of commencement (NOC) or data demonstrating risk are received unless the toxicity testing required is long-term. EPA is issuing this explanation and notification as required in 40 CFR 721.160(a)(2) as it has determined that SNURs are not needed at this time for these substances which are subject to a final section 5(e) consent order under TSCA.

PMN Numbers P–93–880/881

Chemical names: Amines, *N*-cocoalkyltrimethylenedi-, citrates (P–93–880); Amines, *N*-tallowalkyltripropylenetetra-, citrates (P–93–881).
CAS number: 189120–63–6 (P–93–880); 189120–62–5 (P–93–881).
Effective date of section 5(e) consent order: September 4, 1997.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i), (e)(1)(A)(ii)(I), and (e)(1)(A)(II) of TSCA based on a finding that these substances may present an unreasonable risk of injury to the environment, that the PMN substances will be produced in substantial quantities, and there may be significant or substantial environmental exposure to the substances.
Toxicity concern: Based on test data for the substances and test data on structurally similar aliphatic amines, there is concern for toxicity to aquatic organisms at concentrations as low as 2 parts per billion (ppb) in surface waters.
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a fish acute toxicity mitigated by dissolved organic carbon (humic acid

test) (OPPTS 850.1085 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substance.
CFR citations: 40 CFR 721.7285 (P–93–880); 40 CFR 721.7286 (P–93–881).

PMN Number P–95–1098

Chemical name: (generic) Tris carbamoyl triazine.
CAS number: Not available.
Effective date of section 5(e) consent order: April 25, 1997.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i), (e)(1)(A)(ii)(I), and (e)(1)(A)(ii)(II) of TSCA based on a finding that this substance may present an unreasonable risk of injury to the environment, that the PMN substance will be produced in substantial quantities, and there may be significant or substantial human exposure to the substance.
Toxicity concern: Based on test data for the substance, there is concern for toxicity to aquatic organisms at concentrations as low as 40 ppb in surface waters. The health testing required in the order is based on the exposure based finding pursuant to section 5(e)(1)(A)(ii)(II) of TSCA.
Recommended testing: EPA has determined that a chronic 60-day fish early life stage toxicity test in rainbow trout (40 CFR 797.1600 or OPPTS 850.1400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) and a 21-day daphnid chronic toxicity test (40 CFR 797.1330 or OPPTS 850.1300 test guideline (public draft; 61 FR 16486, April 15, 1996)) (FRL–5363–1)) would help characterize the environmental effects of the PMN substance. The PMN submitter has agreed to conduct a prenatal developmental toxicity study by the oral route in one-species (40 CFR 799.9370) (62 FR 43832, August 15, 1997) (FRL–5719–5) before exceeding the production volume limit.
CFR citation: 40 CFR 721.9719.

PMN Numbers P–96–756/757/758

Chemical names: (generic) 1-Piperidinecarboxylic acid, 2-[(dichloro-hydroxy-carbomonocycle)hydrazono]-, methyl ester (P–96–756); (generic) Dichloro, hydroxy, hydrazino-carbomonocycle (P–96–757); (generic) Dichloro, hydroxy, hydrazino-carbomonocycle-monohydrochloride (P–96–758).
CAS number: Not available.
Effective date of section 5(e) consent order: August 29, 1997.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i), (e)(1)(A)(ii)(I), and (e)(1)(A)(II) of TSCA based on a finding that the substances may present an unreasonable risk of injury to health, that the substances are expected to be produced in substantial quantities, and there may be significant or substantial human exposure to the substances.
Toxicity concern: Structurallyt similar chemicals have been shown to cause effects to internal organs and cancer in test animals.
Recommended testing: A 90-day oral subchronic toxicity in rats (40 CFR 798.2650 or OPPTS 870.3100 test guideline (63 FR 41845, August 5, 1998) (FRL–5740–1)) and a two-species carcinogenicity study (40 CFR 799.9420) (62 FR 43838, August 15, 1997) (FRL–5719–5) are recommended to help characterize health effects. The PMN submitter has agreed not to exceed the production volume limit without performing the 90-day oral subchronic toxicity test for P–96–756.
CFR citations: 40 CFR 721.2078 (P–96–756); 40 CFR 721.2079 (P–96–757); 40 CFR 721.2081 (P–96–758).

PMN Number P–96–1006

Chemical name: 1,3-Dioxolane, 2-ethenyl-.
CAS number: 3984–22–3.
Effective date of section 5(e) consent order: May 1, 1997.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (e)(1)(A)(ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to human health.
Toxicity concern: Based on submitted acute toxicity testing by the dermal (LD_{50} = 25.1 milligram/kilogram (mg/kg)) and oral (LD_{50} = 84.7 mg/kg) routes, exposure to the substance may result in fatality, central nervous system effects, liver toxicity, and irritation to the skin and eyes.
Recommended testing: EPA has determined that a 90-day subchronic inhalation study (40 CFR 799.9346) (62 FR 43828, August 15, 1997) (FRL–5719–5) and a 90-day subchronic dermal study (40 CFR 798.2250 or OPPTS 870.3250 test guideline (63 FR 41845, August 5, 1998) (FRL–5740–1)) would help characterize the health effects of the PMN substance.
CFR citation: 40 CFR 721.2485.

PMN Number P–96–1320

Chemical name: (generic) Isoalkyldimethylamine.
CAS number: Not available.
Basis for action: The PMN substance will be used as an intermediate. Based on structure activity analogy to aliphatic amines, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 3 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to surface waters in significant quantities. EPA has determined that other uses of the substance may result in releases to surface waters which exceed the concern concentration. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.2480.

PMN Numbers P–96–1425/1426

Chemical names: (generic) Salt of a modified tallow alkylenediamine (P–96–1425); salt of a fatty alkylamine derivative (P–96–1426).
CAS number: Not available.
Basis for action: The PMN substances will be used as processing aids. Based on structure activity analogy to aliphatic amines, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substances in surface waters. EPA determined that use of the substances as described in the PMNs did not present an unreasonable risk because the substances would not be released to surface waters. EPA has determined that other uses of the substances may result in releases to surface waters which exceed the concern concentration. Based on this information the PMN substances meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline public draft; 61

FR 16486, April 15, 1996) (FRL–5363–1)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substances.
CFR citations: 40 CFR 721.630 (P–96–1425); 40 CFR 721.558 (P–96–1426).

PMN Number P–96–1428

Chemical name: (generic) Modified polyisocyanates.
CAS number: Not available.
Effective date of section 5(e) consent order: July 7, 1997.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and 5(e)(1)(A)(ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Structurally similar chemicals have been shown to cause skin irritation and allergic reactions, respiratory irritation and sensitization, and lung toxicity in test animals.
Recommended testing: A 90-day subchronic inhalation toxicity study in rats (40 CFR 799.9346) (62 FR 43828, August 15, 1997) (FRL–5719–5) will help the Agency to characterize the human health effects of the PMN substance. The PMN submitter has agreed not to exceed the production volume limit without performing the 90-day study.
CFR citation: 40 CFR 721.6498.

PMN Number P–96–1520

Chemical name: Octadecanoic acid, ester with 1,2-propanediol, phosphate, anhydride with silicic acid (H_4SiO_4).
CAS number: 177771–31–2.
Effective date of section 5(e) consent order: July 8, 1997.
Basis for section 5(e) consent order: The order was issued under section 5 (e)(1)(A)(i), (e)(1)(A)(ii)(I), and (e)(1)(A)(ii)(II) of TSCA based on a finding that this substance may present an unreasonable risk of injury to the environment, that this substance is expected to be produced in substantial quantities, and there may be significant or substantial environmental exposure to the substance.
Toxicity concern: Structurally similar chemicals have been shown to cause toxicity in aquatic organisms.
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substance. The PMN submitter has agreed not to exceed the production volume limit without performing these tests.
CFR citation: 40 CFR 721.3635.

PMN Number P–97–4

Chemical name: (generic) Substituted diphenylmethane.
CAS number: Not available.
Basis for action: The PMN substance will be used as a raw material for manufacture of light stabilizers. Based on submitted test data, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 10 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to surface waters. EPA has determined that other uses of the substance may result in releases to surface waters which exceed the concern concentration. Based on this information the PMN substances meets the concern criteria at § 721.170(b)(4)(i).
Recommended testing: EPA has determined that a chronic 60-day fish early life stage toxicity test in rainbow trout (40 CFR 797.1600 or OPPTS 850.1400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a 21-day daphnid chronic toxicity test (40 CFR 797.1330 or OPPTS 850.1300 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.2532.

PMN Numbers P–97–42/43

Chemical name: (generic) Phenylazoalkoxy naphthylamines.
CAS number: Not available.
Basis for action: The PMN substances will be used as petroleum additives. Based on structual activity analogy to neutral organics, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 50 ppb for P–97–42 and 40 ppb for P–97–43 in surface waters. EPA determined that use of the substances as described in the PMNs did not present an unreasonable risk because the substances would not be released to surface waters in significant quantities. EPA has determined that other uses of the substances may result in releases to surface waters which exceed the concern concentration. Based on this information the PMN substances meet the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a chronic 60-day fish early life stage toxicity test in rainbow trout (40 CFR 797.1600 or OPPTS 850.1400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) and a 21-day daphnid chronic toxicity test (40 CFR 797.1330 or OPPTS 850.1300 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substances.
CFR citation: 40 CFR 721.5290.

PMN Numbers P–97–93/94

Chemical names: (generic) Di-substituted acetophenone (P–97–93); (generic) Di-substituted propanedione (P–97–94).
CAS number: Not available.
Effective date of section 5(e) consent order: June 9, 1997.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and 5(e)(1)(A)(ii)(I) of TSCA based on a finding that these substances may present an unreasonable risk of injury to health.
Toxicity concern: Based on submitted test data for P–97–94 the substances may cause liver, kidney, adrenal gland, and heart toxicity in test animals.
Recommended testing: EPA has determined that a glove permeation study according to American Society for Testing and Materials (ASTM) F739, an *in vitro* dermal absorption study published in the **Federal Register** on April 3, 1996 (61 FR 14773) (FRL–5359–3) and a 90-day gavage study in rats (40 CFR 798.2650 or OPPTS 870.3100 test guideline (63 FR 41845, August 5, 1998) (FRL–5740–1)) would help characterize the health effects of the PMN substance. The PMN submitter has agreed not to exceed the production volume limit without performing these tests.
CFR citations: 40 CFR 721.305 (P–97–93); 40 CFR 721.8153 (P–97–94).

PMN Numbers P–97–179/783, P–97–181/781, P–97–189/769, and P–97–775/782

Chemical name: (generic) Zirconium dichlorides.
CAS number: Not available.
Basis for action: The PMN substances will be used as polymerization catalysts.

Based on structural activity analogy to organo zirconium compounds, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substances in surface waters. EPA determined that use of the substances as described in the PMNs did not present an unreasonable risk because the substances would not be released to surface waters in significant quantities. EPA has determined that other uses of the substances may result in releases to surface waters which exceed the concern concentration. Based on this information the PMN substances meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substances.
CFR citation: 40 CFR 721.9973.

PMN Numbers P–97–296/297/298/299

Chemical name: (generic) Alkyl benzene sulfonic acids and alkyl sulfates, amine salts.
CAS number: Not available.
Basis for action: The PMN substances will be used as polymerization catalysts. Based on submitted test data and structural activity analogy to anionic surfactants, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 30 ppb of the PMN substances in surface waters. EPA determined that use of the substances as described in the PMN did not present an unreasonable risk because the substances would not be released to surface waters in significant quantities. EPA has determined that other uses of the substances may result in releases to surface waters which exceed the concern concentration. Based on this information the PMN substances meets the concern criteria at § 721.170(b)(4)(i) and (b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996)(FRL–5363–1)) would help characterize the environmental effects of the PMN substances.
CFR citation: 40 CFR 721.9595.

PMN Number P–97–332

Chemical name: Siloxanes and silicones, de-Me, 3-[4-[[[3(dimethylamino) propyl]amino] carbonyl]-2-oxo-1-pyrrolidinyl] propyl Me.
CAS number: 179005–02–8.
Basis for action: The PMN substance will be used as an intermediate in a multiple step synthesis. Test data on structurally similar chemical substances which the Agency has received under section 8(e) of TSCA raised concerns for lung toxicity. EPA determined that use of the PMN substance as an intermediate as described in the PMN did not present an unreasonable risk because workers would not be subject to significant inhalation exposures. However, EPA has identified other potential uses which may result in significant inhalation exposures to workers. Based on this information the PMN substance meets the concern criteria at 721.170(b)(3)(ii).
Recommended testing: EPA has determined that the results of an acute inhalation toxicity test in rats (OPPTS 870.1300 test guideline (63 FR 41845, August 5, 1998) (FRL–5740–1)) and a 90-day subchronic inhalation study (40 CFR 799.9346) (62 FR 43828, August 15, 1997) (FRL–5719–5) would help characterize the health effects of the PMN substance.
CFR citation: 40 CFR 721.9517.

PMN Number P–97–370

Chemical name: (generic) Propionic acid methyl ester.
CAS number: Not available.
Basis for action: The PMN substance will be used as a solvent. Based on submitted test data, there is concern for developmental toxicity. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because significant worker exposure would not result if dermal protection were used by workers and only if the specific uses stated in the PMN apply. EPA has determined that manufacture, processing, or use of the substance without dermal protection, for uses other than stated in the PMN, and domestic manufacture may result in significant exposure to workers. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(i).
Recommended testing: None.
CFR citation: 40 CFR 721.8660.

PMN Number P–97–497

Chemical name: Poly(oxy-1,2-ethanediyl), alpha, alpha′- [thiobis(1-oxo-3,1-propanediyl)] bis[omega-hydroxy-,bis ($C_{11–15}$ and $C_{11–15–isoalkyl}$) ethers.
CAS number: 174254–18–3.
Basis for action: The PMN substance will be used as a spin finish for industrial polyamide fibers. Based on analogy to nonionic surfactants, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 2 ppb of the PMN substance in surface waters. EPA determined that use of the substance did not present an unreasonable risk because significant releases would not occur. EPA has determined that uses other than those specified in the PMN may result in significant environmental exposure. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.9663.

PMN Numbers P–97–520/521

Chemical names: 2-Piperdinone, 1,3-dimethyl- (P–97–520); 2-piperdinone, 1,5-dimethyl- (P–97–521).
CAS number: 1690–76–2 (P–97–520); 86917–58–0 (P–97–521).
Basis for action: The PMN substances will be used as semiconductor cleaning solvents. Based on structrual activity analogy to 2-piperdinone, *N*-methylpyrrolidone, and other similarly analogous substances, there is concern for neurotoxicity, developmental toxicity, and reproductive toxicity. EPA determined that the stated use of the substances as described in the PMN did not present an unreasonable risk because significant worker or general population exposure would not result. EPA has determined that manufacture, processing, or use of the substances other than for the use stated in the PMN may result in significant exposure to workers or the general population. Based on this information the PMN substances meet the concern criteria at § 721.170 (b)(3)(ii).
Recommended testing: EPA has determined that a 90-day oral subchronic toxicity study in rats (40

CFR 798.2650 or OPPTS 870.3100 test guideline (63 FR 41845, August 5, 1998) (FRL–5740–1)), a reproduction and fertility effects study in rats by the oral route (40 CFR 799.9380) (62 FR 43834, August 15, 1997) (FRL–5719–5), and a prenatal developmental toxicity study by the oral route in two-species (40 CFR 799.9370) (62 FR 43832, August 15, 1997) (FRL–5719–5) would help characterize the human health effects of the PMN substances.
CFR citations: 40 CFR 721.6175 (P–97–520); 40 CFR 721.6176 (P–97–521).

PMN Numbers P–97–552/553

Chemical names: Boric acid (H_3BO_3), zinc salt (2=3) (P–97–552); Boric acid (H_3BO_2), zinc salt (P–97–553).
CAS number: 10192–46–8 (P–97–552); 14720–55–9 (P–97–553).
Basis for action: The PMN substances will be used as nucleating agents for no-stick automotive glass coating. Based on structural activity analogy to zinc and boron compounds, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 3 ppb of the PMN substances in surface waters. EPA determined that use of the substances as described in the PMN did not present an unreasonable risk because the substances would not be released to surface waters in significant quantities. EPA has determined that other uses of the substances may result in releases to surface waters which exceed the concern concentration. Based on this information the PMN substances meet the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substances.
CFR citations: 40 CFR 721.3031 (P–97–552); 40 CFR 721.3032 (P–97–553).

PMN Numbers P–97–582 and P–97–583

Chemical name: (generic) Substituted heteroaromatic-2 [[4-(dimethylamino)phenyl] azo]-3-methyl-, salts.
CAS number: Not available.
Basis for action: The PMN substances will be used as textile dyes. Based on the submitted test data, structural activity analogy to a similar delocalized cationic dye, the aniline-based azo reduction product, analogy to Butter Yellow, and analogy to trichlorozincate, EPA is concerned that the PMN substances may cause developmental toxicity, carcinogenicity, neurotoxicity, acute and chronic toxicity, severe eye irritation and corrosivity, blood toxicity, and mutagenicity. EPA determined that use of the substances as described in the PMN did not present an unreasonable risk because there were no significant worker exposures. EPA has determined that domestic manufacture of the PMN substances may result in significant worker exposures. Based on this information the PMN substances meet the concern criteria at § 721.170 (b)(1)(i)(C), (b)(2), (b)(3)(ii), and (b)(3)(iii).
Recommended testing: EPA has determined that a 90-day oral subchronic toxicity study in rats (40 CFR 798.2650 or OPPTS 870.3100 test guideline (63 FR 41845, August 5, 1998) (FRL–5740–1)), an oral two-species carcinogenicity study (40 CFR 799.9420) (62 FR 43838, August 15, 1997) (FRL–5719–5) and a prenatal developmental toxicity study by the oral route in two-species (40 CFR 799.9370) (62 FR 43832, August 15, 1997) (FRL–5719–5) would help characterize the health effects of the PMN substances.
CFR citation: 40 CFR 721.4098.

PMN Number P–97–593

Chemical name: (generic) Hydrofluorochloroalkene.
CAS number: Not available.
Basis for action: The PMN substance will be used as an intermediate. Based on structural activity analogy to similar substances and toxicity data submitted with the PMN, EPA is concerned that mutagencity, neurotoxicity, immunotoxicity, carcinogenicity, liver toxicity, and kidney toxicity will occur in exposed workers. EPA determined that use of the substance as an intermediate did not present an unreasonable risk because it did not result in significant worker exposure. EPA has determined that use other than an as intermediate may result in significant worker exposure. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(1)(i)(B), (b)(3)(i), and (b)(3)(ii).
Recommended testing: EPA has determined that a 90-day oral subchronic toxicity study in rats (40 CFR 798.2650 or OPPTS 870.3100 test guideline (63 FR 41845, August 5, 1998) (FRL–5740–1)) and an oral two-species carcinogenicity study (40 CFR 799.9420) (62 FR 43838, August 15, 1997) (FRL–5719–5) would help characterize the health effects of the PMN substance.
CFR citation: 40 CFR 721.450.

PMN Number P–97–740

Chemical name: Siloxanes and silicones, 3-[(2-aminoethyl) amino]propyl Me, di-Me, reaction products with polyethylene-polypropylene glycol Bu glycidyl ether.
CAS number: 189354–73–2.
Basis for action: The PMN substance will be used as an ingredient for plastic resins. Based on structural activity analogy to similar substances, EPA is concerned that lung toxicity will occur in exposed workers. EPA determined that use of the substance did not present an unreasonable risk because significant worker exposure would not occur. EPA has determined that applications generating an aerosol, mist, or vapor may result in significant worker exposure. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).
Recommended testing: EPA has determined that a 90-day oral subchronic toxicity study in rats (40 CFR 798.2650 or OPPTS 870.3100 test guideline (63 FR 41845, August 5, 1998) (FRL–5740–1)) would help to characterize the health effects of the PMN substance.
CFR citation: 40 CFR 721.9516.

PMN Number P–97–813

Chemical name: (generic) Diphenol tars.
CAS number: Not available.
Basis for action: The PMN substance will be used as a polymer additive. Based on structural activity analogy to phenols, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 10 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substances would not be released to surface waters in significant quantities. EPA has determined that other uses of the substance may result in releases to surface waters during use which exceed the concern concentration. Based on this information the PMN substance meet the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test

guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.9661.

PMN Number P–97–820

Chemical name: (generic) C.I. Disperse Red 152.
CAS number: Not available.
Basis for action: The PMN substance will be used as a dyestuff for fabrics. Based on analogy to structurally similar substances, EPA is concerned that cancer and developmental toxicity will occur in exposed workers. EPA determined that use of the substance did not present an unreasonable risk because significant worker exposure would not occur. EPA has determined that use of the substance as a powder may result in significant worker exposure. Based on this information the PMN substance meets the concern criteria at § 721.170 (b)(1)(i)(D) and (b)(3)(ii).
Recommended testing: EPA has determined that a prenatal developmental toxicity test by the oral route in two-species (40 CFR 799.9370) (62 FR 43832, August 15, 1997) (FRL–5719–5) and a two-species oral carcinogenicity study (40 CFR 799.9420) (62 FR 43838, August 15, 1997) (FRL–5719–5) would help to characterize the health effects of the PMN substance.
CFR citation: 40 CFR 721.2580.

PMN Numbers P–97–854

Chemical name: (generic) 3,6-Bis(dialkylamino)-9-[2-alkoxycarbonyl)phenyl]-xanthylium salt,.
CAS number: Not available.
Basis for action: The PMN substance will be used as a colorant additive. Based on structural activity analogy to cationic dyes, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 2 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to surface waters in significant quantities. EPA has determined that other uses of the substance may result in releases to surface waters which exceed the concern concentration. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that an activated sludge sorption isotherm (OPPTS 835.1110 test guideline (63 FR 4259, January 28, 1998) (FRL–5761–7)), an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a chronic 60-day fish early life stage toxicity test in rainbow trout (40 CFR 797.1600 or OPPTS 850.1400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and a 21-day daphnid chronic toxicity test (40 CFR 797.1330 or OPPTS 850.1300 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.9969.

PMN Numbers P–97–869/870/871

Chemical name: (generic) Alkylated diphenyls.
CAS number: Not available.
Basis for action: The PMN substances will be used as specialty solvents. Based on structural activity analogy to similar substances, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substances in surface waters. EPA determined that use of the substances as described in the PMNs did not present an unreasonable risk because the substances would not be released to surface waters in significant quantities. EPA has determined that other uses of the substances may result in releases to surface waters which exceed the concern concentration. Based on this information the PMN substances meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substances.
CFR citation: 40 CFR 721.2570.

PMN Number P–97–878

Chemical name: (generic) Polysubstituted carbomonocyclic hydroxylamine.
CAS number: Not available.
Basis for action: The PMN substance will be used as an antioxidant. Based on analogy to structurally similar substances, there is concern for liver toxicity, kidney toxicity, developmental toxicity, and neurotoxicity. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because significant worker exposure would not result if respiratory protection were used by workers. EPA has determined that manufacture, processing, or use of the substance without respiratory protection may result in significant inhalation exposure to workers. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).
Recommended testing: EPA has determined that a 90-day oral subchronic toxicity study in rats (40 CFR 798.2650 or OPPTS 870.3100 test guideline (63 FR 41845, August 5, 1998) (FRL–5740–1)) and a prenatal developmental toxicity study by the oral route in two-species (40 CFR 799.9370) (62 FR 43832, August 15, 1997) (FRL–5719–5) would characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.2083.

PMN Numbers P–97–880/881/882

Chemical name: (generic) Alkylphenylpolyetheralkanolamines.
CAS number: Not available.
Basis for action: The PMN substances will be used as a fuel additive. Based on structural activity analogy to aliphatic amines, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substances in surface waters. EPA determined that use of the substances as described in the PMN did not present an unreasonable risk because the substances would not be released to surface waters. EPA has determined that other uses of the substances may result in releases to surface waters which exceed the concern concentration. Based on this information the PMN substances meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substances.
CFR citation: 40 CFR 721.435.

PMN Numbers P–97–943/944/945/946/947/948

Chemical name: (generic) Mixed trialkylamines.
CAS number: Not available.
Basis for action: The PMN substances will be used as dispersing agents,

surfactants, and manufacturing intermediates. Based on structural activity analogy to aliphatic amines, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substances in surface waters. EPA determined that use of these substances as described in the PMN did not present an unreasonable risk because the submitter has agreed to recommend ''no releases to water'' in its Material Safety Data Sheet (MSDS). EPA has determined that other uses of these substances may result in releases to surface waters which exceed the concern concentration. Based on this information the PMN substances meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substances.

CFR citation: 40 CFR 721.9685.

PMN Number P–97–956

Chemical name: (generic) Mixed metal oxide.

CAS number: Not available.

Basis for action: The PMN substance will be used as a pearlescent pigment. Based on analogy to structurally similar substances, there is concern for lung toxicity and fibrosis. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because significant worker exposure would not result if respiratory protection were used by workers. EPA has determined that manufacture, processing, or use of the substance without respiratory protection may result in significant inhalation exposure to workers. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).

Recommended testing: EPA has determined that a 90-day subchronic inhalation study (40 CFR 799.9346) (62 FR 43828, August 15, 1997) (FRL–5719–5) would characterize the human health effects of the PMN substance.

CFR citation: 40 CFR 721.5548.

PMN Number P–97–1011

Chemical name: Oxirane, 2,2′-[methylenebis [(2,6-dimethyl-4,1-phenylene) oxymethylene]]bis-.
CAS number: 93705–66–9.
Effective date of section 5(e) consent order: January 15, 1998.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (e)(1)(A)(ii)(I) of TSCA based on a finding that the substance may present an unreasonable risk of injury to health and the environment.
Toxicity concern: Structurally similar chemicals have been shown to cause cancer and reproductive effects in test animals and toxicity to aquatic organisms.
Recommended testing: EPA has determined that a 90-day subchronic inhalation study in rats with attention to pathology of the reproductive organs (40 CFR 799.9346) (62 FR 43828, August 15,1997) (FRL–5719–5) and a two-species carcinogenicity study (40 CFR 799.9420) (62 FR 43838, August 15, 1997) (FRL–5719–5) would help to characterize health effects. EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substance. The PMN submitter has agreed not to exceed the production volume limit without performing the 90-day subchronic inhalation toxicity test.
CFR citation: 40 CFR 721.5580.

PMN Numbers P–97–1028/1029

Chemical name: (generic) Substituted nitrobenzene (P–97–1028); (generic) Substituted benzonitrile (P–97–1029).
CAS number: Not available.
Basis for action: The PMN substances will be used as described in the PMNs. Based on analogy to structurally similar substances, there is concern for mutagenicity, carcinogenicity, immunotoxicity, liver toxicity, kidney toxicity, reproductive/developmental toxicity, and neurotoxicity. EPA determined that use of the substances as described in the PMNs did not present an unreasonable risk because significant worker exposure would not result if respiratory protection and impervious gloves were used by workers. EPA has determined that manufacture, processing, or use of the substances without respiratory and dermal protection may result in significant inhalation and dermal exposure to workers. Based on this information the PMN substances meet the concern criteria at § 721.170(b)(3)(ii).
Recommended testing: EPA has determined that a skin sensitization test in Guinea pigs (40 CFR 798.4100 or OPPTS 870.2600 test guideline (63 FR 41845, August 5, 1998) (FRL–5740–1)), a Salmonella assay (40 CFR 798.5625 or OPPTS 870.5265 test guideline (63 FR 41845, August 5, 1998) (FRL–5740–1)), a mouse micronucleus assay by intraperitoneal injection (40 CFR 799.9539) (62 FR 43853, August 15, 1997) (FRL–5719–5), a neurotoxicity screening battery, National Technical Information Service (NTIS) Publication 91–154617, March 1991, series 81–8, 82–7, 831 (emphasizes the automated measuring of motor activity which was seen to be a sensitive end point for several analogues), an Organization for Economic Cooperation and Development (OECD) guideline no. 421, reproductive/ developmental toxicity screening test (for initial information on all aspects of reproductive/ developmental toxicity), a 28-day repeated oral exposure test in species to determine liver/kidney toxicity (40 CFR 798.4900 or OPPTS 870.3700 test guideline (63 FR 41845, August 5, 1998) (FRL–5740–1)), and a two-species carcinogenicity study (40 CFR 799.9420) (62 FR 43838, August 15, 1997) (FRL–5719–5) would help characterize the health effects of the PMN substances.
CFR citations: 40 CFR 721.5360 (P–97–1028); 40 CFR 721.1734 (P–97–1029).

PMN Number P–97–1046

Chemical name: (generic) Substituted S-phenylthiazole.
CAS number: Not available.
Basis for action: The PMN substance will be used as a pesticide intermediate. Based on submitted test data for a structurally similar substance, EPA is concerned that the PMN substance may cause hepatotoxicity, kidney toxicity, reproductive toxicity, blood toxicity, developmental toxicity, and toxicity to the spleen and adrenal glands. Based on structural activity analogy to aliphatic amines, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 40 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because there were no significant worker or environmental exposures. EPA has determined that domestic manufacture of the PMN substance may result in significant

worker or environmental exposures. Based on this information the PMN substance meets the concern criteria at § 721.170 (b)(3)(ii) and (b)(4)(ii).
Recommended testing: EPA has determined that a 90-day subchronic oral study in rats (40 CFR 798.2650 or OPPTS 870.3100 test guideline (63 FR 41845, August 5, 1998) (FRL–5740–1)), a prenatal developmental toxicity study by the oral route in two-species (40 CFR 799.9370) (62 FR 43832, August 15, 1997) (FRL–5719–5), and a reproduction and fertility effects study by the oral route (40 CFR 799.9380) (62 FR 43834, August 15, 1997) (FRL–5719–5) would help characterize the health effects of the PMN substance. EPA has also determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.5965.

PMN Numbers P–97–1060/1061/1062

Chemical name: (generic) Sodium salts of dodecylphenol.
CAS number: Not available.
Basis for action: The PMN substances will be used as catalysts. Based on structural activity analogy to phenols, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substances in surface waters. EPA determined that use of the substances as described in the PMNs did not present an unreasonable risk because the substances would not be released to surface waters in significant quantities. EPA has determined that other uses of the substances may result in releases to surface waters which exceed the concern concentration. Based on this information the PMN substances meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substances.
CFR citation: 40 CFR 721.2585.

PMN Number P–97–1095

Chemical name: (generic) Substituted alkyl aminomethylene polyphosphonic acid, salt.
CAS number: Not available.
Basis for action: The PMN substance will be used as a processing aid. Based on structural activity analogy to aliphatic amines, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 200 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to surface waters. EPA has determined that other uses of the substance may result in releases to surface waters which exceed the concern concentration. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.7785.

PMN Number P–98–24

Chemical name: (generic) Methoxy benzoic acid derivative.
CAS number: Not available.
Basis for action: The PMN substance will be used as a mediator in enzyme catalyzed reactions. Based on submitted test data, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 40 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to surface waters in significant quantities. EPA has determined that other uses of the substance may result in releases to surface waters which exceed the concern concentration. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(i).
Recommended testing: EPA has determined that a chronic 60-day fish early life stage toxicity test in rainbow trout (40 CFR 797.1600 or OPPTS 850.1400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) and a 21-day daphnid chronic toxicity test (40 CFR 797.1330 or OPPTS 850.1300 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.1710

PMN Number P–98–45

Chemical name: (generic) Dialkylaminophenyl imino pyrazole acid ester.
CAS number: Not available.
Basis for action: The PMN substance will be used as a colorant for thermal printing. Based on structural activity analogy to esters, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 30 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to surface waters. EPA has determined that other uses of the substance may result in releases to surface waters which exceed the concern concentration. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.987.

PMN Number P–98–91

Chemical name: (generic) Pyrazolone azomethine dye.
CAS number: Not available.
Basis for action: The PMN substance will be used as a colorant for thermal printing. Based on submitted test data, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an

unreasonable risk because the substance would not be released to surface waters. EPA has determined that other uses of the substance may result in releases to surface waters which exceed the concern concentration. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(i).
Recommended testing: EPA has determined that a chronic 60-day fish early life stage toxicity test in rainbow trout (40 CFR 797.1600 or OPPTS 850.1400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) and a 21-day daphnid chronic toxicity test (40 CFR 797.1330 or OPPTS 850.1300 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.988.

PMN Number P–98–101

Chemical name: 7-Oxabicyclo[4.1.0]heptane-3-carboxylic acid, methyl ester.
CAS number: 41088–52–2.
Basis for action: The PMN substance will be used as a chemical intermediate. Based on analogy to structurally similar substances and toxicity data submitted with the PMN, EPA is concerned that mutagenicity, carcinogenicity, reproductive toxicity in males, developmental toxicity, irritation to membranes, and sensitization to lungs and skin will occur in exposed workers. EPA determined that use of the substance as an intermediate did not present an unreasonable risk because it did not result in significant worker exposure. EPA has determined that use other than as an intermediate may result in significant worker exposure. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(1)(i)(B), (b)(3)(i), and (b)(3)(ii).
Recommended testing: EPA has determined that a 90-day oral subchronic toxicity study in rats (40 CFR 798.2650 or OPPTS 870.3100 test guideline (63 FR 41845, August 5, 1998) (FRL–5740–1)) and an oral two-species carcinogenicity study (40 CFR 799.9420) (62 FR 43838, August 15, 1997) (FRL–5719–5) would help characterize the health effects of the PMN substance.
CFR citation: 40 CFR 721.4097.

PMN Number P–98–155

Chemical name: (generic) Disubstituted benzene ether, polymer with substituted phenol.
CAS number: Not available.
Basis for action: The PMN substance will be used as a reactant in the manufacture of a thermosetting adhesive polymer. Based on structural activity analogy to phenols, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to surface waters. EPA has determined that other uses of the substance may result in releases to surface waters which exceed the concern concentration. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.1580.

PMN Number P–98–185

Chemical name: Ethanol, 2,2′2″-nitrilotris-, compound with alpha-[2,4,6-tris(1-phenylethyl)phenyl]-omega-hydroxypoly (oxy-1,2-ethanediyl)-phosphate.
CAS number: 105362–40–1.
Basis for action: The PMN substance will be used as a pesticide inert. Based on submitted test data, EPA is concerned that liver toxicity, effects to the thyroid and pituitary glands, and effects to the kidneys will occur in exposed workers. EPA determined that import of the substance for use as a pesticide inert did not present an unreasonable risk because it did not result in significant worker exposure. EPA has determined that use other than import for use as a pesticide inert may result in significant worker exposure. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(i).
Recommended testing: EPA has determined that a 2-year oral chronic toxicity study in rats (40 CFR 798.3260 or OPPTS 870.4100 test guideline (63 FR 41845, August 5, 1998) (FRL–5740–1)) would help characterize the health effects of the PMN substance.
CFR citation: 40 CFR 721.5356.

PMN Number P–98–198

Chemical name: Phenol, 5-amino-2,4-dicholoro-, hydrochloride.
CAS number: 197178–93–1.
Basis for action: The PMN substance will have a destructive use. Based on structural activity analogy to phenols and anilines, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 2 ppb of the PMN substance in surface waters. Based on structural activity analogy to halogenated benzenes, phenols, and anilines EPA is concerned for potential liver toxicity, kidney toxicity, developmental toxicity, neurotoxicity, carcinogenicity, blood toxicity, immunotoxicity, and irritation to skin, eyes, and mucous membranes. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to surface waters and workers would not be exposed via inhalation. EPA has determined that other uses of the substance may result in releases to surface waters which exceed the concern concentration and inhalation exposure to workers. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(1)(i)(C), (b)(3)(ii), and (b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substance. EPA has also determined that a 90-day oral subchronic toxicity study in rats (40 CFR 798.2650 or OPPTS 870.3100 test guideline (63 FR 41845, August 5, 1998) (FRL–5740–1)), a prenatal developmental toxicity study by the oral route in two-species (40 CFR 799.9370) (62 FR 43832, August 15, 1997) (FRL–5719–5) and an oral two-species carcinogenicity study (40 CFR 799.9420) (62 FR 43838, August 15, 1997) (FRL–5719–5) would help characterize the health effects of the PMN substance.
CFR citation: 40 CFR 721.5775.

PMN Numbers P–98–412/414/415/416/417

Chemical names: (generic) Coco alkyldimethyl amine salts.
CAS number: Not available.

Basis for action: The PMN substances will be used as a component of a coating. Based on submitted test data, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substances in surface waters. EPA determined that use of the substances as described in the PMN did not present an unreasonable risk because the substances would not be released to surface waters. EPA has determined that other uses of the substances may result in releases to surface waters which exceed the concern concentration. Based on this information the PMN substances meet the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft; 61 FR 16486, April 15, 1996) (FRL–5363–1)) would help characterize the environmental effects of the PMN substances.

CFR citation: 40 CFR 721.9490.

IV. Objectives and Rationale of the Rule

During review of the PMNs submitted for the chemical substances that are subject to this SNUR, EPA concluded that for 12 of the 73 substances, regulation was warranted under section 5(e) of TSCA, pending the development of information sufficient to make reasoned evaluations of the health or environmental effects of the substances. The basis for such findings is outlined in Unit III. of this preamble. Based on these findings, TSCA section 5(e) consent orders requiring the use of appropriate exposure controls were negotiated with the PMN submitters; the SNUR provisions for these substances designated herein are consistent with the provisions of the TSCA section 5(e) consent orders.

In the other 61 cases for which the proposed uses are not regulated under a TSCA section 5(e) consent order, EPA determined that one or more of the criteria of concern established at 40 CFR 721.170 were met.

EPA is issuing this SNUR for specific chemical substances which have undergone premanufacture review to ensure that:

(1) EPA will receive notice of any company's intent to manufacture, import, or process a listed chemical substance for a significant new use before that activity begins.

(2) EPA will have an opportunity to review and evaluate data submitted in a SNUR notice before the notice submitter begins manufacturing, importing, or processing a listed chemical substance for a significant new use.

(3) When necessary, to prevent unreasonable risks, EPA will be able to regulate prospective manufacturers, importers, or processors of a listed chemical substance before a significant new use of that substance occurs.

(4) All manufacturers, importers, and processors of the same chemical substance which is subject to a TSCA section 5(e) consent order are subject to similar requirements.

Issuance of a SNUR for a chemical substance does not signify that the substance is listed on the TSCA Inventory. Manufacturers, importers, and processors are responsible for ensuring that a new chemical substance subject to a final SNUR is listed on the TSCA Inventory.

V. Direct Final Procedures

EPA is issuing these SNURs as direct final rules, as described in 40 CFR 721.160(c)(3) and 721.170(d)(4). In accordance with 40 CFR 721.160(c)(3)(ii), this rule will be effective October 19, 1998, unless EPA receives a written notice by September 21, 1998 that someone wishes to make adverse or critical comments on EPA's action. If EPA receives such a notice, EPA will publish a notice to withdraw the direct final SNUR for the specific substance to which the adverse or critical comments apply. EPA will then propose a SNUR for the specific substance providing a 30-day comment period.

This action establishes SNURs for a number of chemical substances. Any person who submits a notice of intent to submit adverse or critical comments must identify the substance and the new use to which it applies. EPA will not withdraw a SNUR for a substance not identified in a notice.

VI. Test Data and Other Information

EPA recognizes that section 5 of TSCA does not require developing any particular test data before submission of a SNUN. Persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them. In cases where a TSCA section 5(e) consent order requires or recommends certain testing, Unit III. of this preamble lists those recommended tests.

However, EPA has established production limits in the TSCA section 5(e) consent orders for several of the substances regulated under this rule, in view of the lack of data on the potential health and environmental risks that may be posed by the significant new uses or increased exposure to the substances. These production limits cannot be exceeded unless the PMN submitter first submits the results of toxicity tests that would permit a reasoned evaluation of the potential risks posed by these substances. Under recent consent orders, each PMN submitter is required to submit each study at least 14 weeks (earlier consent orders required submissions at least 12 weeks) before reaching the specified production limit. Listings of the tests specified in the TSCA section 5(e) consent orders are included in Unit III. of this preamble. The SNURs contain the same production volume limits as the consent orders. Exceeding these production limits is defined as a significant new use.

The recommended studies may not be the only means of addressing the potential risks of the substance. However, SNUNs submitted for significant new uses without any test data may increase the likelihood that EPA will take action under TSCA section 5(e), particularly if satisfactory test results have not been obtained from a prior submitter. EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on:

(1) Human exposure and environmental release that may result from the significant new use of the chemical substances.

(2) Potential benefits of the substances.

(3) Information on risks posed by the substances compared to risks posed by potential substitutes.

VII. Procedural Determinations

EPA is establishing through this rule some significant new uses which have been claimed as CBI subject to Agency confidentiality regulations at 40 CFR part 2. EPA is required to keep this information confidential to protect the CBI of the original PMN submitter. EPA promulgated a procedure to deal with the situation where a specific significant new use is CBI. This procedure appears in 40 CFR 721.1725(b)(1) and is similar to that in § 721.11 for situations where the chemical identity of the substance subject to a SNUR is CBI. This

procedure is cross-referenced in each of these SNURs.

A manufacturer or importer may request EPA to determine whether a proposed use would be a significant new use under this rule. Under the procedure incorporated from § 721.1725(b)(1), a manufacturer or importer must show that it has a *bona fide* intent to manufacture or import the substance and must identify the specific use for which it intends to manufacture or import the substance. If EPA concludes that the person has shown a *bona fide* intent to manufacture or import the substance, EPA will tell the person whether the use identified in the *bona fide* submission would be a significant new use under the rule. Since most of the chemical identities of the substances subject to these SNURs are also CBI, manufacturers and processors can combine the *bona fide* submission under the procedure in § 721.1725(b)(1) with that under § 721.11 into a single step.

If a manufacturer or importer is told that the production volume identified in the *bona fide* submission would not be a significant new use, i.e. it is below the level that would be a significant new use, that person can manufacture or import the substance as long as the aggregate amount does not exceed that identified in the *bona fide* submission to EPA. If the person later intends to exceed that volume, a new *bona fide* submission would be necessary to determine whether that higher volume would be a significant new use. EPA is considering whether to adopt a special procedure for use when CBI production volume is designated as a significant new use. Under such a procedure, a person showing a *bona fide* intent to manufacture or import the substance, under the procedure described in § 721.11, would automatically be informed of the production volume that would be a significant new use. Thus, the person would not have to make multiple *bona fide* submissions to EPA for the same substance to remain in compliance with the SNUR, as could be the case under the procedures in § 721.1725(b)(1).

VIII. Applicability of Rule to Uses Occurring Before Effective Date of the Final Rule

To establish a significant ''new'' use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule have recently undergone premanufacture review. TSCA section 5(e) consent orders have been issued for 12 substances and notice submitters are prohibited by the TSCA section 5(e) consent orders from undertaking activities which EPA is designating as significant new uses. In cases where EPA has not received an NOC and the substance has not been added to the Inventory, no other person may commence such activities without first submitting a PMN. For substances for which an NOC has not been submitted at this time, EPA has concluded that the uses are not ongoing. However, EPA recognizes in cases when chemical substances identified in this SNUR are added to the Inventory prior to the effective date of the rule, the substances may be manufactured, imported, or processed by other persons for a significant new use as defined in this rule before the effective date of the rule. However, 63 of the 73 substances contained in this rule have CBI chemical identities, and since EPA has received a limited number of post-PMN *bona fide* submissions, the Agency believes that it is highly unlikely that any of the significant new uses described in the following regulatory text are ongoing.

As discussed in the **Federal Register** of April 24, 1990 (55 FR 17376), EPA has decided that the intent of section 5(a)(1)(B) of TSCA is best served by designating a use as a significant new use as of the date of publication rather than as of the effective date of the rule. Thus, persons who begin commercial manufacture, import, or processing of the substances regulated through this SNUR will have to cease any such activity before the effective date of this rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

EPA has promulgated provisions to allow persons to comply with this SNUR before the effective date. If a person were to meet the conditions of advance compliance under § 721.45(h), the person would be considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the substance between publication and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

IX. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, and processors of the chemical substances subject to this rule. EPA's complete economic analysis is available in the rulemaking record for this rule (OPPTS–50632).

X. Public Record and Electronic Submissions

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket control number OPPTS–50632 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located in the TSCA Nonconfidential Information Center Rm. NE–B607, 401 M St., SW., Washington, DC.

Electronic comments can be sent directly to EPA at:

oppt.ncic@epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number OPPTS–50632. Electronic comments on this rule may be filed online at many Federal Depository Libraries.

The OPPTS harmonized test guidelines referenced in this document are available on EPA's World Wide Web site (http:// www.epa.gov/epahome/research.htm) under the heading ''Test Methods and Guidelines/OPPTS Harmonized Test Guidelines.''

XI. Regulatory Assessment Requirements

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' subject to review by the Office of Management and Budget (OMB). In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 104–4), or require prior consultation with State officials as also specified in Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993). Nor does it involve special considerations of

environmental justice related issues as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or additional OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq*., an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9. The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0012 (EPA ICR No. 574). This action does not impose any burden requiring additional OMB approval.

If an entity were to submit a significant new use notice to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review and submit the required significant new use notice.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, OPPE Regulatory Information Division, Environmental Protection Agency (Mail Code 2137), 401 M St., SW., Washington, DC 20460, with a copy to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to these addresses.

In addition, pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq*.), the Agency has previously certified, as a generic matter, that the promulgation of a SNUR does not have a significant adverse economic impact on a substantial number of small entities. The Agency's generic certification for promulgation of new SNURs appears on June 2, 1997 (62 FR 29684) (FRL–5597–1) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

XII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq*., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit 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 United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: August 10, 1998.

Ward Penberthy,

Acting Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. By adding new § 721.305 to subpart E to read as follows:

§ 721.305 Di-substituted acetophenone (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as di-substituted acetophenone (PMN P–97–93) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(3), (b) (concentration set at 1.0 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 1.0 percent), (f), (g)(2)(i), (g)(2)(v). The following statement shall appear on each label as specified in § 721.72(b) and the MSDS as specified in § 721.72(c): This substance is expected to be dermally absorbed and may cause effects to the liver, kidney, adrenal glands, and the heart.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (e), (f), (g), (h), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

3. By adding new § 721.435 to subpart E to read as follows:

§ 721.435 Alkylphenylpolyetheralkanolamines (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as alkylphenylpolyetheralkanolamines (PMNs P–97–880/881/882) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

4. By adding new § 721.450 to subpart E to read as follows:

§ 721.450 Hydrofluorochloroalkene (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a hydrofluorochloroalkene (PMN P–97–593) is subject to reporting under this section for the significant new uses

described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The recordkeeping requirements specified in § 721.125 (a), (b), (c) and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

5. By adding new § 721.558 to subpart E to read as follows:

§ 721.558 Salt of a fatty alkylamine derivative (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a salt of a fatty alkylamine derivative (PMN P–96–1426) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

6. By adding new § 721.630 to subpart E to read as follows:

§ 721.630 Salt of a modified tallow alkylenediamine (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a salt of a modified tallow alkylenediamine (PMN P–96–1425) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

7. By adding new § 721.987 to subpart E to read as follows:

§ 721.987 Dialkylaminophenyl imino pyrazole acid ester (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as dialkylaminophenyl imino pyrazole acid ester (PMN P–98–45) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

8. By adding new § 721.988 to subpart E to read as follows:

§ 721.988 Pyrazolone azomethine dye (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a pyrazolone azomethine dye (PMN P–98–91) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

9. By adding new § 721.1580 to subpart E to read as follows:

§ 721.1580 Disubstituted benzene ether, polymer with substituted phenol (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as disubstituted benzene ether, polymer with substituted phenol (PMN P–98–155) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

10. By adding new § 721.1710 to subpart E to read as follows:

§ 721.1710 Methoxy benzoic acid derivative (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a methoxy benzoic acid derivative (PMN P–98–24) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N = 40).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

11. By adding new § 721.1734 to subpart E to read as follows:

§ 721.1734 Substituted benzonitrile (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a substituted benzonitrile (PMN P–97–1029) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(2)(i), (a)(3), (a)(4), (a)(5)(ii), (a)(5)(iv), (a)(5)(v), and (a)(6)(v).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g).

(iii) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The recordkeeping requirements specified in § 721.125 (a), (b), (c), (d), (e), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

12. By adding new § 721.2078 to subpart E to read as follows:

§ 721.2078 1-Piperidinecarboxylic acid, 2-[(dichloro-hydroxy-carbomonocycle)hydrazono]-, methyl ester (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as 1-piperidinecarboxylic acid, 2-[(dichloro-hydroxy-carbomonocycle) hydrazono]-, methyl ester (PMN P–96–756) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(4), (a)(5)(i), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(iv), (g)(1)(vii), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (g), (l), and (q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (f), (g), (h), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

13. By adding new § 721.2079 to subpart E to read as follows:

§ 721.2079 Dichloro, hydroxy, hydrazino-carbomonocycle (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as dichloro, hydroxy, hydrazino-carbomonocycle (PMN P–96–757) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(4), (a)(5)(i), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(iv), (g)(1)(vii), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (g), (l), and (q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (f), (g), (h), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

14. By adding new § 721.2081 to subpart E to read as follows:

§ 721.2081 Dichloro, hydroxy, hydrazino-carbomonocycle-monohydrochloride (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as dichloro, hydroxy, hydrazino-carbomonocycle-monohydrochloride (PMN P–96–758) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(4), (a)(5)(i), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(iv), (g)(1)(vii), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (g), (l), and (q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (f), (g), (h), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

15. By adding new § 721.2083 to subpart E to read as follows:

§ 721.2083 Polysubstituted carbomonocyclic hydroxylamine (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a polysubstituted carbomonocyclic hydroxylamine (PMN P–97–878) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(4), (a)(5)(ii), (a)(5)(iv), (a)(5)(v), and (a)(6)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The recordkeeping requirements specified in § 721.125 (a), (b), (c), and (d) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

16. By adding new § 721.2480 to subpart E to read as follows:

§ 721.2480 Isoalkyldimethylamine (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as isoalkyldimethylamine (PMN P–96–1320) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N = 3).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

17. By adding new § 721.2485 to subpart E to read as follows:

§ 721.2485 1,3-Dioxolane, 2-ethenyl-.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified as 1,3-Dioxolane, 2-ethenyl- (PMN P–96–1006; CAS No. 3984–22–3) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(2)(i), (a)(2)(ii), (a)(3)(i), (a)(4), (a)(5)(iii), (a)(5)(xii), (a)(5)(xiii), (a)(5)(xiv), (a)(6)(v), (b) (concentration set at 1.0 percent), and (c). The imperviousness of each item pursuant to (a)(2)(i) and (a)(2)(ii) must be demonstrated by actual testing under (a)(3)(i) and not by manufacturer specifications. Permeation testing shall be conducted according to the ASTM F739 ''Standard Test Method for Resistance of Protective Clothing Materials to Permeation by Liquids or Gases.'' Results shall be recorded as a cumulative permeation rate as a function of time, and shall be documented in accordance with ASTM F739 using the format specified in ASTM F1194–89 ''Guide for Documenting the Results of Chemical Permeation Testing on Protective Clothing Materials.'' Gloves may not be used for a time period longer than they are actually tested and must be replaced at the end of each work shift. The manufacturer, importer, or processor must submit all test data to the Agency and must receive written Agency approval for each type of glove tested prior to use of such gloves.

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 1.0 percent), (f), (g)(1)(iii), (g)(1)(iv), (g)(2)(ii), (g)(2)(iii), and (g)(5). The following statements shall appear on each label as specified in § 721.72(b) and the MSDS as specified in § 721.72(c): This substance may cause fatality. When using this substance avoid dermal contact. When using this substance use respiratory protection or engineering and process controls to mitigate respiratory exposure. When using this substance use dermal protection to prevent dermal exposure.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (e), (f), (g), and (h) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

18. By adding new § 721.2532 to subpart E to read as follows:

§ 721.2532 Substituted diphenylmethane (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a substituted diphenylmethane (PMN P–97–4) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

19. By adding new § 721.2570 to subpart E to read as follows:

§ 721.2570 Alkylated diphenyls (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as alkylated diphenyls (PMNs P–97–869/870/871) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N = 1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

20. By adding new § 721.2580 to subpart E to read as follows:

§ 721.2580 C.I. Disperse Red 152 (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as C.I. disperse red 152 (PMN P–97–820) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (v)(1), (w)(1), and (x)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

21. By adding new § 721.2585 to subpart E to read as follows:

§ 721.2585 Sodium salts of dodecylphenol (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as sodium salts of dodecylphenol (PMNs P–97–1060/1061/1062) are subject to reporting under this

section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N = 1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

22. By adding new § 721.3031 to subpart E to read as follows:

§ 721.3031 Boric acid (H_3BO_3), zinc salt (2=3).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as boric acid (H_3BO_3), zinc salt (2=3) (PMN P–97–552; CAS No. 10192–46–8) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N = 3).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

23. By adding new § 721.3032 to subpart E to read as follows:

§ 721.3032 Boric acid (H_3BO_2), zinc salt.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as boric acid (H_3BO_2), zinc salt (PMN P–97–553; CAS No. 14720–55–9) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N = 3).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

24. By adding new § 721.3635 to subpart E to read as follows:

§ 721.3635 Octadecanoic acid, ester with 1,2-propanediol, phosphate, anhydride with silicic acid (H_4SiO_4).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as octadecanoic acid, ester with 1,2-propanediol, phosphate, anhydride with silicic acid (H_4SiO_4) (PMN P–96–1520; CAS No. 177771–31–2) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (f), (g)(3)(ii), (g)(4)(i), and (g)(5). The following statement shall appear on each label as specified in § 721.72(b) and the MSDS as specified in § 721.72(c): Do not release into the environment in quantities that allow surface water concentrations to exceed 6 ppb.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(p) (15 months).

(iii) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N = 6).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (f), (g), (h), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

25. By adding new § 721.4097 to subpart E to read as follows:

§ 721.4097 7-Oxabicyclo[4.1.0]heptane-3-carboxylic acid, methyl ester.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 7-oxabicyclo[4.1.0]heptane-3-carboxylic acid, methyl ester (PMN P–98–101) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The recordkeeping requirements specified in § 721.125 (a), (b), (c) and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

26. By adding new § 721.4098 to subpart E to read as follows:

§ 721.4098 Substituted heteroaromatic-2[[4-(dimethylamino) phenyl]azo]-3-methyl-, salts (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as substituted heteroaromatic-2[[4-(dimethylamino)phenyl]azo]-3-methyl-, salts (PMNs P–97–582 and P–97–583) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

27. By adding new § 721.5290 to subpart E to read as follows:

§ 721.5290 Phenylazoalkoxy naphthylamines (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as phenylazoalkoxy napthylamines (PMNs P–97–42 and P–97–43) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N = 50 for P–97–42) (N = 40 for P–97–43).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

28. By adding new § 721.5356 to subpart E to read as follows:

§ 721.5356 Ethanol, 2,2′2″-nitrilotris-, compound with alpha-2,4,6-tris (1-phenylethyl)phenyl]-omega-hydroxypoly (oxy-1,2-ethanediyl) phosphate.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as ethanol, 2,2′2″-nitrilotris-, compound with alpha-[2,4,6-tris(1-phenylethyl)phenyl]-omega-hydroxypoly (oxy-1,2-ethanediyl) phosphate (PMN P–98–185) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (f) and (j) (pesticide inert).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The recordkeeping requirements specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

29. By adding new § 721.5360 to subpart E to read as follows:

§ 721.5360 Substituted nitrobenezene (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as substituted nitrobenezene (PMN P–97–1028) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(2)(i), (a)(3), (a)(4), (a)(5)(ii), (a)(5)(iv), (a)(5)(v), and (a)(6)(v).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g).

(iii) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The recordkeeping requirements specified in § 721.125 (a), (b), (c), (d), (e), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

30. By adding new § 721.5548 to subpart E to read as follows:

§ 721.5548 Mixed metal oxide (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a mixed metal oxide (PMN P–97–956) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(4), (a)(5)(iii), (a)(5)(iv), and (a)(6)(i).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The recordkeeping requirements specified in § 721.125 (a), (b), (c), and (d) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

31. By adding new § 721.5580 to subpart E to read as follows:

§ 721.5580 Oxirane, 2,2′-[methylenebis[(2,6-dimethyl-4,1-phenylene)oxymethylene]]bis-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as oxirane, 2,2′-[methylenebis[(2,6-dimethyl-4,1-phenylene)oxymethylene]]bis- (PMN P–97–1011; CAS No. 93705–66–9) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(4), (a)(5)(iii), (a)(5)(iv), (a)(5)(v), (a)(5)(vi), (a)(5)(vii), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (b) (concentration set at 0.1 percent), and (c). As an alternative to the respiratory requirements listed here, a manufacturer, importer, or processor may choose to follow the new chemical exposure limit (NCEL) provisions listed in the TSCA section 5(e) consent order for this substance. The NCEL is 0.35 milligram/meter^3 (mg/m^3).

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set 0.1 percent), (f), (g)(1)(vi), (g)(1)(vii), (g)(2)(ii), (g)(2)(iv), (g)(3)(i), (g)(3)(ii), (g)(4)(i), (g)(4)(iii), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (f) and (q).

(iv) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (f), (g), (h), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

32. By adding new § 721.5775 to subpart E to read as follows:

§ 721.5775 Phenol, 5-amino-2,4-dicholoro-, hydrochloride.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as phenol, 5-amino-2,4-dicholoro-, hydrochloride (PMN P–98–198) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (v)(i), (w)(i), and (x)(i).

(ii) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125

(a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

33. By adding new § 721.5965 to subpart E to read as follows:

§ 721.5965 Substituted S-phenylthiazole (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as substituted s-phenylthiazole (PMN P–97–1046) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

34. By adding new § 721.6175 to subpart E to read as follows:

§ 721.6175 2-Piperdinone, 1,3-dimethyl-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 2-Piperdinone, 1,3-dimethyl- (PMN P–97–520; CAS No. 1690–76–2) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.80(j).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The recordkeeping requirements specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

35. By adding new § 721.6176 to subpart E to read as follows:

§ 721.6176 2-Piperdinone, 1,5-dimethyl-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified as 2-Piperdinone, 1,5-dimethyl- (PMN P–97–521; CAS No. 86917–58–0) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.80(j).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The recordkeeping requirements specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

36. By adding new § 721.6498 to subpart E to read as follows:

§ 721.6498 Modified polyisocyanates (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as modified polyisocyanates (PMN P–96–1428) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(3), (a)(4), (a)(5)(ii), (a)(5)(viii), (a)(5)(ix), (a)(6)(ii), (b) (concentration set at 0.1 percent), and (c). As an alternative to the respiratory requirements listed here, a manufacturer, importer, or processor may choose to follow the NCEL provisions listed in the TSCA section 5(e) consent order for this substance. The NCEL is 0.05 mg/m^3.

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), and (g)(5). The following statements shall appear on each label as specified in § 721.72(b) and the MSDS as specified in § 721.72(c): Warnings. Exposure to diisocyanates may cause the following human health effects: Skin irritation and allergic reactions, respiratory irritation, respiratory sensitization, and lung toxicity; some diisocyanates also may cause cancer. The likelihood that these effects will occur depends on a number of factors; among them, the level of exposure, frequency of exposure, part of the body exposed, and sensitivity of the exposed individual. Symptoms of allergic reaction and respiratory sensitization include rashes, cough, shortness of breath, asthma, chest tightness and other breathing difficulties. There is uncertainty as to the mechanism by which sensitization occurs. In sensitized individuals, exposure to even small amounts of diisocyanates (below government-recommended workplace exposure levels) may cause allergic respiratory reactions like asthma and severe breathing difficulties. It is especially important to note that contact with skin may lead to respiratory sensitization or cause other allergic reactions. In some cases, the effects of diisocyanate exposure may be immediate and life-threatening; in others, the effects may be delayed and occur hours after the exposure has ended. Repeated or prolonged exposure to diisocyanates may also cause irritation to eyes, skin, respiratory tract and lungs, as well as adverse chronic lung effects, like decreased lung capacity and function. Individuals experiencing shortness of breath, tightness in the chest or other problems breathing should seek immediate medical attention. When using this substance the following protective measures should be used: In workplaces where individuals handle diisocyanates or coatings or other formulations that contain them, an industrial hygiene and safety program should be operative. Important components of this program include: Hazard communication and training on safe handling practices; use of efficient and well-maintained application equipment, engineering controls and personal protective equipment; housekeeping procedures including spill prevention and cleanup practices; and, if feasible, means to measure airborne levels of polyisocyanates and diisocyanates. During spray applications, workers should take precautions to avoid breathing vapors, mists or aerosols. Inhalation exposures should be limited to < 0.05 mg/m^3 as an 8-hour time-weighted average (TWA) for combined polyisocyanates and diisocyanates. Engineering controls should serve as the first, most effective means of reducing airborne polyisocyanate and diisocyanate concentrations; an appropriate National Institute for Occupational Safety and Health/Mine Safety and Health Administration (NIOSH/MSHA) approved respirator should be used as a secondary tool to lower exposures. Currently, downdraft spray booths and high-volume low-pressure (HVLP) spray guns appear to offer the most efficient

technology to reduce inhalation exposures; a maintenance program should always be used to ensure optimal operating efficiencies. To limit dermal contact, individuals should wear impermeable gloves, protective clothing and goggles or glasses with side shields.

(iii) *Industrial, commercial, and consumer activites.* Requirements as specified in § 721.80(q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (e), (f), (g), (h), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

37. By adding new § 721.7285 to subpart E to read as follows:

§ 721.7285 Amines, N-cocoalkyltrimethylenedi-, citrates.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified as amines, *N*-cocoalkyltrimethylenedi-, citrates. (PMN P–93–880; CAS No. 189120–63–6) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (f), (g)(3)(ii), (g)(4)(iii), and (g)(5).

(ii) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (f), (g), (h), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

38. By adding new § 721.7286 to subpart E to read as follows:

§ 721.7286 Amines, N-tallowalkyltripropylenetetra-, citrates.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified as amines, *N*-tallowalkyltripropylenetetra-, citrates (PMN P–93–881; CAS No. 189120–62–5) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (f), (g)(3)(ii), (g)(4)(iii), and (g)(5).

(ii) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (f), (g), (h), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

39. By adding new § 721.7785 to subpart E to read as follows:

§ 721.7785 Substituted alkyl aminomethylene polyphosphonic acid, salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a substituted alkylamino methylene polyphosphonic acid, salt (PMN P–97–1095) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

40. By adding new § 721.8153 to subpart E to read as follows:

§ 721.8153 Di-substituted propanedione (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as di-substituted propanedione (PMN P–97–94) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(3), (b) (concentration set at 1.0 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 1.0 percent), (f), (g)(2)(i), (g)(2)(v). The following statement shall appear on each label as specified in § 721.72(b) and the MSDS as specified in § 721.72(c): This substance is expected to be dermally absorbed and may cause effects to the liver, kidney, adrenal glands, and the heart.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (e), (f), (g), (h), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

41. By adding new § 721.8660 to subpart E to read as follows:

§ 721.8660 Propionic acid methyl ester (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a propionic acid methyl ester (PMN P–97–370) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(2)(i), and (a)(3).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (f) and (j).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The recordkeeping requirements specified in § 721.125 (a), (b), (c), (d), (e), and (i) are applicable to

manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

42. By adding new § 721.9490 to subpart E to read as follows:

§ 721.9490 Coco alklydimethyl amine salts (generic).

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances identified generically as coco alkyldimethyl amine salts (PMNs P–98–412/414/415/416/417) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

43. By adding new § 721.9516 to subpart E to read as follows:

§ 721.9516 Siloxanes and silicones, 3-[(2-aminoethyl) amino]propyl Me, di-Me, reaction products with polyethylene-polypropylene glycol Bu glycidal ether.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as siloxanes and silicones, 3-[(2-aminoethyl) amino]propyl Me, di-Me, reaction products with polyethylene-polypropylene glycol Bu glycidyl ether (PMN P–97–740; CAS No. 189354–73–2) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(y)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

44. By adding new § 721.9517 to subpart E to read as follows:

§ 721.9517 Siloxanes and silicones, de-Me, 3-[4-[[[3-(dimethyl amino) propyl] amino]carbonyl]-2-oxo-1-pyrrolidinyl] propyl Me.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as siloxanes and silicones, de-Me, 3-[4-[[[3-(dimethylamino) propyl]amino] carbonyl]-2-oxo-1-pyrrolidinyl]propyl Me (PMN P–97–332) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(y)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

45. By adding new § 721.9595 to subpart E to read as follows:

§ 721.9595 Alkyl benzene sulfonic acids and alkyl sulfates, amine salts (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as alkyl benzene sulfonic acids and alkyl sulfates, amine salts (PMNs P–97–296/297/298/299) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

46. By adding new § 721.9661 to subpart E to read as follows:

§ 721.9661 Diphenol tars (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as diphenol tars (PMN P–97–813) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

47. By adding new § 721.9663 to subpart E to read as follows:

§ 721.9663 Poly(oxy-1,2-ethanediyl), alpha, alpha′-[thiobis (1-oxo-3,1-propanediyl)]bis [omega-hydroxy-,bis ($C_{11–15}$ and $C_{11–15–isoalkyl}$) ethers.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as poly(oxy-1,2-ethanediyl), alpha, alpha′-[thiobis (1-oxo-3,1-propanediyl)]bis [omega-hydroxy-,bis($C_{11–15}$ and $C_{11–15–isoalkyl}$) ethers (PMN P–97–497; CAS No. 174254–18–3) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The recordkeeping requirements specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

48. By adding new § 721.9685 to subpart E to read as follows:

§ 721.9685 Mixed trialkylamines (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as mixed trialkylamines (PMNs P–97–943/944/945/946/947/948) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

49. By adding new § 721.9719 to subpart E to read as follows:

§ 721.9719 Tris carbamoyl triazine (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as tris carbamoyl triazine (PMN P–95–1098) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (f), (g)(3)(i), (g)(3)(ii), (g)(4)(i), and (g)(5).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(iii) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N = 40).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (f), (g), (h), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

50. By adding new § 721.9969 to subpart E to read as follows:

§ 721.9969 3,6-Bis(dialkylamino) -9-[2-alkoxycarbonyl) phenyl]-xanthylium salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as 3,6-bis(dialkylamino) -9-[2-alkoxycarbonyl) phenyl]-xanthylium salt (PMN P–97–854) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (f) and (j).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

51. By adding new § 721.9973 to subpart E to read as follows:

§ 721.9973 Zirconium dichlorides (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as zirconium dichlorides (PMNs P–97–179/181/189/769/775/781/782/783) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N = 20).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

[FR Doc. 98–22441 Filed 8–19–98; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–8; RM–9178]

Radio Broadcasting Services; Albion, Honeoye Falls, South Bristol Township, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Citicasters Company, reallots Channel 297A from Honeoye Falls, NY, to South Bristol Township, NY, modifies the license of Station WMAX–FM accordingly, reallots Channel 236B from South Bristol Township to Honeoye Falls, modifies the license of Station WNVE accordingly, and substitutes Channel 271A for vacant but applied-for Channel 238A at Albion, NY. *See* 63 FR 6698, February 10, 1998. Channel 236B can be allotted to Honeoye Falls in compliance with the Commission's minimum distance separation requirements with respect to domestic allotments, with a site restriction of 16.5 kilometers (10.3 miles) northeast, at coordinates 43–02–00; 77–25–17, to accommodate petitioner's desired transmitter site. This site is short-spaced to Stations CKQT–FM, Channel 235B, Oshawa, Ontario, and CKDS–FM, Channel 237C1, Hamilton, Ontario, Canada. Channel 297A can be allotted to South Bristol Township in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.9 kilometers (1.8 miles) northwest, at coordinates 42–44–47; 77–25–35, to accommodate petitioner's desired transmitter site. Channel 271A can be allotted to Albion in compliance with the Commission's minimum distance separation requirements, with respect to domestic allotments, without the imposition of a site restriction, at coordinates 43–14–48; 78–11–36. This allotment is short-spaced to Station CFNY–FM, Channel 271C1, Brampton, Ontario, Canada, and to the vacant Channel 272B at Belleville, Canada. Canadian concurrence in these allotments has been received since each of the communities are located within 320 kilometers (200 miles) of the U.S.-Canadian border. The allotments at Honeoye Falls and Albion have been concurred in as specially negotiated short-spaced allotments. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 28, 1998.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98–8, adopted August 5, 1998, and released August 14, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New York, is amended by removing Channel 238A and adding Channel 271A at Albion, removing Channel 297A at Honeoye Falls and adding Channel 236B, removing Channel 236B at South Bristol Township and adding Channel 297A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 98–22347 Filed 8–19–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

Radio Broadcasting Services; Various Locations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, on its own motion, editorially amends the Table of FM Allotments to specify the actual classes of channels allotted to various communities. The changes in channel classifications have been authorized in response to applications filed by licensees and permittees operating on these channels. This action is taken pursuant to *Revision of Section 73.3573(a)(1) of the Commission's Rules Concerning the Lower Classification of an FM Allotment,* 4 FCC Rcd 2413 (1989), and the *Amendment of the Commission's Rules to permit FM Channel and Class Modifications [Upgrades] by Applications,* 8 FCC Rcd 4735 (1993).

EFFECTIVE DATE: August 20, 1998.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, adopted August 5, 1998, and released August 14, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., 1231 20th Street, NW, Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by removing Channel 228A and adding Channel 229C3 at Monticello.

3. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by removing Channel 271A and adding Channel 271C3 at Estes Park.

4.–5. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Channel 253A and adding Channel 253C3 at San Carlos Park.

6. Section 73.202(b), the Table of FM Allotments under Hawaii, is amended by removing Channel 251C and adding Channel 251C1 at Lihue.

7. Section 73.202(b), the Table of FM Allotments under Idaho, is amended by removing Channel 252A and adding Channel 252C1 at McCall.

8. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by removing Channel 223A and adding Channel 223C3 at Park Rapids.

9. Section 73.202(b), the Table of FM Allotments under Montana, is amended by removing Channel 240C2 and adding Channel 240C at Columbia Falls.

10. Section 73.202(b), the Table of FM Allotments under Nevada, is amended by removing Channel 243A and adding Channel 244C1 at Ely.

11. Section 73.202(b), the Table of FM Allotments under North Dakota, is amended by removing Channel 286C2 and adding Channel 286C1 at Cavalier, and by removing Channel 295A and adding Channel 295C2 at Minot.

12. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by removing Channel 272A and adding Channel 272C2 at Sand Springs.

13. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by removing Channel 272A and adding Channel 272C3 at Seaside.

14. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 252A and adding Channel 251C2 at Anson, by removing Channel 236A and adding Channel 236C2 at New Boston, and by removing Channel 285A and adding Channel 284A at Winnsboro.

15. Section 73.202(b), the Table of FM Allotments under Utah, is amended by removing Channel 228A and adding Channel 228C2 at St. George.

16. Section 73.202(b), the Table of FM Allotments under Washington, is amended by removing Channel 289C3 and adding Channel 289C2 at South Bend.

17. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by removing Channel 247A and adding Channel 247C1 and removing Channel 284A and adding Channel 284C1 at Casper and by removing Channel 257A and adding Channel 256C1 at Fort Bridger.

18. Section 73.202(b), the Table of FM Allotments under Garapan, is amended by removing Channel 266A and adding Channel 266C3 and by removing Channel 280A and adding Channel 280C3 at Saipan.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 98–22348 Filed 8–19–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WT Docket No. 96–199; FCC 98–182]

Finder's Preference Rule

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends the rules to eliminate the finder's preference program in the 220–222 MHz band and in the 470–512 Mhz, 800 MHz and 900 MHz Private Land Mobile Radio (PLMR) bands. This action is taken to facilitate geographic licensing in the 220–222 MHz band and to permit Commission resources presently devoted to the finder's preference program to be redirected to other, more efficient channel recovery methods. No further finder's preference requests will be accepted after the adoption date of the *Report and Order*, July 29, 1998, an action which is procedural in nature and which is taken for good cause stated. Finder's preference requests pending as of the adoption date will be processed.

EFFECTIVE DATE: September 21, 1998.

FOR FURTHER INFORMATION CONTACT: Michael J. Wilhelm of the Public Safety and Private Wireless Division, Wireless Telecommunications Bureau at 202–418–0680 or via e-mail at mwilhelm@fcc.gov.

SUPPLEMENTARY INFORMATION:

1. This is a summary of the Commission's *Report and Order* (Report and Order) discontinuing the finder's preference program.

2. Previously, the Commission adopted a *Report and Order*, 56 FR 65857, December 19, 1991, wherein it established a finder's preference program that gave a dispositive licensing preference to persons who identified licensees who were not in compliance with the Commission's construction and operation rules.

3. In the *Second Memorandum Opinion and Order and Third Notice of Proposed Rulemaking* in PR Docket No. 89–552, 60 FR 46564 (September 7, 1995), the Commission proposed a new licensing plan for the 220–222 MHz service. That licensing plan provided for geographical, rather than site-specific licensing in the 220–222 MHz band.

4. In the *Notice of Proposed Rule Making* in WT Docket No. 96–199 (NPRM), 61 FR 51877 (October 4, 1996) the Commission proposed elimination of the finder's preference program in the 220–222 MHz band because it appeared inconsistent with the geographical licensing plan for that band. The NPRM also solicited comment on whether or not the finder's preference program should be maintained in the 470–512 Mhz, 800 MHz and 900 MHz bands.

5. Based on review of the record developed in response to the *NPRM*, the Commission concluded that the finder's preference program should be discontinued for the 220–222 MHz band and the 470–512 Mhz, 800 MHz and 900 MHz bands. With respect to the 220–222 MHz band, the Commission found its decision to discontinue the finder's preference program was consistent with earlier actions it had taken in discontinuing the program in other bands. *See First Report and Order, Eighth Report and Order and Second Notice of Proposed Rule Making* in PR Docket No. 93–144, PP Docket No. 93–253, 61 FR 6138 (February 16, 1996); *Second Order on Reconsideration and Seventh Report and Order* in PR Docket No. 89–553, PP Docket No. 93–252, GN Docket No. 93–252, 60 FR 48913 (September 21, 1995). Moreover, no commenting party opposed retention of the finder's preference program for the 220–222 MHz band. With respect to the 470–512 Mhz, 800 MHz and 900 MHz bands, after review of the record and internal Commission data regarding the finder's preference program, the Commission decided the program should be eliminated. The Commission did not find persuasive, comments filed by parties urging retention of the program notwithstanding its conceded problems, among them several protracted adversarial contests for ''found'' spectrum. The Commission determined that its own compliance review efforts had been more effective than the finder's preference program in yielding spectrum recovery. Finally, the Commission declined to assign the processing of finder's preference requests to frequency coordinators because the processing of such requests was outside the frequency coordinators' expertise and, in any event, appeals from frequency coordinators' decisions would require resolution by the Commission.

6. Several commenting parties urged the Commission to process pending finder's preference requests rather than dismissing them, as the Commission had reserved the discretion to do in the *NPRM*. In light of the relatively few finder's preference requests still pending, the Commission determined that processing of those requests would not impose an undue burden on Commission resources and therefore agreed to process pending requests. However, to forestall an influx of speculative finder's preference requests before the rule eliminating the finder's preference program became effective, the Commission decided not to accept new finder's preference requests after the adoption date of the *Order*. The Commission determined that the avoidance of such an influx of new requests constituted good cause for not accepting further finder's preference requests and that, in any event, its action in declining to accept new requests was procedural in nature.

Ordering Clauses

7. In view of the foregoing and pursuant to the authority contained in sections 4, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154, 303 and 307 it is ordered that part 90 of the Commission's Rules is amended and becomes effective September 21, 1998. It is further ordered that effective upon adoption of this *Report and Order*, no additional finder's preference requests for the 220–222 MHz band or the 470–512 MHz, 800 MHz, and 900 MHz PLMR bands will be accepted for filing.

Procedural Matters

8. The Final Regulatory Flexibility Analysis pursuant to the Regulatory Flexibility Act, 5 U.S.C. § 604, is contained in the attachment at the end of this document.

List of Subjects in 47 CFR Part 90

Communications equipment, Radio.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Part 90 of Chapter I of Title 47 of the Code of Federal Regulations, is amended as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for part 90 continues to read as follows:

Authority: Secs. 4, 251–2, 303, 309, and 332, 48 Stat. 1066, 1082, as amended: 47 U.S.C. §§ 154, 251–2, 303, 309, and 332, unless otherwise noted.

2. Revise paragraph (k) of § 90.173 to read as follows:

§ 90.173 Policies governing the assignment of frequencies.

* * * * *

(k) This paragraph is only applicable to entities with Finder's Preference requests pending before the Commission as of July 29, 1998. Notwithstanding any other provisions of this part, any eligible person shall be given a dispositive

preference for a channel assignment on an exclusive basis in the 220–222 MHz, 470–512 MHz, and 800/900 MHz (except on frequencies designated exclusively for SMR service) bands by submitting information that leads to the recovery of channels in these bands. Recovery of such channels must result from information provided regarding the failure of existing licensees to comply with the provisions of §§ 90.155, 90.157, 90.629, 90.631 (e) or (f), or 90.633 (c) or (d).

* * * * *

§ 90.175 [Amended]

3. Remove paragraph (i)(15) of § 90.175.

Attachment—Final Regulatory Flexibility Analysis

As required by 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* in WT Docket No. 96–199.[1] The Commission sought written public comments on the proposals in the *NPRM,* including comments on the IRFA. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this Report and Order conforms to the RFA, as amended by the Contract With America Advancement Act of 1996.[2]

I. Need For and Objective of the Proposed Rule

In the *NPRM,* as our objectives, we proposed to amend Part 90 of our Rules to eliminate the finder's preference program in the 220–222 MHz band because we had proposed competitive bidding and geographic licensing for this band. The *NPRM* also sought comment on (1) whether the finder's preference program should be continued for Private Land Mobile Radio (PLMR) services in the 470–512 MHz, 800 MHz, and 900 MHz bands because these bands had few, if any, finder's preference requests, (2) whether the Commission should delay processing finder's preference requests in the 220–222 MHz band, (3) whether the Commission should retain the discretion to dismiss pending finder's preference requests in any frequency band in which the finder's preference is eliminated, and (4) whether ongoing oversight and compliance review programs are adequate enforcement mechanisms so as to justify the elimination of the finder's preference program.

In this *Report and Order,* we find that elimination of the finder's preference program in the 220–222 MHz, 470–512 MHz, 800 MHz, and 900 MHz bands is appropriate. Pending finder's preference requests will be processed in accordance with Commission's rules.

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

No comments were submitted in direct response to the IRFA. We have, however, reviewed general comments that may impact small businesses.

The only impact on small business from this *Report and Order* is the elimination of the finder's preference program and filings related thereto in the 220–222 MHz, 470–512 MHz, 800 MHz, and 900 MHz bands. To date, only one finder's preference request has been filed in the 220–222 MHz band. The elimination of the finder's preference program in the 220–222 MHz band is predicated on the fact that geographic area licensing and competitive bidding have been adopted for this band.[3] The competitive bidding and geographic area licensing framework has been designed to implement Congress's goal of giving small business and others the opportunity to participate in the provision of spectrum-based services in accordance with 47 U.S.C. § 309(j)(4)(D). We eliminated the finder's preference program in the 800 MHz and 900 MHz bands when we adopted geographic area licensing and competitive bidding in those bands.[4] Therefore, this *Report and Order*—which eliminates the finder's preference program in the 220–222 MHz band—is consistent with our objective to promote efficient licensing and enhance the competitive potential of the 220–222 MHz band and is in accordance with the statutory directives of Section 309(j)(4)(D) of the Communications Act. We believe that the Commission's ongoing oversight and compliance programs are adequate and that the few number of finder's preference requests filed overall justify the elimination of the finder's preference program not only in the 220–222 MHz band, but also in the 470–512 MHz, 800 MHz, and 900 MHz bands.

III. Description and Estimate of the Number of Small Entities Affected by the Subject Rules

The rules adopted in this *Report and Order* will require small businesses that desire spectrum in the 220–222 MHz band to participate in the geographic area licensing and competitive bidding process, with the exception of certain channels allocated to Public Safety and Special Emergency Radio Services (SERS) that are not subject to geographic area licensing. The process has been designed to enable small businesses to compete for spectrum. In the 470–512 MHz, 800 MHz, and 900 MHz PLMR band services, as well as on those 220–222 MHz channels allocated to Public Safety and SERS, small businesses may obtain channels in accordance with the Commission's licensing rules for those bands.

The PLMR service plays an essential role in a vast range of industrial, business, land transportation, and public safety activities. PLMR systems are used by companies of all sizes operating in all U.S. business categories. Because of the vast array of PLMR users, the Commission has not developed nor would it be possible to develop a definition of small entities specifically applicable to PLMR users. For the purpose of determining whether a licensee is a small business as defined by the Small Business Administration (SBA), each licensee would need to be evaluated within its own business area.

The *NPRM* requested comment on the number of small entities that use PLMR for their internal communications needs in the 220–222 MHz, 470–512 MHz, 800 MHz, and 900 MHz bands and on the number of small entities that are likely to file finder's preference requests to obtain spectrum for their own internal communications needs. No comments were received. Therefore, the Commission is unable at this time to determine the number of small businesses which could be impacted by the amended rules. However, the Commission's fiscal year 1994 annual report indicates that at the end of fiscal year 1994, there were 1,101,711 licensees operating 12,882,623 transmitters in the PLMR bands below 512 MHz. There are also significant numbers of licensees in PLMR above 512 MHz.

The RFA also includes small governmental entities as part of the regulatory flexibility analysis.[5] The definition of small governmental entity is one with a population of less than 50,000.[6] There are over 85,006 governmental entities in the nation.[7] This number includes such entities as states, counties, cities, utility districts, and school districts. There are no figures available on what portion of this number has populations fewer than 50,000. This number, however, includes 38,978 counties, cities, and towns, and of those 37,566, or 96 percent, have populations fewer than 50,000.[8] The Census Bureau estimates that this ratio is approximately accurate for all governmental entities.[9] Thus, of the 85,006 governmental entities, we estimate that 96 percent, or

[1] Amendment of Part 90 Concerning the Commission's Finder's Preference Rules, *Notice of Proposed Rule Making,* WT Docket No. 96–199, 11 FCC Rcd 13016 (1996) (*NPRM*).

[2] Pub. L. No. 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is ''The Small Business Regulatory Enforcement Fairness Act of 1996'' (SBREFA), codified at 5 U.S.C. § 601 *et seq.*

[3] *See* Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220–222 MHz Band by the Private Land Mobile Radio Service, PR Docket No. 89–522, Implementation of Sections 3(n) and 332 of the Communications Act—Regulatory Treatment of Mobile Services, GN Docket No. 93–252, and Implementation of Section 309(j) of the Communications Act—Competitive Bidding, 220–222 MHz, *Second Memorandum Opinion and Order and Third Notice of Proposed Rulemaking,* PP Docket No. 93–253, 11 FCC Rcd 188 (1995).

[4] Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels in the Designated Filing Areas in the 896–901 MHz Bands Allotted to the Specialized Mobile Radio Pool, *Second Order on Reconsideration and Seventh Report and Order,* 11 FCC Rcd 2639 (1995); Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, Implementation of Sections 3(n) and 322 of the Communications Act Regulatory Treatment of Mobile Services, Implementation of Section 309(j) of the Communications Act—Competitive Bidding, *First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rulemaking,* 11 FCC Rcd 1463 (1995).

[5] See 5 U.S.C. § 601(5) (including cities, counties, towns, townships, villages, school districts, or special districts).

[6] Id.

[7] 1992 Census of Governments, U.S. Bureau of the Census, U.S. Department of Commerce.

[8] Id.

[9] Id.

81,600 are small entities that may be affected by our rules.

IV. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rules

This *Report and Order* eliminates the finder's preference program in the 220–222 MHz, 470–512 MHz, 800 MHz, and 900 MHz PLMR bands. The administrative requirements and related costs for filing such finder's preference requests are eliminated. Therefore, no new requirements are imposed by this action.

V. Steps Taken by Agency To Minimize Significant Economic Impact on Small Entities Consistent With Stated Objectives

This *Report and Order* eliminates the finder's preference program in the 220–222 MHz band because we have adopted geographic area licensing and competitive bidding in this band. The competitive bidding and geographic area licensing framework has been designed to implement Congress' goal of providing small businesses and others the opportunity to participate in the provision of spectrum-based services in accordance with 47 U.S.C. 309(j)(4)(D). We eliminated the finder's preference program in the 800 MHz and 900 MHz SMR bands when we adopted geographic area licensing and competitive bidding. Therefore, the *Report and Order* is consistent with our objective to promote efficient licensing and enhancement of the competitive potential of the 220–222 MHz band and is in accordance with the statutory directives of Section 309(j)(4)(D) of the Communications Act. The elimination of the finder's preference program in the 470–512 MHz, 800 MHz, and 900 MHz PLMR bands should not affect small businesses because the Commission's ongoing oversight and compliance programs are adequate to ensure that unused spectrum is returned and re-assigned efficiently. Additionally, any returned channels in these bands may be applied for by PLMR providers, which are primarily small businesses.

VI. Report to Congress

The Commission will send a copy of this Final Regulatory Flexibility Analysis along with the Report and Order, in a report to Congress pursuant to the SBREFA.[10]

Note: This attachment will not appear in the Code of Federal Regulations.

[FR Doc. 98–22401 Filed 8–19–98; 8:45 am]

BILLING CODE 6712–01–P

[10] See 5 U.S.C. § 801(a)(1)(A).

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC09

Endangered and Threatened Wildlife and Plants; Final Rule To Determine the Plant Pediocactus winkleri (Winkler Cactus) To Be a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) determines the plant species *Pediocactus winkleri* (Winkler cactus), to be a threatened species. *P. winkleri* is endemic to lower elevations of the Colorado Plateau in south-central Utah. Four populations of *P. winkleri* are known. These populations total about 20,000 plants that grow on widely separated parcels of habitat between 1 (2.4 acres (ac)) and 20 (48 ac) hectares (ha) in size. This species is threatened by collection and by habitat disturbances due to mining, recreation, and livestock. This determination, that *P. winkleri* is a threatened species, implements protection under the Endangered Species Act of 1973, as amended.

DATES: This rule is effective September 21, 1998.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Lincoln Plaza, Suite 404, 145 East 1300 South, Salt Lake City, Utah 84115.

FOR FURTHER INFORMATION CONTACT: John L. England at the above address (telephone 801/524–5001).

SUPPLEMENTARY INFORMATION:

Background

Pediocactus winkleri was discovered in the early 1960's and described in scientific literature by Heil (1979). The plant genus *Pediocactus* contains eight species, seven of these are rare endemics of the Colorado Plateau region of Utah, Colorado, New Mexico, and Arizona (Heil et al. 1981).

Pediocactus winkleri is a small globose (globular) cactus with stems 2.5 to 6.5 centimeters (cm) (1 to 2.5 inches (in)) tall and up to 5 cm (2 in) in diameter. It has clusters of 9 to 11 small radial spines with dense fine woolly hairs at their base; erect central spines are lacking. The flowers of *P. winkleri* are urn shaped, 1.8 to 2.5 cm (0.7 to 1 in) long and 1.8 to 3.8 cm (0.7 to 1.5 in) in diameter, and have a peach-to-pink color. The fruit is barrel shaped, 0.7 to 1.0 cm (.3 to .4 in) high and 0.8 to 1.1 cm (.31 to .43 in) wide, dehiscing (process of opening) by a vertical slit along the ovary wall. The seeds are shiny black, 3 millimeters (mm) (.12 in) long and 2 mm (.08 in) wide (Heil 1979, Heil et al. 1981; Welsh et al. 1993).

Based on the most recent surveys, the Service has determined that *Pediocactus winkleri* occurs in four populations that total about 20,000 plants (Kass 1997; Fish and Wildlife Service 1994, 1997; D. Clark, Torrey, Utah, personal communication 1998). The October 6, 1993, proposed rule to list *P. winkleri* as endangered (58 FR 52059) stated that *P. winkleri o*ccurred in 6 populations of about 3,500 plants. The abundance estimate of 3,500 plants given in the proposed rule was obtained from Heil (1984). Surveys through 1998, however, have documented about 5,800 individual *P. winkleri* plants (Fish and Wildlife Service 1997, Kass 1997, D. Clark, per. comm. 1998). Recent surveys in 1994 (Fish and Wildlife Service 1994), 1996 (T. Clark, Capitol Reef National Park, pers. comm. 1996), 1997 (Fish and Wildlife Service 1997, Kass 1997), and 1998 (D. Clark, per. comm. 1998) indicate that the species total population could reasonably be estimated to be as many as 20,000 plants based on the amount of available habitat. Each of the four populations contain a number of widely separated sites from 1 ha (2.4 ac) to 20 ha (48 ac) in size. Since the proposed rule was published, a survey conducted by the Bureau of Land Management (BLM) discovered an additional population near the town of Ferron in southwest Emery County, Utah (Fish and Wildlife Service 1994). The Service and BLM conducted additional surveys of the species' entire potential habitat on silty soils derived from the Dakota, Mancos, and Morrison geologic formations. Additional sites were discovered within existing population areas (Fish and Wildlife Service 1997; D. Clark 1998, pers. comm.). The Park Service also reports larger numbers of the cactus within Capitol Reef National Park (K. Heil, pers. comm. 1993; Tom Clark, Capitol Reef National Park, pers. comm. 1996, 1997; D. Clark, pers. comm 1998). The BLM reports larger numbers of the species from the Last Chance Desert population (Wayne Luddington, Bureau of Land Management, Price, Utah, pers. comm. 1997; Fish and Wildlife Service 1997). Service biologists visited these sites and subsequently reviewed the status of all extant populations of *P. winkleri* (Fish and Wildlife Service

1994, 1997). The Service consolidated the five *P. winkleri* populations in Wayne County, Utah (Heil 1984 and Neese 1987) into two populations, Notom and Hartnet, (Fish and Wildlife Service 1994) in an effort to be consistent with the two, more recently discovered populations, Last Chance and Ferron, in Emery County.

Individual *Pediocactus winkleri* plants are usually situated on the tops and sides of rocky hills or benches in *Atriplex* (saltbush) dominated desert shrub communities (Heil 1984). The species grows in alkaline silty loam or clay loam soils derived primarily from the Dakota formation, the Brushy Basin member of the Morrison formation, and the Emery sandstone member of the Mancos formation (Heil 1984, Neese 1987, Fish and Wildlife Service 1997).

Three of the four populations of *Pediocactus winkleri* form a narrow arc extending from near Notom in central Wayne County to the vicinity of Last Chance Creek in southwestern Emery County, Utah. The fourth is a disjunct population occurring near Ferron, Utah, in western Emery County. Most of these populations occur in widely scattered patches in a range about 58 kilometers (km) (36 miles (mi)) long and about 0.5 km (0.3 mi) wide. About two thirds of the population occurs on lands managed by the BLM east and north of the Capitol Reef National Park boundary. The remainder of the plants are found within the Park.

The range of *Pediocactus winkleri* converges upon populations of the listed endangered cactus *P. despainii* (San Rafael cactus). *P. despainii* and *P. winkleri* are described as separate species in all taxonomic treatments involving those species in regional floras (Welsh et al. 1993) and in monographs of the genus (Heil et al. 1981; K. Heil, San Juan College, Farmington, New Mexico, pers. comm. 1994, 1998). Recent cytotaxonomic research demonstrates that typical *P. winkleri* from the Notom population is genetically different from typical *P. despainii* from the San Rafael Swell (M. Porter, Rancho Santa Ana Botanic Garden, Claremont, California, pers. comm. 1998). However, the two species are phylogenetically related, and it has been suggested (Kass 1990) that they be treated as varieties (i.e. subspecies) of *P. winkleri*, the first of the two species to be described (Heil 1979; Welsh & Goodrich 1980). Occasional plants within the northern portion of the Last Chance population bear characteristics intermediate between *P. winkleri* and *P. despainii*. The two species are, however, morphologically distinct and geographically separated. The Service recognizes *P. winkleri* as a species distinct from *P. despainii*. If these species are later recognized as subspecies, their designations as threatened and endangered species will remain valid because section 3(15) of the Act allows for the listing of subspecies.

Previous Federal Action

Federal actions relating to this species began when the Secretary of the Smithsonian Institution prepared a report on those plants considered to be endangered, threatened, or extinct. This report (House Document No. 94–51) was then presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) formally accepting the report as a petition under section 4(c)(2) of the Act (petition acceptance is now governed by section 4(b)(3) of the Act), and acknowledging its intention to review the status of those plants. *Pediocactus winkleri* was not included in the 1975 notice but was included as a new candidate species in the **Federal Register** notice of December 15, 1980 (45 FR 82480). The 1980 notice included *P. winkleri* as a Category 1 species. Category 1 species were those taxa for which the Service had on file substantial information on the biological vulnerability and threats to support proposing them as endangered or threatened species.

Section 4(b)(3)(B) of the 1982 amendments to the Act required the Secretary of the Interior to make a finding within 1 year of receiving a listing petition as to whether the listing is warranted, warranted but precluded by other pending proposals of higher priority, or not warranted. In this case a ''warranted but precluded'' finding was made. This category requires a finding each year thereafter until the petitioned taxa are either proposed for listing or a final ''not warranted'' finding is made.

Section 2(b)(1) of the 1982 amendments further required that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. To facilitate making the necessary annual ''warranted but precluded'' findings on several plant taxa, the Service made an administrative decision to treat all the plant candidates in Category 1 and Category 2 at that time as if their listings had been petitioned on October 13, 1982. This included species such as *Pediocactus winkleri* which was included as a candidate in the 1980 Notice of Review but was never the subject of a petition. As a result of the administrative decision to treat these species as petitioned, *P. winkleri* was included in the annual warranted but precluded findings, first published on October 13, 1983.

In the November 28, 1983, supplemental notice (48 FR 53640), the Service changed the status of *Pediocactus winkleri* from Category 1 to Category 2 as a result of a careful review of the status information. Category 2 species were taxa for which the Service had information indicating the appropriateness of a proposal to list the taxa as endangered or threatened but for which more substantial data were needed on biological vulnerability and threats. The Service discontinued use of a category system in the February 28, 1996, **Federal Register** notice (61 FR 7596).

On September 27, 1985, the Service published a Notice of Review (50 FR 39526) replacing the 1980 notice and its 1983 supplement. This Notice of Review included *Pediocactus winkleri* as a Category 1 species, a change resulting from a status survey for *P. winkleri* (Heil 1984), which documented the vulnerability and threats to this species. The Service published Notices of Review on February 21, 1990 (55 FR 6184) and September 27, 1993 (58 FR 51144), which retained *P. winkleri* as a Category 1 species. The Service's proposal to list *P. winkleri* as endangered on October 6, 1993 (58 FR 52059), constituted the warranted 12-month petition finding for this species. During the public comment period on the 1993 proposal, the Service received substantive comments on information contained in the proposal regarding the threats to and population numbers of *P. winkleri.* Since that time, the Service has made efforts through additional surveys to obtain the best available scientific information in making the decision to list *P. winkleri.* The Service believes this final rule is an accurate assessment of the population numbers and threats faced by this species. In order to obtain and incorporate any new scientific information into this final determination for *P. winkleri,* and due to new information on the species range and abundance obtained by the Service since the comment period closed on December 6, 1993 (58 FR 52059), the Service reopened the public comment period for 30 days on June 22, 1998 (63 FR 33901).

The Service published Listing Priority Guidance for Fiscal Years 1998 and 1999 on May 8, 1998 (63 FR 25502). The guidance clarifies the order in which the Service will process rulemakings giving highest priority (Tier 1) to processing emergency rules to add species to the Lists of Endangered and Threatened

Wildlife and Plants (Lists); second priority (Tier 2) to processing final determinations on proposals to add species to the Lists, processing new proposals to add species to the Lists, processing administrative findings on petitions (to add species to the Lists, delist species, or reclassify listed species), and processing a limited number of proposed or final rules to delist or reclassify species; and third priority (Tier 3) to processing proposed or final rules designating critical habitat. Processing of this proposed rule is a Tier 2 action.

Summary of Comments and Recommendations

In the October 6, 1993, proposed rule and associated notifications, and the June 22, 1998, notice, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate Federal and State agencies, county governments, scientific organizations, and other interested parties were contacted and were requested to comment. Newspaper notices requesting public comments were published in The Salt Lake Tribune and the Deseret News on November 4, 1993, and the Emery County Progress on November 2, 1993.

In accordance with the Services' peer review policy published on July 1, 1994 (59 FR 34270), the Service solicited the expert opinions of three botanists regarding information contained in the proposed rule and new information obtained following the proposal on the species status. The three reviewers chosen are associated with colleges and universities and are considered experts on the species. All three reviewers responded and concurred with the Service's assessment of the threats facing this species.

During the comment period the Service received a total of twelve comment letters which are addressed in the following summary. Pertinent information received during the comment period has been incorporated into this final rule.

Issue 1: Botanical surveys by Neese (1987), Heil (1987), and Kass (1990), while in or near the habitat of *Pediocactus winkleri*, had objectives other than a specific inventory for *P. winkleri.* The population of *P. winkleri* may be greater than 3,500 as stated in the proposed rule, which was apparently based on the Heil (1984) status report for *P. winkleri.* The Heil status report does not document how the species population of 3,500 was arrived at. Additional inventory is needed to establish a more accurate species population number.

Service Response: From the close of the initial 1993 comment period on December 6, 1993, several additional surveys and studies were conducted (Fish and Wildlife Service 1994; 1997; Kass 1997; D. Clark, pers. comm. 1998). As described above in the ''Background'' section, these surveys documented a larger population than was known in 1993 and give a better understanding of the natural and human caused impacts to the species. Surveys through 1998 have documented actual numbers of *Pediocactus winkleri* plants at about 5,800 (Fish and Wildlife Service 1997, Kass 1997, D. Clark, per. comm. 1998). Based on these most recent surveys, the Service concurs with estimates by the BLM that *P. winkleri* occurs in four populations with a total number of approximately 20,000 plants, which results from acceptable extrapolation of direct survey counts (Kass 1997; Fish and Wildlife Service 1994, 1997; D. Clark, pers. comm. 1998).

Issue 2: The Service should resolve the taxonomic relationship between *Pediocactus despainii* and *P. winkleri* before final listing. Distinguishing between the two species in wild populations is difficult.

Service Response: Pediocactus despainii and *P. winkleri* are currently considered separate species in all taxonomic treatments involving those species in regional floras (Welsh et al. 1993) and in monographic treatments of the genus (Heil et al. 1981; K. Heil, pers. comm. 1994, 1998). However, the two species are phylogenetically related, and it has been suggested (Kass 1990) that they be treated as varieties of *P. winkleri*, the first of the two species to be described (Heil 1979; Welsh & Goodrich 1980). Plant taxonomists working specifically on this genus have no information, at this time, which would warrant an alternative taxonomic treatment (Welsh et al. 1993; K. Heil, pers. comm. 1994, 1998; M. Porter, pers. comm. 1994, 1998).

The two species are morphologically distinct and geographically separated as discussed above in the above ''Background'' section. *Pediocactus winkleri* has uniformly smaller seeds than *P. despainii. P. winkleri* areoles (the basal structure at the tip of stem tubercles which forms the base from which the spines arise) are wooly with dense villous hairs. *P. despainii* areoles are naked except for its spines. These facts strongly suggest the current taxonomic classification is accurate (K. Heil, pers. comm. 1993). Recent cytotaxonomic research indicates that the *P. winkleri* and *P. despainii* are taxonomically distinct (M. Porter, pers. comm. 1998).

Issue 3: Recreational off-road vehicle (ORV) use is not affecting all populations of *Pediocactus winkleri.* The heaviest ORV use in the Notom area occurs outside the species' occupied habitat. The Hartnet site is located within Capitol Reef National Park where no ORV use is occurring. *P. winkerli*'s characteristic of shrinking underground during its vegetative stage naturally protects the species and it is only vulnerable during its spring flowering period. The BLM has restricted ORV use in the Price Resource Area within *P. winkleri* habitat.

Service Response: ORV's are affecting all of the species' populations to some degree, with the exception of the Last Chance population where no ORV use occurs. Locally heavy use occurs with observed adverse impacts in the Ferron population. Although ORV use does not occur in that portion of the Harnet population contained within Capitol Reef National Park, the remainder of this population occurs on BLM land and is subject to ORV use. Occupied *Pediocactus winkleri* habitat within the BLM portion of the Hartnet population experiences frequent ORV spillover from the adjacent Dry Wash area where heavy ORV use occurs. The Service agrees that the heaviest ORV use occurs outside of occupied habitat in the Notom area, however, this population also experiences frequent ORV spillover use (K. Heil, pers. comm. 1993; Fish and Wildlife Service 1994, 1997; Wayne Luddington, Bureau of Land Management, Price, Utah, pers. comm. 1996, 1997). The BLM ORV restrictions in the Price Resource Area are for and within populations of *P. despainii*, a listed endangered species, not *P. winkleri.* Regarding the characterisic of the species to shrink underground see discussion under Factor A.

Issue 4: Livestock trampling is a minimal and decreasing threat to *Pediocactus winkleri*. The BLM has reduced livestock grazing levels in all *P. winkleri* habitat, in some cases to less than 20% of previous levels.

Service Response: The Service is aware of adverse impacts to this cactus from livestock trampling. Recent survey and habitat monitoring information show that livestock trampling continues to kill *Pediocactus winkleri* plants (K. Heil, pers. comm. 1993; Fish and Wildlife Service 1994, 1997). This species is poorly adapted to the impacts of large, sharp-hoofed ungulates, and plants are easily dislodged and killed by domestic livestock herds moving through its habitat. This trampling impact is most damaging during periods

when the soil surface is wet. These conditions occur most commonly during mild winter and early spring days when livestock grazing is most intense in the species' desert range habitat. Most of the reduction in livestock grazing within Capitol Reef National Park occurred in the southern portions of the Park outside the species' range. However, the Service acknowledges that this threat is decreasing and is, at present and by itself, a low level chronic threat, not a high level acute threat.

Issue 5: Mining and mining claim assessment work for gypsum and uranium is a minimal and decreasing threat to *Pediocactus winkleri.* Known occurrences of gypsum in the vicinity of *P. winkleri* populations occur in the Carmel Formation which is not habitat for the species. Development of known occurrences of uranium have only a slight potential to affect the species. Current low prices for uranium ore are expected to decrease interest in prospecting and mining claim assessment work within the range of the species. Changes in regulations affecting mining claim assessment activities are expected to decrease surface disturbance associated with mining claim assessment work.

Service Response: The Service has noted the above comment and has revised the final rule appropriately. The recent development of a mine for high quality, cosmetic grade bentonite clay is adversely affecting the species in the Last Chance Desert (Fish and Wildlife Service 1994, 1997). Mining claims cover the entire Last Chance Desert population of *Pediocactus winkleri.* Oil and gas activity is directly affecting the Ferron population. A portion of this population was lost to a gas well. A portion of the Hartnet population is in an oil and gas lease area.

Issue 6: A commenter questioned whether or not the Notom *Pediocactus winkleri* population has experienced an 80 percent loss of its individuals to collectors. Another commenter questioned a statement in the June 22, 1998, notice reopening the comment period that the FWS estimation of the population size at Notom has declined from about 2,000 individuals in 1984 to an estimated 700 individuals in 1997.

Service Response: In the 1993 proposal, the Service estimated that about 80 percent of the plants in the Notom area were taken by plant collectors over the last 10 years. The Service has revised this final rule to indicate that only the portion of the Notom population in the area of the monitoring transect has undergone a significant reduction in numbers of plants primarily from collection. In 1984 the Service established a monitoring transect in the Notom population of *Pediocactus winkleri* in an easily accessible area that cactus collectors frequent (Fish and Wildlife Service 1994, 1997). The Service has periodically monitored this transect, usually at 2-year intervals. The *P. winkleri* population along this transect declined from 53 plants in 1984 to zero plants in 1997. Overall the population in the immediate vicinity of the monitoring transect declined from 387 individuals in 1994 to 221 in 1997 (Fish and Wildlife Service 1997). The Service feels that this loss of plants is primarily attributed to collection, however, other factors including the characteristic of this species to remain underground during dry years may have contributed to a higher estimate of plant loss then has really occurred. The spring 1998 survey estimated the entire Notom population at about 4,000 individuals.

The Service, during its 1997 survey of the Notom population, discovered 27 shovel marks within the occupied habitat of this species. These marks were at the locations of plants last observed in 1994 and missing in 1997, and are obviously the remains of an effort to exploit this horticulturally desirable species. Most field collected cacti, however, are collected using smaller garden trowels, and consequently excavation scars are usually not noticeable after a few months.

Issue 7: The BLM has the ability to manage for the conservation of candidate species on lands under their jurisdiction and can control collection of the species.

Service Response: Collection of desirable small rare cacti is a difficult action to detect and to control. The recognition and protection offered a listed species under the Act focuses resources for its preservation and recovery, and reinforces the actions of the BLM and other Federal agencies through sections 7 and 9 of the Act for conservation of the species. The listing of species under the Act focuses the management actions of all Federal agencies to provide active conservation and protection for listed species and provides opportunities for States to assist in plant conservation under Section 6 of the Act.

Issue 8: People living in an area where endangered species are proposed for listing should be informed in time to be able to comment and to hold public hearings.

Service Response: One commenter requested a 2- to 3-year comment period and also requested that a public hearing should be held. This was the only request for a public hearing and the request was not received during the specified open comment period.

As stated previously, immediately after publication of the proposed rule on October 6, 1993, the Service contacted all known interested parties (i.e., Federal and State agencies, county governments, scientific organizations, and others), and comments were solicited from them. In addition, newspaper notices requesting public comments were published (between November 2 and 4, 1993) in three newspapers that cover the potentially affected area. Thus, the Service believes that adequate time was given to receive requests for public hearings.

The Service specified that public hearing requests must be received by November 23, 1993, and no such request was received by that date. However, at the request of Emery County, a representative of the Service met with county officials to explain the Service's rationale for proposing to list the species, and to receive the County's comments. The Emery County commissioners were concerned that the listing of *Pediocactus winkleri* would interfere with the economic activities of grazing and mining within their County. These concerns were also expressed in writing. The Service recognizes that potential restrictions in land use to protect this cactus could limit some future mining development plans and livestock grazing activities on Federal lands within the species' range. *P. winkleri* has a limited distribution and therefore widespread restrictions on these activities on public lands in Emery and Wayne counties is not anticipated. The Service reopened the public comment period again on June 22, 1998. The second comment period closed on July 22, 1998. The Service received four comments during the reopened comment period and has incorporated new information provided during the comment period in this finding.

Issue 9: The BLM believes that threats to the species have not been adequately quantified, have lessened since the proposed rule was published, and that species' protection under a conservation agreement would be more appropriate than listing.

Service Response: Threats to the species continue unabated since the proposed rule was published in October 1993. Evidence of take was documented not only at a specific transect which has been monitored since 1984, but also from site visits where photographs of cattle trampling, collecting, and ORV loss were documented. These losses are

not natural losses which could be expected to occur but losses which could be prevented through stricter regulation and enforcement activities.

The Service commends the BLM for initiating the ''*Pediocactus winkleri* and *Pediocactus despainii* Conservation Agreement and Strategy'' and for its anticipated future implementation. The proposed agreement contains strategies which, if implemented over time, would assist in the recovery of both species of cactus. However, the agreement is in draft form and is not signed. As such, the Service is not able to consider the effectiveness of this agreement in reducing or eliminating the threats to this species in the future as part of the decision to list.

Copies of the listing proposal were provided to three professional botanists with research experience with rare flora including *Pediocactus winkleri*. The supplemental population information provided by BLM was also forwarded for their review. The three reviewers continue to support listing due to continued threats to the species.

The Service does not believe that the larger numbers of *Pediocactus winkleri* found in BLM's most recent data is a function of reduced threat, but instead is a function of the increased effort put forth to find individual plants. Most surveys up until this year were conducted by one or two individuals with limited resources. More recent BLM surveys were conducted by four or more individuals over a period of several weeks.

Even though the increased surveys resulted in increased numbers of *Pediocactus winkleri*, the threats to the species have not diminished to the point that the species does not need protection under the Act. The Service therefore believes listing as threatened is justified as described in the following sections.

Summary of Factors Affecting the Species

After a thorough review of all available information, the Service has determined that *Pediocactus winkleri* should be listed as a threatened species. Procedures found in section 4(a)(1) of the Act and regulations implementing the listing provisions of the Act (50 CFR part 424) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to *P. winkleri* are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The small, restricted populations of *Pediocactus winkleri* make the species highly vulnerable to human-caused habitat disturbances. ORV activity, mineral development, road and utility corridor development, and livestock trampling have adversely affected this species (Heil 1984, 1987; Heil, pers. comm. 1993; Neese 1987; Fish and Wildlife Service 1994, 1997). This species is especially vulnerable during the spring flowering period when seasonally moist soils make it susceptible to damage and mortality from surface disturbance of its habitat. The species is easily dislodged by domestic livestock and ORV's during periods when the soil is wet. ORV use and livestock grazing are most intense during the mild spring season when the species is most vulnerable to habitat disturbance. During periods of drought, these cacti do not protrude above ground level, thus rendering them less susceptible to livestock trampling and damage by ORV activity. However, the species forms flower buds in the autumn that persist over winter (Heil et al. 1981). These flowering buds at the ground surface level are very vulnerable to surface disturbance.

A considerable portion of the habitat of this species, as well as individual plants, are being damaged by ORV activity (Heil 1984, Neese 1987; Fish and Wildlife Service 1994, 1997). At the northern and southern limits of the species' range, occupied *Pediocactus winkleri* habitat, located on sparsely vegetated slopes in readily accessible areas, is adjacent to heavily used ORV recreational areas, and is being impacted by ORV activity. Except for habitat within Capitol Reef National Park and the Last Chance population on BLM lands, the remaining habitat of *P. winkleri* is experiencing similar but lesser impacts from ORV activity (Fish and Wildlife Service 1997). Hard-tired ORVs such as motorcycles and four wheel drive trucks and other highway vehicles are most damaging to the species. These hard-tired vehicles can cause damage and mortality even when the plant is dormant. Increased erosion as a consequence of ORV's damaging the natural desert pavement and cryptogamic crust potentially increases the species' exposure to losses from extreme weather events which occur in the area.

Livestock trampling has affected every population of this cactus including those in Capitol Reef National Park (the Park is not closed to livestock grazing). According to the BLM, livestock use in areas of *Pediocactus winkleri* habitat has decreased in recent years, but the impacts of trampling to some populations continue (Heil, pers. comm. 1993; Fish and Wildlife Service 1994, 1997). The Service believes grazing and trampling impacts are, for the most part, more chronic than acute and rarely impact more than one percent of the population each year. Individuals lost due to livestock trampling probably could be replaced by natural recruitment from the populations' seed bank. However, cumulative impacts from collecting, localized ORV destruction, and natural losses from disease and parasitism are at sufficient levels in some portion of the species' range (i.e. Notom and Ferron populations) that population viability is impaired.

The habitat of *Pediocactus winkleri* contains bentonite clay, oil and gas and some uranium ore deposits. The development of these mineral and petroleum deposits and surface disturbance by annual assessment work has directly affected the species. Currently, oil and gas field development activities are impacting the Ferron population. This activity has destroyed individual plants and occupied habitat. Over eighty percent of the area occupied by the Ferron population is leased for oil and gas (Fish and Wildlife Service 1997). In addition, bentonite clay mining has impacted the Last Chance population by destroying individual plants and occupied habitat (W. Luddington, pers. comm. 1994, 1996, and 1997). Much of the Last Chance population is in areas with registered mining claims (Fish and Wildlife Service 1997). The transfer of mining claim patents from the Public domain to private ownership is not affected by the Act. Unauthorized utility and road development within the species' Notom population caused individual plant mortality and habitat degradation in 1995 and remains a potential threat to the species (Fish and Wildlife Service 1997).

B. *Over-utilization for commercial, recreational, scientific, or educational purposes. Pediocactus winkleri* is an attractive small cactus, especially when it is in flower. Although difficult to cultivate in most horticultural settings, this rare plant is highly desired in cactus collections and gardens and has been sought by both hobby and commercial cactus collectors (Hochstätter 1990, Heil 1984, Heil, pers. comm. 1993, 1998). The fact that this species is difficult to maintain in garden settings stimulates a continual demand for replacement plants as cultivated garden and greenhouse plants die. Cactus collectors are active in the Colorado Plateau, going from the habitat of one species of *Pediocactus* to the next to collect a complete set of the genus

(Heil, pers. comm. 1994; Fish and Wildlife Service 1994, 1997). A portion of the Notom population of *P. winkleri* has been severely reduced primarily from losses to plant collectors (Heil 1984 and U.S. Fish and Wildlife Service 1997) (Also discussed under Issue 6). In addition to the Notom population, the Hartnet and Ferron populations are highly vulnerable to specimen collecting due to their ease of access and their being known to cactus collectors (Heil 1984, and Fish and Wildlife Service 1994, 1997).

C. *Disease or predation.* Because of its small size and the shortness of its spines, this species of cactus is less protected from animals than other, more spiny species. The effects of livestock grazing on desert vegetation may produce indirect impacts on *Pediocactus winkleri* populations. The desert range of *P. winkleri* had very sparse use by large, wild ungulates prior to the introduction of domestic livestock. Livestock grazing has caused changes in the floristic composition of the species' desert ecosystem with the introduction of weeds. These introduced weeds have the potential to outcompete over the long term, and to eventually reduce or displace native species, including *P. winkleri.* The effects of livestock trampling are discussed in Factor ''A'' above. This species is also susceptible to natural infestations of beetle larvae which will kill an individual within two years of initial infestation (Fish and Wildlife Service 1994).

D. *The inadequacy of existing regulatory mechanisms.* There are no Federal or State laws or regulations directly protecting *Pediocactus winkleri* or its habitat. The National Park Service (NPS) restricts, and in most cases forbids, the collection of plants and plant materials from National Parks. The BLM Manual 6840 (Special Status Species Management) states that ''The BLM shall carry out management, consistent with multiple use, for the conservation of candidate species and their habitats and shall ensure that actions authorized, funded, or carried out do not contribute to the need to list any of these species as Threatened or Endangered.'' The BLM has the authority to control the removal of vegetative materials from Federal lands under its management and presently requires a permit to collect plant species. Current BLM policy is to require a permit to collect any cactus from the habitat area of *P. winkleri.* However, this species has populations that are scattered over remote country, thus making protection from unauthorized collecting difficult, even in Capitol Reef National Park. The Utah Forest Products Act requires proof of ownership to harvest or transport native vegetation from State, private, and Federal wildlands in Utah. Listing of *P. winkleri* would also provide for greater statutory protection and a more stringent penalty for take. Therefore, a greater deterrent for taking the species would be established.

The species is listed in Appendix I of The Convention of International Trade in Endangered Species of Wild Fauna and Flora (CITES). CITES import and export permits are generally required for international trade in Appendix I species, and permits are not allowed for commercial shipments. The small size of these species makes them easy to hide and therefore hard to detect in international commerce.

E. *Other natural or manmade factors affecting its continued existence. Pediocactus winkleri* is restricted to a limited geographic area with scattered, isolated occurrences and relatively low population numbers per occurrence, which render this cactus vulnerable to human disturbances. These additional stresses to the plant may exacerbate natural disturbances to populations of this species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. As described under the Act, a species should be found to be endangered if the species is in danger of becoming extinct throughout all or a significant portion of its range. The term threatened is defined as likely to become endangered within the foreseeable future throughout all or a significant portion of its range. In the proposed rule, *Pediocactus winkleri* was proposed to be listed as an endangered species. With the new information collected on this species since the proposed rule the Service has found that the population numbers are larger than previously estimated. Based on a reevaluation of the population numbers and threats, the preferred action is to list *P. winkleri* as threatened. Collection has been documented in a portion of the Notom population to significantly lower its numbers and is considered a primary threat to the Hartnet and Ferron population. Surface disturbances are impacting the ecosystem in which the species occurs and may increase in the future, especially from recreational ORV use. However, in an effort to eliminate soil compaction and plant destruction, the draft BLM Conservation Agreement and Strategy will restrict ORV use to existing roads and trails through the preparation of a managment plan. Because of new information indicating a relatively larger population of *P. winkleri,* and the expected implementation of a Conservation Agreement and Strategy aimed at reducing and eliminating threats to *P. winkleri,* threatened status is a more accurate assessment of the current condition of this species. For the reasons given below, it is not prudent to designate critical habitat at this time.

Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures that are necessary to bring the species to the point at which the measures provided pursuant to the Act are no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12(a)) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat concurrently with determining a species to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (i) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or (ii) such designation of critical habitat would not be beneficial to the species.

As noted under Factor B in the ''Summary of Factors Affecting the Species'', *Pediocactus winkleri* is threatened by collection, an activity difficult to prevent. The listing of species as endangered or threatened publicizes their rarity and may make them more susceptible to collection. The publication of precise maps and descriptions of critical habitat would make *P. winkleri* more vulnerable to collection. Precise maps could also threaten more remote areas of *P.*

winkleri habitat, currently not subject to collection, by providing specific location information to cactus collectors. The Service feels that publication of precise maps for this species along with this final listing rule would put this species at greater risk of collection by cactus enthusiasts given the well documented history of previous collections.

Critical habitat designation, by definition, directly affects only Federal agency actions. *P. winkleri* occurs entirely on lands under Federal (BLM and NPS) management. Federal actions that might affect this species and its habitat include activities such as mining, grazing, and ORV use. Such activities would be subject to review under section 7(a)(2) of the Act, whether or not critical habitat was designated. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. Federal actions satisfying the standard for adverse modification are nearly always found to also jeopardize the species concerned, and the existence of critical habitat designation does not materially affect the outcome of consultation. The Service recognizes that there may be some benefit in designating critical habitat for highly endangered species whose survival and recovery depend upon expansion of range and numbers into currently unoccupied habitat. However, this is not the case for *P. winkleri* which is being listed as threatened and does not require unoccupied habitat for its survival or recovery. Habitat protection for *P. winkleri* can be accomplished through the section 7 jeopardy standard and there would be no benefit from designating critical habitat for this species.

Both the BLM and NPS are actively involved in the management and monitoring of *Pediocactus winkleri* and are aware of the threats facing this species. BLM has drafted a Conservation Agreement, with the assistance of the NPS and other partners, aimed at reducing and eliminating identified threats to *P. winkleri.* Designation of critical habitat would not increase the commitment or management efforts of the BLM or NPS. The Service believes that protection of *P. winkleri* will be better addressed through the recovery process and through section 7(a)(2) of the Act, as amended.

The Service finds that the designation of critical habitat is not prudent because of the increase of threat from collection which far outweighs any benefit that might be gained from identifying areas in need of special protection. The Service feels that recovery of the species will be accomplished more effectively with the current coordination process that the Service has established with the BLM and NPS.

Available Conservation Measures

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

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

Pediocactus winkleri occurs on Federal lands managed by the BLM and the NPS. Both of these Federal agencies are responsible for insuring that all activities and actions on lands that they manage are not likely to jeopardize the continued existence of *P. winkleri.*

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all threatened plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Section 4(d) allows for the provision of such protection to threatened species through regulation. This protection may apply to this species in the future if regulations are promulgated. Seeds from cultivated specimens of threatened plants are exempt from these prohibitions provided that a statement of ''cultivated origin'' appears on their containers. Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. For threatened plants, permits also are available for botanical or horticultural exhibition, educational purposes, or special purposes consistent with the purposes of the Act. It is anticipated that permits will be sought for cultivated specimens, which are currently available through domestic and international nurseries. Requests for copies of the regulations regarding listed species and inquiries about prohibitions and permits may be addressed to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225; telephone number 303–236–7398; facsimile number 303–236–0027. Information collections associated with these permits are approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–6649. For additional information concerning these permits and associated requirements, see 50 CFR 17.72.

On July 29, 1983, *Pediocactus winkleri* was included in Appendix I of CITES. Appendix I species generally require both an export and import permit before international shipment of this species can occur. Such shipment is strictly regulated by CITES party nations to prevent effects that may be detrimental to the species' survival. Generally, the import or export of an Appendix I species cannot be allowed if it is for primarily commercial purposes. If plants are certified as artificially propagated, however, international

shipment requires only export documents under CITES, and commercial shipments may be allowed.

It is the policy of the Service, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the species' range. The Service believes the following actions would not be likely to result in a violation of section 9:

(1) Activities authorized, funded, or carried out by Federal agencies (e.g., grazing, ORV activity, mining) when such activity is conducted in accordance with any reasonable and prudent measures given by the Service in a consultation conducted under section 7 of the Act;

(2) Casual, dispersed human activities on foot (e.g., sight seeing, photography, hiking).

The Service believes that the following activities would likely result in a violation of section 9:

(1) Unauthorized collection and knowingly damaging *Pediocactus winkleri* plants;

(2) Interstate or foreign commerce and import/export without previously obtaining an appropriate permit. Permits to conduct activities are available for purposes of scientific research and enhancement of propagation or survival of the species.

(3) Use of herbicides or pesticides in violation of label restrictions.

Other activities not identified above will be reviewed on a case-by-case basis to determine if a violation of section 9 of the Act may be likely to result from such activity. The Service does not consider these lists to be exhaustive and provides them as information to the public.

Anyone interested in determining whether a particular activity would constitute a prohibited act under section 9(a)(2) should contact the Service's Field Supervisor in Salt Lake City (see **ADDRESSES** section).

National Environmental Policy Act

The Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (49 FR 49244).

Paperwork Reduction Act

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. 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. For additional information concerning permit and associated requirements for threatened species, see 50 CFR 17.32.

References Cited

A complete list of all references cited herein is available upon request from the Salt Lake City, Utah, Field Office (see **ADDRESSES** section).

Authors

The primary author of this document is John L. England, botanist (see **ADDRESSES** above).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, the Service amends part 17, Subchapter B of Chapter I, title 50 of the Code of Federal Regulations, as set forth below:

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

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

2. Amend § 17.12(h) by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	
Pediocactus winkleri	Winkler cactus	U.S.A. (UT)	Cactaceae	T	641	NA	NA
*	*	*	*	*	*	*	

Dated: August 13, 1998.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 98–22448 Filed 8–19–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 654

[Docket No. 980501114–8213–02; I.D. 041698G]

RIN 0648–AK48

Stone Crab Fishery of the Gulf of Mexico; Amendment 6

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 6 to the Fishery Management Plan for the Stone Crab Fishery of the Gulf of Mexico (FMP). Amendment 6 and this rule will reinstate for up to 4 years (through June 30, 2002) the previously existing temporary moratorium on the Federal registration of stone crab vessels that expired on June 30, 1998. The intended effect is to provide additional time for the industry and Florida to develop and implement a limited access system for the fishery.

DATES: This rule is effective August 20, 1998.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, 727–570–5305.

SUPPLEMENTARY INFORMATION: The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 654.

On April 23, 1998, NMFS announced the availability of Amendment 6 and requested comments on the amendment (63 FR 20162). On May 14, 1998, NMFS published a proposed rule to implement Amendment 6 and requested comments on the rule (63 FR 26765). The background and rationale for the measures in the amendment and proposed rule are contained in the preamble to the proposed rule and are not repeated here. On July 22, 1998, after considering the comments received on the amendment and the proposed rule, NMFS approved Amendment 6.

Comments and Responses

Two public comments were received on Amendment 6 and/or the proposed rule. The U.S. Fish and Wildlife Service submitted comments supporting Amendment 6. Comments from the U.S. Coast Guard concluded that there were no vessel safety or enforcement concerns. NMFS concurs with these comments. The proposed rule has been adopted as final without change.

Classification

The Administrator, Southeast Region, NMFS, with the concurrence of the Assistant Administrator for Fisheries, NOAA (AA), determined that Amendment 6 is necessary for the conservation and management of the stone crab fishery of the Gulf of Mexico and that Amendment 6 is consistent with the Magnuson-Stevens Act and other applicable law.

This final rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce, based on the Council's Regulatory Impact Review that assesses the economic impacts of management measures in this rule on fishery participants, certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

Because this rule merely reinitiates a moratorium that was in place until June 30, 1998, and does not require any participants in the fishery to take action to come into compliance, the AA finds for good cause under 5 U.S.C. 553(d)(3) that delaying the effective date of this rule for 30 days is unnecessary. Accordingly, the AA reinitiates the moratorium effective upon the date of publication in the **Federal Register**.

List of Subjects in 50 CFR Part 654

Fisheries, Fishing.

Dated: August 14, 1998.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 654 is amended as follows:

PART 654—STONE CRAB FISHERY OF THE GULF OF MEXICO

1. The authority citation for part 654 continues to read as follows:

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

2. In § 654.3, paragraph (d) is revised to read as follows.

§ 654.3 Relation to other laws.

* * * * *

(d) Under Amendment 6 to the Fishery Management Plan for the Stone Crab Fishery of the Gulf of Mexico, there is a temporary moratorium on the issuance by the Regional Director of Federal identification numbers and color codes for vessels and gear in the stone crab fishery in the management area. The moratorium will end not later than June 30, 2002. During the moratorium, fishermen must obtain identification numbers and color codes for these vessels and gear from the State of Florida. (See § 654.6(a).)

[FR Doc. 98–22431 Filed 8–19–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971208298–8055–02; I.D. 081498A]

Fisheries of the Exclusive Economic Zone Off Alaska; Species in the Rock Sole/Flathead Sole/''Other Flatfish'' Fishery Category by Vessels Using Trawl Gear in the Bering Sea and Aleutian Islands

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for species in the rock sole/flathead sole/''other flatfish'' fishery category by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 1998 Pacific halibut bycatch allowance specified for the trawl rock sole/flathead sole/''other flatfish'' fishery category.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 16, 1998, until 2400 hrs, A.l.t., December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens

Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 1998 prohibited species bycatch mortality allowance of halibut for the BSAI trawl rock sole/flathead sole/''other flatfish'' fishery category, which is defined at § 679.21(e)(3)(iv)(B)(*2*), was established as 735 metric tons by the Final 1998 Harvest Specifications of Groundfish for the BSAI (63 FR 12689, March 16, 1998).

In accordance with § 679.21(e)(7)(v), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 1998 halibut bycatch allowance specified for the trawl rock sole/flathead sole/''other flatfish'' fishery in the BSAI has been caught. Consequently, the Regional Administrator is closing directed fishing for species in the rock sole/flathead sole/''other flatfish'' fishery category by vessels using trawl gear in the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent exceeding the 1998 Pacific halibut bycatch allowance specified for the trawl rock sole/flathead sole/''other flatfish'' fishery category. Providing prior notice and an opportunity for public comment on this action is impracticable and contrary to the public interest. The fleet will soon take the allowance. Further delay would only result in the 1998 Pacific halibut bycatch allowance being exceeded. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.21 and is exempt from review under E.O. 12866.

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

Dated: August 14, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–22342 Filed 8–14–98; 4:26 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 161
Thursday, August 20, 1998

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 COMMUNICATIONS COMMISSION

47 CFR Parts 2, 25, and 97

[ET Docket No. 98–142, FCC 98–177]

Mobile-Satellite Service Above 1 GHz

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: By this action, we propose to amend the Commission's Rules by allocating the 5091–5250 MHz and 15.43–15.63 GHz bands to the fixed-satellite service (''FSS'') on a co-primary basis for Earth-to-space (''uplink'') transmissions and by allocating the 6700–7075 MHz and 15.43–15.63 GHz bands on a co-primary basis for space-to-Earth (''downlink'') transmissions. We also propose to add these frequency bands to the list of frequencies available for use by the Satellite Communications Service. We further propose to limit the use of these new FSS allocations to feeder links that would be used in conjunction with the service links of non-geostationary satellite orbit mobile-satellite service (''NGSO MSS'') systems. The adoption of these proposals would provide spectrum for feeder links to support the current and immediate requirements of NGSO MSS systems.

DATES: Comments are due September 21, 1998, reply comments are due October 5, 1998.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Tom Mooring, Office of Engineering and Technology, (202) 418–2450.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making*, ET Docket No. 98–142, FCC 98–177, adopted July 28, 1998, and released August 4, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC, and also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857–3800, 1231 20th Street, NW Washington, DC 20036.

Summary of the Notice of Proposed Rule Making

1. *Introduction*. By this action, we propose to amend part 2 of the Commission's rules by allocating the 5091–5250 MHz and 15.43–15.63 GHz bands to the FSS on a co-primary basis for uplink transmissions and by allocating the 6700–7075 MHz and 15.43–15.63 GHz bands on a co-primary basis for downlink transmissions. We also propose to amend part 25 in order to add these frequency bands to the list of frequencies available for use by the Satellite Communications Service. We further propose to limit the use of these new FSS allocations to feeder links that would be used in conjunction with the service links of NGSO MSS systems. The adoption of these proposals would provide spectrum for feeder links to support the current and immediate requirements of NGSO MSS systems. In order to implement these feeder-link allocations, we propose, consistent with the international allocations and footnotes, to maintain the international standard system's right of precedence over all other uses in the 5000–5150 MHz band and to remove that right in the 5150–5250 MHz band, to delete the aeronautical mobile-satellite (R) service allocations in the 5150–5250 MHz and 15.4–15.7 GHz bands, and to delete the FSS and inter-satellite feederlink allocations for the aeronautical radionavigation and/or aeronautical mobile (R) services in the 5000–5250 MHz and 15.4–15.7 GHz bands.

2. In addition, we propose to implement the clarification concerning the maximum power flux density (''PFD'') for Big LEO service uplinks at 1610–1626.5 MHz that was adopted at the 1995 World Radiocommunication Conference (''WRC–95'') and the more lenient coordination threshold standard for Big LEO service downlinks at 2483.5–2500 MHz that was adopted at the 1997 World Radiocommunication Conference (''WRC–97''). The proposals we make in this instant proceeding are consistent with international allocations for these frequency bands and will provide incumbent operations in these bands with adequate protection from harmful interference.

3. *NGSO MSS Feeder Links in the 5000–5250 MHz Band*. We propose to allocate the 5150–5250 MHz band to the non-Government fixed-satellite (Earth-to-space) service on a primary basis; to adopt international footnotes S5.367 (previously 733), S5.444 (796), S5.444A, S5.447A, and S5.447C domestically; to delete reference to footnote 797 from the United States Table of Frequency Allocations; and to add the 5091–5250 MHz band to the list of frequency bands available in the Satellite Communications Service. The adoption of this proposal would provide Big LEO and other commercial systems with 159 megahertz of contiguous NGSO MSS feeder uplink spectrum from 5091 MHz to 5250 MHz. However, we caution Globalstar and any other prospective user of the 5091–5250 MHz band that Working Group 4A is still developing the sharing criteria between aeronautical radionavigation service and FSS uplinks for this band; that prior to January 1, 2010, the requirements of existing and planned international standard systems (*e.g.*, microwave landing systems) which cannot be met in the 5000–5091 MHz band will take precedence over other uses of the 5091–5150 MHz band; and, that after January 1, 2010, FSS uplinks will operate on a secondary basis to the aeronautical radionavigation service in the 5091–5150 MHz band. In addition, we seek comment on footnote S5.447B, which provides for ''reverse band working'' in the 5150–5216 MHz band.

4. Finally, we observe that the National Telecommunications and Information Administration (''NTIA'') has previously adopted footnote G126, which states that Differential-Global-Positioning-System (''DGPS'') stations may be authorized on a primary basis in the 5000–5150 MHz bands for the specific purpose of transmitting DGPS information intended for aircraft navigation. We propose to add footnote G126 to the Government column of the 5000–5150 MHz band.

5. *NGSO MSS Feeder Downlinks in the 6700–7075 MHz Band*. We observe that the 1995 Conference Preparatory Meeting Report indicated that studies have shown that bi-directional spectrum sharing between geostationary fixed-satellite service and non-geostationary mobile-satellite service feeder link

networks is technically feasible given careful site selection and antenna sizing, and depending on the number of gateway earth stations. At WRC–95, we proposed the 6700–7025 MHz band as a ''reverse band'' candidate. We made this proposal because the numerous restrictions on the GSO FSS uplink allotment plan for the 6725–7025 MHz band have resulted in only light use of this band throughout the world, including the United States. Therefore, we believe that the 6700–7075 MHz band could be used for feeder downlinks by up to four NGSO MSS systems using currently available technology, with two of the systems ''cross polarized'' from the other two. Accordingly, we propose to allocate the 6700–7075 MHz band to the non-Government fixed-satellite (space-to-Earth) service on a co-primary basis; to adopt international footnotes S5.440 (previously 791), S5.441 (792A), S5.458 (809), S5.458A, and S5.458B domestically; to add a cross reference to the rules for the Satellite Communications Service with respect to the 6875–7075 MHz band; and to add the 6700–7075 MHz band (space-to-Earth) to the list of FSS frequency bands available in the Satellite Communications Service. In addition, we propose to adopt footnote S5.149 which states, *inter alia*, that in making assignments to stations of other services, administrations are urged to take all practicable steps to protect radio astronomy use of the 6650–6675.2 MHz band from harmful interference. Finally, we propose to replace the Domestic Public Fixed Service (part 21) and Private Operational-Fixed Microwave Service (part 94) cross references with one for the Fixed Microwave Services (part 101); to delete the erroneous cross reference to the Domestic Public Fixed Service (part 21) for the 6875–7075 MHz band in the Table of Frequency Allocations; and to add an existing part 2 requirement to the rules for the Amateur Radio Service. We request comment on all of the proposals. In particular, comment is sought on the PFD limits in No. S9.11A (previously known as Resolution 46). It is our belief that the proposed PFD limits will afford terrestrial fixed and broadcast auxiliary users of the band with adequate protection. We assume that each satellite system will require only a few gateways, approximately six in number. We solicit comment on this assumption, on how many gateways overall are likely to use this band, whether technological advances are likely to significantly increase the number of gateways, and where these gateways are likely to be geographically located, especially whether they will likely be located in rural areas, or in urban areas. In general, we request comment on the likely impact of sharing the spectrum with Big LEO feeder links upon the terrestrial users.

6. *NGSO MSS Feeder Links in the 15.4–15.7 GHz Band*. In preparation for WRC–97, the Commission, the WRC–97 Advisory Committee, and NTIA assisted the ITU in the development of the necessary technical constraints that would allow FSS uplinks and downlinks to co-exist with incumbent services in the 15.4–15.7 GHz band. WRC–97 adopted the United States proposals for the 15.4–15.7 GHz band. We now propose to implement these WRC–97 changes domestically. Specifically, we propose to allocate the 15.43–15.63 GHz band to the fixed-satellite service for both uplink and downlink transmissions and to adopt international footnotes S5.511A and S5.511C domestically. We also propose to delete reference to footnotes 733 and 797 from the 15.4–15.7 GHz band entry in the Table of Frequency Allocations, to add a cross reference to the rules for the Satellite Communications Service into the 15.43–15.63 GHz band entry, and to add both the FSS uplink and downlink allocations to the list of frequency bands available in the Satellite Communications Service. We request comment on these proposals.

7. *Big LEO Service Link Coordination*. During our preparation for WRC–95, we stated that technical constraints that could hinder implementation of the Big LEO service had been identified in that proceeding and in the ITU–R process. Accordingly, we proposed that WRC–95 remove several of these constraints from the Big LEO service link spectrum. WRC–95 generally adopted our proposals, and we are now proposing to implement domestically these WRC–95 changes.

8. Big LEO systems are authorized to use the 1610–1626.5 MHz band for their service uplinks. In our WRC–95 preparation, we proposed to modify footnote 731E by specifying a ''peak'' power density limit in those parts of the 1610–1626.5 MHz band which are used by systems operating in accordance with footnote 732, and by specifying a ''mean'' power density in the part of the band where no such systems are operating. We also stated that interference protection under RR No. 953 should be sufficient and accordingly proposed to delete the language specifying additional protection of non-MSS services in the 1610–1626.5 MHz band.

9. WRC–95 adopted our proposal for RR 731E (re-numbered as S5.364), except that the additional protection of non-MSS services was not deleted. In addition, international footnotes 722, 731F, 732, 733, 733A, 733E, and 734, which have previously been adopted domestically, were re-numbered as S5.341, S5.365, S5.366, S5.367, S5.368, S5.372, and S5.149, respectively. Accordingly, we propose to update the United States table by adopting these international footnotes domestically. We request comment on this proposal. Finally, we observe that a recent revision to footnote US319 was inadvertently not published in the Code of Federal Regulations and that footnote S5.368 (previously 733A) was inadvertently not added to the 1613.8–1626.5 MHz band. We therefore take this opportunity to correct these oversights.

10. Big LEO systems are authorized to use the 2483.5–2500 MHz band for their service downlinks. In our preparation for WRC–95, we expressed concern that footnote 753F references PFD limits in RR No. 2566 that may be too stringent and could result in unnecessary coordination. We also proposed to add cautionary language in footnote 753F to protect radio astronomy in the 4990–5000 MHz band and declined to propose to suppress footnote 733E.

11. Footnote 753F states that coordination, in this band, of space stations of the mobile-satellite and radiodetermination-satellite services with terrestrial services is required only if the PFD produced by a space station at the Earth's surface exceeds the limits in Radio Regulation No. 2566. WRC–95 re-numbered footnote 753F as S5.402 and modified it to provide a more lenient coordination threshold standard than the current requirement and this new coordination threshold standard is incorporated in Resolution 46/No. S9.11A. WRC–97 further revised the interim procedures in Resolution 46. We also note that the procedures for the coordination and notification of frequency assignments of satellite networks established under No. S9.11A are only interim in nature. In particular, we observe that the coordination threshold factors applicable to terrestrial services other than fixed services may be reviewed at a future conference. Nonetheless, we believe that the new coordination threshold will adequately protect incumbent terrestrial services, while significantly increasing the usefulness of the 2483.5–2500 MHz band for Big LEO service downlinks. In addition, international footnotes 752 and 753A, which have previously been adopted domestically, were re-

numbered as S5.150 and S5.398, respectively. Accordingly, we propose to update the United States table by adopting these international footnotes domestically. We invite comments on these proposals. Finally, we observe that a recent revision to footnote NG147 was inadvertently not published in the Code of Federal Regulations, and we therefore take this opportunity to correct this oversight.

Initial Regulatory Flexibility Analysis Certification

12. The Regulatory Flexibility Act (''RFA'')[1] requires that a regulatory flexibility analysis be prepared for notice and comment rulemaking proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The RFA generally defines ''small entity'' as having the same meaning as the term ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is 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).

13. This *Notice of Proposed Rule Making* (''*Notice*'') proposes to allocate the 5091–5250 MHz and 15.43–15.63 GHz bands to the fixed-satellite (Earth-to-space) service on a primary basis, to allocate the 6700–7075 MHz and 15.43–15.63 GHz bands on a primary basis to the fixed-satellite (space-to-Earth) service, and to limit the use of these FSS allocations to feeder links that would be used in conjunction with the service links of NGSO MSS systems. We take this action on our own initiative in order to adopt domestically the NGSO MSS feeder link allocations adopted at WRC–95. The adoption of this proposal would accommodate the growing demand for Big LEO services and would provide satellite operators with increased flexibility in the design of their systems.

14. The Commission has not developed a definition of small entities specifically applicable to the satellite services licensees here at issue. Therefore, the applicable definition of small entity in the satellite services industry is the definition under the Small Business Administration (''SBA'') rules applicable to Communications Services ''Not Elsewhere Classified.''[2] This definition provides that a small entity is expressed as one with $11.0 million or less in annual receipts. According to Census Bureau data, there are 848 firms that fall under the category of Communications Services, Not Elsewhere Classified. Of those, approximately 775 reported annual receipts of $11 million or less and qualify as small entities.[3] The Census Bureau category is very broad and commercial satellite services constitute only a subset of its total.

15. We estimate that—using current technology—up to four NGSO MSS systems could utilize the feeder uplink spectrum and that up to six NGSO MSS systems could utilize the feeder downlink spectrum being allocated in this proceeding. None of the Big LEO licensees is a small business because they each have revenues in excess of $11 million annually or have parent companies or investors that have revenues in excess of $11 million annually.

16. We therefore certify that this *Notice* will not have a significant economic impact on a substantial number of small entities. The Commission's Office of Public Affairs, Reference Operations Division, will send a copy of this *Notice*, including this certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 2

Communications equipment, Radio, Reporting and recordkeeping requirements.

47 CFR Part 25

Communications common carriers, Communications equipment, Radio, Reporting and recordkeeping requirements, Satellites.

47 CFR Part 97

Communications equipment, Radio, Reporting and recordkeeping requirements.

[1] The RFA, *see* 5 U.S.C. 601 *et. seq.*, has been amended by the Contract with American Advancement Act of 1996, Pub. L. 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4899.

[3] U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92–S–1, Subject Series, Establishment and Firm Size, Table 2D, Employment Size of Firms: 1992, SIC Code 4899 (issued May 1995).

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–22353 Filed 8–19–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket 96–45, 97–160; DA 98–1576]

Federal-State Joint Board on Universal Service and Forward-Looking Mechanism for High Cost Support for Non-Rural LECs

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; Supplemental data request.

SUMMARY: In conjunction with the Commission's proceeding to select a forward-looking economic cost mechanism for determining the level of federal high cost support that eligible non-rural carriers will receive beginning July 1, 1999, we request certain revenue information from non-rural local exchange carriers and holding companies.

DATES: Responses to this data request must be submitted on or before October 6, 1998.

ADDRESSES: The full text of data request order and spreadsheets are available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M St., NW, Washington, DC. In addition, interested parties may obtain the spreadsheet from the Commission's web site at http://www.fcc.gov/ccb/universal_service/highcost.html#determine.

FOR FURTHER INFORMATION CONTACT: Katie King, Accounting Policy Division, Common Carrier Bureau, (202) 418–7400.

SUPPLEMENTARY INFORMATION:

1. In the *Universal Service Order*, CC Docket No. 96–45, FCC 97–157 (released May 8, 1997) 62 FR 32862 (June 17, 1997), the Commission determined that the level of federal high cost support that eligible non-rural carriers will receive would be 25 percent of the difference between the estimated forward-looking economic cost of providing the supported services and a nationwide average revenue benchmark. The Commission also determined that the revenue benchmark should be calculated using revenues derived from local service, access, and other telecommunications services, including discretionary services. The Commission

did not adopt a precise calculation of the revenue benchmark in the *Universal Service Order*, but stated that, based on 1994 data received in response to an earlier data request, ''it appears that the benchmark for residential services should be approximately $31 and for single-line businesses should be approximately $51.''

2. In a Public Notice released May 4, 1998, 63 FR 28339 (May 22, 1998), the Common Carrier Bureau sought to augment the record on certain issues relating to the creation of the federal forward-looking economic cost mechanism. With respect to the revenue benchmark, we sought comment generally on the amount of access revenues that should be included in the benchmark. In addition, the Bureau sought comment on the appropriate amount of intraLATA toll revenue that should be included in the revenue benchmark. We also encouraged parties to provide further information about the revenues that are derived from services provided over the network that the universal service mechanism is designed to support.

3. We find that, in addition to comments that we received in response to the May 4th Public Notice, specific information from non-rural local exchange carriers and holding companies is necessary to allow the Commission to calculate accurately the revenue benchmark that may be used to determine the level of federal high cost support. The Commission's suggested residential and business benchmarks of $31 and $51, respectively, were based on data that are four years old. In addition, the earlier data request did not ask local exchange carriers to differentiate among various revenue sources that would allow the Commission to deduct specific portions of access or toll revenue from the benchmark.

4. *Purpose of Data Request.* This data request is being issued to assist the Commission in implementing the forward-looking economic cost mechanism used to estimate the amount of universal service support that will be provided to eligible non-rural carriers beginning July 1, 1999.

5. *Carriers Subject to Data Request.* The following non-rural local exchange carriers and holding companies must respond to this data request: Aliant Communications Company, ALLTEL, Ameritech, Anchorage Telephone Utility, Bell Atlantic, BellSouth, Cincinnati Bell, Frontier Corporation, GTE, North State Telephone Company, Puerto Rico Telephone Company, Roseville Telephone Company, Southern New England, Southwestern Bell, U S West, and United Telephone System.

6. *OMB Approval.* Approved by OMB, 3060–0842, Expires 2/28/1999, Burden hour per respondent: 250 average. 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 currently valid control number.

7. Accordingly, pursuant to sections 5(c), 201–205, 220(c), 254 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 155(c), 201–205, 220(c), 254, and 403, and sections 0.91 and 0.291 of the Commission's rules, 47 CFR 0.91 and 0.291, it is *Hereby Ordered* that Aliant Communications Company, ALLTEL, Ameritech, Anchorage Telephone Utility, Bell Atlantic, BellSouth, Cincinnati Bell, Frontier Corporation, GTE, North State Telephone Company, Puerto Rico Telephone Company, Roseville Telephone Company, Southern New England, Southwestern Bell, U S West, and United Telephone System shall complete the attached Revenue Benchmark Data Request in the prescribed formats, and file their responses to the data request with the Commission by October 6, 1998.

Federal Communications Commission.

James D. Schlichting,

Deputy Chief, Common Carrier Bureau.

[FR Doc. 98–22341 Filed 8–19–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–149, RM–9331]

Radio Broadcasting Services; Long Beach and Shallotte, NC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Morfield, L.L.C. seeking the reallotment of Channel 252C3 from Shallotte to Long Beach, NC, as the community's first local aural service, and the modification of its construction permit for Station WAZO(FM) to specify Long Beach as its community of license. Channel 252C3 can be allotted to Long Beach in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.6 kilometers (7.2 miles) east, at coordinates 33–56–49 North Latitude; 78–00–04 West Longitude, to accommodate petitioner's desired transmitter site.

DATES: Comments must be filed on or before October 5, 1998, and reply comments on or before October 20, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Ellen S. Mandell, Pepper & Corazzini, L.L.P., 1776 K Street, NW., Washington, DC 20006 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–149, adopted August 5, 1998, and released August 14, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

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

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 98–22351 Filed 8–19–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–151; RM–9320]

Radio Broadcasting Services; Douglas, WY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Mountain Tower Broadcasting proposing the allotment of Channel 223C1 at Douglas, Wyoming, as the community's second local FM transmission service. Channel 223C1 can be allotted to Douglas in compliance with the Commission's minimum distance separation requirements with a site restriction of 27.8 kilometers (17.3 miles) east to avoid a short-spacing to the proposed allotment site for Channel 222C1, Kaycee, Wyoming, at petitioner's requested site. The coordinates for Channel 223C1 at Douglas are North Latitude 42–40–19 and West Longitude 105–05–05.

DATES: Comments must be filed on or before October 5, 1998, and reply comments on or before October 20, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Victor A. Michael, Jr., President, Mountain Tower Broadcasting, 7901 Stoneridge Drive, Cheyenne, Wyoming 82009 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–151, adopted August 5, 1998, and released August 14, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

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

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 98–22350 Filed 8–19–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–150; RM–9302]

Radio Broadcasting Services; Royal City, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Royal Communications proposing the allotment of Channel 228A at Royal City, Washington, as the community's second local FM transmission service. Channel 228A can be allotted to Royal City in compliance with the Commission's minimum distance separation requirements with a site restriction of 12 kilometers (7.4 miles) southwest at petitioner's requested site. The coordinates for Channel 228A at Royal City are North Latitude 46–48–25 and West Longitude 119–33–12. Since Royal City is located within 320 kilometers (200 miles) of the U.S-Canadian border, concurrence of the Canadian government is requested.

DATES: Comments must be filed on or before October 5, 1998, and reply comments on or before October 20, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Chris Gilbreth, Royal Communications, 1018 S.W. Bade Avenue, College Place, Washington 99324 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–150, adopted August 5, 1998, and released August 14, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

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

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 98–22349 Filed 8–19–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 177, 178, 180

[Docket No. RSPA–97–2718 (HM–225A)]

RIN 2137–AD07

Hazardous Materials: Safety Standards for Preventing and Mitigating Unintentional Releases During the Unloading of Cargo Tank Motor Vehicles in Liquefied Compressed Gas Service

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of negotiated rulemaking committee meetings.

SUMMARY: In accordance with the Federal Advisory Committee Act, RSPA announces the dates for its advisory committee meetings to negotiate recommendations for alternative safety standards for preventing and mitigating unintentional releases of hazardous materials during the unloading of cargo tank motor vehicles in liquefied compressed gas service. The Committee will meet on the dates listed below. The public is invited to attend; an opportunity for members of the public to make oral presentations will be provided if time permits.

DATES: Meetings of the advisory committee will be from 8:30 a.m. to 4:00 p.m. The Committee is scheduled to meet on the following dates:

Wednesday and Thursday, September 9–10, 1998
Wednesday and Thursday, October 7–8, 1998
Wednesday and Thursday, November 4–5, 1998
Tuesday and Wednesday, December 1–2, 1998
Wednesday and Thursday, January 6–7, 1999

The September 9–10 meeting will be held in the Captains Room, Pier 7—Channel Inn, 650 Water Street, S.W., Washington, D.C., (202) 554–2500. The October 7–8 and November 4–5 meetings will take place at the Department of Transportation, Room 2230, 400 Seventh Street, S.W., Washington, D.C. Location of the December and January meetings will be announced in a later notice.

FOR FURTHER INFORMATION CONTACT: Jennifer Karim or Susan Gorsky, (202) 366–8553, Office of Hazardous Materials Standards, Research and Special Programs Administration, Department of Transportation. *Facilitator:* Philip J. Harter, The Mediation Consortium, (202) 887–1033.

SUPPLEMENTARY INFORMATION: The Negotiated Rulemaking Committee has been established to develop recommendations for alternative safety standards for preventing and mitigating unintentional releases of hazardous materials during the unloading of cargo tank motor vehicles (CTMVs) in liquefied compressed gas service. Meeting summaries and other relevant materials will be placed in the public docket and can be accessed through (*http://www.dms.dot.gov*). Persons wishing to submit written comments should identify the docket number and submit one copy to the Dockets Management System, U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20001. The Dockets Management System is located on the Plaza level of the Nassif Building at the U.S. Department of Transportation at the above address. Persons wishing to receive confirmation of receipt of their written comments should include a self-addressed, stamped postcard.

Comments may also be submitted by e-mail to the following address: ''rules@rspa.dot.gov''. Public dockets may be reviewed there between the hours of 10:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on August 17, 1998, under authority delegated in 49 CFR Part 1.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration.

[FR Doc. 98–22421 Filed 8–19–98; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

[I.D. 121597D]

Atlantic Swordfish Fishery; Reopening of Comment Period and Hearing Announcement

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

ACTION: Reopening of comment period and hearing announcement.

SUMMARY: NMFS reopens the public comment period on a proposed rule to establish annual quotas for the South Atlantic swordfish fishery and to change quota adjustment procedures. Also, NMFS announces three hearings.

DATES: Comments must be submitted on or before September 1, 1998. Hearings will be held on August 26, 1998, in Warwick, RI; August 28, 1998, in Fairhaven, MA; and September 1, 1998, in St. Croix, USVI.

ADDRESSES: Written comments should be submitted to, and the proposed rule and draft Environmental Assessment are available from, Jill Stevenson, Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, Maryland 20910. Hearings will be held at the following locations: August 26, 1998, 6:30–9:30 p.m. at the Radisson Airport Hotel Providence, 2081 Post Road, Warwick, RI; for directions only, (401) 739–3000; August 28, 1998, 7–10 p.m. at the Seaport Inn, Fairhaven, MA, for directions only (800) 835–7678; September 1, 1998, 7–9 p.m. at the Hotel on the Cay, Protestant Cay, St. Croix, USVI, for directions only, (340) 773–2035.

FOR FURTHER INFORMATION CONTACT: Jill Stevenson or Steve Meyers, telephone: (301) 713–2347, fax: (301) 713–1917.

SUPPLEMENTARY INFORMATION: The Atlantic swordfish fishery is managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act, (16 U.S.C. 1801 *et seq*.) and the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq*.). On June 10, 1998, NMFS published a proposed rule (63 FR 31710) to establish annual quotas for the South Atlantic swordfish fishery. The notice also contained proposed measures to change the quota adjustment procedures for the North and South Atlantic swordfish fisheries. Initial comments in response to that notice included requests to extend the comment period on these measures due to the far-ranging nature of the swordfish fishing fleet and the need to schedule public hearings on these issues. Therefore, NMFS reopens the public comment period through September 1, 1998.

Dated: August 14, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–22360 Filed 8–14–98; 4:39 pm]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 63, No. 161

Thursday, August 20, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. TB–98–19]

Burley Tobacco Advisory Committee; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App.) announcement is made of the following committee meeting:

Name: Burley Tobacco Advisory Committee.

Date: September 10, 1998.

Time: 10:00 a.m.

Place: Campbell House Inn, South Colonial Hall, 1375 Harrodsburg Road, Lexington, Kentucky 40504.

Purpose: To elect officers, recommend opening dates, discuss selling schedules, review the 1998 policies and procedures, and other related matters for the 1998 burley tobacco marketing season.

The meeting is open to the public. Persons, other than members, who wish to address the Committee at the meeting should contact John P. Duncan III, Deputy Administrator, Tobacco Programs, AMS, U.S. Department of Agriculture, Room 502 Annex Building, P.O. Box 96456, Washington, D.C. 20090–6456, (202) 205–0567, prior to the meeting. Written statements may be submitted to the Committee before, at, or after the meeting. If you need any accommodations to participate in the meeting, please contact the Tobacco Programs at (202) 205–0567 by September 4, 1998, and inform us of your needs.

Dated: August 13, 1998.

William O. Coats,

Acting Deputy Administrator, Tobacco Programs.

[FR Doc. 98–22449 Filed 8–19–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 98–080–1]

Availability of Environmental Assessment and Finding of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to allow the field testing of genetically engineered organisms. The environmental assessment provides a basis for our conclusion that the field testing of the genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Assistant Director, Scientific Services, PPQ, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1237; (301) 734–7710. For copies of the environmental assessment and finding of no significant impact, contact Ms. Linda Lightle at (301) 734–8231; e-mail: Linda.Lightle@usda.gov. Please refer to the permit number listed below when ordering documents.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained or a notification acknowledged before a regulated article may be introduced into the United States. The regulations set forth the permit application requirements and the notification procedures for the importation, interstate movement, and release into the environment of a regulated article.

In the course of reviewing the permit application, the Animal and Plant Health Inspection Service (APHIS) assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued a permit for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessment and finding of no significant impact, which are based on data submitted by the applicant and on a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field test.

An environmental assessment and finding of no significant impact have been prepared by APHIS relative to the issuance of a permit to allow the field testing of the following genetically engineered organisms:

Permit No.	Permittee	Date Issued	Organisms	Field Test Location
98–120–01r	Biosource Technologies, Inc	7–15–98	Tobacco etch virus genetically engi-neered to express genes of pharma-ceutical interest.	Kentucky.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 13th day of August, 1998.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–22460 Filed 8–19–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 98–079–1]

Novartis Seeds and Monsanto Co.; Receipt of Petition for Determination of Nonregulated Status for Sugar Beet Genetically Engineered for Glyphosate Herbicide Tolerance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from Novartis Seeds and Monsanto Company seeking a determination of nonregulated status for a sugar beet line designated as GTSB77, which has been genetically engineered for tolerance to the herbicide glyphosate. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. In accordance with those regulations, we are soliciting public comments on whether this sugar beet line presents a plant pest risk.

DATES: Written comments must be received on or before October 19, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 98–079–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 98–079–1. A copy of the petition and any comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing access to that room to inspect the petition or comments are asked to call in advance of visiting at (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. James White, Biotechnology and Biological Analysis, PPQ, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–5940. To obtain a copy of the petition, contact Ms. Kay Peterson at (301) 734–4885; e-mail: Kay.Peterson@usda.gov.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for determination of nonregulated status must take and the information that must be included in the petition.

On June 22, 1998, APHIS received a petition (APHIS Petition No. 98–173–01p) from Novartis Seeds (Novartis) of Research Triangle Park, NC, and Monsanto Company (Monsanto) of St. Louis, MO, (Novartis/Monsanto) requesting a determination of nonregulated status under 7 CFR part 340 for a sugar beet (*Beta vulgaris* L.) line designated as GTSB77, which has been genetically engineered for tolerance to the herbicide glyphosate. The Novartis/Monsanto petition states that the subject sugar beet line should not be regulated by APHIS because it does not present a plant pest risk.

As described in the petition, GTSB77 has been genetically engineered to express an enolpyruvylshikimate-3-phosphate synthase (EPSPS) enzyme derived from *Agrobacterium* sp. strain CP4 (CP4 EPSPS), and the b-D-glucuronidase (GUS) protein from *Escherichia coli*. The CP4 EPSPS protein confers tolerance to the herbicide glyphosate, and the GUS protein serves as a marker in the plant transformation process. The subject sugar beet line also expresses a novel protein known as 34550, which has no known biological activity, and was apparently created when a truncated glyphosate oxidoreductase (*gox*) gene fused to sugar beet DNA. The *Agrobacterium tumefaciens* method was used to transfer the added genes into the parental sugar beet proprietary line A1012, and expression of the added genes is controlled in part by gene sequences derived from the plant pathogens figwort mosaic virus and cauliflower mosaic virus.

The GTSB77 line has been considered a regulated article under the regulations in 7 CFR part 340 because it contains gene sequences from plant pathogens. The subject sugar beet line has been field tested since 1996 under APHIS permits and notifications. In the process of reviewing the permit applications and notifications for field trials of this sugar beet line, APHIS determined that the vectors and other elements were disarmed and that the trials, which were conducted under conditions of reproductive and physical containment or isolation, would not present a risk of plant pest introduction or dissemination.

In the Federal Plant Pest Act, as amended (7 U.S.C. 150aa *et seq.*), ''plant pest'' is defined as ''any living stage of: Any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured or other products of plants.'' APHIS views this definition very broadly. The definition covers direct or indirect injury, disease, or damage not just to agricultural crops, but also to plants in general, for example, native species, as well as to organisms that may be beneficial to plants, for example, honeybees, rhizobia, etc.

The U.S. Environmental Protection Agency (EPA) is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136 *et seq.*). FIFRA requires that all pesticides, including herbicides, be registered prior to distribution or sale, unless exempt by EPA regulation. In cases in which genetically modified plants allow for a new use of an herbicide or involve a different use pattern for the herbicide, EPA must

approve the new or different use. Accordingly, a submission has been made to EPA for registration of the herbicide glyphosate for use on sugar beet. When the use of the herbicide on the genetically modified plant would result in an increase in the residues of the herbicide in a food or feed crop for which the herbicide is currently registered, or in new residues in a crop for which the herbicide is not currently registered, establishment of a new tolerance or a revision of the existing tolerance would be required. Residue tolerances for pesticides are established by EPA under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended (21 U.S.C. 301 *et seq.*), and the Food and Drug Administration (FDA) enforces tolerances set by EPA under the FFDCA.

FDA published a statement of policy on foods derived from new plant varieties in the **Federal Register** on May 29, 1992 (57 FR 22984–23005). The FDA statement of policy includes a discussion of FDA's authority for ensuring food safety under the FFDCA, and provides guidance to industry on the scientific considerations associated with the development of foods derived from new plant varieties, including those plants developed through the techniques of genetic engineering. Novartis and Monsanto have begun consultation with FDA on the subject sugar beet line.

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the Petition for Determination of Nonregulated Status from any interested person for a period of 60 days from the date of this notice. The petition and any comments received are available for public review, and copies of the petition may be ordered (see the ADDRESSES section of this notice).

After the comment period closes, APHIS will review the data submitted by the petitioner, all written comments received during the comment period, and any other relevant information. Based on the available information, APHIS will furnish a response to the petitioner, either approving the petition in whole or in part, or denying the petition. APHIS will then publish a notice in the **Federal Register** announcing the regulatory status of the Novartis/Monsanto GTSB77 sugar beet line and the availability of APHIS' written decision.

Authority: 7 U.S.C. 150aa–150jj, 151–167, and 1622n; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 13th day of August, 1998.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–22455 Filed 8–19–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 98–026–2]

Public Meeting; Center for Veterinary Biologics

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: This is the second notice to producers of veterinary biological products, product users, and other interested persons that we are holding our eighth public meeting to discuss regulatory and policy issues related to the manufacture, distribution, and use of veterinary biological products. This notice includes information on the agenda for the public meeting and identifies a contact person for obtaining registration forms, lodging information, and copies of the agenda.

PLACE, DATES, AND TIMES OF MEETING: The eighth public meeting will be held in the Scheman Building at the Iowa State Center, Ames, IA. The meeting is scheduled from 8:30 a.m. to 5 p.m. on Wednesday, September 23, 1998, and from 8 a.m. to 5 p.m. on Thursday, September 24, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Kay Wessman, Center for Veterinary Biologics—Inspection and Compliance, VS, APHIS, 510 South 17th Street, Suite 104, Ames, IA 50010; telephone (515) 232–5785 (extension 127); fax (515) 232–7120; or e-mail: Kay.Wessman@usda.gov.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** on April 14, 1998 (63 FR 18180, Docket No. 98–026–1), the Animal and Plant Health Inspection Service (APHIS) announced that it would be holding its eighth public meeting on veterinary biologics in Ames, IA, on September 23 and 24, 1998. In that notice, APHIS requested that interested persons submit suggestions for agenda topics. Based on the submissions received and on other considerations, the agenda for the eighth public meeting will include, but may not be limited to, the following topics:

1. State of the Center for Veterinary Biologics;
2. Electronic submissions demonstrations;
3. Federal preemption and the Virus-Serum-Toxin Act;
4. Association of Feline Practitioners vaccination guidelines
5. Panel discussion on legal issues;
6. Mutual Recognition Agreement between the United States and the European Union;
7. International harmonization;
8. Vaccinovigilance and veterinary biologics in the United States;
9. Drug Export Reform and Enhancement Act;
10. Panel discussion on international issues;
11. Formulating vaccines with aluminum adjuvants;
12. Relative potency and reference requalification; and
13. Future of vaccines in animal health.

In addition, we have scheduled two community networking sessions in which all meeting attendees and participants will be invited to form small working groups to discuss and provide input on critical issues concerning our program, such as: What is the Center for Veterinary Biologics doing well? Where do we need to improve our services? Given the center's budgetary constraints, what should our priorities be? In what areas should we target our major resources?

Registration forms, lodging information, and copies of the agenda for the eighth public meeting may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT.** The registration deadline is September 15, 1998. A block of hotel rooms has been set aside for this meeting until September 1, 1998.

Done in Washington, DC, this 13th day of August, 1998.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–22461 Filed 8–19–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Request for Nominations for the Task Force on Agricultural Air Quality

SUMMARY: The Secretary of Agriculture is requesting nominations for qualified persons to serve as members of the Task Force on Agricultural Air Quality.

DATE: Nominations must be received in writing or reaffirmed (see

SUPPLEMENTARY INFORMATION section) by October 2, 1998.

ADDRESSES: Send written nominations to: Chief, USDA/Natural Resources Conservation Service, P.O. Box 2890, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: George Bluhm, Designated Federal Official, telephone (530) 752–1018, fax (530) 752–1552, email *bluhm@crocker.ucdavis.edu*. To obtain form AD–755 ONLY contact Jeff Graham, NRCS Agricultural Climatologist via phone at (202) 720–1858 or email at *jeff.graham@usda.gov*.

SUPPLEMENTARY INFORMATION:

Task Force Purpose

As required by Section 391 of the Federal Agriculture Improvement and Reform Act of 1996, the Chief of the Natural Resources Conservation Service (NRCS) shall establish a task force to review research results by any Federal agency that addresses air quality issues related to agriculture or agriculture infrastructure. Recommendations from the Task Force will be provided to the Secretary of Agriculture for guidance on air quality policy implementations. The requirements of the Federal Advisory Committee Act (FACA) apply to this Task Force.

The Task Force will:

1. Review research on agricultural air quality supported by Federal agencies;
2. Base recommendations to the Secretary of Agriculture upon sound scientific findings after adequate peer review and taking into account economic feasibility;
3. Work to ensure intergovernmental (Federal, state and local) coordination to establish policy for agriculture air quality and to avoid duplication; and
4. To the extent practical, assist Federal agencies correct their erroneous data with respect to agriculture air quality.

Task Force Membership

The Task Force will be made up of United States citizens. The Task Force will be composed of:

1. Individuals with expertise in agricultural air quality and/or agricultural production;
2. Individuals representing regional air quality concerns;
3. Representatives of institutions with expertise in air quality impacts on human health;
4. Five representatives from commodity groups having expertise in production agriculture;
5. Six representatives from state or local agencies having expertise in agriculture and air quality; and
6. An atmospheric scientist.

Task Force nominations must be in writing and provide the appropriate background documents required by USDA policy, including form AD–755. Previous nominees and current Task Force members who wish to be reappointed should update their nominations and must provide a new background disclosure form (AD–755) to reaffirm their candidacy. Service as a member of the Task Force shall not constitute employment by, or the holding of an office of, the United States for the purpose of any Federal law.

A Task Force member shall serve for a term of 2 years. No individual may serve more than 2 consecutive 2-year terms as a member of the Task Force. A member of the Task Force shall receive no compensation from the NRCS for their service as a member of the Task Force except as described below.

While away from home or regular place of business of a member of the Task Force, the member will be eligible for travel expenses paid by the NRCS, including per diem in lieu of subsistence, at the same rate as a person employed intermittently in the government service is allowed under section 5703 of title 5, United States code.

Additional information about the Task Force on Agricultural Air Quality may be found on the World Wide Web at http://www.nhq.nrcs.usda.gov/faca/aaqtf.html.

Submitting Nominations

Nominations should be typed and should include the following:

1. A brief summary of no more than two pages explaining the nominee's suitability to serve on the Task Force on Agricultural Air Quality.
2. Resume.
3. A completed copy of form AD–755.

Nominations should be sent to the Chief of NRCS at the address listed above, and be post marked no later than October 2, 1998.

Equal Opportunity Statement

To ensure that recommendations of the Task Force take into account the needs of underserved and diverse communities served by the Department, membership shall include, to the extent practicable, individuals representing minorities, women and persons with disabilities.

Dated: August 14, 1998.

Thomas A. Weber,

Deputy Chief for Science and Technology.

[FR Doc. 98–22452 Filed 8–19–98; 8:45 am]

BILLING CODE 3014–16–M

DEPARTMENT OF COMMERCE

Bureau of the Census

Survey of Income and Program Participation (SIPP) Wave 10 of the 1996 Panel

ACTION: Proposed Collection; Comment Request.

SUMMARY: The Department of Commerce, 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)).

DATES: Written comments must be submitted on or before October 19, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Michael McMahon, Bureau of the Census, FOB 3, Room 3319, Washington, DC 20233–0001, (301) 457–3819.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau conducts the SIPP which is a household-based survey designed as a continuous series of national panels each lasting four years. Respondents are interviewed once every four months in monthly rotations. Approximately 37,000 households are in the current panel.

The SIPP represents a source of information for a wide variety of topics and allows information for separate topics to be integrated to form a single, unified data base so that the interaction between tax, transfer, and other government and private policies can be examined. Government domestic policy formulators depend heavily upon the SIPP information concerning the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on this distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population. The SIPP has provided these kinds of data on a continuing basis

since 1983 permitting levels of economic well-being and changes in these levels to be measured over time.

The survey is molded around a central ''core'' of labor force and income questions that will remain fixed throughout the life of a panel. The core is supplemented with questions designed to answer specific needs, such as obtaining information on taxes, the ownership and contributions made to IRA, Keogh, 401K plans, examining patterns in respondent work schedules, and child care arrangements. These supplemental questions are included with the core and are referred to as ''topical modules.''

The topical modules for the 1996 Panel Wave 10 collect information about: (1) Annual Income and Retirement Accounts, (2) Taxes, (3) Child Care, and (4) Work Schedule.

Wave 10 interviews will be conducted from April through July 1999.

II. Method of Collection

The SIPP is designed as a continuing series of national panels of interviewed households that are introduced every 4 years with each panel having a duration of 4 years in the survey. All household members 15 years old or over are interviewed using regular proxy-respondent rules. They are interviewed a total of 12 times (12 waves) at 4-month intervals making the SIPP a longitudinal survey. Sample persons (all household members present at the time of the first interview) who move within the country and reasonably close to a SIPP Primary Sampling Unit will be followed and interviewed at their new address. Persons 15 years old or over who enter the household after Wave 1 will be interviewed; however, if these persons move, they are not followed unless they happen to move along with a Wave 1 sample person.

III. Data

OMB Number: 0607–0813.

Form Number: SIPP/CAPI Automated Instrument.

Type of Review: Regular.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 77,700.

Estimated Time Per Response: 30 minutes per person.

Estimated Total Annual Burden Hours: 117,800.

Estimated Total Annual Cost: The only cost to respondents is their time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182.

IV. Request for Comments

Comments are invited on: (a) whether the proposed 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 (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 17, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–22400 Filed 8–19–98; 8:45 a.m.]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

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

Agency: Bureau of the Census.

Title: Field Representative Exit Questionnaire.

Form Number(s): BC–1294, BC–1294(D).

Agency Approval Number: 0607–0404.

Type of Request: Extension of a currently approved collection.

Burden: 638 hours.

Number of Respondents: 2,660 households.

Avg Hours Per Response: BC–1294 (5 minutes), BC–1294(D) (15 minutes).

Needs and Uses: The tremendous costs to replace interviewers who leave the Census Bureau continue to grow. Census Bureau interviewers collect data for ongoing current surveys and for the decennial census. These labor-intensive operations require a unique combination of technical knowledge and interpersonal skills. Finding the right person for the job is not easy and retaining that person increasingly presents an additional challenge. If unchecked, interviewer turnover spawns a cycle of recruiting and training which is not only costly, but perhaps harmful to data quality as well. In a continuous effort to devise policies and practices aimed at reducing turnover among our field interviewing staff the Census Bureau needs to collect data on the reasons interviewers leave the Bureau. The exit questionnaire helps the Census Bureau identify specific reasons for the turnovers. Based on the survey results the Census Bureau can develop both general and specific plans to reduce turnover. If turnover can be reduced, the skyrocketing costs of recruiting, hiring, training, and managing a large staff of census interviewers can be reduced.

Approximately every month, a sample of one-half of all interviewers who work on current surveys (field representatives) who voluntarily resign within the sampling period will be contacted by telephone to complete a BC–1294 questionnaire. During the Year 2000, a sample of interviewers hired to conduct the census (enumerators) who have continuously been in a nonpay status for a period of two weeks will be contacted by telephone to complete a BC–1294(D) questionnaire. The Form BC–1294(D) will only be administered in Fiscal Year 2000.

Affected Public: Individuals and households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

Legal Authority: Title 5, United States Code, Section 3101, and Title 13, United States Code, Section 23.

OMB Desk Officer: Nancy Kirkendall, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Nancy Kirkendall, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: August 14, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–22398 Filed 8–19–98; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

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

Agency: Bureau of the Census.

Title: American Community Survey Group Quarters Screening Test.

Form Number(s): ACS–2(GQ).

Agency Approval Number: 0607–0836.

Type of Request: Revision of a currently approved collection.

Burden: 300 hours.

Number of Respondents: 900.

Avg. Hours Per Response: 20 minutes.

Needs and Uses: In 1999 the American Community Survey (ACS) will be conducted in 53 counties. Data from the ACS will determine the feasibility of a continuous measurement system that provides socioeconomic data on a continual basis throughout the decade. The Census Bureau must provide a sample of persons residing in Group Quarters (GQs) the opportunity to be interviewed for the ACS. GQs include places such as student dorms, correctional facilities, hospitals, nursing homes, shelters, and military quarters. Obtaining characteristic information from the GQs will ensure that we include the necessary people residing at GQs in the 1999 ACS.

A GQ screening operation is being conducted in conjunction with 1998 ACS activities. This request revises the existing GQ clearance for use in the 1999 ACS. Major changes are in the estimated number of respondents and in the estimated time per response. In 1998 we are screening a sample of the GQs in eight counties. In 1999 we will screen a sample of the GQs in 53 counties. After completing one-third of the 1998 screening, we have learned that screening averages about 20 minutes per response instead of 10 minutes as originally estimated. In 1999 we will use the same questionnaire for screening that we are using in 1998, Form ACS–2(GQ), ACS GQ Screening.

This screening operation will serve to update information we already have on-hand about the GQ and its residency, tell us if the GQ is within scope for ACS enumeration, and, most importantly, allow us to determine if a mail enumeration of the residents is possible. If a mail enumeration is not possible, face-to-face interviews with GQ residents will be necessary.

Affected Public: Businesses or other for-profit organizations, not-for-profit institutions, farms.

Frequency: One time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., Section 182.

OMB Desk Officer: Nancy Kirkendall, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Nancy Kirkendall, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: August 14, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–22399 Filed 8–19–98; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

President's Export Council Subcommittee on Encryption; Notice of Recruitment of Private-Sector Members

SUMMARY: The President's Export Council Subcommittee on Encryption (PECSENC) advises the U.S. Government on matters and issues pertinent to the Export Administration Act of 1979, as amended; the Export Administration Regulations; and related statutes and regulations on policies regarding commercial encryption products. The PECSENC draws on the expertise of its members to provide advice and make recommendations on ways to minimize the possible adverse impact of commercial encryption policy on U.S. industry while protecting U.S. national security and fostering U.S. foreign policy goals, including public safety of U.S. citizens at home and abroad.

The PECSENC is composed of high-level representatives from business, academia, and law enforcement representing diverse points of view on current commercial encryption policies, laws, and regulations.

PECSENC members are appointed by the Secretary of Commerce and serve at the Secretary's discretion. The membership reflects the Department's commitment to attaining balance and diversity. PECSENC members must obtain secret-level clearances prior to appointment. These clearances are necessary so that members can be permitted access to relevant classified information needed in formulating recommendations to the President and the U.S. Government. The PECSENC meets 4 to 6 times per year. Members of the Subcommittee will not be compensated for their services. The PECSENC is seeking approximately seven private-sector members with senior expertise in the field of commercial encryption policy. Please send a fact sheet on your firm and a resume. We will use these documents to determine your activity in the area of concern. Materials may be faxed to the number below.

Deadline: This request will be open for 15 days from date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Lee Ann Carpenter on (202) 482–2583. Materials may be faxed to (202) 501–8024, to the attention of Ms. Lee Ann Carpenter.

Dated: August 14, 1998.

R. Roger Majak,

Assistant Secretary for Export Administration.

[FR Doc. 98–22443 Filed 8–19–98; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 98–037. *Applicant:* Finch University of Health Sciences, The Chicago Medical School, 3333 Green Bay Road, North Chicago, IL

60064–3095. *Instrument:* Electrode Puller, Model PD–5. *Manufacturer:* Narishige Co., Japan. *Intended Use:* The instrument will be used for investigations of the cellular and network properties of the nervous system in the marine mollusk Tritonia diomedea that underlie decision-making and learning. *Application accepted by Commissioner of Customs:* July 20, 1998.

Docket Number: 98–038. *Applicant:* The Salk Institute for Biological Studies, 10010 North Torrey Pines Road, La Jolla, CA 92037. *Instrument:* Diffractometer and X-Ray Generator, Models DIP–2030H and MO6X. *Manufacturer:* MAC Science Co., Ltd., Japan. *Intended Use:* The instrument is intended to be used to collect x-ray diffraction data from crystals made with certain biological macromolecules in order to study phenomena such as signal transduction, ion conductance and protein DNA recognition. The experimental plan will consist of purifying the proteins, crystallizing them in an optimum condition in the wet bench laboratory, then recording the diffraction pattern using the x-ray instrument and imaging plates system. *Application accepted by Commissioner of Customs:* July 24, 1998.

Docket Number: 98–039. *Instrument:* Laser Optics, Version 2. *Manufacturer:* Radiant Dyes Laser Accessories, GmbH, Germany. *Docket Number:* 98–040. *Instrument:* Laser, Model SL404G–10. Manufacturer: Spectron Laser Systems, United Kingdom. *Applicant:* Princeton University, Purchasing Department, Armory Building, 110 Washington Road, Princeton, NJ 08544. *Intended Use:* The instruments will be used for studies of the atmospheric constituents sulfuric acid and water. Experiments will consist of mixing sulfuric acid and water vapors and ionizing them with multi-photon ionization using the Nd-YAG and dye lasers to determine the rate of formation of particles from sulfuric acid and water mixtures. *Applications accepted by Commissioner of Customs:* July 30, 1998.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 98–22437 Filed 8–19–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of California, San Diego; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 98–031. *Applicant:* University of California, San Diego, La Jolla, CA 92093–0358. *Instrument:* Electron Beam Evaporation Source. *Manufacturer:* Oxford Applied Research, United Kingdom. *Intended Use:* See notice at 63 FR 35911, July 1, 1998.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides: (1) four pockets to be used with three rods for simultaneous evaporation of three elements and (2) built-in flux monitors for each pocket. The National Institute of Standards and Technology advises that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use (comparable case).

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 98–22438 Filed 8–19–98; 8:45 am]

BILLING CODE 3510–DS–P

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade: Proposed Amendments to the Wheat Futures Contract Regarding Vomitoxin in Deliverable Wheat

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule change.

SUMMARY: The Chicago Board of Trade (CBT or Exchange) has submitted amendments to its wheat futures contract that would permit receivers of wheat futures deliveries to require that wheat loaded out from delivery warehouses have a vomitoxin content of no more than 5 parts per million. The Commission has determined to request public comment on the proposed CBT rule based upon its finding that the proposed rule is of major economic significance within the meaning of section 5a(a)(12) of the Commodity Exchange Act (Act) and that its publication is in the public interest and will assist the Commission in considering the views of interested persons.

DATE: Comments must be received on or before September 21, 1998.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. In addition, comments may be send by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to the CBT wheat futures contract vomitoxin proposal.

FOR FURTHER INFORMATION CONTACT: Please contact Fred Linse of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581, telephone (202) 418–5273, facsimile number (202) 418–5527, or electronically at flinse@cftc.gov.

SUPPLEMENTARY INFORMATION: Currently, the CBT futures contract contains no provisions relating to vomitoxin in deliverable wheat. The proposed CBT amendments would provide the parties that receive delivery of wheat under the futures contract may request that the wheat loaded out from the delivery warehouse contain no more than 5 parts per million of the fungus deoxynivalenol (vomitoxin). Under the proposed amendments, the delivery receiver would be required to pay for inspection of the delivery wheat for vomitoxin content, with such inspection being done at the time of load out by the Federal Grain Inspection Service or by a third party inspection service which is mutually agreeable to the delivery receiver and the deliverer.

The Exchange plans to implement the proposed amendments on September 1, 1999. Under the proposed implementation plan, CBT registered warehouse receipts issued prior to September 1, 1999 will be deliverable

after that date only if the warehouse operator certifies on the warehouse receipt that the delivery receiver may request that wheat loaded out from the delivery warehouse have a vomitoxin content of no more than 5 parts per million. Holders of warehouse receipts issued prior to September 1, 1999 who request that the warehouse receipts be reissued or endorsed to comply with the vomitoxin standard will be liable to warehouse operators for a maximum of two cents per bushel as compensation for the cost of bringing delivery wheat underlying such receipts into compliance with the proposed standard. The Exchange has noted that the September and December 1999 contract months have been listed for trading with a special indicator to indicate that deliveries against these contract months be subject to the proposed vomitoxin limit, pending approval by the Commission. The price adjustment to outstanding warehouse receipts will affect their price and might have an effect on the pricing of existing positions in contract months that currently are listed for trading. The potential of a proposed rule change to affect a contract's pricing is one of the bases used by the Commission in determining whether a proposed rule change is of major economic significance within the meaning of section 5a(a)(12) of the Act and must be published for public comment under that section of the Act.[1]

In support of the proposed amendments, the CBT reasons that the amendments will provide certainty to market users regarding the maximum level of vomitoxin in futures delivery wheat and will maintain the integrity of the futures contract as a pricing and hedging medium. In this regard, the Exchange notes that vomitoxin is associated with gastrointestinal illnesses in humans and animals and is subject to Federal Food and Drug Administration (FDA) advisory levels. The CBT notes that the current FDA advisory level for vomitoxin is finished wheat products to be consumed by humans is not more than 1 part per million. For animals, the advisory level is no more than 10 parts per million for cattle and chicken, with a recommendation that the ingredients not exceed 50 percent of the diet, 5 parts per million for swine, with a recommendation that the ingredients constitute no more than 20 percent of the diet, and 5 parts per million for all other animals with a recommendation that the ingredients not exceed 40 percent of the diet. The CBT indicates that the FDA determined not to specify an advisory level for raw wheat used to produce finished wheat products for human consumption, since wheat millers can reduce vomitoxin in finished products from that found in raw wheat.

The Exchange notes that, in the wheat cash market, users and merchandisers purchase wheat with a maximum vomitoxin guarantee when there is concern about vomitoxin in the wheat crop or in carryover stocks. The CBT indicated that, while the maximum level of vomitoxin permitted in cash market transactions varies from year to year, the proposed level of 5 parts per million falls within the range of maximum levels accepted by buyers in recent years. The Exchange also noted that the proposed vomitoxin standard is consistent with U.S. Department of Agriculture regulations which specify a maximum vomitoxin content of 5 parts per million for wheat eligible for nonrecourse loans. Finally, the CBT notes that, by segregating inbound wheat receipts, and by blending and cleaning the wheat, warehouse operators will be able to provide for adequate deliverable supplies of wheat in crop years when vomitoxin levels are above 5 parts per million.

The proposed amendments were submitted pursuant to the Commission's 45-day fast track procedures for streamlining the review of futures contract rule amendments and new contract approvals (62 FR 10434). In light of the nature of the rule and the time of year, a longer comment period is more appropriate than fast track consideration would permit. Accordingly, the CBT has requested that the proposal be removed from Fast Track consideration, and the Commission has determined to publish for public comment notice of the availability of the proposed amendments for 30 days.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW, Washington, DC 20581. Copies of the proposed amendments can be obtained through the Office of the Secretariat by mail at the above address, by telephone at (202) 418–5100, or via the internet on the CFTC website at ''www.cftc.gov'' under ''What's Pending''.

Other materials submitted by the CBT may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 or 145.8.

Any person interested in submitting written data, views, or arguments on the proposed amendments, or with respect to other materials submitted by the CBT, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on August 14, 1998.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 98–22413 Filed 8–19–98; 8:45 am]

BILLING CODE 6351–01–M

[1] It should be noted that section 5a(a)(12) of the Act, which requires the Commission to publish proposed rules of ''major economic significance,'' does not define the meaning of that term. Moreover, section 5a(a)(12) provides that the Commission's determination that proposed exchange rules are of major economic significance under that section is final and not subject to judicial review. The Commission staff has interpreted the meaning of ''major economic significance'' broadly as proposed rules which may have an effect on the pricing of a contract, on the value of existing contracts, on a contract's hedging or price basing utility, or on deliverable supplies. Section 5a(a)(12) does not define rules of ''major economic significance'' based upon a specific dollar impact on the economy or other such measures used in other statutes, such as those used in determining whether an agency rule is a ''major rule'' under 5 U.S.C. section 804(2).

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

State Energy Advisory Board, Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. No. 92–463; 86 Stat. 770), notice is hereby given of the following meeting:

Name: State Energy Advisory Board.

Date and Time: September 24, 1998 from 9:00 am to 5:00 pm, and September 25, 1998 from 9:00 am to 12:00 pm.

Place: The Canterbury Hotel-Union Square, 750 Sutter Street, San Francisco, CA 94109, 212–474–1452.

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. No.101–440).

Tentative Agenda: Briefings on, and discussions of:

- Federal efforts to market energy efficiency and renewable energy technologies.
- Issues related to Electric Utility Industry restructuring and financing.
- The transportation sector, its progress, and next steps in energy efficient technologies.

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 August 14, 1998.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–22417 Filed 8–19–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collections listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3507(d)(1)(A) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

The entry contains the following information: (1) collection numbers and titles; (2) summary of the collection of information (includes sponsor (i.e., the DOE component)), current OMB document number, type of request (new, revision, extension, or reinstatement), and response obligation (mandatory, voluntary, or required to obtain or retain benefits); (3) a description of the need and proposed use of the information; (4) description of the type of likely respondents; and an (5) estimate of the total annual reporting burden (average hours per response times proposed frequency of response per year times estimated number of likely respondents.)

DATES: Comments must be filed on or before September 21, 1998. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW, Washington, D.C. 20503. (Comments should also be addressed to the Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Jay Casselberry, Statistics and Methods Group, (EI–70), Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585. Mr. Casselberry may be telephoned at (202) 426–1116, FAX (202) 426–1081, or e-mail at Jay.Casselberry@eia.doe.gov.

SUPPLEMENTARY INFORMATION: The energy information collections submitted to OMB for review were:

1. EIA–63A, ''Annual Solar Thermal Collector Manufacturers Survey,'' and EIA–63B, ''Annual Photovoltaic Module/Cell Manufacturers Survey''.

2. Energy Information Administration; OMB No. 1905–0196; Extension of Currently Approved Collection; Mandatory

3. Forms EIA–63A and EIA–63B collect data on the manufacture, shipment, and importation of solar thermal collectors and photovoltaic modules/cells. The data are used by the private sector, the renewable energy industry, the DOE, and other government agencies. Respondents are U. S. companies that manufacture, shipped, and/or imported solar thermal collectors and/or photovoltaic modules and cells.

4. Business or other for-profit.

5. 195 hours (3 hours per response times 1 response per year times 65 respondents).

Statutory Authority: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13).

Issued in Washington, D.C., August 14, 1998.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 98–22418 Filed 8–19–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–101–000]

Continental Energy; Notice of Petition for Adjustment

August 14, 1998.

Take notice that on August 6, 1998, Russell Freeman (Freeman), d/b/a Continental Energy (Continental), filed a petition pursuant to section 502(c) of the Natural Gas Policy Act of 1978, for relief from making Kansas ad valorem tax refunds to Northern Natural Gas Company (Northern), Williams Gas Pipelines Central, Inc., formerly: Williams Natural Gas Company (Williams), and Colorado Interstate Gas Company (CIG). Freeman adds that Amoco Production Company (Amoco) shows Freeman and his working interest partners as owing an additional but unspecified refund amount. Absent such relief, the refunds are required by the Commission's September 10, 1997 order, in Docket No. RP97–369–000 *et al*,[1] on remand from the D.C. Circuit

[1] See 80 FERC ¶ 61,264 (1997); Order Denying Rehearing issued January 28, 1998, 82 FERC ¶ 61,058 (1998).

Court of Appeals.[2] The September 10 order directed First Sellers to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988. Continental's petition is on file with the Commission and open to public inspection.

Freeman states that he is 64 years old, that his company [Continental] was a small sole proprietorship, and that he understands that he is not responsible for the refunds owed by other working interest owners. Freeman states, however, that the principal he owes on his own working interest share of the refunds claimed by Northern, Williams and CIG is significant, amounting to nearly $100,000 ($98,299.36 to Northern, $147.21 to Williams, and $522.93 to CIG).

Freeman also states that he only has a few wells left, and that they are either losing money or barely breaking even. According to Freeman, for the years 1995, 1996, and 1997, these wells generated a total profit of just $9,269.36. Freeman adds that he hopes to draw approximately $1,100 per month in Social Security in just over a year, and he contends that paying the subject refunds would wipe-out his retirement. Accordingly, Freeman requests to be relieved from making the subject refunds on the grounds that to do so would cause him to endure a special hardship.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). 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.

David P. Boergers,

Secretary.

[FR Doc. 98–22382 Filed 8–19–98; 8:45 am]

BILLING CODE 6717–01–M

[2] *Public Service Company of Colorado* v. *FERC*, 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–350–001]

East Tennessee Natural Gas Company; Notice of Compliance Filing

August 14, 1998.

Take notice that on August 10, 1998, East Tennessee Natural Gas Company (East Tennessee), P.O. Box 2511, Houston, Texas 77252, filed Sub Fourth Revised Sheet No. 176 for inclusion in East Tennessee's FERC Gas Tariff, Second Revised Volume No. 1. East Tennessee requests that this revised tariff sheet be deemed effective August 1, 1998.

East Tennessee states that Sub Fourth Revised Sheet No. 176 is filed in compliance with the Commission's July 24, 1998 Letter Order issued in the above-referenced docket and incorporates by reference the Gas Industry Standards Board Dataset 2.4.6 into East Tennessee's tariff.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such 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 this proceeding. Copies of this filing are on file with the Commission and available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–22381 Filed 8–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–267–000]

Eastern Shore Natural Gas Company; Notice of Interruptible Revenue Sharing Report

August 14, 1998.

Take notice that on June 29, 1998, Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing with the Federal Energy Regulatory Commission an Interruptible Revenue Sharing Report showing the IT credits applied to each customer's June 1998 demand invoice issued July 1, 1998.

Eastern Shore states that the revenue credits, which were calculated for the period from November, 1997 through March, 1998, totaled $24,270 including interest of $552.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before August 21, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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.

David P. Boergers,

Secretary.

[FR Doc. 98–22377 Filed 8–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–720–000]

Florida Gas Transmission Company; Notice of Application

August 14, 1998.

Take notice that on August 11, 1998, Florida Gas Transmission Company (Applicant), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP98–720–000 an abbreviated application pursuant to Section 7(b) of the Natural Gas Act, as amended, and Section 157.18 of the Federal Energy Regulatory Commission's (Commission) regulations thereunder, for permission and approval to authorize Applicant to abandon by sale to Denbury Resources, Inc., as non-jurisdictional facilities, the Lake Facilities consisting of 1.5 miles of ten-inch Lake Chicot Lateral from the Denbury Production Platform to the connection of the Lake Mongoulois Lateral, 4.7 miles of the eight-inch Lake Mongoulois Lateral, 7.3 miles of the eight-inch Lake Fausse Point Lateral, and miscellaneous piping and valves connecting the field compressor site at Milepost 15.2, all located in St. Martin and Iberia Parishes, Louisiana and all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that upon abandonment and sale to Denbury, the capital and operating costs of the facilities will be removed from Applicant's rate base and cost-of-service, and there will be no stranded facility costs associated with the proposed abandonment. Applicant further states that it will analyze the economic advantages and disadvantages of repairing the remaining portions of the Lake Chicot Lateral at Bayou Sorrel and take the appropriate action at a later date.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 24, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a petition 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 the proceeding or to participate as a party in any hearing therein must file a petition 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 on this application if no petition to intervene is filed within the time required herein, and if the Commission on its own review of the matter finds that the abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 98–22373 Filed 8–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–183–001]

MIGC, Inc.; Notice of Petition To Amend

August 14, 1998.

Take notice that on August 6, 1998, MIGC, Inc. (MIGC), 1100 H Street, N.W., Washington, D.C. 20080, filed in Docket No. CP97–183–001 a petition pursuant to Section 7(c) of the Natural Gas Act to amend its certificate issued in Docket No. CP97–183–000, authorizing MIGC to modify the operation of the compressors authorized for installation at the Hilight Processing Plant in Campbell County, Wyoming, all as more fully set forth in the petition on file with the Commission and open to public inspection.

MIGC proposes to operate simultaneously the two compressors authorized in Docket No. CP97–183–000 by order issued May 27, 1997. In that order MIGC was authorized to operate one compressor as the primary compressor and one as the backup, without operating both simultaneously. It is stated that MIGC has determined since that time that increased volumes of coal seam gas flowing into its system require increased compression. Therefore, MIGC requests amended authorization to operate both compressors at half load to provide the additional compression capacity. It is stated that this would ensure continuous compression at the Hilight Plant in the event that one of the two engines were shut down unexpectedly. It is asserted that no construction or modification of facilities will be required to effectuate the proposal. It is further asserted that MIGC' system throughput would not be impacted.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before August 24, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., 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 FR 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.

David P. Boergers,

Secretary.

[FR Doc. 98–22369 Filed 8–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–713–000]

National Fuel Gas Supply; Notice of Request Under Blanket Authorization

August 14, 1998.

Take notice that on August 7, 1998, National Fuel Gas Supply Corporation (National), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP98–713–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate a new residential sales tap in Erie County, Pennsylvania under National's blanket certificate issued in Docket No. CP83–4–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

National proposes to construct and operate a new sales tap for delivery of approximately 150 Mcf of gas annually to National Fuel Gas Distribution Corporation. National further states that the proposed tap will be located in its Line L. National estimates that the cost of construction will be $1,500, for which National will be reimbursed.

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.

David P. Boergers,

Secretary.

[FR Doc. 98–22371 Filed 8–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–708–000]

NorAm Gas Transmission Company; Notice of Request Under Blanket Authorization

August 14, 1998.

Take notice that on August 4, 1998, as supplemented on August 10, 1998, NorAm Gas Transmission Company (NorAm), 1111 Louisiana Street, Houston, Texas, filed in Docket No. CP98–708–000 a request pursuant to Sections 157.205, and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211(b)) for authorization to install a delivery tap and related facilities to deliver increased volumes of gas to an existing customer, Cross Oil Refining and Marketing, Inc. (Cross), located in Union County, Arkansas. Specifically, NorAm proposes to install a 4-inch tap on its Line K and to construct 2.4 miles of 6-inch pipe (Line KT–10), under the blanket certificate issued and amended in Docket Nos. CP82–384–000 and CP82–384–001, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

NorAm states that these new facilities will allow peak day and annual deliveries of 4,000 Dth and 1,460,000 Dth, respectively. NorAm estimates the cost of construction to be $295,000, and states that Cross will reimburse NorAm for 50% of the total cost of these facilities. Currently, NorAm serves Cross' refinery through a delivery tap located on Line HM–18, a 4-inch diameter, low pressure, lateral line which is only capable of delivering only 3,000 Dth per day.

Cross has executed an amendment to its firm transportation agreement to provide for a new contract demand total of 4,000 Dth per day and to establish Line KT–10 as the new primary delivery point. NorAm states that it will make minor modifications to the existing meter station to allow for higher pressure gas to be delivered to Cross. According to NorAm, Line HM–18 will stay in service as a backup source of delivery. NorAm states that it has sufficient capacity to accomplish the deliveries without detriment or disadvantage to its other customers.

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 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.

David P. Boergers,

Secretary.

[FR Doc. 98–22370 Filed 8–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–715–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

August 14, 1998.

Take notice that on August 10, 1998, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed a request with the Commission in Docket No. CP98–715–000, pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to install and operate a new delivery point and appurtenant facilities, located in Yoakum County, Texas, authorized in blanket certificate issued in Docket No. CP82–401–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern proposes to install and operate a new delivery point and appurtenant facilities to provide natural gas transportation service to Golden Spread Electric Cooperative, Inc., Electric Generating Cooperative, Inc. and Denver City Energy Associates, L.P. (hereinafter referred to as Golden Spread). Northern would install two (2) taps at its Plains Compressor Station plus install EFM and scada equipment at a downstream measurement/ interconnect point between Northern's and Golden Spread's facilities. Northern states that service would be provided to Golden Spread pursuant to currently effective throughput service agreement(s). Northern reports that Golden Spread has requested the proposed delivery point to provide fuel for its Mustang Plant.

Northern further reports that the volumes to be delivered to Golden Spread would be 90,000 MMBtu on a peak day and 16,420,000 MMBtu on an annual basis. Northern estimates a facility cost of approximately $132,000 which would be reimbursed by Golden Spread. Golden Spread would construct or cause to be constructed, approximately 0.6 miles of pipeline from the taps to the proposed delivery point at its own expense.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, 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 NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, 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 NGA.

David P. Boergers,

Secretary.

[FR Doc. 98–22372 Filed 8–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–319–001]

PG&E Gas Transmission, Northwest Corporation; Notice of Compliance Filing

August 14, 1998.

Take notice that on August 11, 1998, PG&E Gas Transmission, Northwest Corporation (PG&E GT–NW) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, Substitute Second Revised Sheet No. 81A.04, to be effective August 1, 1998.

PG&E GT–NW asserts the purpose of this filing is to comply with the Commission's July 27, 1998 Letter Order in this Docket.

PG&E GT–NW further states a copy of this filing has been served upon its jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and

Regulations. All such 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 proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–22380 Filed 8–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–12–003]

Williams Gas Pipelines Central, Inc.; Notice of Proposed Changes in FERC Gas Tariff

August 14, 1998.

Take notice that on August 10, 1998, Williams Gas Pipelines Central, Inc. (Williams), tendered for filing the following tariff sheets to become part of its FERC Gas Tariff:

Williams Gas Pipelines Central, Inc.
Original Volume No. 1, April 6, 1998

Substitute Original Sheet Nos. 36 and 37

Williams Natural Gas Company
Second Revised Volume No. 1, November 1, 1997

Second Substitute Second Revised Sheet No. 8E and 8F

Williams states that it made a filing on January 9, 1998, in the above referenced docket, to respond to Commission Staff's December 30, 1997, data request. The filing included Williams' final corrections to the MDTQ's and customer allocations included in its October 1, 1997, filing. By Order issued July 30, 1998, the Commission concluded that the corrected MDTQ's and customer allocations were correct, and directed Williams to file revised tariff sheets reflecting these MDTQ's and customer allocations. The instant filing is being made to comply with the order.

Williams states that a copy of its filing was served on all participants listed on the service lists maintained by the Commission in the dockets referenced above and on all of Williams' jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such 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 proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–22375 Filed 8–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–105–009]

Williams Gas Pipelines Central, Inc.; Notice of Proposed Changes in FERC Gas Tariff

August 14, 1998.

Take notice that on August 10, 1998, Williams Gas Pipelines Central, Inc. (Williams), tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with the proposed effective date of May 1, 1998:

Substitute First Revised Sheet Nos. 269 and 270

Williams states that it made a filing on April 30, 1998, in the above referenced docket. By Order On Rehearing and Compliance Filing issued July 30, 1998, the Commission directed Williams to file (1) additional information required by the order, and (2) revised tariff sheets conforming to the order, within 10 days after the order issued. The instant filing is being made to comply with the order.

Williams states that a copy of its filing was served on all participants listed on the service lists maintained by the Commission in the dockets referenced above and on all of Williams' jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such 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 proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–22376 Filed 8–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–269–001]

Wyoming Interstate Company, Ltd.; Notice of Tariff Compliance Filing

August 14, 1998.

Take notice that on August 10, 1998, Wyoming Interstate Company, Ltd. (WIC), Post Office Box 1087, Colorado Springs, Colorado 80944, tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1: Substitute Third Revised Sheet No. 14C, Seventh Revised Sheet No. 15, Sixth Revised Sheet No. 15A, Third Revised Sheet No. 15B, and Sixth Revised Sheet No. 28 to be effective August 1, 1998.

WIC states that the purpose of this compliance filing is to remove Standard 4.3.4 from the reference on Sheet No. 14C. WIC has also included GISB Standard No. 5.3.30 version 1.2 in the Tariff all as required in the Order issued July 29, 1998 in Docket No. RP98–269–000.

Any person desiring to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC, 20426, in accordance with Section 385.214 and Section 385.211 of the Commission's 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.

David P. Boergers,

Secretary.

[FR Doc. 98–22378 Filed 8–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–270–002]

Young Gas Storage Company, Ltd.; Notice of Tariff Compliance Filing

August 14, 1998.

Take notice that on August 10, 1998, Young Gas Storage Company, Ltd. (Young), Post Office Box 1087, Colorado Springs, Colorado 80944, tendered for filing to become part of its FERC Gas Tariff: Sub Second Revised Sheet No. 48B, Fifth Revised Sheet No. 58, Fourth Revised Sheet No. 59, Fourth Revised Sheet No. 60, Fourth Revised Sheet No. 61, Fifth Revised Sheet No. 62, Fifth Revised Sheet No. 63, and Second Revised Sheet No. 63A to be effective August 1, 1998.

Young states that the purpose of this compliance filing is to delete GISB Standard 4.3.4 and to include GISB Standard 5.3.30 in its Tariff as required in the July 30, 1998 Order in Docket No. RP98–270–000.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such 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 proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–22379 Filed 8–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC96–19–035, et al.]

California Independent System Operator Corporation, et al.; Electric Rate and Corporate Regulation Filings

August 7, 1998.

Take notice that the following filings have been made with the Commission:

1. California Independent System Operator Corporation

[Docket Nos. EC96–19–035 and ER96–1663–036]

Take notice that on August 4, 1998, the California Independent System Operator Corporation, filled with the Federal Energy Regulatory Commission, a Market Notice which alerts Market Participants that the ISO will accept bids and self-provision of external imports of Spinning Reserve, Non-Spinning Reserve and Replacement Reserve from Ancillary Service resources located outside of the ISO's control area for Wednesday's Day-Ahead Market for Operating Day Thursday, August 6, 1998. The ISO will accept bids for the Hour-Ahead market upon closing of the Day-Ahead Market. The ISO has also posted the Market Notice on the ISO Home Page. The ISO is providing this notice pursuant to its transmittal letter accompanying Amendment No. 10, which amends the ISO Tariff and Protocols (the ISO's FERC Electric Tariff, Original Volume No. 1) and the Commission's July 31, 1998, Order accepting Amendment No. 10 for filing.

Comment date: August 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Main Public Service Company

[Docket No. ER98–3741–000]

Take notice that on July 15, 1998, Maine Public Service Company submitted a Quarterly Report of Transactions for the period April 1 through June 30, 1998. This filing was made in compliance with Commission orders dated May 31, 1995 (Docket No. ER95–851) and April 30, 1996 (Docket No. ER96–780).

Comment date: August 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Toledo Edison Company

[Docket No. ER98–3929–000]

Take notice that on July 27, 1998, Toledo Edison Company tendered for filing its quarterly report for the period April 1, 1998 through June 39, 1998.

Comment date: August 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Central Illinois Light Company

[Docket No. ER98–3978–000]

Take notice that on July 10, 1998, Central Illinois Light Company (CILCO), tendered for filing a report for the quarter ending June 30, 1998, of sales under its Market Rate Power Sales Tariff.

Comment date: August 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. PP&L, Inc.

[Docket No. ER98–3988–000]

Take notice that on July 30, 1998, PP&L, Inc. filed a summary of activity conducted under its market-based rates tariff, FERC Electric Tariff, Original Volume No. 5, during the quarter ending June 30, 1998.

Comment date: August 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Washington Water Power

[Docket No. ER98–3996–000]

Take notice that on July 30, 1998, Washington Water Power, tendered for filing its summary of activity for the quarter ending June 30, 1998, under its FERC Electric Tariff Original Volume No. 9.

Comment date: August 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. State Line Energy, L.L.C.

[Docket No. ER98–4004–000]

On July 30, 1998, State Line Energy, L.L.C., submitted for filing its quarterly report of transactions that occurred during the period April 1, 1998, through June 30, 1998, pursuant to its Market Rate Schedule accepted by the Commission in Docket No. ER96–2869–000.

Comment date: August 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Union Electric Company

[Docket No. ER98–4005–000]

Take notice that on July 30, 1998, Union Electric Company submitted a Quarterly Report on Transactions for the period April 1 through June 30, 1998.

Comment date: August 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. New England Power Company

[Docket No. ER98–4013–000]

Take notice that on July 30, 1998, New England Power Company submitted a Quarterly Report on Transactions for the period ending June 30, 1998.

Comment date: August 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Western Resources, Inc.

[Docket No. ER98–4017–000]

Take notice on July 30, 1998, Western Resources, Inc., tendered for filing a summary of sales under its Market-

Based Power Sales Tariff for the quarter ended June 30, 1998.

Comment date: August 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Southern Company Services, Inc.

[Docket No. ER98–4019–000]

Take notice that on July 30, 1998, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (collectively referred to as Southern Companies), submitted a report of short-term transactions that occurred under the Market-Based Rate Power Sales Tariff (FERC Electric Tariff, Original Volume No. 4) during the period May 1, 1998 through June 30, 1998.

Comment date: August 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before 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 these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 98–22368 Filed 8–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC97–56–000, et al.]

Western Resources, Inc., et al.; Electric Rate and Corporate Regulation Filings

August 13, 1998.

Take notice that the following filings have been made with the Commission:

1. Western Resources, Inc., Kansas City Power & Light Co.

[Docket No. EC97–56–000]

Take notice that on August 7, 1998, Western Resources, Inc. (Western Resources) and Kansas City Power & Light Co. (KCPL) (collectively, Applicants), filed, pursuant to Rule 385.215 of the Commission's Regulations, 18 CFR 385.215, an amendment to their Application for Authorization and Approval of Merger filed in this proceeding on September 18, 1997. The amended application and supporting supplemental direct testimony describe the revised merger agreement between Western Resources and KCPL. The amended application and supporting supplemental direct testimony also describe an addition to the Applicants' Customer Protection Plan to protect wholesale power customers from experiencing higher fuel-related costs resulting from the merger. Finally, this Amended Merger Application describes the Applicants' commitment to join an independent system operator (ISO) or other similar organization and the Applicants' commitment to treat transmission dependent utilities (TDUs) interconnected with the merged company on the same basis as the Applicants' native load for purposes of transmission planning, reservation, scheduling and curtailment.

Copies of the amended application have been served on all persons included in the Commission's official service list.

Comment date: September 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. California Independent System Operator Corporation

[Docket Nos. ER98–992–001]

Take notice that on August 10, 1998, the California Independent System Operator Corporation (ISO), tendered for filing Amendment No. 2 to the Participating Generator Agreement between the ISO and Southern California Edison Company for acceptance by the Commission. The ISO states that Amendment No. 2 modifies the Participating Generator Agreement by extending the date by which Southern California Edison must obtain certification by the ISO in accordance with Section 4.3.2 of the agreement.

The ISO states that this filing has been served on all parties listed on the Restricted Service List in the above-referenced docket.

Comment date: August 31, 1998, in accordance with Standard paragraph E at the end of this notice.

3. California Independent System Operator Corporation

[Docket No. ER98–1017–001]

Take notice that on August 10, 1998, the California Independent System Operator Corporation (ISO), tendered for filing Amendment No. 1 to the Scheduling Coordinator Agreement between Illinova Energy Partners, Inc. and the ISO for acceptance by the Commission. The ISO states that Amendment No. 1 modifies the Agreement, as directed by the Commission, to comply with the Commission's order issued December 17, 1997 in *Pacific Gas and Electric Co.*, 81 FERC ¶ 61,320 (1997).

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: August 31, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. California Independent System Operator Corporation

[Docket Nos. ER98–1855–001]

Take notice that on August 10, 1998, the California Independent System Operator Corporation (ISO), tendered for filing Amendment No. 1 to the Meter Service Agreement for Scheduling Coordinators between Illinova Energy Partners, Inc. and the ISO for acceptance by the Commission. The ISO states that Amendment No. 1 modifies the Agreement, as directed by the Commission, to comply with the Commission's order issued December 17, 1997 in *Pacific Gas and Electric Co.*, 81 FERC ¶ 61,320 (1997).

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: August 31, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, Southwestern Electric Power Company

[Docket No. ER98–1980–000]

Take notice that on August 10, 1998, Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma and Southwestern Electric Power Company (collectively, the CSW Operating Companies) submitted for filing a corrected page to their Restated and Amended Operating Agreement. The CSW Operating Companies have requested an effective date of January 1, 1997 for the corrected page.

The CSW Operating Companies state that a copy of the filing has been served on the Public Utility Commission of Texas, the Louisiana Public Service Commission, the Arkansas Public Service Commission, the Oklahoma Corporation Commission, and on all parties to Docket No. ER98–1980.

Comment date: August 31, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Sithe Mystic LLC Company

[Docket No. ER98–3799–000]

Take notice that on July 20, 1998, Sithe Mystic LLC, Sithe Edgar LLC, Sithe New Boston LLC, Sithe Framingham LLC, Sithe West Medway LLC and Sithe Wyman LLC tendered for filing the second quarter 1998 transaction report in the above-referenced docket.

Comment date: August 21, 1998 in accordance with Standard Paragraph E at the end of this notice.

7. California Independent System Operator Corporation

[Docket No. ER98–4166–000]

Take notice that on August 10, 1998, the California Independent System Operator Corporation (ISO), tendered for filing Amendment No. 2 to the Participating Generator Agreement between the ISO and Midway Sunset Cogeneration Company for acceptance by the Commission. The ISO states that Amendment No. 2 modifies the Participating Generator Agreement by extending the date by which Midway Sunset must obtain certification by the ISO in accordance with section 4.3.2 of the agreement.

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: August 31, 1998 in accordance with Standard Paragraph E at the end of this notice.

8. Louisville Gas and Electric Company and Kentucky Utilities Company

[Docket No. ER98–4169–000]

Take notice that on August 7, 1998 Louisville Gas and Electric Company/Kentucky Utilities (LG&E/KU) tendered for filing an unexecuted Service Agreement for Firm Point-To-Point Transmission Service between LG&E/KU and Consumers Energy Company and The Detroit Edison Company (referred to collectively as the Michigan Companies) under LG&E/KU's Open Access Transmission Tariff.

LG&E/KU respectfully request that this service agreement become effective as of July 12, 1998.

Comment date: August 31, 1998 in accordance with Standard Paragraph E at the end of this notice.

9. Ameren Services Company

[Docket No. ER98–4170–000]

Take notice that on August 10, 1998, Ameren Services Company (ASC) tendered for filing Service Agreements for Firm Point-to-Point Transmission Services between ASC, Griffin Energy Marketing, L.L.C. and PG&E Energy Trading. ASC asserts that the purpose of the Agreements is to permit ASC to provide transmission service the parties pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER 96–677–004.

ASC requests that the Service Agreements become effective on July 14, 1998 for Griffin Energy Marketing, L.L.C. and on July 26, 1998 for PG&E Energy Trading.

Comment date: August 31, 1998 in accordance with Standard Paragraph E at the end of this notice.

10. Ameren Services Company

[Docket No. ER98–4171–000]

Take notice that on August 10, 1998, Ameren Services Company (ASC) tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service between ASC and Griffin Energy Marketing, L.L.C. (GEM). ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to GEM pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER96–677–004.

ASC requests that the Service Agreement be allowed to become effective July 14, 1998.

Comment date: August 31, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Ameren Services Company

[Docket No. ER98–4172–000]

Take notice that on August 10, 1998, Ameren Services Company (ASC) tendered for filing a Service Agreement for Long-Term Firm Point-to-Point Transmission Service between ASC and PECO Energy—Power Team (PECO). ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to PECO pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER96–677–004.

ASC respectfully requests that the Commission waive its notice requirement and allow this agreement to become effective May 1, 1998.

Comment date: August 31, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Orange and Rockland Utilities, Inc.

[Docket No. ER98–4173–000]

Take notice that on August 10, 1998, Orange and Rockland Utilities, Inc. (Orange and Rockland) filed a Service Agreement between Orange and Rockland and Central Hudson Enterprises Corp. (Customer). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of Orange and Rockland Open Access Transmission Tariff filed on July 9, 1996 in Docket No. OA96–210–000.

Orange and Rockland requests waiver of the Commission's sixty-day notice requirements and an effective date of July 27, 1998 for the Service Agreement.

Orange and Rockland has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: August 31, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. New Century Services

[Docket No. ER98–4174–000]

Take notice that on August 10, 1998, New Century Services on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies) tendered for filing an Umbrella Service Agreement under their Joint Open Access Transmission Service Tariff for Non-Firm Point-to-Point Transmission Service between the Companies and CLECO Generation Services.

The Companies request that the Agreement be made effective on July 24, 1998. Consistent with the Commission's policy, this requested effective date is appropriate because the Companies filed this Agreement within 30 days of it being executed.

Comment date: August 31, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. NGE Generation, Inc.

[Docket No. ER98–4175–000]

Take notice that on August 10, 1998, NGE Generation, Inc. (NGE Gen) tendered for filing notice that they have terminated certain transactions with The Power Company of America, L.P. (PCA) in accordance with the terms of NGE Gen's Electric Power Sales Tariff, FERC Electric Rate Schedule, Original Volume No. 1 (Tariff), initially filed with the Commission in Docket No. ER97–2518–000 and restated on March 18, 1998 in Docket No. ER98–2234–000. NGE Gen terminated transactions with PCA as of July 2, 1998.

Comment date: August 31, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. El Paso Energy Marketing Company

[Docket No. ER98–4176–000]

Take notice that on August 10, 1998, El Paso Energy Marketing Company (EPEM) filed a notice of cancellation of EPEM's agreements under which it sells electric power to the Power Company of America, L.P. (PCA).

EPEM also requests waiver of the 60-day notice requirement to permit this filing to become effective July 1, 1998.

Comment date: August 31, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. California Independent System Operator Corporation

[Docket No. ER98–4177–000]

Take notice that on August 7, 1998, the California Independent System Operator Corporation (ISO), tendered for filing an amendment to Schedule 1 to the Meter Service Agreement for ISO Metered Entities between the ISO and the Southern California Edison Company (SCE). The ISO states that the amendment revises the schedule to reflect SCE's sale of certain generating facilities.

The ISO states that this filing has been served on all parties listed on the official service lists in the above-referenced dockets.

Comment date: August 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. New Century Services

[Docket No. ER98–4178–000]

Take notice that on August 10, 1998, New Century Services, on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies) tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Firm Point-to-Point Transmission Service between the Companies and CLECO Generation Services.

The Companies request that the Agreement be made effective on July 24, 1998. Consistent with the Commission's policy, this requested effective date is appropriate because the Companies filed this Agreement within 30 days of it being executed.

Comment date: August 31, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Northeast Utilities Service Company

[Docket No. ER98–4180–000]

Take notice that on August 10, 1998, Northeast Utilities Service Company (NUSCO) tendered for filing a Service Agreement with UGI Utilities, Inc. under the NU System Companies' Sale for Resale Tariff No. 7 Market-Based Rates.

NUSCO states that a copy of this filing has been mailed to the UGI Utilities, Inc.

NUSCO requests that the Service Agreement become effective July 29, 1998.

Comment date: August 31, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Consumers Energy Company

[Docket No. ER98–4182–000]

Take notice that on August 10, 1998, Consumers Energy Company (Consumers) tendered for filing an executed Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service pursuant to the Joint Open Access Transmission Service Tariff filed on December 31, 1996 by Consumers and The Detroit Edison Company (Detroit Edison) with transmission customer, Griffin Energy Marketing, L.L.C.

Copies of the agreement were served upon the Michigan Public Service Commission, Detroit Edison and the transmission customer.

Consumers requests that the Service Agreement be allowed to become effective August 4, 1998.

Comment date: August 31, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Otter Tail Power Company

[Docket No. ER98–4194–000]

Take notice that on August 10, 1998, Otter Tail Power Company (OTP) tendered for filing a Transmission Service Agreement between itself and Tenaska Power Services Co. as a customer under OTP's transmission service tariff (FERC Electric Tariff, Original Volume No. 7).

OTP respectfully requests an effective date sixty days after filing. OTP is authorized to state that Tenaska Power Services Co. joins in the requested effective date.

Copies of the filing have been served on Tenaska Power Services Co., Public Utility Commission of Texas, Minnesota Public Utilities Commission, North Dakota Public Service Commission, and the South Dakota Public Utilities Commission.

Comment date: August 31, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before 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 these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 98–22367 Filed 8–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 10808–000, 10809–000, 10810–000—Michigan]

Wolverine Power Corporation; Notice of Availability of Final Multiple Project Environmental Assessment

August 14, 1998.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Hydropower Licensing has reviewed the applications for an original license for the Edenville, Second, and Smallwood Hydroelectric Projects, located on the Tittabawassee River, in Gladwin County, Michigan, and has prepared a Final Multiple Project Environmental Assessment (FEA) for the projects. In the FEA, the Commission's staff has analyzed the potential environmental impacts of the existing unlicensed projects and has concluded that approval of the project, with appropriate environmental protection measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the FEA are available for review in the Public Reference Branch, Room 2–A, of the Commission's offices

at 888 First Street, NE, Washington, DC 20426.

David P. Boergers,

Secretary.

[FR Doc. 98–22374 Filed 8–19–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6148–7]

Public Water System Supervision Program Revision for the State of Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Public notice is hereby given in accordance with the provisions of section 1413 of the Safe Drinking Water Act, as amended, 42 U.S.C. 300f *et seq.*, and 40 CFR part 142, subpart B, the National Primary Drinking Water Regulations (NPDWR) that the State of Indiana is revising its approved Public Water System Supervision (PWSS) primacy program. The Indiana Department of Environmental Management (IDEM) has adopted new analytical methods, withdrawn outdated analytical methods, and updated older analytical methods for drinking water contaminants. The IDEM has also adopted technical amendments to correct typographical errors and clarify regulatory language. These regulations correspond to the NPDWRs promulgated by the United States Environmental Protection Agency (U.S. EPA) on June 30, 1994, (59 FR 33860–33864); on July 1, 1994, (59 FR 34320–34325); on June 29, 1995 (60 FR 33926–33932); and on December 5, 1994, (59 FR 62456–62471), as amended on June 29, 1995, (60 FR 34084–34086). The U.S. EPA has completed its review of Indiana's PWSS primacy program revision.

The U.S. EPA has determined that the Indiana rule revision meets the requirements of the Federal rule. Therefore U.S. EPA is proposing to approve the IDEM's rule revision.

All interested parties are invited to submit written comments on these proposed determinations, and may request a public hearing on or before September 21, 1998. If a public hearing is requested and granted, the corresponding determination(s) shall not become effective until such time following the hearing, at which the Regional Administrator issues an order affirming or rescinding this action. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator.

Requests for a public hearing should be addressed to: Miguel Del Toral (WD–15J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determinations and of information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Notification of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing. Such notice will be made by the Regional Administrator in the **Federal Register** and in newspapers of general circulation in the State of Indiana. A notice will be sent to the person(s) requesting the hearing as well as to the State of Indiana. The hearing notice will include a statement of purpose, information regarding the time and location, and the address and telephone number where interested persons may obtain further information. The Regional Administrator will issue an order affirming or rescinding his determination upon review of the hearing record. Should the determination be affirmed, it will become effective as of the date of the order.

Should no timely and appropriate request for a hearing be received, and should the Regional Administrator elect not to hold a hearing on his own motion, these determinations shall become effective on September 31, 1998. Please bring this notice to the attention of any persons known by you to have an interest in these determinations.

All documents related to these determinations are available for inspection between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Indiana Department of Environmental Management, Drinking Water Branch, 2525 North Shadeland Avenue, Indianapolis, Indiana 46219, State Docket Officer: Ms. Stacy Jones, (317) 308–3292

Safe Drinking Water Branch, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604, Docket Officer: Miguel Del Toral, (312) 886–5253

FOR FURTHER INFORMATION CONTACT: Miguel Del Toral, Region 5, Safe Drinking Water Branch, at the Chicago address given above.

(Section 1413 of the Safe Drinking Water Act, as amended (1986), and 40 CFR 142.10 of the National Primary Drinking Water Regulations)

Dated: August 6, 1998.

William E. Muno,

Acting Regional Administrator, Region 5.

[FR Doc. 98–22425 Filed 8–19–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6148–6]

Public Water System Supervision Program Revision for the State of Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Public notice is hereby given in accordance with the provisions of section 1413 of the Safe Drinking Water Act, as amended, 42 U.S.C. 300f *et seq.*, and 40 CFR part 142, subpart B, the National Primary Drinking Water Regulations (NPDWR) that the State of Wisconsin is revising its approved Public Water System Supervision (PWSS) primacy program. The Wisconsin Department Natural Resources (WDNR) has adopted new analytical methods, withdrawn outdated analytical methods, and updated older analytical methods for drinking water contaminants. The WDNR has also adopted technical amendments to correct typographical errors and clarify regulatory language. These regulations correspond to the NPDWRs promulgated by the United States Environmental Protection Agency (U.S. EPA) on June 30, 1994, (59 FR 33860–33864); on July 1, 1994, (59 FR 34320–34325); on June 29, 1995 (60 FR 33926–33932); and on December 5, 1994, (59 FR 62456–62471), as amended on June 29, 1995, (60 FR 34084–34086). The U.S. EPA has completed its review of Wisconsin's PWSS primacy program revision.

The U.S. EPA has determined that the Wisconsin rule revision meets the requirements of the Federal rule. Therefore U.S. EPA is proposing to approve the WDNR's rule revision.

All interested parties are invited to submit written comments on these proposed determinations, and may request a public hearing on or before

September 21, 1998. If a public hearing is requested and granted, the corresponding determination(s) shall not become effective until such time following the hearing, at which the Regional Administrator issues an order affirming or rescinding this action. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator.

Requests for a public hearing should be addressed to: Miguel Del Toral (WD–15J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determinations and of information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Notification of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing. Such notice will be made by the Regional Administrator in the **Federal Register** and in newspapers of general circulation in the State of Wisconsin. A notice will be sent to the person(s) requesting the hearing as well as to the State of Wisconsin. The hearing notice will include a statement of purpose, information regarding the time and location, and the address and telephone number where interested persons may obtain further information. The Regional Administrator will issue an order affirming or rescinding his determination upon review of the hearing record. Should the determination be affirmed, it will become effective as of the date of the order.

Should no timely and appropriate request for a hearing be received, and should the Regional Administrator elect not to hold a hearing on his own motion, these determinations shall become effective on September 21, 1998. Please bring this notice to the attention of any persons known by you to have an interest in these determinations.

All documents related to these determinations are available for inspection between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Wisconsin Department of Natural Resources, Bureau of Drinking Water and Ground Water, 100 South Webster Street, Madison, Wisconsin 53707, State Docket Officer: Mr. Mark Nelson, (608) 267–4230

Safe Drinking Water Branch, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604, Docket Officer: Miguel Del Toral, (312) 886–5253

FOR FURTHER INFORMATION CONTACT: Miguel Del Toral, Region 5, Safe Drinking Water Branch, at the Chicago address given above.

(Section 1413 of the Safe Drinking Water Act, as amended (1986), and 40 CFR 142.10 of the National Primary Drinking Water Regulations)

Dated: August 6, 1998.

William E. Muno,

Acting Regional Administrator, Region 5.

[FR Doc. 98–22426 Filed 8–19–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

[Docket No. 98–15]

Hual As—Service Contracts And Time-Volume Rate Arrangements With Ocean Freight Forwarders; Order Of Investigation and Hearing

HUAL AS (''HUAL''), formerly known as Hoegh-Ugland Auto Liners A/S, is an ocean common carrier which operates vessels in the trade between the United States and Europe and is engaged in the ocean transportation of automobiles and boats from the United States. HUAL is a Norwegian company located at Dronningensgt. 40, Oslo 1, Norway. It currently maintains several tariffs at the Commission, and its Automated Tariff Filing and Information System (''ATFI'') organization number is 015120.[1] According to HUAL's Internet site, HUAL's main branch office in the United States is HUAL North America Inc., The Jericho Atrium, 500 North Broadway, Suite 259, Jericho, NY 11753.[2]

In 1997 HUAL entered into at least four service contracts with ocean freight forwarders where none of the actual shippers were identified. These service contracts provided for shipments of vehicles and boats from United States ports to European ports. It appears that there are common elements of these four service contracts and of the shipments made thereunder, including:

1. The service contract identified the freight forwarder as ''shipper/freight forwarder'' or ''shipper.''

2. There was no shipper certification in the service contract.

3. The service contract contained a provision which stated, ''Carrier will pay freight forwarders commission of 5% on base ocean freight only to licensed freight forwarder if services, as stipulated by F.M.C. regulations, are provided whether or not freight forwarder is contract signatory.''

4. The service contract was filed at the Commission.

5. The essential terms for the service contract did not contain the service contract's provision about freight forwarder commission.

6. For the shipments that moved under the contract, the freight forwarder identified itself for the ocean common carrier's bills of lading as the freight forwarder.

7. For the shipments that moved under the contract, the freight forwarder did not identify itself for the ocean common carrier's bills of lading as the shipper.

8. The freight forwarder collected freight forwarder compensation on the shipments that moved under the service contract.

9. There is no evidence that the freight forwarder certified to HUAL that it performed the freight forwarding services.

A review of service contracts indicates that HUAL may have been signing service contracts with freight forwarders since May 1993.[3]

The 1984 Act defines a shipper as the ''owner or person for whose account the ocean transportation of cargo is provided or the person to whom delivery is to be made.'' Only shippers or shippers' associations may enter into a service contract in accordance with section 8(c) of the 1984 Act. Therefore, unless a company can be defined as a shipper, it cannot enter into a service contract.

As defined by the 1984 Act, a freight forwarder dispatches cargo from the United States on behalf of the owner or person for whose account the ocean transportation of cargo is provided or the person to whom delivery is to be made. Because a freight forwarder is an agent of the shipper and not the shipper, the statute would not appear to permit

[1] This organization record was filed in ATFI on October 22, 1997. HUAL's predecessor, Hoegh-Ugland Auto Liners A/S, had ATFI organization number 001444, and it maintained tariffs between June 1994 and October 1997.

[2] HUAL has additional branch offices in Baltimore, MD; Chicago, IL; and Jacksonville, FL. In addition to its branch offices, HUAL has a booking agent in the United States: Palmetto Ship Agencies, Inc. in Charleston, SC. See HUAL's Internet site—http:/www.hual.no/hual.

[3] For service contracts signed before October 1997, HUAL was known as Hoegh-Ugland Auto Liners A/S.

a freight forwarder to enter into service contracts on its own.[4] Rather, it appears that a forwarder can only sign service contracts on behalf of a disclosed shipper where the shipper is the principal entering into the contract.

None of the shippers who were listed in the shipper identification box on HUAL's bills of lading, were signatories to the HUAL service contracts nor were they affiliates of the service contract signatories. However, HUAL seems to have allowed these shippers to obtain the service contract rates for their shipments.

By entering into service contracts with freight forwarders, HUAL apparently allowed freight forwarders and shippers to obtain transportation for property at less than the rates or charges established in HUAL's tariff or service contracts by an unlawful means in violation of section 10(b)(4) of the 1984 Act. Furthermore, HUAL seems to have charged, demanded, collected or received less compensation than the rates or charges that would otherwise be applicable for the service contract shipments in violation of section 10(b)(1) of the 1984 Act.

In addition to entering into service contracts with freight forwarders, HUAL also appears to have allowed freight forwarders to enroll in HUAL's time-volume rates (''TVR'').[5] Currently, HUAL maintains in its tariff a TVR (ATFI Tariff No. 015120–004, Tariff Rule 26, Sub-rule 09, TVR No. 3698) which states:

> The name of the enrollee shall appear on the Bill of Lading as the Shipper, Consignee, or Forwarder in order that cargo represented by the Bill of Lading be credited under this offering. There shall be only one shipper, one consignee, one port of loading and one port of discharge per Bill of Lading. * * * Enrollees desiring to ship cargo under this offering should notify the Carrier in writing using the form specified at the end of this offer. No cargo shipped by enrollee will qualify for this offer until the Carrier has received enrolee's [sic] enrollment form The [sic] The enrollment must be in the name of the Shipper or Consignee making the application.

The 1984 Act defines a TVR as a tariff rate which will ''vary with the volume of cargo offered over a specified period of time.'' 46 USC app. 1707(b). A freight forwarder does not have cargo of its own which it can commit to a common carrier, and for the reasons discussed above, the statute would not appear to permit a freight forwarder to enroll in TVRs on its own account. Furthermore, it appears that some shippers who received HUAL's TVRs were not enrolled or gave no notice to HUAL of their intention to enroll in the TVRs, as required by the Commission's regulations at 46 CFR 514.13(b)(19)(I)(D). Thus, by permitting freight forwarders to enroll in TVRs, HUAL may have allowed freight forwarders and shippers to obtain transportation for property at less than the rates or charges established in HUAL's tariff or service contracts by an unlawful means in violation of section 10(b)(4) of the 1984 Act. In addition, HUAL also seems to have charged, demanded, collected or received less compensation than the rates or charges that would otherwise be applicable for the TVR shipments in violation of section 10(b)(1) of the 1984 Act.

It appears that HUAL has paid freight forwarder compensation to forwarders for service contract shipments since at least March 1995. HUAL also may have paid freight forwarder compensation to the freight forwarders for the shipments that moved under its TVRs. Section 19(d)(1) of the 1984 Act sets forth certain conditions under which a common carrier can pay freight forwarder compensation on a shipment. One condition is that the shipment must be dispatched by the freight forwarder ''on behalf of others.'' Another condition is that the freight forwarder must certify to the carrier as to the forwarding services that it performed. While it appears that the freight forwarders dispatched the HUAL service contract and TVR shipments on behalf of others, there is no evidence that certifications of freight forwarding services were provided to HUAL regarding the shipments. Therefore, HUAL may have violated section 19(d)(1) in paying compensation to these forwarders without obtaining any freight forwarder certifications.

Section 19(d)(4) prohibits a common carrier from knowingly paying forwarder compensation to a freight forwarder which has a beneficial interest in a shipment. Beneficial interest is defined in the Commission's regulations at 46 CFR 510.2(b) as:

> a lien or interest in or right to use, enjoy, profit, benefit, or receive any advantage, either proprietary or financial, from the whole or any part of a shipment of cargo where such interest arises from the financing of the shipment or by operation of law, or by agreement, express or implied.

HUAL's service contracts and TVRs gave the signatory freight forwarders various benefits and advantages with respect to the shipments that took place under these agreements. Since the freight forwarders obtained the benefits and advantages by means of the HUAL agreements, they may have had beneficial interests in the shipments.[6] Furthermore, HUAL appears to have facilitated the beneficial interests of the freight forwarders through the provision of service contracts and TVRs to the freight forwarders. Therefore, HUAL should have known whether the freight forwarders had beneficial interests in the shipments. Thus, HUAL may have knowingly paid freight forwarder compensation on TVR and service contract shipments to freight forwarders which had beneficial interests in the shipments in apparent violation of section 19(d)(4) of the 1984 Act.

The Commission's regulations at 46 CFR 514.4(d)(5)(i)(A) and 46 CFR 514.17(a)(1), require a common carrier to file at the Commission the essential terms of service contracts so that the terms of the service contracts are available to the general public, which includes shippers who may want ''me-too'' service contracts. The Commission's regulation at 46 CFR 514.17(d)(7)(vi), imposes a mandatory obligation to file in Essential Term No. 6 ''any and all conditions and terms of service or operation or concessions which in any way affect such rates or charges.'' In its essential terms, HUAL did not file the service contract provision that the ''Carrier will pay freight forwarders commission of 5% on base ocean freight only to licensed freight forwarder if services, as stipulated by F.M.C. regulations, are provided whether or not freight forwarder is contract signatory.'' A 5% commission paid to a service contract signatory is a concession which affects the rates or charges in the service contracts. Therefore, by failing to file the complete essential terms as mandated by the Commission's regulations, HUAL may have violated the Commission's regulations at 46 CFR 514.4(d)(5)(i)(A), 46 CFR 514.17(a)(1), and 46 CFR 514.17(d)(7)(vi).

The Commission's regulation at 46 CFR 514.7(e)(1), requires the shipper signatory to a service contract to certify its shipper status on the signature page of the contract. The Commission's regulation at 46 CFR 514.4(d)(5)(i)(A), requires the carrier signatory to file the service contract with the Commission. HUAL apparently did not include the

[4] The Commission is aware of the contrary views on this matter of some in the industry. This proceeding should provide an appropriate forum for the adjudication of this issue.

[5] A freight forwarder can give notice to a common carrier of a disclosed shipper's decision to enroll in a TVR.

[6] The beneficial interest appears to be the benefits resulting to the forwarders from HUAL providing the forwarders discounted service contract and TVR rates which only are available to shippers if they use those forwarders for their cargo. The beneficial interest does not arise out of any arrangements between the forwarders and shippers.

information for shipper certification on the signature pages of its service contracts; as a result, none of the freight forwarders who entered into service contracts with HUAL certified their shipper status in the contracts. Thereafter, HUAL filed these service contracts at the Commission. Thus, HUAL appears to have failed to file complete service contracts at the Commission in violation of the Commission's regulations at 46 CFR 514.4(d)(5)(i)(A).

Now therefore it is ordered, That pursuant to sections 3, 8, 10, 11, 13 and 19 of the 1984 Act, 46 U.S.C. app. 1702, 1707, 1709, 1710, 1712 and 1718, and 46 CFR Part 514, an investigation is hereby instituted to determine:

(1) Whether HUAL violated section 10(b)(1) of the 1984 Act by charging, demanding, collecting or receiving less compensation for the transportation of property than the rates or charges that are set forth in its tariffs;

(2) Whether HUAL violated section 10(b)(4) of the 1984 Act by allowing freight forwarders and shippers to obtain transportation for property at less than the rates or charges established in HUAL's tariffs by an unjust or unfair device or means;

(3) Whether HUAL violated section 19(d)(1) of the 1984 Act by paying freight forwarder compensation on shipments without obtaining certifications from the freight forwarders;

(4) Whether HUAL violated section 19(d)(4) of the 1984 Act by paying freight forwarder compensation on shipments to freight forwarders who had beneficial interests in the shipments;

(5) Whether HUAL violated 46 CFR 514.17(d)(7)(vi), 46 CFR 514.4(d)(5)(i)(A) and 46 CFR 514.17(a)(1), by failing to file complete essential terms for its service contracts;

(6) Whether HUAL violated 46 CFR 514.4(d)(5)(i)(A) by failing to file complete service contracts at the Commission;

(7) Whether, in the event HUAL violated sections 10(b)(1), 10(b)(4), 19(d)(1) or 19(d)(4) of the 1984 Act or the Commission's regulations at 46 CFR 514.4(d)(5)(i)(A), 46 CFR 514.17(a)(1), or 46 CFR 514.17(d)(7)(vi), civil penalties should be assessed and, if so, the amount of such penalties;

(8) Whether, in the event HUAL violated sections 10(b)(1) or 10(b)(4) of the 1984 Act, the tariff of HUAL should be suspended for a period not to exceed 12 months; and

(9) Whether, in the event HUAL violated sections 10(b)(1), 10(b)(4), 19(d)(1) or 19(d)(4) of the 1984 Act or the Commission's regulations at 46 CFR 514.4(d)(5)(i)(A), 46 CFR 514.17(a)(1), or 46 CFR 514.17(d)(7)(vi), an appropriate cease and desist order should be issued against HUAL.

It is further ordered, That a public hearing be held in this proceeding and that this matter be assigned for hearing before an Administrative Law Judge of the Commission's Office of Administrative Law Judges in compliance with Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Administrative Law Judge only upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matters in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record;

It is further ordered, That HUAL is designated Respondent in this proceeding;

It is further ordered, That the Commission's Bureau of Enforcement is designated a party to this proceeding;

It is further ordered, That notice of this Order be published in the **Federal Register**, and a copy be served on parties of record;

It is further ordered, That other persons having an interest in participating in this proceeding may file petitions for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 CFR 502.72;

It is further ordered, That all further notices, orders, and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be served on parties of record;

It is further ordered, That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, in accordance with Rule 118 of the Commission's Rules of Practice and Procedure, 46 CFR 502.118, and shall be served on parties of record; and

It is further ordered, That in accordance with Rule 61 of the Commission's Rules of Practice and Procedure, the initial decision of the Administrative Law Judge shall be issued by August 13, 1999, and the final decision of the Commission shall be issued by December 13, 1999.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 98–22355 Filed 8–19–98; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies That are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 3, 1998.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Androscoggin Bancorp, MHC, and Androscoggin Bancorp, Inc., both of Lewiston, Maine; to acquire Financial Institutions Service Corp., Lewiston, Maine and thereby engage in providing primarily item and certain data processing functions to a number of financial institutions that are primarily located in Maine pursuant to § 225.28(b)(14) of Regulation Y.

Board of Governors of the Federal Reserve System, August 14, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–22423 Filed 8–19–98; 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 September 14, 1998.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Popular Inc., Popular International Bank, Inc., both of Hato Rey, Puerto Rico; Popular North America, Inc., Mt. Laurel, New Jersey; and Banco Popular North America, Inc., Streamwood, Illinois; to acquire and merge with Gore-Bronson Bancorp, Inc., Prospect Heights, Illinois, and thereby indirectly acquire Water Tower Bank, Chicago, Illinois; Bronson-Gore Bank, Prospect Heights, Illinois; and Irving Bank, Chicago, Illinois.

2. Popular Inc., Popular International Bank, Inc., both of Hato Rey, Puerto Rico; and Popular North America, Inc., Mt. Laurel, New Jersey; to acquire 100 percent of the voting shares of First State Bank of Southern California, Santa Fe Springs, California.

B. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Maryland Permanent Capital Corporation, Owings Mills, Maryland; to become a bank holding company by acquiring 100 percent of the voting shares of Maryland Permanent Bank & Trust Co. Owings Mills, Maryland.

In connection with this application, Maryland Permanent Capital Corporation also has applied to acquire Maryland Permanent Mortgage Corporation, Owings Mills, Maryland and Pyramid Leasing Corp., Owings Mills, Maryland, and thereby engage in making, acquiring, brokering or servicing loans or other extensions of credit and activities related to extending credit pursuant to §§ 225.28(b)(1) and (b)(2) of Regulation Y; and leasing personal or real property pursuant to § 225.28(b)(3) of Regulation Y.

C. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Compass Bancshares, Inc., Birmingham, Alabama; to acquire 100 percent of the voting shares of Arizona Bank, Tuscon, Arizona.

Board of Governors of the Federal Reserve System, August 14, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–22424 Filed 8–19–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[File No. 982–3015]

GeoCities; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before October 19, 1998.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Lee Peeler or Joel Winston, FTC/S–4002, Washington, DC 20580. (202) 326–3090 or 326–3153.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for August 13, 1998), on the World Wide Web, at ''http://www.ftc.gov/os/actions97.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, DC 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from GeoCities, the operator of a Web site on the World Wide Web (''Web''), located at http://www.geocities.com.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The GeoCities Web site is a ''virtual community'' consisting of members' personal home pages organized into 40 themed areas, called ''neighborhoods,'' One such neighborhood is the ''Enchanted Forest'' described as a ''community for and by kids.'' GeoCities provides numerous services to its members, including free and fee-based personal home pages, free e-mail service, contests, and children's clubs, among other activities. Persons wishing to become a member of GeoCities must complete an application form. The

application form requests certain mandatory personally identifiable information about the applicant and certain other information it designates as ''optional.'' The form also asks applicants to designate whether they wish to receive specific ''special offers'' from advertisers, and specific products or services from individual companies.

The Commission's complaint in this matter alleges that GeoCities engaged in three deceptive practices in connection with its collection and use of personal identifying information from consumers. First, the complaint alleges that GeoCities falsely represented that the personal identifying information it collects through the membership application form is used only to provide members the specific advertising offers and products or services they request. In fact, according to the complaint, that information has been sold, rented or otherwise disclosed to third parties who have used it for purposes other than those for which members have given permission.

Second, the complaint alleges that GeoCities falsely represented that the ''optional information'' it collects through the application form is not disclosed to third parties without the member's permission. In fact, the complaint alleges, GeoCities has disclosed this information to third parties who have used it to target advertising back to the member.

The third allegation relates to two specific activities in the Enchanted Forest neighborhood. GeoCities promotes the Official GeoCities' GeoKidz Club; children wishing to join are required to complete the Membership Request Form that solicits personal identifying information. GeoCities also promotes certain Enchanted Forest contests; children wishing to participate are required to complete an entry form that solicits personal identifying information. The complaint alleges that GeoCities has falsely represented that it collects and maintains the children's personal identifying information collected through the GeoKidz Club Membership Request Form and the Enchanted Forest Contest Entry form. In fact, the Club and contest are run by third party ''community leaders'' hosted on the GeoCities Web site, and those third parties actually collect and maintain the children's information.

Part I of the proposed order prohibits GeoCities from making any misrepresentation about its collection or use of personal identifying information from or about consumers, including what information will be disclosed to third parties and how the information will be used. The order defines ''personal identifying information'' as including but not limited to, ''first and last name, home or other physical address (e.g. school), e-mail address, telephone number, or any information that identifies a specific individual, or any information which when tied to the above becomes identifiable to a specific individual.''

Part II of the proposed order prohibits GeoCities from misrepresenting either the identity of a party collecting any personal identifying information or the sponsorship of any activity on its Web site.

Part III prohibits GeoCities from collecting personal identifying information from any child if GeoCities has actual knowledge that the child does not have a parent's permission to provide the information. The order defines ''child'' as ages twelve and under.

Parts IV and V of the order are designed as fencing-in provisions to prevent violations of consumers' information privacy in the future. Part IV orders GeoCities to post a clear and prominent notice on its Web Site explaining GeoCities' practices with regard to its collection and use of personal identifying information. The notice must include the following:

(a) What information is being collected;

(b) Its intended use(s);

(c) The third parties to whom it will be disclosed;

(d) How the consumer can obtain access to the information; and

(e) How the consumer can have the information removed from GeoCities' databases.

The notice must appear on the Web site's home page and at each location on the site at which such information is collected, although the collection of so-called ''tracking'' information need only be disclosed on the home page.

Part IV includes a ''safe harbor'' provision that deems a specified procedure to be in compliance with this Part. It would allow GeoCities to post a Privacy Notice on its home page along with a clear and prominent hyperlink to that notice at each location on the site at which personal identifying information is collected. The hyperlink would be accompanied by the following statement:

NOTICE: We collect personal information on this site. To learn more about how we use your information click here.

Part V of the proposed order sets forth the principles of parental choice and control. This Part requires GeoCities to implement a procedure to obtain ''express parental consent'' prior to collection and using children's identifying information, a procedure commonly referred to as ''opt-in''. The proposed order provides GeoCities with flexibility in designing its procedures, so long as they meet the objective of ensuring prior parental consent. This flexibility reflects the likelihood of future technological developments to facilitate parental consent in the online medium.

In addition, this Part includes a ''safe harbor'' procedure. Under it, GeoCities may collect certain, limited screening information from prospective site registrants to identify those twelve and under. Prior to collecting any further information, GeoCities will then send the parent an e-mail providing notice of the child's interest in registering and instructing the parent to go to a specified location on the site to register the child and provide consent to GeoCities' collection and use of the information. The order provides several means by which GeoCities may obtain express parental consent, including (1) a statement signed by the parent that is mailed or faxed to GeoCities, (2) a credit card authorization, (3) e-mail from the parent with an electronically verifiable signature, (4) a procedure authorized by statute, rule or FTC guideline, or (5) any other procedure that ensures verified parental consent and the parent's identity. GeoCities must hold secure all screening information and may use it only to provide notice to the child or parent, or to block the child from further attempts to register without parental consent.

Part VI addresses the information that GeoCities previously collected from consumers. It requires GeoCities to notify all such consumers (in the case of children, their parents) and to give them an opportunity to have their information removed from GeoCities' and third parties' databases. Those over the age of twelve will be given notice and the opportunity to remove their information (commonly referred to as ''opt-out''). For children, GeoCities must remove all such information (including home pages and e-mail accounts) unless a parent grants express consent to its continued retention and use (''opt-in'') GeoCities' information removal obligations also include the responsibility to contact third parties to whom it previously has disclosed the information and to request that those parties delete that information as well. GeoCities must obtain a statement from all such third parties that they intend to comply with the above requirements, and must cease doing business with any such party that refuses to provide the statement or who

GeoCities knows or has reason to know is failing to delete the information upon request. GeoCities must also provide consumers with a reasonable and secure means to access the information that GeoCities previously collected from them.

Part VII permits GeoCities to retain certain personally identifiable information in its ''archived database'' for the limited purposes of site maintenance, computer file back-up, blocking a child's attempt to register without parental consent, or to respond to requests for such information from law enforcement agencies or pursuant to judicial process. GeoCities must disclose its retention of information in the archived database in its privacy notice.

Part VIII is a consumer education provision. It requires that for five years GeoCities place a clear and prominent hyperlink within its privacy notice directing visitors to the FTC's Web site to view educational material on consumer privacy. Currently, the FTC site contains a brochure entitled: ''Site-Seeing on the Internet,'' which can be found at www.ftc.gov/bcp/conline/pubs/online/sitesee/index.html.

Part IX outlines GeoCities' recordkeeping requirements under the proposed order. Part X requires GeoCities to deliver a copy of the order to certain company officers and personnel. Part XI requires GeoCities to establish an ''information practices training program'' for employees and GeoCities Community Leaders, volunteers who provide a variety of services to GeoCities' members. The program must include training about GeoCities' privacy policies, information security procedures, and disciplinary procedures for violations of its privacy policies.

Parts XII and XIII require GeoCities to notify the Commission of any change in its corporate structure that might affect compliance with the order; and to file compliance reports with the Commission. Part XIV is a ''sunset'' provision, dictating that the order will terminate in twenty years absent certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 98–22444 Filed 8–19–98; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Translation Advisory Committee for Diabetes Prevention and Control Programs: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Translation Advisory Committee for Diabetes Prevention and Control Programs.

Time and Dates: 9 a.m–6 p.m., September 1, 1998. 9 a.m.–1 p.m., September 2, 1998.

Place: The Holiday Inn Select, 130 Clairmont Avenue, Decatur, Georgia 30030, telephone 404/371–0204.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: This committee is charged with advising the Director, CDC, regarding policy issues and broad strategies for diabetes translation activities and control programs designed to reduce risk factors, health services utilization, costs, morbidity, and mortality associated with diabetes and its complications. The Committee identifies research advances and technologies ready for translation into widespread community practice; recommends broad public health strategies to be implemented through public health interventions; identifies opportunities for surveillance and epidemiologic assessment of diabetes and related complications; and for the purpose of assuring the most effective use and organization of resources, maintains liaison and coordination of programs with the Federal, voluntary, and private sectors involved in the provision of services to people with diabetes.

Matters to be Discussed: Agenda items include a discussion of public health issues pertinent to the role of behavioral research for diabetes mellitus in the Division of Diabetes Translation (DDT) priorities.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Margaret Hurd, Committee Management Specialist, DDT, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway, NE M/S K–10, Atlanta, Georgia 30341–3717, telephone 770/488–5505.

Dated: August 14, 1998.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–22396 Filed 8–19–98; 8:45 am]

BILLING CODE 4163–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

FDA Cares About Consumers: A Conversation With America; District Consumer Forum

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of meeting.

The Food and Drug Administration (FDA's), Office of Regulatory Affairs, Southeast Region, Atlanta District Office, and the Office of Consumer Affairs are announcing a district consumer forum entitled ''FDA Cares About Consumers: A Conversation With America.'' This forum will provide an opportunity for consumers, community-based organizations, and other interested stakeholders to participate in open discussions on health issues and agency regulatory actions with FDA officials and tour the new FDA regional laboratory.

Date and Time: The forum will be held on Wednesday, September 16, 1998, from 10 a.m. to 12:30 p.m., with tours of the Southeast Regional Laboratory from 8:30 a.m. to 10 a.m., and 12:30 p.m. to 2:30 p.m.

Location: The forum will be held at the U.S. Food and Drug Administration, The Atlanta Complex, 60 Eighth St. NE., Atlanta, GA 30309.

Contact: JoAnn M. Pittman, Food and Drug Administration, Atlanta District Office, Office of Regulatory Affairs, 60 Eighth St. NE., Atlanta, GA 30309, 404–347–7355.

Registration: Send registration information (including name, title, firm name, address, telephone, and fax number) to Priscilla G. McDaniel, 404–347–4344, FAX 404–347–1912. There is no registration fee for this forum. Space is limited, therefore, interested parties are encouraged to register early. Indicate whether you would like a tour of the laboratory facility and the time you would like the tour. Tour space is very limited and will be filled on a ''first come, first serve basis.''

Transcripts: Transcripts of the forum may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville,

MD 20857, approximately 15 working days after the forum, at a cost of 10 cents per page.

Dated: August 11, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–22392 Filed 8–19–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0339]

Public Meeting on Section 406(b) of the FDA Modernization Act of 1997

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of meeting.

The Food and Drug Administration (FDA) is announcing the following meeting: Public Meeting on Section 406(b) of the FDA Modernization Act of 1997 (FDAMA). The topic to be discussed is how FDA can best meet its statutory obligations under the Federal Food, Drug, and Cosmetic Act (the act). The meeting is intended to involve participants from consumer and patient advocacy groups, health professionals, scientific and academic experts, and the regulated industry in drafting FDA's developmental plan to meet the objectives of FDAMA.

Date and Time: The meeting will be held on Monday, September 14, 1998, 9 a.m. to 5 p.m.

Location: The meeting will be held at Bethesda Holiday Inn, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact: Patricia M. Kuntze, Office of External Affairs (HF–60), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3363, FAX 301–594–0113, or e-mail ''PKuntze@bangate.fda.gov''.

Registration and Requests for Oral Presentations: Send registration information (including name, title, firm name, address, telephone, and fax number), and written material and requests to make oral presentations, to the contact person by Monday, August 31, 1998.

If you need special accommodations due to a disability, please contact Patricia M. Kuntze at least 7 days in advance.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 406(b) of FDAMA, the agency is required to consult with its external stakeholders, specifically ''appropriate scientific and academic experts, health care professionals, representatives of patient and consumer advocacy groups, and the regulated industry.'' Following these consultations, FDA is to develop and publish a plan for achieving compliance with each of its statutory obligations.

Section 406(b) of FDAMA further requires that the plan, which must be published in the **Federal Register** by November 21, 1998, should address, but may not be confined to, the following six objectives: (1) Maximizing the availability and clarity of information about the agency application and submission review processes; (2) maximizing the availability and clarity of information for consumers and patients concerning new products; (3) implementing inspection and postmarket monitoring provisions of the act; (4) assuring access to the scientific and technical expertise needed to carry out FDA's obligations; (5) establishing mechanisms, by July 1, 1999, for meeting specified time periods for the review of applications and submissions; and (6) eliminating backlogs in the review of applications and submissions.

The agency held a series of public meetings to obtain public views on how FDA can best meet its statutory obligations related to foods, biologics, human drugs, medical devices, and veterinary medicine. FDA also solicited specific suggestions on how the agency can most effectively achieve the six FDAMA objectives outlined above. The views received by the agency on these topics were used as a source for identifying crosscutting issues, themes, and priorities that should be addressed in the FDA plan.

This meeting will focus on these crosscutting issues, themes, and priorities. Of particular interest to the agency are its stakeholder views on FDA's consumer health protection obligations and the approaches that should be used to fulfill them. These obligations include: (1) Conducting the research, or taking other steps, necessary to assess risks associated with product consumption/use; (2) establishing standards, based on risk assessment, for products and the processes necessary to produce them; (3) reviewing new product applications and determining the product's acceptability for entry onto the market; (4) assisting new product sponsors in designing and implementing research and testing protocols that will facilitate the progress of their applications through the FDA review process; (5) determining ''experience'' with products once they are on the market; (6) conducting inspections to determine the state of industry compliance with FDA standards; (7) carrying out a variety of strategies to ensure compliance, including education, technical assistance, and more directed enforcement activities such as warning letters, product seizures, and prosecutions; and (8) educating consumers and health professionals on risks and risk-avoidance behavior.

The agency is open to all views and ideas about what methods should be used to carry out these basic consumer protection functions, the level of consumer protection that will be provided by different methods and whether this level of protection is acceptable, and what will be needed to reach the desired level of consumer protection by using the proposed method. To help clarify stakeholder views on FDA's role and approaches for fulfilling its consumer protection obligations, the agency requests that oral and/or written views address the following seven questions:

1. Should the above-listed consumer protection functions be modified in any way? If so, what functions would you change, add, or delete?

2. For which of the above-listed functions do you believe that it would be acceptable for FDA to charge fees?

3. For which of the above-listed functions could, and should, FDA rely more on the efforts of third parties, such as testing laboratories, health professional organizations, standard setting organizations, States, or regulated industry?

4. For which of the above-listed functions do you see the best potential for FDA to collaborate with its external stakeholders, such as States, industry, other regulatory agencies, international organizations, etc. to the greater benefit of all parties?

5. Which of the above-listed functions do you believe offers the greatest opportunities for FDA to place more emphasis on non-regulatory approaches—such as education, technical assistance, and collaborative problem solving—to protect and promote the public health?

6. FDA's product and process standards have long been considered as the ''benchmark'' by which to judge the safety, quality, and efficacy of foods, drugs, biologicals, and medical devices. Would it be appropriate for the agency to sanction the use of an FDA seal or mark on products that meet the 'gold' standard, as a way of encouraging more widely behavior that meets the standard? Should FDA charge user fees to third parties and others who use the seal, as a way of financing agency operations?

7. Currently, the vast majority of the agency's international resources are devoted to detecting and stopping product problems at the border, while developing the capability to allow safe products to go forward quickly. A smaller percentage of FDA's international resources are dedicated to working with other countries through our participation in international standard setting, developing mutual recognition agreements between the United States and other nations, and offering technical assistance to the public sector regulators and private sector producers of other countries. Do you think that the American consumer is adequately protected with this balance of activities?

II. Comments

Written comments should be identified with the docket number found in brackets in the heading of this document and should be submitted by September 21, 1998, to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments can be sent to the Dockets Management Branch at the following e-mail address ''FDADockets@bangate.fda.gov'' or via the FDA website ''http://www.fda.gov''.

The FDA website provides substantive background information. It is strongly recommended that those individuals or groups who wish to make a presentation or submit written comments consult the FDA website ''http://www.fda.gov'' for additional information. For pertinent information not on the website, consult with the designated contact person listed in this document.

Individuals who wish to present at this public meeting are encouraged to attend the entire day. Information will be presented throughout the meeting about cross-cutting issues and themes related to the FDA plan that will be derived from stakeholder input. This meeting will provide an opportunity for an open comment session in which attendees can express their views.

III. Additional Meetings

FDA held a series of public meetings to discuss the FDAMA objectives, within the context of its statutory obligations for foods, biologics, human drugs, medical devices, and veterinary medicine, as described in section I of this document. The public meeting for the Center for Food Safety and Applied Nutrition (CFSAN) was held on June 24 and 25, 1998. A summary of the views presented at the CFSAN meeting is available on the CFSAN website ''http://www.cfsan.fda.gov''. For more information on the CFSAN meeting, contact Tracy S. Summers, Center for Food Safety and Applied Nutrition (HFS–1), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4850, FAX 202–205–5025, e-mail ''tsummers@bangate.fda.gov''.

The other meetings were held in Washington, DC on August 14, 1998 (Biologics); August 17, 1998 (Human Drugs); August 18, 1998 (Medical Devices); and August 19, 1998 (Veterinary Medicine); and in Oakland, CA on August 28, 1998 (Biologics). For additional information about these meetings, please refer to the **Federal Register** of July 24, 1998 (63 FR 39877) or the FDA website ''http://www.fda.gov''.

IV. Transcripts

The transcript of this meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page. The transcript of the meeting will be available for public examination at the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday, as well as on the FDA website ''http://www.fda.gov''.

Dated: August 11, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–22391 Filed 8–19–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0339]

Public Meeting on Section 406(b) of the FDA Modernization Act of 1997

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of meeting.

The Food and Drug Administration (FDA) is announcing a meeting with health professional organizations on section 406(b) of the FDA Modernization Act of 1997 (FDAMA) to discuss how FDA can best meet its statutory obligations under the Federal Food, Drug, and Cosmetic Act (the act). The agency intends to involve participants from health professional organizations in drafting FDA's developmental plan to meet the objectives of FDAMA.

Date and Time: The meeting will be held on Tuesday, September 8, 1998, 1 p.m. to 4 p.m.

Location: The meeting will be held at the Hyatt Regency Hotel, One Metro Center, Bethesda, MD.

Contact: Elizabeth B. Palsgrove, Office of Health Affairs (HFY–40), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6618, FAX 301–443–2446, or 1–800–433–3332, e-mail ''epalsgro@bangate.fda.gov''.

Registration and Requests for Oral Presentations: Send registration information (including name, title, firm name, address, telephone, e-mail, and fax number), and written material and requests to make oral presentations, to the designated contact person listed in this document. There is no registration fee, however, space is limited. Persons will be registered in the order in which registration is received.

If you need special accommodations due to a disability, please contact Elizabeth B. Palsgrove at least 7 days in advance.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 406(b) of FDAMA, the agency is required to consult with its external stakeholders, specifically ''appropriate scientific and academic experts, health care professionals, representatives of patient and consumer advocacy groups, and the regulated industry.'' Following these consultations, FDA is to develop and publish a plan for achieving compliance with each of its obligations under the act.

Under section 406(b) of FDAMA, the plan, which must be published in the **Federal Register** by November 21, 1998, should address, but may not be confined to, the following six objectives: (1) Maximizing the availability and clarity of information about the agency application and submission review processes; (2) maximizing the availability and clarity of information for consumers and patients concerning new products; (3) implementing inspection and postmarket monitoring provisions of the act; (4) assuring access to the scientific and technical expertise needed to carry out FDA's obligations; (5) establishing mechanisms, by July 1, 1999, for meeting specified time periods for the review of applications and submissions; and (6) eliminating backlogs in the review of applications and submissions.

To help focus comments, FDA requests that oral and/or written views

regarding how the agency can best meet these six objectives of its modernization plan address seven questions. An information packet, available on the FDA webpage or from the designated contact person listed in this document, provides substantive background information; it is highly recommended that those individuals or groups who wish to make a presentation or submit written comments obtain this packet. Specific questions relate to each objective as follows:

1. What can FDA do to improve its explanation of the agency's submission review processes, and make explanations more available to product sponsors and other interested parties?

2. How can the agency maximize the availability and clarity of information concerning new products?

3. How can FDA work with its partners to ensure that products—both domestic and foreign—produced and marketed by the regulated industry are of high quality and provide necessary consumer protection; and how can FDA best establish and sustain an effective, timely, and science-based postmarketing surveillance system for reporting, monitoring, evaluating, and correcting problems associated with use/consumption of FDA-regulated products?

4. What approach should FDA use to assure an appropriate scientific infrastructure, with continued access to the scientific and technical expertise needed to meet its statutory obligations and strengthen its science-based decisionmaking process?

5. What do you believe FDA should do to adequately meet the demands that are beginning to burden the application review process, especially for non-user fee products, so that it can meet its statutory obligations to achieve timely product reviews?

6. What suggestions do you have for the agency to eliminate backlogs in the review process?

7. What other objectives related to the agency's statutory obligations or public expectations—beyond the six objectives—should be included in the FDA plan?

II. Comments

Written comments should be identified with the docket number found in brackets in the heading of this document and should be submitted by September 11, 1998, to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments can be sent to the Dockets Management Branch at the following e-mail address ''FDADockets@bangate.fda.gov'' or via the FDA website ''http://www.fda.gov''.

III. Additional Meetings

This meeting is related to a series of other public meetings held that were announced in the **Federal Register** of July 24, 1998. A separate FDAMA section on the FDA website is available for information about these public meetings.

An additional public meeting is being planned for September 14, 1998, to obtain stakeholder views on potential recurring themes and the best approach for consolidating these themes agencywide. A separate notice of this meeting will be published in the **Federal Register**.

IV. Transcripts

Transcripts of these meetings may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page. The transcript of the meeting will be available for public examination at the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday, as well as on the FDA website ''http://www.fda.gov''.

Dated: August 13, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–22393 Filed 8–19–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–8003 and HCFA–R–185]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision of a currently approved collection; *Title of Information Collection:* Home and Community-Based Services Waiver Requests and Supporting Regulations in 42 CFR 440.180–.185, and 441.301–441.310; *Form No.:* HCFA–8003 (OMB# 0938–0449); *Use:* Under a Secretarial waiver, States may offer a wide array of home and community-based services to individuals who would otherwise require institutionalization. States requesting a waiver must provide certain assurances, documentation and cost & utilization estimates which are reviewed, approved and maintained for the purpose of identifying/verifying States' compliance with such statutory and regulatory requirements. The purpose of this request is to provide authority for the State to furnish such individuals with services in the home and community-based setting; *Frequency:* When a State requests a waiver or amendment to a waiver; *Affected Public:* State, Local or Tribal Government; *Number of Respondents:* 50; *Total Annual Responses:* 140; *Total Annual Hours:* 8,220.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Granting and Withdrawal of Deeming Authority to Private Nonprofit Accreditation Organizations and of CLIA Exemption Under State Laboratory Programs and Supporting Regulations in 42 CFR 493.501, 493.506, 493.513, and 493.515; *Form No.:* HCFA–R–185 (OMB# 0938–0686); *Use:* The information required is necessary to determine whether a private accreditation organization/State licensure program standards and accreditation/licensure process is equal to or more stringent than those of CLIA. This information also provides a CLIA exemption of laboratories in a State that applies licensure requirements that are equal to or more stringent than those of CLIA; *Frequency:* Initial Application/as needed; *Affected Public:* Not-for-profit institutions, and State, Local, or Tribal Government; *Number of Respondents:* 22; *Total Annual Responses:* 11; *Total Annual Hours:* 2,112.

To obtain copies of the supporting statement and any related forms for the

proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Louis Blank, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: August 12, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 98–22356 Filed 8–19–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting with be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Preclinical Evaluation of Intermediate Endpoints and their Modulation by Chemopreventive Agents.

Date: September 14, 1998.

Time: 3:00 PM to 5:30 PM.

Agenda: To review and evaluate grant applications.

Place: 6130 Executive Blvd. 6th Floor, Rockville, MD 20852.

Contact Person: Lalita D. Palekar, Scientific Review Administrator, Special Review, Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard EPN–622B, Rockville, MD 20892–7405, 301/496–7575.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 14, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–22410 Filed 8–19–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Role of ETS Genes in Transformation and Differentiation.

Date: August 19, 1998.

Time: 2:00 PM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: 6130 Executive Blvd. 6th Floor, Rockville, MD 20852.

Contact Person: David Irwin, PHD, Research Programs Review Section Chief, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institute of Health, 6130 Executive Boulevard, EPN-Room 635E, MSC 7405, Rockville, MD 20892–7405, (301) 402–0371, dj4k@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 14, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–22411 Filed 8–19–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Human Genome Research Institute.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552B(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Human Genome Research Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Human Genome Research Institute.

Date: September 16–18, 1998.

Closed: September 16, 1998, 5:30 PM to Recess.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Airlie Center, 6809 Airlie Road, Warrenton, VA 20187.

Open: September 17, 1998, 8:30 AM to adjournment on September 18.

Agenda: Reports on the status of NHGRI, the status of the Division of Intramural Research, and updates on the branches.

Place: Airlie Center, 6809 Airlie Road, Warrenton, VA 20187.

Contact Person: Claire Rodgaard, Assistant to the Scientific Director, Division of Intramural Research, Office of the Director, National Human Genome Research Institute, 45 Convent Drive, Building 49, Room 4A06, Bethesda, MD 20892, 301–435–5802.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: August 13, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–22406 Filed 8–19–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Inherited Disease Research Access Committee.

Date: September 1, 1998.

Open: 9:00 AM to 11:00 AM.

Agenda: Senior staff at CIDR will provide an update of the laboratory activities, a progress report on genotyping projects that are ongoing and what is in the queue. They will brief the committee on a new instrument from Affymetrix Corporation for detecting single nucleotide polymorphisms.

Place: Center for Inherited Disease Research, 333 Cassell Drive, Triad Technology Center, Suite 2000, Baltimore, MD 21224.

Closed: 11:00 AM to Adjournment.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Center for Inherited Disease Research, 333 Cassell Drive, Triad Technology Center, Suite 2000, Baltimore, MD 21224.

Contact Person: Jerry Roberts, PHD, Scientific Review Administrator, Office of Scientific Review, National Institutes of Health, Building 38A, Bethesda, MD 20892, 301–402–0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: August 13, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–22407 Filed 8–19–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: September 3, 1998.

Time: 2:00 PM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: Parklawn Building—Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, (Telephone Conference Call).

Contact Person: Jack D. Maser, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9C–18, Rockville, MD 20857, 301–443–1340.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: August 14, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–22404 Filed 8–19–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Cancellation of Meeting

Notice is hereby given of the cancellation of the National Institute of Mental Health Special Emphasis Panel, August 19, 1998, 9:00 AM to August 19, 1998, 5:00 PM, Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD, 20814 which was published in the **Federal Register** on August 13, 1998, 63 FR 43408.

The meeting is cancelled due to scheduling problems.

Dated: August 14, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–22405 Filed 8–19–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Alcohol Abuse and Alcoholism.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would

constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Alcohol Abuse and Alcoholism.

Date: September 16–17, 1998.

Closed: September 16, 1998, 7:00 PM to 9:00 PM.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Closed: September 17, 1998, 8:30 AM to 9:00 AM.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Open: September 17, 1998, 9:00 AM to Adjournment.

Agenda: The meeting will be open to the public to discuss Institute programs and other issues relating to committee activities.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Contact Person: James F. Vaughan, Executive Secretary, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: August 14, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–22408 Filed 8–19–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communications Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel, ZDC1 SRB–S (01).

Date: September 10, 1998.

Time: 1:00 PM to 3:30 PM.

Agenda: To review and evaluate grant applications.

Place: 6120 Executive Blvd, Suite 400C, Bethesda, MD 20852 (Telephone Conference Call).

Contact Person: Melissa Stick, PhD, MPH, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, NIDCD/NIH, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 98.173, Biological Research Related to Deafness and Communications Disorders, National Institutes of Health, HHS)

Dated: August 14, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–22409 Filed 8–19–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4349–N–31]

Submission for OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: September 21, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 12, 1998.

David S. Cristy,

Director, IRM Policy and Management Division.

Title of Proposal: Service Coordinator Database Information.

Office: Housing.

OMB Approval Number: 2502–xxxx.

Description of the Need for the Information and its Proposed Use: The form will be used to collect information about HUD subsidized housing projects with Service Coordinators and will be placed in a national database for use primarily by the public for their informational purposes.

Form Number: 92297.

Respondents: Not-For-Profit Institutions, Business or Other For-Profit, Federal, State, Local, or Tribal Governments.

Frequency of Submission: On occasion.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
92297	1500		1		.17		250

Total Estimated Burden Hours: 250.

Status: New Collection.

Contact: Carissa Janis, HUD (202) 708–3291; Joseph F. Lackey,Jr., OMB, (202) 395–7316.

[FR Doc. 98–22345 Filed 8–19–98; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection To Be Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Information collection; request for comments.

SUMMARY: The collection of information described below has been submitted to OMB for approval under the provisions of the Paperwork Reduction Act of 1995. Copies of specific information collection requirements, related forms, and explanatory material may be obtained by contacting the Fish and Wildlife Service's (Service) Information Collection Clearance Officer at the address or phone number listed below.

DATES: Consideration will be given to all comments received on or before September 21, 1998.

ADDRESSES: Comments and suggestions on specific requirements should be sent to the: Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Please also send a copy of your comments to: Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 222 ARLSQ, 1849 C Street, NW, Washington D.C. 20240, Telephone 703/358–2287.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Horwath, Division of Fish and Wildlife Management Assistance, Arlington, Virginia, 703/358–1718; or Wells Stephensen, Office of Marine Mammals Management, Anchorage, Alaska, 907/786–3815.

SUPPLEMENTARY INFORMATION: The Service has submitted the following information collection clearance requirements to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act of 1995, Pub. L. 104–13. The Service 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. A 60-day notice inviting public comment on this information collection requirement previously was published in the **Federal Register** on April 1, 1998 (63 FR 15855). No comments on the previous notice were received. Pursuant to this request for approval, comments are invited on: (1) whether the collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to 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, The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days; therefore, public comments should be submitted to the OMB within 30 days in order to assure their maximum consideration.

As authorized by Section 109(i) of the Marine Mammal Protection Act of 1972, as amended (Act) (16 U.S.C. 1361–1407), the Service in October 1988 implemented formal Marking, Tagging, and Reporting Regulations in 50 CFR 18.23 for Alaskan Natives harvesting polar bear, sea otter, and Pacific walrus. Under Section 101(b) of the Act, Alaskan Natives residing in Alaska and dwelling on the coast of the North Pacific or Arctic Oceans may harvest these species for subsistence or handicraft purposes. Section 109(i) of the Act authorizes the Service, acting on behalf of the Secretary of the Interior, to prescribe marking, tagging, and reporting regulations applicable to this Native subsistence and handicraft take.

On June 28, 1988, the Service published, under authority of Section 109(i) of the Act, a final rule in the **Federal Register** that added paragraph (f) to regulations at 50 CFR 18.23 that enabled the Service to gather data on the Native subsistence and handicraft harvest, and biology of polar bear, sea otter, and Pacific walrus in order to determine what effect such take is having on these populations. It also provided the Service with a means of monitoring the disposition of the harvest to ensure that any commercial use of products created from these species meets the criteria set forth in Section 101(b) of the Act.

The information proposed to be collected by the Service from Alaskan Natives will be used to improve the Service's decision-making ability by substantially expanding the quality and quantity of harvest and biological data upon which future management decisions can be based. It will provide the Service with the ability to make inferences about the condition and general health of these populations, and to consider the importance and impacts to these population from such processes as development activities and habitat degradation. Without authority to collect this harvest information, the Service's ability to measure the take of polar bear, sea otter and walrus is inadequate. Mandatory marking, tagging, and reporting is considered essential to improve the quality and quantity of harvest and biological data upon which future management decisions will be based. It allows the Service to make rational, knowledgeable decisions regarding the Native harvest, habitat degradation, and the effects of oil and gas exploration, development and production planned or underway for areas within the range of these species.

The Service estimates that the annual burden associated with this request will be 482 hours for each year of the 3-year period of OMB authorization. This estimated burden was calculated based on previous experience suggesting that Alaskan Natives annually will take about 1,930 polar bears, sea otter, and Pacific walrus for subsistence and handicraft purposes, and that 15 minutes will be needed to provide the required information for each animal taken.

Title: Marine Mammal Marking, Tagging, and Reporting Program.

Bureau form numbers: R7–50, R7–51, and R7–52.

Frequency of collection: Occasional.

Description of respondents: Individual and households.

Number of respondents: Approximately 1,930 per year.

Estimated completion time: 15 minutes per response.

Annual burden hours: 482 hours.

Current OMB Clearance Number: 0118–0066.

Approval Expires: August 31, 1998.

Dated: August 3, 1998.

Hannibal Bolton,

Acting Assistant Director-Fisheries.

[FR Doc. 98–22384 Filed 8–19–98; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–843874

Applicant: Hawthorn Corporation, Grayslake, IL.

The applicant requests renewal of this permit to export and re-import captive-born tigers (*Panthera tigris*), and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

PRT–843994

Applicant: Joyce Sroufe (B–J Game Farm), Ponca City, OK.

The applicant requests a permit to import a male Leopard Cat (*Prionailurus bengalensis bengalensis*) from Jungle Cat World, Ontario, Canada, for the purpose of enhancement of the species through captive propagation.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Rm 700, Arlington, Virginia 22203, phone (703) 358–2104 or Fax (703) 358–2281.

Dated: August 14, 1998.

MaryEllen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 98–22346 Filed 8–19–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Conduct Public Scoping and Prepare an Environmental Document

AGENCY: Fish and Wildlife Service, Interior; National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice of intent to conduct public scoping and prepare an environmental document.

SUMMARY: Pursuant to the National Environmental Policy Act this notice advises the public that the Fish and Wildlife Service and National Marine Fisheries Service (Services) intend to gather information necessary to prepare an environmental document (environmental assessment or environmental impact statement) related to the proposed approval of a Habitat Conservation Plan (Plan) and issuance of an incidental take permit (Permit) to take endangered and threatened species in accordance with section 10(a) of the Endangered Species Act of 1973, as amended (Act). The Permit applicant is Crown Pacific, Ltd., and the application is related to forest management and timber harvest on a portion of the Hamilton Tree Farm located in Whatcom and Skagit Counties, Washington. Crown Pacific intends to request a Permit for northern spotted owl, marbled murrelet, and possibly bald eagle, peregrine falcon, grizzly bear, and gray wolf. Crown Pacific may also seek coverage for approximately 20 currently unlisted species of concern (including anadromous and resident fish) under specific provisions of the Permit, should these species be listed in the future. In accordance with the Act, Crown Pacific is preparing a Plan for, among other things, minimizing and mitigating any such take which could occur incidental to the proposed Permit activities (forest management and timber harvest).

The Services are furnishing this notice in order to: (1) Advise other agencies and the public of our intentions; and (2) to obtain suggestions and information on the scope of issues to include in the environmental document.

DATES: Written comments should be received on or before September 21, 1998.

ADDRESSES: Address comments and requests for more information to: Brian Bogaczyk, Fish and Wildlife Service, 510 Desmond Drive, S.E., Suite 102, Lacey, Washington 98503, (360) 753–5824; or Matt Longenbaugh, National Marine Fisheries Service, 510 Desmond Drive, S.E., Suite 103, Lacey, Washington 98503, (360) 753–7761.

SUPPLEMENTARY INFORMATION: Crown Pacific, Ltd., owns and manages Hamilton Tree Farm, located in Whatcom and Skagit Counties, Washington. The proposed Plan area is composed of several parcels of the Hamilton Tree Farm, totaling 84,430 acres, and is located north and south of State Highway 20, roughly between Sedro-Woolley and Marblemount, Washington. Management activities on the tree farm include forest management and timber harvest. A portion of the proposed Plan area, Arlecho Creek, is in the process of being transferred to the Nature Conservancy and the Lummi Indian Nation, with the understanding that the property will be managed as a natural/cultural area. The transfer is expected to be completed in late 1999.

Some timber management activities have the potential to impact species subject to protection under the Act. Section 10 of the Act contains provisions for the issuance of incidental take permits to non-Federal land owners for the take of endangered and threatened species, provided the take is incidental to otherwise lawful activities, and will not appreciably reduce the likelihood of the survival and recovery of the species in the wild. In addition, the applicant must prepare and submit to the Services for approval, a Plan containing a strategy for minimizing and mitigating all take associated with the proposed activities to the maximum extent practicable. The applicant must also ensure that adequate funding for the Plan will be provided.

Crown Pacific has initiated discussions with the Services regarding the possibility of a Permit and associated Plan for their activities on the Hamilton Tree Farm. Activities proposed thus far for Permit coverage include the following: site preparation;

tree planting; harvesting and yarding of timber; construction, maintenance and use of logging roads and landings; quarrying of stone and gravel for use in those roads and landings; and cellular phone and radio repeater tower sites.

The Services will conduct an environmental review of the Plan and prepare an environmental document (environmental assessment or environmental impact statement). The environmental review will analyze the proposal as well as a full range of reasonable alternatives, and the associated impacts of each. The Services are currently in the process of developing alternatives for analysis. There are four alternatives proposed thus far. Under Alternative A (no action alternative) no Permit is issued and take will be avoided for any and all threatened and endangered species on the property. Alternative B (preferred alternative) involves issuing a Permit for six threatened and endangered species on the property (bald eagle, peregrine falcon, marbled murrelet, northern spotted owl, grizzly bear, gray wolf) with provisions for approximately 20 unlisted species. The Plan would have minimization and mitigation measures for six threatened and endangered species and approximately 20 unlisted species on the property. Alternative C involves issuing a Permit for northern spotted owl and marbled murrelet only, with provisions for approximately 20 unlisted species. The Plan would have minimization and mitigation measures for northern spotted owl and marbled murrelet and approximately 20 unlisted species. Alternative D involves a Candidate Conservation Agreement with minimization and mitigation measures for anadromous salmonids and bull trout and take avoidance for any and all threatened and endangered species on the property.

Comments and suggestions are invited from all interested parties to ensure that the full range of issues related to this proposed action are addressed and all significant issues identified. Comments or questions concerning this proposed action and the environmental review should be directed to the Fish and Wildlife Service or the National Marine Fisheries Service at the addresses provided above.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and implementing regulations (40 CFR 1500–1508), other appropriate Federal laws and regulations, and policies and procedures of the Services for compliance with those regulations. It is estimated that the draft environmental document will be available by January 1998.

Dated: August 12, 1998.

Thomas Dwyer,

Acting Regional Director, Region 1, Portland, Oregon, Fish and Wildlife Service.

[FR Doc. 98–22267 Filed 8–19–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Western Regional Panel, a geographic committee of the Aquatic Nuisance Species Task Force. The meeting is open to the public. Meeting topics are identified in the **SUPPLEMENTAL INFORMATION**.

DATES: The Western Regional Panel will meet from 8:30 a.m. to 5:00 p.m. on Wednesday, September 23, 1998, and 8:30 a.m. to 12:00 noon on Thursday, September 24, 1998. Committees of the Panel will meet late Wednesday afternoon and early Thursday morning.

ADDRESSES: The meeting will be held at U.S. Bureau of Reclamation offices, Building 67, Denver Federal Center, 6th and North Street, Lakewood, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: Max Haegele, Chair, Western Regional Panel at 303–445–2801, Linda Drees, Coordinator, Western Regional Panel at 785–539–3474, extension 20, or Bob Peoples, Executive Secretary, Aquatic Nuisance Species Task Force at 703–358–2025.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, this notice announces a public meeting of the Recreation Activities Committee of the Aquatic Nuisance Species Task Force. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990.

Topics to be covered during the meeting: nonindigenous species policy and legislative developments, including the proposed Executive Order on Invasives, the Western Governors' Association Resolution on Undesirable Aquatic and Terrestrial Species, the proposed Plant Protection Act, and national voluntary ballast water regulations; the Washington State and Colorado River basin ANS management plans; a proposed ballast water outreach program; purple loosestrife management; proposed amendment of Panel procedures and its geographic structure; additional tribal representation on the Panel's Executive Committee; review of accomplishments under the Panel's current work plan, committee reports and recommendations for the Panel's 1999 work plan; and proposed Panel actions.

Minutes of the meeting will be maintained by the Coordinator, Western Regional Panel, U.S. Fish and Wildlife Service, 315 Houston Street, Suite E, Manhattan, Kansas 66502, and Executive Secretary, Aquatic Nuisance Species Task Force, Suite 851, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622. They will be available for public inspection at these locations during regular business hours, Monday through Friday, within 30 days following the meeting.

Dated: August 17, 1998.

Hannibal Bolton,

Acting Co-Chair, Aquatic Nuisance Species Task Force, Acting Assistant Director—Fisheries.

[FR Doc. 98–22385 Filed 8–19–98; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–060–4310–DN–P]

Closure of Public Lands

AGENCY: Bureau of Land Management, Malta Field Office.

ACTION: Notice of permanent closure.

SUMMARY: Notice is hereby given that effective immediately, all non-permitted uses such as, but not limited to, hunting, shooting and camping on public land within the townsites of Landusky and Zortman and the public lands surrounding the Zortman Elementary school are prohibited. Authorized personnel of the Bureau of Land Management, state and local Law Enforcement, and other emergency services are exempt from this closure. The public lands in the townsite of Landusky are located in T. 25 N., R. 24 E., sec. 22 and 27, block 1, block 2 school reserve, block 3 lots 10, 13 and 18, block 4 and block 8. The public lands in the townsite of Zortman are located in T. 25 N., R. 25 E., sec. 16 and 17, block 1, block 3, block 5, block 6 lot 9, block 7, block 8 lots 3, 4 and 8, block 9, block 11, block 14 lots 1 through 4, inclusive, block 15 lots 1 through 4, inclusive, block 16, lots 1 through 4

inclusive, block 18 lots 1 through 5, inclusive and block 19 lots 1 to 6, inclusive. The public lands surrounding the Zortman Elementary school are in T. 25 N., R. 25 E., sec. 16, S½NE¼SW¼, W½SE¼SW¼, SE¼SE¼SW¼, SW¼NW¼SE¼, W½SW¼SE¼.

The purpose of this closure is to ensure the public safety and protection of private property of the residents of Landusky and Zortman while at the same time protecting the public lands from environmental and resource degradation. The emergency closure is in accordance with the provision of 43 CFR 8364.1.

Any person convicted of violating this closure or restriction is punishable by a fine not to exceed $1,000.00 and/or imprisonment not to exceed 12 months.

DATES: Effective immediately.

LOCATION: Public lands in the townsites of Landusky and Zortman, Phillips County, MT.

FOR FURTHER INFORMATION CONTACT: Richard Hotaling, Field Manager, Malta Field Office, Bureau of Land Management, HC 65 Box 5000, 501 S. 2nd Street, E., Malta, MT 59538–0047, 406–654–1240.

Dated: August 6, 1998.

Richard M. Hotaling,

Field Manager.

[FR Doc. 98–22124 Filed 8–19–98; 8:45 am]

BILLING CODE 4310–DN–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–020–05–3809–00; AZA29237]

Notice of Extension of Public Comment Period for the Yarnell Mining Project Draft Environmental Impact Statement in Yavapai County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Extension.

SUMMARY: Notice is hereby given that the comment period of the Draft Environmental Impact Statement (DEIS) prepared by the Bureau of Land Management is extended for an additional 36 days.

DATES: Written comments must be post-marked no later that September 30, 1998.

ADDRESSES: Written comments should be sent to the Project Manager for the Yarnell Mining Project EIS, Bureau of Land Management, Phoenix Field Office, 2015 West Deer Valley Road, Phoenix, AZ 85027.

FOR FURTHER INFORMATION CONTACT: Connie Stone, EIS Project Manager, (602) 580–5517.

SUPPLEMENTARY INFORMATION: The end of the comment period, as noted in the Draft EIS for the Yarnell Mining Project, was August 25, 1998. The comment period is now extended to September 30, 1998.

Dated: August 12, 1998.

MarLynn Spears,

Assistant Field Manager, Lands and Minerals.

[FR Doc. 98–22402 Filed 8–19–98; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Cancellation of Prospectus for Operation of Accommodations, Facilities, and Services Within Grand Canyon National Park

SUMMARY: This notice advises all persons and entities interested in the Prospectus for Operation of Accommodations, Facilities and Services, National Park Service, Grand Canyon National Park, South Rim which was issued on June 8, 1998, that the National Park Service is cancelling this prospectus pursuant to 36 CFR 51.4(c). This notice is effectively immediately. The National Park Service has concluded that several programmatic issues have arisen which require consideration and resolution before proceeding further. A new prospectus will be issued by the National Park Service as soon as is practicable. Persons requesting the prospectus issued on June 8, 1998 will be notified of its issuance at the appropriate time. Solicitation notices will be posted in accordance with 36 CFR 51.4(a).

SUPPLEMENTARY INFORMATION: Additional information can be obtained by contacting the National Park Service, Intermountain Region-Denver Support Office, Office of Concessions Management, 12795 W. Alameda Parkway, P.O. Box 25287, Denver, Colorado 80225–0287, Attn: Kathy Fleming (303) 969–2665.

Dated: August 12, 1998.

Ronald E. Everhart,

Acting Director, Intermountain Region.

[FR Doc. 98–22389 Filed 8–19–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Tallgrass Prairie National Preserve; Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule for a meeting of the Tallgrass Prairie National Preserve Advisory Committee. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

DATE, TIME, AND ADDRESS: Friday, August 28, 1998; 8:30 a.m. until business and public comment are complete; Emporia State University, Memorial Union, Colonial Ballroom, Emporia, Kansas.

This business meeting is open to the public. Space and facilities to accommodate members of the public are limited and people will be accommodated on a first-come, first-served basis. Maps showing meeting and parking locations are available by contacting the Superintendent. An agenda will be available from the Superintendent 1 week prior to the meeting. Attendees are encouraged to participate in these meetings. If you would like to address the committee, please contact the Superintendent by August 28, 1998, at the address or telephone number listed below requesting that your name be added to the agenda. Depending on the number of requests, the Superintendent has the right to limit the amount of time each participant is allowed to address this committee.

FOR FURTHER INFORMATION CONTACT: Steve Miller, Superintendent, Tallgrass Prairie National Preserve, P.O. Box 585, 226 Broadway, Cottonwood Falls, Kansas 66845; or telephone him at 316–273–6034.

SUPPLEMENTARY INFORMATION: The Tallgrass Prairie National Preserve was established by Public Law 104–333, dated November 12, 1996.

Dated: August 12, 1998.

David N. Given,

Deputy Regional Director, Midwest Region.

[FR Doc. 98–22390 Filed 8–19–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Bay-Delta Advisory Council Meeting and Bay-Delta Advisory Council's Ecosystem Roundtable Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meetings.

SUMMARY: The Bay-Delta Advisory Council (BDAC) will meet to discuss and advise the CALFED Bay-Delta Program on the implementation approach described in the document entitled ''Selecting a Draft Preferred Alternative.'' BDAC members will also be briefed on the current status of the CALFED conservation strategy. On the evening of September 10, BDAC members will participate in a public meeting sponsored by CALFED on issues of concern to residents of the Delta. In addition, BDAC members will be briefed on the Water Quality Program, and will hear highlights from the expert panel on bromides which will have met on September 8 and 9 in Sacramento. Finally, BDAC members will received a status report on the Ecosystem Restoration Program, and will consider the final fiscal year 1999 selections for the Restoration Coordination Program The Bay-Delta Advisory Council's (BDAC) Ecosystem Roundtable will meet to discuss several issues including: an implementation and tracking system update, status of the 1998 Proposal Solicitation Package, the development of other directed funding programs, the planning process for FY 99, water acquisition, funding coordination, and other issues. The meeting are open to the public. Interested persons may make oral statements to the BDAC and Ecosystem Roundtable or may file written statements for consideration.

DATES: The Bay-Delta Advisory Council meeting will be held from 9:00 a.m. to 4:30 p.m. on Thursday, September 10, 1998, and 8:30 a.m.–Noon on Friday, September 11, 1998. The BDAC Ecosystem Roundtable meeting will be held from 9:30 a.m. to 3:30 p.m. on Monday, August 31, 1998.

ADDRESSES: The Bay-Delta Advisory Council will meet at the Stockton Inn, 4219 Waterloo Road, Stockton, California, (209) 931–3131. The Ecosystem Roundtable will meet at the Resources Building, 1416 Ninth Street, Room 1131, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: For the Bay-Delta Advisory Council Meeting, Mary Selkirk, CALFED Bay-Delta Program, at (916) 657–2666; for the Ecosystem Roundtable, Cindy Darling, CALFED Bay-Delta Program, at (916) 657–2666. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the state of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies will management and regulatory responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan which addresses all of the resource problems. This effort, the CALFED Bay-Delta Program (Program), is being carried out under the policy direction of CALFED. The Program is exploring and developing a long-term solution for a cooperative planning process that will determine that most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for the variety of beneficial uses, and minimize Bay-Delta system vulnerability. A group of citizen advisors representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long term solutions for the problems affecting the Bay-Delta system has been chartered under the Federal Advisory Committee Act (FACA) as Advisory Council BDAC to advise CALFED on the program mission, problems to be addressed, and objectives for the Program. BDAC provides a forum to help ensure public participation, and will review reports and other materials prepared by CALFED staff. BDAC has established a subcommittee called the Ecosystem Roundtable to provide input on annual workplans to implement ecosystem restoration projects and programs.

Minutes of the meeting will be maintained by the Program, Suite 1155, 1416 Ninth Street, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: August 19, 1998.

Roger Patterson,

Regional Director, Mid-Pacific Region.

[FR Doc. 98–22388 Filed 8–19–98; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP (OJJDP)–1186]

RIN 1121–ZB23

Program Announcement, ''Nonparticipating State Program, Kentucky''

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of issuance of competitive program announcement.

SUMMARY: Notice is hereby given that the Office of Juvenile Justice and Delinquency Prevention (OJJDP), pursuant to the provisions of Section 223(d) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, 42 U.S.C. 5601 *et seq.*, (hereinafter the JJDP Act), is issuing a program announcement and solicitation for applications from local public and private nonprofit agencies serving the State of Kentucky. Because of non-compliance with the core requirements of the JJDP Act, the State is not eligible to receive its fiscal year 1994, 1995, and 1996 Formula Grants program allocations under Part B of Title II of the JJDP Act. These funds total $2,477,000. Eligible applicants for the Nonparticipating State Program are limited to local public and private nonprofit agencies who propose innovative service delivery programs designed to provide placement alternatives to secure confinement placements that are not consistent with the core requirements of the JJDP Act. Applicants must currently be operating in the State and their proposed programs must directly impact the State of Kentucky's ability to meet the core requirements of the JJDP Act. Such agencies are eligible to receive assistance awards to be expended over a two year period. Multiple assistance awards will be made to local public and

nonprofit agencies in amounts ranging from $100,000 to $150,000 per applicant from a total of $1,477,000 that is available from fiscal year 1994–1996 Formula Grant funds that have been reallocated for award under the Nonparticipating State Program. A cooperative agreement of up to $1,000,000 will also be awarded on a competitive basis to a private nonprofit agency currently operating statewide in Kentucky. Of this amount, $800,000 would be used to contract for local community-based placement alternatives to adult jails and lockups with the remaining $200,000 used to manage the local assistance awards and provide technical assistance to and coordination among the multiple assistance award recipients funded under the Nonparticipating State Grant Program.

DATES: Applications under this program are due October 19, 1998.

FOR FURTHER INFORMATION CONTACT: Gregory C. Thompson, State Representative, State Relations and Assistance Division, Office of Juvenile Justice and Delinquency Prevention, 810 7th Street, NW, Washington, DC 20531, (202) 307–5921; e-mail: Thompson@ojp.usdoj.gov

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

A. JJDP Act Statutory Requirement

Pursuant to Section 223(d) of the JJDP Act, if a State chooses not to submit a Formula Grants Program plan, fails to submit a plan, or submits a plan which does not meet the requirements of the JJDP Act, the OJJDP Administrator shall endeavor to make the Formula Grants Program fund allotment, under Section 222(a) of the JJDP Act, available to local public and private nonprofit agencies within the State. The funds must be used solely for the purpose(s) of achieving compliance with the following JJDP Act core requirements:

1. Section 223(a)(12)(A), requires that juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult or offenses (Other than an offense that constitutes a violation of a valid court order or a violation of section 922(x) of Title 18 or a similar State law), which do not constitute violations of valid court orders, or alien juveniles in custody, or such nonoffenders as dependent or neglected children, shall not be placed in secure detention facilities or secure correctional facilities;

2. Section 223(a)(13), provides that juveniles alleged to be or found to be delinquent and youths within the purview of section 223(a)(12)(A) above, shall not be detained or confined in any institution in which they have contact with adult persons incarcerated because they have been convicted of a crime or are awaiting trial on criminal charges or with the part-time or full-time security staff (including management) or direct-care staff of a (collocated) jail or lockup for adults;

3. Section 223(a)(14) provides that no juvenile shall be detained or confined in any jail or lockup for adults, except that the Administrator shall promulgate regulations which make exceptions with regard to the detention of juveniles accused of nonstatus offenses who are awaiting an initial court appearance pursuant to an enforceable State law requiring such appearances within twenty-four hours after being taken into custody (excluding weekends and holidays) provided that such exceptions are limited to areas that are in compliance with section 223(a)(13); and

a. (1) are outside a Standard Metropolitan Statistical Area; and

(2) have no existing acceptable alternative placement available;

b. are located where conditions of distance to be traveled or the lack of highway, road, or other ground transportation do not allow for court appearances within 24 hours, so that a brief (not to exceed 48 hours) delay is excusable; or

c. are located where conditions of safety exist (such as severely adverse, life-threatening weather conditions that do not allow for reasonably safe travel), in which case the time for an appearance may be delayed until 24 hours after the time that such conditions allow for reasonably safe travel.

For further information and explanation of regulatory exceptions, to the provisions of Section 223(a)(12)(A), (13) and (14), see the OJJDP Consolidated Regulation (28 CFR Part 31), 31.303 (c-d) substantive requirements. Copies of the Consolidated Regulation may be obtained by contacting the Office of Juvenile Justice and Delinquency Prevention at (202) 307–5921.

B. History

Kentucky has begun the process of working toward compliance with the core requirements of the JJDP Act. While these steps are encouraging and OJJDP will continue to work with the State agency with the goal of Kentucky rejoining the OJJDP Formula Grants program, based on monitoring data submitted by Kentucky demonstrating failure to achieve compliance with the core requirements of the JJDP Act, the State has not qualified for award of its Formula Grants program allocation since fiscal year 1990. Of particular concern is Kentucky's chronically high number of Section 223(a)(14) jail and lockup removal violations. The maximum allowable (de minimis) violation rate is 9 per 100,000 of the juvenile population while Kentucky's rate has ranged from 409.32 to 565.48 per 100,000 over the past six years. This violation rate, coupled with Kentucky's failure to pass legislation incorporating the core requirements of the JJDP Act into State law, or in absence of passing a State law, promulgating enforceable administrative rules/executive orders that are consistent with the JJDP Act core requirements and will bring the State into compliance, continues to prevent Kentucky from qualifying for its Formula Grants award.

C. Problems to be Addressed

Kentucky has not been able to successfully address the core requirements of the JJDP Act due to State laws that sanction violations, lack of local policies, lack of coordination in use of resources, and a limited number of alternative resources available to communities. Local jurisdictions, in turn, are using secure facilities to detain or confine juveniles in a manner inconsistent with sections 223(a)(12)(A), (13) and (14) for a number of reasons:

1. A lack of coordination and cooperation among juvenile justice system agencies including schools, law enforcement, prosecution, the judiciary, jails, corrections, public and private service providers, and local public interest groups, which contributes to placement of juveniles in jails and lockups that violate the sections 223(a)(12)(A), (13), and (14) of the JJDP Act;

2. A lack of public awareness and policies regarding the issues of juveniles in secure confinement consistent with section 223(a)(13) and (14), and the secure confinement of status offenders and nonoffenders in violation of section 223(a)(12)(A) of the JJDP Act;

3. The lack of a flexible network of services and programs that is responsive to local jurisdiction's needs and capabilities. This network should focus upon jurisdictions with the most difficult barriers to meeting the core requirements of the JJDP Act; and

4. The lack of alternative services which can be sustained over time with local resources including, but not limited to:

a. availability of appropriate secure juvenile facilities for the detention of juvenile criminal-type offenders;

b. intensive supervision in a child's home as a placement alternative and use

of home detention, including electronic monitoring;

c. emergency foster care, shelter care, group care, and independent living arrangements; and

d. crisis intervention services, short-term residential crisis intervention programs, and non-secure holdovers that can be used for conflict mediation, emergency holding, and provision of emergency attention for youth with physical or emotional problems.

II. Program Goals and Objectives

In accordance with section 223(d) of the JJDP Act, the goal of the Nonparticipating State Program is to assist Kentucky in developing a range of secure and nonsecure alternatives and revising associated policies to move the State toward measurable compliance with section 223(a)(12)(A), the deinstitutionalization of status offenders and nonoffenders, section 223(a)(13), the separation of juveniles from adults in adult jails and lockups, and section 223(a)(14), the removal of juveniles from adult jails and lockups. To achieve these goals, and thus ensure a fair and effective system for juvenile custody, applicants must provide each of the following:

A. A succinct statement describing their understanding of the goals and objectives of the program.

B. A problem statement to include a discussion of the applicant's understanding of:

1. State laws impacting the placement of juveniles in adult jails and lockups and status offenders and non-offenders in secure detention or correctional facilities, and the issues surrounding the removal of such juveniles from the facilities;

2. What the monitoring data indicates about the targeted jurisdiction's compliance in relation to the measurable core requirements of the JJDP Act where the applicant is proposing to develop alternative placements to adult jails and lockups;

3. State legislative, judicial and executive branch activities related to supervision and protection of status offenders and non-offenders and jail removal;

4. How the applicant plans to impact, in measurable terms, the goal of meeting the core requirements of the JJDP Act, in Kentucky, by providing community-based alternative placements to adult jails and lockups; and

5. How, in order to coordinate efforts and enhance the project's impact on the State's efforts to meet the JJDP Act core requirements, the local or statewide applicant has the ability to establish and maintain a working relationship with the following:

The selected statewide nonparticipating State grantee (local applicants only);
The Kentucky State Advisory Group (SAG); and,
The Kentucky Department of Juvenile Justice.

C. Program Strategy

OJJDP anticipates funding multiple public and private nonprofit local applicants to implement the program in Kentucky and a nonprofit organization operating statewide to contract for community-based placement alternatives to adult jails and lockups and provide technical assistance to, and coordination among, the multiple service providers involved in the Nonparticipating State Program.

Applicants should describe the proposed approach and timeline for achieving program goals and objectives. For applicants proposing to provide community-based alternatives to detention and confinement in adult jails and lockups, the timeline needs to address the development of policies and procedures, a training plan for project employees, a plan for the provision of program services, and public awareness efforts about the core requirements of the JJDP Act. A discussion of how the goals and objectives of the program will be accomplished and a description of the products to be prepared, and other anticipated outcomes should also be included. A plan for assessing the effectiveness of the overall program must be described.

All applicants shall establish a working relationship with the Kentucky SAG and the Kentucky Department of Juvenile Justice (DJJ). Each local applicant is expected to use monitoring data specific to their targeted jurisdiction in their assessment of the proposed project's impact on advancing the State efforts to meet the JJDP Act core requirements. Additionally, the applicant is expected to provide an assessment of detention and incarceration legislation, policies, procedures and practices impacting the jurisdiction that is the target of the proposed program.

The strategy developed by the statewide applicant who proposes to contract for community-based placement alternatives to adult jails and lockups and to provide technical assistance to and coordinate among the multiple service providers involved in the Nonparticipating State Grant Program must describe in detail how the applicant will:

1. Provide technical assistance to the multiple local recipients and those that are providing community-based placement alternatives to adult jails and lockups on program implementation and evaluation;

2. Establish an ongoing working relationship with the Kentucky SAG and the Kentucky DJJ in order to maximize the impact of the projects on the State's efforts to meet the JJDP Act core requirements; and

3. Provide coordination among other recipients participating in the Nonparticipating State Grant Program to ensure that the individuals and collective efforts are enhancing the State's ability to meet the core requirements of the JJDP Act.

4. Undertake a public information effort to inform public officials and citizens about the core requirements of the JJDP Act and best practices in juvenile justice and delinquency prevention programming.

D. Program Implementation Plan

Applicants should prepare a plan that outlines the major activities involved in implementing the program and describe how they will allocate available resources to implement the program and how the program will be managed.

E. Organizational Capability

Applicants must demonstrate that they are eligible to compete for an award on the basis of eligibility criteria established in this solicitation.

1. Organizational Experience

Applicants must concisely describe their experience with respect to the eligibility criteria described in Section IV. Applicants must demonstrate how their experience and capabilities will enable them to achieve the goals and objectives of this initiative.

2. Capability of Working With Other Organizations in the State

Applicants must demonstrate that they have discussed this program with local and State elected public officials or their staffs, the Kentucky DJJ, key decision makers in the juvenile justice system such as juvenile court judges, associations of those involved in juvenile justice, the boards of public and private youth service providers, the Kentucky Jailers Association, the Kentucky SAG, and other groups whose cooperation or participation is essential to the success of the program. The applicant must certify that it is able to obtain the aforementioned cooperation or participation.

3. Financial Capability

In addition to the assurances provided in Part V, Assurances (OJP Form 4000/

3), OJP procedures require private nonprofit applicants to demonstrate that their organization has or can establish fiscal controls and accounting procedures which assure that Federal funds available under this announcement are disbursed and accounted for properly.

When the applicant is a non-governmental entity and if there has been no recent history with the Office of Justice Programs (OJP), a financial capability questionnaire will be provided to the applicant. This questionnaire must be completed by an independent auditor and submitted to the awarding agency before the award is made. Copies of the form (Accounting System and Financial Capability Questionnaire—OJP Form 7120/1) will be provided in the application kit and must be prepared and submitted along with the application.

III. Dollar Amount and Duration

A. The project period for this program is two years from the date of award. Local recipients will be eligible for awards ranging from $100,000 to $150,000, for a total of up to $1,477,000, and the statewide grantee will be eligible for an award of up to $1,000,000, of which $800,000 will be used to contract for community-based placement alternatives to adult jails and lockups and $200,000 will be used for managing the contracts and for providing technical assistance to and coordination among the multiple service providers involved in the Nonparticipating State Grant Program. Funds will be made available through cooperative agreements. Financial assistance provided under this program requires no matching contribution in accordance with Part C of Title II of the JJDP Act, except as provided under C, below.

B. OJJDP anticipates that 10 to 15 local applicants will be selected for cooperative agreements to provide community-based placement alternatives to adult jails and lockups and one applicant will be selected to award and manage contracts statewide to establish community-based placement alternatives to adult jails and lockups and provide technical assistance to and statewide coordination among the multiple service providers involved in the Nonparticipating State Program pursuant to the selection criteria established in this announcement.

C. No more than one-fourth of the funds received by a public or private organization may be used for construction or renovation purposes. Use of funds for construction is limited to innovative, community-based facilities for fewer than 20 persons and must be approved in advance by OJJDP. All construction funds must be matched dollar-for-dollar, in cash, by the local organization.

IV. Eligibility Criteria

Applications are invited from local public and private nonprofit agencies and from nonprofit agencies operating statewide, within the State of Kentucky, that agree to operate their programs and services, whether or not supported with Federal grant funds, in a manner consistent with the JJDP Act core requirements and can demonstrate knowledge and experience in developing and/or implementing programs and projects statewide or at the local level. Applicants that have previously received Nonparticipating State grant funds are also eligible to compete for these funds. To be eligible for consideration, an applicant must address the following:

A. An understanding of the intent of the statutory requirements of the JJDP Act and the general approaches for implementing the requirements at the local level;

B. Knowledge of, and experience with, juvenile justice systems, local jails, lockups, and secure juvenile detention facilities, the specific problems, strategies, and program alternatives necessary to achieve the objectives of this program, ability to use monitoring data specific to the targeted jurisdiction to indicate the project's impact on JJDP Act compliance, and the ability to provide community-based alternative placements to adult jails and lockups;

C. Capability to develop management and fiscal systems necessary for the proper administration of Federal funds;

D. Capability to fulfill the activities and responsibilities identified in the Program Strategy section of this announcement;

E. Capability to work effectively with local and State elected public officials, Kentucky Department of Juvenile Justice officials, key decision makers in the juvenile justice system, the boards of public and private youth service providers, the Kentucky Jailers Association, and the Kentucky State Advisory Group which exist within the State for the purpose of achieving the objectives of this program;

F. Capability to analyze project impact in light of monitoring data specific to the target jurisdiction;

G. Provide an explanation of how all their agency programs and services will operate in a manner consistent with the core requirements of the JJDP Act;

H. Provide a discussion of the status of the jurisdiction to be impacted (city, county, State) with regard to deinstitutionalization of status and nonoffenders, separating juveniles and adults by sight and sound in secure placement, and removing juveniles from adult jails and lockups in accordance with the JJDP Act using identified data sources specifying the time period studied; and

I. Capability to develop, submit for approval, and utilize approved policies and procedures for the implementation of community-based services and placement options programs, a timeline for development of the policies and procedures, a training plan for project employees, a timetable for the provision of program services, and a strategy to educate the public about the program and solicit State and local support for the core requirements of the JJDP Act.

The applicant must describe how the provision of the proposed services will directly impact, in measurable terms, the State's ability to meet the measurable core requirements of the JJDP Act.

V. Program Application Requirements

Only applicants who agree to operate in a manner consistent with the core requirements of the JJDP Act and that provide an assurance that they will work toward the goal of bringing the State into compliance with the core requirements of the JJDP Act will be eligible for an award. All applicants must submit a completed Standard Form 424, Application for Federal Assistance; Standard Form 424A, Budget Information; OJP Form 4000/3, Program Narrative and Assurances; and OJP Form 4061/6, Certifications. All applications must include the information required by this specific solicitation and the Standard Form 424. The narrative must not exceed 35 pages in length (excluding forms, assurances, and appendixes) and must be submitted on 8½ by 11-inch paper, double spaced on one side of the paper in a standard 12-point font. This is necessary to maintain fair and uniform standards among all applicants. If the narrative does not conform to these standards, OJJDP will deem the application ineligible for consideration.

The SF–424 must appear as a cover sheet for the entire application. The project summary should follow the SF–424. All other forms must then follow. Applicants must sign: OJP forms 4000/3 and 4061/6, Certifications Regarding Lobbying; Debarment, Suspension and other Responsibility Matters; and Drug-Free Workplace Requirements. The applicant's signature on this form

provides for compliance with certification requirements under 28 CFR Part 69, ''New Restrictions on Lobbying'' and 28 CFR Part 67, ''Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants).'' The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Justice determines to award the covered transaction, grant, or cooperative agreement. Applicants are requested to submit the original signed application (SF–424) and two copies to OJJDP.

Applicants that are receiving other funds in support of the proposed activity should identify other organizations that will provide financial assistance to the program and indicate the amount of funds to be contributed during the program period. Provide the title of the project, name of the public and private grantor, and amount to be contributed during the program period. Give a brief description of the program. In addition to the above requirements, the following information should be included in the application.

If this program is closely related to a project supported by another agency, the following information must be provided:

A. A list of the names of any organizational units that will assist in any part of this other particular program activity.

B. The title of the other project, the name of the public or private grantor, and the amounts requested or to be contributed during this program/budget period.

C. A brief description of the program.

Applications and copies must be sent to the following address: Gregory C. Thompson, State Representative, Office of Juvenile Justice and Delinquency Prevention, SRAD, 810 7th Street, NW, 8th Floor, Washington, D.C. 20531.

OJJDP will notify applicants in writing that their applications have been received. Subsequently, applicants will be notified by letter as to the decision made regarding whether or not their submission has been selected for funding.

When submitting joint applications with more than one organization, the relationships among the parties must be set forth in the application. As a general rule, organizations that describe their working relationship as primarily cooperative or collaborative when developing products and delivering services will be considered co-applicants. In the event of a co-applicant submission, one co-applicant must be designated the payee and, as such, will receive and disburse project funds and be responsible for the supervision and coordination of the activities of the other co-applicant. Under this arrangement, each organization would agree to be jointly and separately responsible for all project funds and services. Each co-applicant must sign the SF–424 and indicate their acceptance of the conditions of joint and separate responsibility with the other co-applicant.

All procurement transactions, whether negotiated or competitively bid and without regard to dollar value, shall be conducted in a manner so as to provide maximum open and free competition. All sole source procurement in excess of $100,000 must receive prior approval of the awarding agency.

VI. Procedures and Criteria for Selection

All applicants will be evaluated and rated by an OJJDP staff panel according to general selection criteria below. Selection criteria determine each applicant's responsiveness to minimum program application requirements, organizational capability, thoroughness, and innovativeness in responding to strategic issues related to project implementation. OJJDP staff reviewers will use the following criteria to rate applications.

A. *Statement of the Problem. (20 Points)* The applicant includes a clear, concise statement of the problem addressed in this program.

B. *Definition of Objectives. (20 Points)* The goals and objectives are clearly defined and the objectives are clear, measurable, and attainable.

C. *Project Design.* (20 points) The project design is sound and constitutes an effective approach to meeting the goals and objectives of this program and impacting the State's efforts to meet the core requirements of the JJDP Act. The design provides a detailed implementation plan with a timeline that indicates significant milestones in the project, due dates for products, and the nature of the products to be submitted. The design contains program elements directly linked to the achievement of the project.

D. *Management Structure.* (15 points) The project's management structure and staffing is adequate to successfully implement and complete the project. The management structure for the project is consistent with the project goals and tasks described in the application. Application explains how the management structure and staffing assignments are consistent with the needs of the program.

E. *Organizational Structure.* (15 points) The applicant organization's potential to conduct the project successfully must be documented. Applicant demonstrates knowledge of and experience in the juvenile justice field, particularly in the area of study the project addresses. Applicant demonstrates that staff members have sufficient substantive expertise and technical experience. The applications will be judged on the appropriateness of the position descriptions, required qualifications, and staff selection criteria.

F. *Reasonable of Costs.* (10 points) Budgeted costs are reasonable, allowable, and cost effective for the activities proposed, and are directly related to the achievement of the program objectives. All costs are justified in a budget narrative that explains how costs are determined.

OJJDP staff review recommendations are advisory only and the final award decision will be made by the Administrator. OJJDP will negotiate specific terms of the award with the selected applicants.

VII. Audit Requirements

State and local governments, nonprofit organizations, and institutions of higher education are governed by OMB Circular A–133, as amended. Whether an audit is required under this circular is dependent upon the amount of Federal funds that are expended during the recipient's fiscal year. If the organization expends $300,000 or more per year in Federal funds, the organization shall have a single audit conducted in accordance with the OMB Circular A–133.

VIII. State Single Point of Contact

To comply with Executive Order 12372, applicants from State and local units of government or other organizations providing services within a State must submit a copy of their application to the State Single Point of Contact, if one exists, and if the program has been selected for review by the State.

IX. Civil Rights Compliance

A. All recipients of OJJDP assistance including any contractors, must comply with the nondiscrimination requirements of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended; Title VI of the Civil Rights Act of 1964; section 504 of the Rehabilitative Act of 1973 as amended; Title IX of the Education Amendments of 1972; the Age Discrimination Act of

1975; and the Department of Justice Nondiscrimination Regulations (28 CFR part 42, subparts C, D, E, and G).

B. In the event a Federal or State court or administrative agency makes a finding of discrimination, after a due process hearing, on the grounds of race, color, religion, national origin or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office for Civil Rights (OCR) of the Office of Justice Programs.

C. Applicants shall maintain and submit to OJJDP upon request, timely, complete, and accurate data establishing the fact that no person or persons will be or have been denied or prohibited from participation in, benefits of, or denied or prohibited from obtaining employment in connection with any program activity funded in whole or in part with funds made available under this program because of their race, national origin, sex, religion, handicap or age. In the case of any program under which the primary recipient of Federal funds extends financial assistance to any other recipient or contracts with any other person(s) or group(s) shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to assure its civil rights compliance obligations under a grant award.

X. Immigration and Naturalization Service Requirements

Organizations funded under the Kentucky Nonparticipating State Program must agree to complete and keep on file, as appropriate, the Immigration and Naturalization Service Employment Eligibility Form (I–9). This form is to be used by the recipient of Federal funds to verify that persons employed by the recipient are eligible to work in the United States.

XI. Submission Requirements

This program announcement is a request for proposals from local public and private nonprofit agencies in the State of Kentucky. The applications and necessary forms will be provided upon request. Applicants must submit an original signed application and two copies to OJJDP.

Applications must be received by mail or hand delivered to the OJJDP by 5:00 p.m. EST October 19, 1998. Those applications sent by mail should be addressed to: Thomas Bell, SRAD/OJJDP, United States Department of Justice, 810 7th Street, NW, 8th Floor, Washington, DC 20531. Hand delivered applications must be taken to the SRAD, 8th Floor, 810 7th Street, NW, Washington, DC between the hours of 8:00 a.m. and 5:00 p.m. except Saturdays, Sundays or Federal holidays.

Shay Bilchik,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

Appendix—Definitions of Terms

1. *Adult jail.* A locked facility administered, by State, county, or local law enforcement and public or private correctional agencies. The purpose of such facility is to detain adults charged with violating criminal law pending trial. Facilities used to hold convicted adult criminal offenders, usually sentenced for less than one year, are also considered adult jails.

2. *Adult lockup.* Similar to an adult jail except that an adult lockup is generally a municipal or police facility of a temporary nature which does not hold persons after they have been formally charged.

3. *Criminal-type offender.* A juvenile offender who has been adjudicated for conduct which would, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult (i.e. a criminal-type offense).

4. *Accused juvenile offender.* A juvenile on whom a petition has been filed in the juvenile court or other action has occurred alleging that such juvenile is a juvenile offender, (i.e., a criminal-type offender or a status offender), but no final adjudication has been made by the juvenile court.

5. *Adjudicated juvenile offender.* A juvenile who the juvenile court has determined through an adjudicative procedure is a juvenile offender, (i.e., a criminal-type offender or a status offender).

6. *Facility.* A place, an institution, a building or part thereof, a set of buildings or an area, whether or not enclosing a building or set of buildings, that is used for the lawful custody and treatment of juveniles and that may be owned and/or operated by public and private agencies.

7. *Juvenile offender.* An individual within a juvenile court's jurisdiction for purposes of adjudication and treatment based on age and offense limitations as defined by State law (i.e., a criminal-type offender or a status offender).

8. *Lawful custody.* The exercise of care, supervision and control over a juvenile offender or non-offender pursuant to the provisions of the law, a judicial order or decree.

9. *Local private nonprofit agency.* A nonprofit organization that provides services within an identifiable unit(s) or a combination of units of general local government, but which is not under public supervision or control. A nonprofit organization means an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 that is exempt from taxation under section 501(a) of the Internal Revenue Code of 1986.

10. *Local public agency.* Any unit of local government, combination of such units, or any department, agency, or instrumentality of any such unit or combination of such units.

11. *Non-offender.* A juvenile who is subject to the jurisdiction of the juvenile court—usually under abuse, dependency, or neglect statutes—for reasons other than legally prohibited conduct of the juvenile.

12. *Nonparticipating State.* A State which chooses not to submit a plan, fails to submit a plan, or submits a plan which does not meet the requirements of section 223 of the JJDP Act and thus is not participating in the Formula Grants Program authorized by Part B of Title II of the JJDP Act for a particular fiscal year; or a State found ineligible to receive program funds because of failure to achieve or maintain substantial compliance with the JJDP Act, its implementing regulation (28 CFR Part 23), or a plan or application submitted pursuant to Part B of Title II of the JJDP Act.

13. *Secure.* As used to define a detention or correctional facility this term describes residential facilities which include construction fixtures designed to physically restrict the movements and activities of persons in custody such as locked rooms and buildings, fences, or other physical structures. It does not include facilities where physical restriction of movement or activity is provided solely through facility staff.

14. *Status offender.* A juvenile offender who has been charged with or adjudicated for conduct which would not, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult.

15. *Valid Court Order.* The term means a court order given by a juvenile court judge to a juvenile who was brought before the court and made subject to a court order; who received, before the issuance of such order, the full due process rights guaranteed to such juvenile by the Constitution of the United States; and with respect to whom an appropriate public agency, before the issuance of such order—

(i) reviewed the behavior of such juvenile and the circumstances under which such juvenile was brought before the court and made subject to such order;

(ii) determined the reasons for the behavior that caused such juvenile to be brought before the court and made subject to such order; and

(iii) determined that all dispositions (including treatment), other than placement in a secure detention facility or a secure correctional facility, have been exhausted or are clearly inappropriate.

The requirements for using the valid court order exception can be found in the Formula Grants Regulation, 28 CFR Part 31, at § 31.303(f).

[FR Doc. 98–22414 Filed 8–19–98; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP (OJJDP)–1187]

RIN 1121–ZB24

Program Announcement, ''Nonparticipating State Program, Wyoming''

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of issuance of competitive program announcement.

SUMMARY: Notice is hereby given that the Office of Juvenile Justice and Delinquency Prevention (OJJDP), pursuant to the provisions of section 223(d) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, 42 U.S.C. 5601 *et seq.*, (hereinafter the JJDP Act), is issuing a program announcement and solicitation for applications from nonprofit agencies operating statewide in the State of Wyoming. Because of non-compliance with the core requirements of the JJDP Act, the State is not eligible to receive its fiscal year (FY) 1995, 1996, and 1997 Formula Grants program allocations under Part B of Title II of the JJDP Act, which total $1,708,650. (State allocations of $600,000 per year, minus $91,350 which has been awarded directly to the Wyoming Department of Family Services for the support of the activities of the Wyoming State Advisory Group Council on Juvenile Justice.) Eligible applicants for the Nonparticipating State Program are limited to private nonprofit agencies operating statewide, who propose innovative service delivery programs designed to provide placement alternatives to existing secure confinement placements that are not consistent with the core requirements of the JJDP Act. Applicants must currently be operating in the State and their proposed programs must directly impact the State of Wyoming's ability to meet the core requirements of the JJDP Act. The successful applicant will enter into a cooperative agreement with OJJDP to be expended over a two year period. Of the total amount available, $1,366,920 will be utilized by the recipient to contract with local public or private nonprofit agencies for local community-based placement alternatives to adult jails and lockups for both delinquent and status offender populations, with the remaining $341,730 retained by the applicant to manage the contracts and provide technical assistance to and coordination among the local contractors funded under the Nonparticipating State Grant Program.

DATES: Applications under this program are due October 19, 1998.

FOR FURTHER INFORMATION CONTACT: For further information contact Gregory C. Thompson, State Representative, State Relations and Assistance Division, Office of Juvenile Justice and Delinquency Prevention, 810 7th Street, NW, Washington, DC 20531, (202) 307–5924. E-Mail: Thompson@ojp.usdoj.gov

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

A. JJDP Act Statutory Requirement

Pursuant to section 223(d) of the JJDP Act, if a State chooses not to submit a Formula Grants Program plan, fails to submit a plan, or submits a plan which does not meet the requirements of the JJDP Act, the OJJDP Administrator shall endeavor to make the Formula Grants program fund allotment, under section 222(a) of the JJDP Act, available to private nonprofit agencies within the State. The funds must be used solely for the purpose(s) of achieving compliance with the following JJDP Act core requirements:

1. Section 223(a)(12)(A), requires that juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult or offenses (other than an offense that constitutes a violation of a valid court order or a violation of section 922(x) of Title 18 or a similar State law), or alien juveniles in custody, or such nonoffenders as dependent or neglected children, shall not be placed in secure detention facilities or secure correctional facilities.

2. Section 223(a)(13), provides that juveniles alleged to be or found to be delinquent, and those within the purview of section 223(a)(12)(A) above, shall not be detained or confined in any institution in which they have contact with adult persons incarcerated because they have been convicted of a crime or are awaiting trial on criminal charges or with the part-time or full-time security staff (including management) or direct-care staff of a (collocated) jail or lockup for adults;

3. Section 223(a)(14) provides that no juvenile shall be detained or confined in any jail or lockup for adults, except that the Administrator shall promulgate regulations which make exceptions with regard to the detention of juveniles accused of nonstatus offenses who are awaiting an initial court appearance pursuant to an enforceable State law requiring such appearances within twenty-four hours after being taken into custody (excluding weekends and holidays) provided that such exceptions are limited to areas that are in compliance with section 223(a)(13), above; and

a. (1) are outside a Standard Metropolitan Statistical Area; and

(2) have no existing acceptable alternative placement available; or

b. are located where conditions of distance to be traveled or the lack of highway, road, or other ground transportation do not allow for court appearances within 24 hours, so that a brief (not to exceed 48 hours) delay is excusable; or

c. are located where conditions of safety exist (such as severely adverse, life-threatening weather conditions that do not allow for reasonably safe travel), in which case the time for an appearance may be delayed until 24 hours after the time that such conditions allow for reasonably safe travel.

For further information and explanation of regulatory exceptions, to the provisions of section 223(a)(12)(A), (13) and (14), see the OJJDP Consolidated Regulation (28 CFR Part 31), 31.303 (c–d) substantive requirements. Copies of the Consolidated Regulation may be obtained by contacting the Office of Juvenile Justice and Delinquency Prevention at (202) 307–5921.

B. History

For the past several years, the State of Wyoming has failed to demonstrate compliance with sections 223(a)(12)(A), (13), and (14) of the JJDP Act. The last official monitoring report representing the 1991 monitoring year, reported exceptionally high violation rates as follows:

1. Wyoming was not in compliance with the deinstitutionalization of status offenders requirement of section 223(a)(12)(A) of the JJDP Act. Wyoming's 275 reported incidents of noncompliance resulted in a rate of 203.7 per 100,000 juvenile population. To establish full compliance with de minimis exceptions to section 223(a)(12)(A) of the JJDP Act, the rate cannot exceed 29.4 per 100,000 juvenile population.

2. Wyoming was not in compliance with section 223(a)(13) of the JJDP Act. The 1991 Compliance Monitoring Report reported 1,176 violations of the sight and sound separation provision of the JJDP Act. Full compliance requires either: (1) no violations, or (2) that the instances of noncompliance are in violation of State law or policy, do not constitute a pattern or practice, are unlikely to recur, and the State has developed an acceptable plan to

eliminate noncompliant incidents. Wyoming did not meet either of the eligibility criteria specified above.

3. Wyoming was not in compliance with the jail and lockup removal requirement of section 223(a)(14) of the JJDP Act. Wyoming reported 1,628 violations, a noncompliance rate of 1,205.6 incidents per 100,000 juvenile population. The maximum de minimis rate is no more than 9 per 100,000 juvenile population.

At the present time, Wyoming does not have in place a compliance monitoring system capable of reporting accurate data concerning the detention of nonoffenders, status offenders, and criminal-type juvenile offenders. Wyoming has recently taken a positive step toward resuming participation in the JJDP Formula Grants program with the establishment of a State Advisory Council on Juvenile Justice that will undertake an effort to examine available data sources and establish a compliance monitoring system within the next two years. OJJDP will continue to work with the State agency with the goal of Wyoming rejoining the OJJDP Formula Grants program.

C. Problems To Be Addressed

Wyoming has not been able to successfully address the core requirements of the JJDP Act due to State laws that sanction violations, a lack of local policies that promote the coordination of available resources, and a limited number of alternative resources available to communities. Local jurisdictions, therefore, are using secure facilities to detain or confine juveniles in a manner inconsistent with sections 223(a) (12)(A), (13) and (14) for a number of reasons:

1. The lack of policies regarding the issues of juveniles in secure confinement consistent with section 223(a) (13) and (14), and the secure confinement of status offender juveniles in violation of section 223(a)(12)(A) of the JJDP Act;

2. The lack of coordination and cooperation among juvenile justice system agencies including schools, law enforcement, prosecution, the judiciary, jails, corrections, public and private service providers, and local public interest groups, which contributes to placement of juveniles in jails and lockups that violate the section 223(a) (12)(A), (13), and (14) of the JJDP Act;

3. The lack of a flexible network of services and programs that is responsive to local jurisdiction's needs and capabilities. This network should focus upon jurisdictions with the most difficult barriers to meeting the core requirements of the JJDP Act; and

4. The lack of alternative services which can be sustained over time with local resources including, but not limited to:

a. availability of appropriate secure juvenile facilities for the detention of juvenile criminal-type offenders;

b. intensive supervision in a child's home as a placement alternative and use of home detention, including electronic monitoring;

c. emergency foster care, shelter care, group care, and independent living arrangements; and

d. crisis intervention services, short-term residential crisis intervention programs, and non-secure holdovers that can be used for conflict mediation, emergency holding, and provision of emergency attention for youth with physical or emotional problems.

II. Program Goals and Objectives

In accordance with section 223(d) of the JJDP Act, the goal of this program is to assist Wyoming in developing a range of secure and nonsecure alternatives and revising associated policies to move the State toward compliance with section 223(a)(12)(A), the deinstitutionalization of status offenders and nonoffenders, section 223(a)(13), the separation of juveniles from adults in adult jails and lockups, and section 223(a)(14), the removal of juveniles from adult jails and lockups requirements. To achieve these goals, and thus ensure a fair and effective system for juvenile custody, applicants must provide each of the following:

A. A succinct statement describing an understanding of the goals and objectives of the program.

B. A problem statement to include a discussion of the applicant's understanding of:

1. State laws impacting the placement of juveniles in adult jails and lockups and status offenders and non-offenders in secure detention or correctional facilities, and the issues surrounding the removal of such juveniles from the facilities;

2. What the monitoring data indicates about the multiple jurisdictions' compliance in relation to the measurable core requirements of the JJDP Act where the applicant is proposing to contract for the development of alternative placements to adult jails and lockups;

3. State legislative, judicial and executive branch activities related to supervision and protection of status offenders and non-offenders and jail removal;

4. How the applicant plans to impact, in measurable terms, the goal of meeting the core requirements of the JJDP Act, in Wyoming, by providing community-based alternative placements to adult jails and lockups; and

5. The applicant's ability to establish and maintain a working relationship with the Wyoming State Advisory Group (SAG), and the Wyoming Department of Corrections in order to coordinate efforts and enhance the project's impact on the State's efforts to meet the JJDP Act core requirements.

C. Program Strategy

OJJDP anticipates entering into a cooperative agreement with an applicant to contract for community-based placement alternatives to adult jails and lockups and provide technical assistance to, and coordination among, multiple service providers involved in the Nonparticipating State Program.

Applicants should describe the proposed approach and timeline for achieving program goals and objectives. The timeline needs to address the development of policies and procedures, a training plan for project employees, a plan for the provision of program services, and public awareness efforts on the core requirements of the JJDP Act. A discussion of how the goals and objectives of the program will be accomplished, a description of the products to be prepared, and other anticipated outcomes should also be included. A plan for assessing the effectiveness of the overall program must be described.

The selected recipient will be expected to establish and/or maintain a working relationship with Wyoming's SAG and the Wyoming Department of Corrections. In order to have the greatest impact on advancing State efforts to meet the JJDP Act core requirements, the recipient will be expected to use the most recent monitoring data available in making site selections for the establishment of community-based alternatives to adult jails and lockups.

The applicant must describe in detail how the proposed strategy will:

1. Provide technical assistance to the contractors providing community-based placement alternatives to adult jails and lockups on program implementation and evaluation;

2. Provide coordination among contractors participating in the Nonparticipating State Grant program to ensure that the individual and collective efforts are enhancing the State's ability to meet the core requirements of the JJDP Act;

3. Undertake a public information effort to inform public officials and citizens about the core requirements of the JJDP Act and best practices in

juvenile justice and delinquency prevention programming.

4. Establish or maintain an ongoing working relationship with the Wyoming SAG and Wyoming Department of Corrections.

D. Program Implementation Plan

Applicants should prepare a plan, including timelines and milestones, that outlines the major activities involved in implementing the program and describe how they will allocate available resources to implement the program and how the program will be managed.

E. Organizational Capability

Applicants must demonstrate that they are eligible to compete for an award on the basis of eligibility criteria established in this solicitation.

1. Organizational Experience

Applicants must concisely describe their experience with respect to the eligibility criteria described in Section IV. Applicants must demonstrate how their experience and capabilities will enable them to achieve the goals and objectives of this initiative.

2. Capability of Working With Other Organizations in the State

Applicants must demonstrate that they have discussed this program with local and State elected public officials or their staffs, the Wyoming Department of Corrections, key decision makers in the juvenile justice system such as juvenile court judges, associations of those involved in juvenile justice, the boards of public and private youth service providers, the Wyoming SAG, and other groups whose cooperation or participation is essential to the success of the program. The applicant must describe how it will be able to obtain the aforementioned cooperation or participation.

3. Financial Capability

In addition to the assurances provided in Part V, Assurances (OJP Form 4000/3), OJP procedures require private nonprofit applicants to demonstrate that their organization has or can establish fiscal controls and accounting procedures which assure that Federal funds available under this announcement are disbursed and accounted for properly.

OJP procedures require nongovernmental applicants having no recent history with OJP, to complete a financial capability questionnaire. This questionnaire must be completed by an independent auditor and submitted to the awarding agency before the award is made. Copies of the form (Accounting System and Financial Capability Questionnaire—OJP Form 7120/1) will be provided with the materials as described in Section V, and must be prepared and submitted along with the application.

III. Dollar Amount and Duration

A. The budget and project period for this program will be two years (from the date of award). A cooperative agreement of $1,708,650 available from fiscal years 1995, 1996, and 1997 Formula Grant funds reallocated for award under the Nonparticipating State Program on a competitive basis to a statewide private nonprofit agency currently operating in Wyoming. Of this amount, $1,366,920 will be available to contract for local community-based placement alternatives to adult jails and lockups for both delinquent and status offender populations, with the remaining $341,730 available to manage the contracts and provide technical assistance to, and coordination among, the contract recipients. The recipient will be required to make funds available to Indian Tribes, at a minimum, in the same amount that the State of Wyoming would have been required to pass-through to Tribes under section 223(a)(5)(C) of the JJDP Act, ($21,644). The financial assistance provided under this program requires no matching contribution in accordance with Part C of Title II of the JJDP Act, except as provided under B., below.

B. No more than one-fourth of the funds received by a public or private organization may be used for construction or renovation purposes. Use of funds for construction is limited to innovative, community-based facilities for fewer than 20 persons and must be approved in advance by OJJDP. All construction funds must be matched dollar-for-dollar, in cash, by the local jurisdiction.

IV. Eligibility Criteria

Applications are invited from private nonprofit agencies operating statewide in the State of Wyoming that agree to operate their programs and services, whether or not supported with Federal grant funds, in a manner consistent with the JJDP Act core requirements and, can demonstrate knowledge and experience in developing and/or implementing programs and projects statewide and at the local level. To be eligible for consideration, an applicant must address the following:

A. An understanding of the intent of the statutory requirements of the JJDP Act and the general approaches for implementing the requirements at the local level;

B. Knowledge of, and experience with, juvenile justice systems, local jails, lockups, and secure juvenile detention facilities, the specific problems, strategies, and program alternatives necessary to achieve the objectives of this program, ability to use monitoring data specific to targeted jurisdictions to indicate the project's impact on JJDP Act compliance, and the ability to provide community-based alternative placements to adult jails and lockups;

C. Capability to develop management and fiscal systems necessary for the proper administration of Federal funds;

D. Capability to fulfill the activities and responsibilities identified in the Program Strategy section of this announcement;

E. Capability to work effectively with local and State elected public officials, Wyoming Department of Corrections officials, key decision makers in the juvenile justice system, boards of public and private youth service providers, and the Wyoming SAG which exists within the State for the purpose of achieving the objectives of this program;

F. Capability to analyze project impact in light of monitoring data specific to jurisdictions that have reported high numbers of noncompliant incidents;

G. Provide an explanation of how all their agency programs and services will operate in a manner consistent with the core requirements of the JJDP Act;

H. Provide a discussion of the status of the State with regard to deinstitutionalization of status and nonoffenders, separation of juveniles and adults in secure custody, and removal of juveniles from adult jails and lockups in accordance with the requirements of the JJDP Act and OJJDP's implementing regulations; and

I. Capability to develop, submit for approval, and utilize approved policies and procedures for the implementation of community-based services and placement options programs, a timeline for development of the policies and procedures, a training plan for project employees, a timetable for the provision of program services, and a strategy to educate the public about the program and solicit community support for the proposed community-based placement alternatives.

The applicant must describe how the provision of the proposed services will directly impact, in measurable terms, the State's ability to meet the core requirements of the JJDP Act.

V. Program Application Requirements

Only applicants who agree to operate in a manner consistent with the core

requirements of the JJDP Act and that provide an assurance that they will work toward the goal of bringing the State into compliance with the core requirements of the JJDP Act will be eligible for an award. All applicants must submit a completed Standard Form 424, Application for Federal Assistance; Standard Form 424A, Budget Information; OJP Form 4000/3, Program Narrative and Assurances; and OJP Form 4061/6, Certifications. All applications must include the information required by this specific solicitation as well as the Standard Form 424. The narrative must not exceed 35 pages in length (excluding forms, assurances, and appendixes) and must be submitted on 8½ by 11-inch paper, double spaced on one side of the paper in a standard 12-point font. This is necessary to maintain fair and uniform standards among all applicants. If the narrative does not conform to these standards, OJJDP will deem the application ineligible for consideration.

The SF–424 must appear as a cover sheet for the entire application. The project summary should follow the SF–424. All other forms must then follow. Applicants must sign: OJP forms 4000/3 and 4061/6, Certifications Regarding Lobbying; Debarment, Suspension and other Responsibility Matters; and Drug-Free Workplace Requirements. The applicant's signature on this form provides for compliance with certification requirements under 28 CFR Part 69, ''New Restrictions on Lobbying'' and 28 CFR Part 67, ''Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants).'' The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Justice determines to award the covered transaction, grant, or cooperative agreement. Applicants are requested to submit the original signed application (SF–424) and two copies to OJJDP.

Applicants that are receiving other funds in support of the proposed activity should identify other organizations that will provide financial assistance to the program and indicate the amount of funds to be contributed during the program period. Provide the title of the project, name of the public and private grantor, and amount to be contributed during the program period. Give a brief description of the program. In addition to the above requirements, the following information should be included in the application.

If this program is closely related to a project supported by funds awarded by another agency, the following information must be provided:

A. A list of the names of any organizational units that will assist in any part of this other particular program activity.

B. The title of the other project, the name of the public or private grantor, and the amounts requested or to be contributed during this program/budget period.

C. A brief description of the program.

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B. Definition of Objectives. (20 points) The goals and objectives are clearly defined and the objectives are clear, measurable, and attainable.

C. Project Design. (20 points) The project design is sound and constitutes an effective approach to meeting the goals and objectives of this program and impacting the State's ability to meet the core requirements of the JJDP Act. The design provides a detailed implementation plan with a timeline that indicates significant milestones in the project, due dates for products, and the nature of the products to be submitted. The design contains program elements directly linked to the achievement of the project.

D. Management Structure. (15 points) The project's management structure and staffing is adequate to successfully implement and complete the project. The management structure for the project is consistent with the project goals and tasks described in the application. The application explains how the management structure and staffing assignments are consistent with the needs of the program.

E. Organizational Structure. (15 points) The applicant organization's potential to conduct the project successfully is documented. Applicant demonstrates knowledge of and experience in the juvenile justice field. Applicant demonstrates that staff members have sufficient substantive expertise and technical experience. Applications will be judged on the appropriateness of the position descriptions, required qualifications, and staff selection criteria.

F. Reasonableness of Costs. (10 points) Budgeted costs are reasonable, allowable, and cost effective for the activities proposed, and are directly related to the achievement of the program objectives. All costs are justified in a budget narrative that explains how costs are determined.

OJJDP staff review recommendations are advisory only and the final award decision will be made by the Administrator. OJJDP will negotiate specific terms of the award with the selected applicant.

VII. Audit Requirements

State and local governments, nonprofit organizations, and institutions of higher education are governed by

OMB Circular A–133, as amended. Whether an audit is required under this circular is dependent upon the amount of Federal funds that are expended during the recipient's fiscal year. If the organization expends $300,000 or more per year in Federal funds, the organization shall have a single audit conducted in accordance with the OMB Circular A–133.

VIII. State Single Point of Contact

To comply with Executive Order 12372, applicants from State and local units of government or other organizations providing services within a State must submit a copy of their application to the State Single Point of Contact, if one exists, and if the program has been selected for review by the State.

IX. Civil Rights Compliance

A. All recipients of OJJDP assistance including any contractors, must comply with the nondiscrimination requirements of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended; Title VI of the Civil Rights Act of 1964; section 504 of the Rehabilitative Act of 1973 as amended; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; and the Department of Justice Nondiscrimination Regulations (28 CFR part 42, subparts C, D, E, and G).

B. In the event a Federal or State court or administrative agency makes a finding of discrimination, after a due process hearing, on the grounds of race, color, religion, national origin or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office for Civil Rights (OCR) of the Office of Justice Programs.

C. Applicants shall maintain and submit to OJJDP upon request, timely, complete and accurate data establishing the fact that no person or persons will be or have been denied or prohibited from participation in, benefits of, or denied or prohibited from obtaining employment in connection with any program activity funded in whole or in part with funds made available under this program because of their race, national origin, sex, religion, handicap or age. In the case of any program under which the primary recipient of Federal funds extends financial assistance to any other recipient or contracts with any other person(s) or group(s) shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to assure its civil rights compliance obligations under a grant award.

X. Immigration and Naturalization Service Requirements

Organizations funded under the Wyoming Nonparticipating State Program must agree to complete and keep on file, as appropriate, the Immigration and Naturalization Service Employment Eligibility Form (I–9). This form is to be used by the recipient of Federal funds to verify that persons employed by the recipient are eligible to work in the United States.

XI. Submission Requirements

This program announcement is a request for proposals from nonprofit agencies operating statewide in the State of Wyoming. The applications and necessary forms will be provided upon request by calling (202) 307–5924. Applicants must submit an original signed application and two copies to OJJDP.

Applications must be received by mail or hand delivered to OJJDP by 5:00 p.m. EST October 19, 1998.

Those applications sent by mail should be addressed to: SRAD/OJJDP, United States Department of Justice, 810 7th Street, NW, 8th Floor, Washington, DC 20531. Hand delivered applications must be taken to the SRAD, 8th Floor, 810 7th Street, NW, Washington, DC between the hours of 8:00 a.m. and 5:00 p.m. except Saturdays, Sundays or Federal holidays.

Shay Bilchik,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

Appendix

Definitions of Terms

1. *Adult jail.* A locked facility administered, by State, county, or local law enforcement and public or private correctional agencies. The purpose of such facility is to detain adults charged with violating criminal law pending trial. Facilities used to hold convicted adult criminal offenders, usually sentenced for less than one year, are also considered adult jails.

2. *Adult lockup.* Similar to an adult jail except that an adult lockup is generally a municipal or police facility of a temporary nature which does not hold persons after they have been formally charged.

3. *Criminal-type offender.* A juvenile offender who has been adjudicated for conduct which would, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult (i.e. a criminal-type offense).

4. *Accused juvenile offender.* A juvenile on whom a petition has been filed in the juvenile court or other action has occurred alleging that such juvenile is a juvenile offender, (i.e., a criminal-type offender or a status offender), but no final adjudication has been made by the juvenile court.

5. *Adjudicated juvenile offender.* A juvenile who the juvenile court has determined through an adjudicative procedure is a juvenile offender, (i.e., a criminal-type offender or a status offender).

6. *Facility.* A place, an institution, a building or part thereof, a set of buildings or an area, whether or not enclosing a building or set of buildings, that is used for the lawful custody and treatment of juveniles and that may be owned and/or operated by public and private agencies.

7. *Juvenile offender.* An individual within a juvenile court's jurisdiction for purposes of adjudication and treatment based on age and offense limitations as defined by State law (i.e., a criminal-type offender or a status offender).

8. *Lawful custody.* The exercise of care, supervision and control over a juvenile offender or non-offender pursuant to the provisions of the law, a judicial order or decree.

9. *Non-offender.* A juvenile who is subject to the jurisdiction of the juvenile court—usually under abuse, dependency, or neglect statutes—for reasons other than legally prohibited conduct of the juvenile.

10. *Nonparticipating State.* A State which chooses not to submit a plan, fails to submit a plan, or submits a plan which does not meet the requirements of section 223 of the JJDP Act and thus is not participating in the Formula Grants Program authorized by Part B of Title II of the JJDP Act for a particular fiscal year; or a State found ineligible to receive program funds because of failure to achieve or maintain substantial compliance with the JJDP Act, its implementing regulation (28 CFR Part 23), or a plan or application submitted pursuant to Part B of Title II of the JJDP Act.

11. *Secure.* As used to define a detention or correctional facility this term describes residential facilities which include construction fixtures designed to physically restrict the movements and activities of persons in custody such as locked rooms and buildings, fences, or other physical structures. It does not include facilities where physical restriction of movement or activity is provided solely through facility staff.

12. *Status offender.* A juvenile offender who has been charged with or adjudicated for conduct which would not, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult.

13. *Valid Court Order.* The term means a court order given by a juvenile court judge to a juvenile who was brought before the court and made subject to a court order; who received, before the issuance of such order, the full due process rights guaranteed to such juvenile by the Constitution of the United States; and with respect to whom an appropriate public agency, before the issuance of such order—

(i) reviewed the behavior of such juvenile and the circumstances under which such juvenile was brought before the court and made subject to such order;

(ii) determined the reasons for the behavior that caused such juvenile to be brought before the court and made subject to such order; and

(iii) determined that all dispositions (including treatment), other than placement

in a secure detention facility or a secure correctional facility, have been exhausted or are clearly inappropriate.

The requirements for using the valid court order exception can be found in the Formula Grants Regulation, 28 CFR Part 31, at § 31.303(f).

[FR Doc. 98–22415 Filed 8–19–98; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP (OJJDP)–1188]

RIN 1121–ZB25

Program Announcement, ''Nonparticipating State Program, South Dakota''

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of issuance of competitive program announcement.

SUMMARY: Notice is hereby given that the Office of Juvenile Justice and Delinquency Prevention (OJJDP), pursuant to the provisions of section 223(d) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, 42 U.S.C. 5601 *et seq.*, (hereinafter the JJDP Act), is issuing a program announcement and solicitation for applications from nonprofit agencies operating statewide in the State of South Dakota. Because of non-compliance with the core requirements of the JJDP Act, the State is not eligible to receive its fiscal year (FY) 1997 and 1998 Formula Grants program allocations under Part B of Title II of the JJDP Act, which total $1,200,000. Eligible applicants for the Nonparticipating State Program are limited to private nonprofit agencies operating statewide who propose innovative service delivery programs designed to provide placement alternatives to existing secure confinement placements that are not consistent with the core requirements of the JJDP Act. Applicants must currently be operating in the State and their proposed programs must directly impact the State of South Dakota's ability to meet the core requirements of the JJDP Act. The successful applicant will enter into a cooperative agreement with OJJDP to be expended over a two year period. Of the total amount available, $960,000 will be utilized by the applicant to contract with local public or private nonprofit agencies for local community-based placement alternatives to adult jails and lockups for both delinquent and status offender populations, with the remaining $240,000 retained by the applicant to manage the contracts and provide technical assistance to and coordination among the local contractors funded under the Nonparticipating State Grant Program.

DATES: Applications under this program are due October 19, 1998.

FOR FURTHER INFORMATION CONTACT: For further information contact Gregory C. Thompson, State Representative, State Relations and Assistance Division, Office of Juvenile Justice and Delinquency Prevention, 810 7th Street, NW, Washington, DC 20531, (202) 307–5924. E-Mail: Thompson@ojp.usdoj.gov

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

A. JJDP Act Statutory Requirement

Pursuant to section 223(d) of the JJDP Act, if a State chooses not to submit a Formula Grants Program plan, fails to submit a plan, or submits a plan which does not meet the requirements of the JJDP Act, the OJJDP Administrator shall endeavor to make the Formula Grants program fund allotment, under section 222(a) of the JJDP Act, available to private nonprofit agencies within the State. The funds must be used solely for the purpose(s) of achieving compliance with the following JJDP Act core requirements:

1. Section 223(a)(12)(A), requires that juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult or offenses (other than an offense that constitutes a violation of a valid court order or a violation of section 922(x) of Title 18 or a similar State law), or alien juveniles in custody, or such nonoffenders as dependent or neglected children, shall not be placed in secure detention facilities or secure correctional facilities.

2. Section 223(a)(13), provides that juveniles alleged to be or found to be delinquent, and those within the purview of section 223(a)(12)(A) above, shall not be detained or confined in any institution in which they have contact with adult persons incarcerated because they have been convicted of a crime or are awaiting trial on criminal charges or with the part-time or full-time security staff (including management) or direct-care staff of a (collocated) jail or lockup for adults;

3. Section 223(a)(14) provides that no juvenile shall be detained or confined in any jail or lockup for adults, except that the Administrator shall promulgate regulations which make exceptions with regard to the detention of juveniles accused of nonstatus offenses who are awaiting an initial court appearance pursuant to an enforceable State law requiring such appearances within twenty-four hours after being taken into custody (excluding weekends and holidays) provided that such exceptions are limited to areas that are in compliance with section 223(a)(13), above; and

a. (1) are outside a Standard Metropolitan Statistical Area; and

(2) have no existing acceptable alternative placement available; or

b. are located where conditions of distance to be traveled or the lack of highway, road, or other ground transportation do not allow for court appearances within 24 hours, so that a brief (not to exceed 48 hours) delay is excusable; or

c. are located where conditions of safety exist (such as severely adverse, life-threatening weather conditions that do not allow for reasonably safe travel), in which case the time for an appearance may be delayed until 24 hours after the time that such conditions allow for reasonably safe travel.

For further information and explanation of regulatory exceptions, to the provisions of section 223(a)(12)(A), (13) and (14), see the OJJDP Consolidated Regulation (28 CFR Part 31), 31.303 (c–d) substantive requirements. Copies of the Consolidated Regulation may be obtained by contacting the Office of Juvenile Justice and Delinquency Prevention at (202) 307–5924.

B. History

The State of South Dakota submitted compliance monitoring data to OJJDP, in the 1996 Compliance Monitoring Report, which demonstrated a failure to achieve compliance with sections 223(a)(12)(A), (13), and (14) of the JJDP Act. This resulted in South Dakota's failure to qualify for award of its FY 1997 and FY 1998 Formula Grants Program allocations. The monitoring data reflected:

1. South Dakota is not in compliance with the deinstitutionalization of status offenders requirement of section 223(a)(12)(A) of the JJDP Act. South Dakota's 150 reported incidents of noncompliance resulted in a rate of 37.69 per 100,000 juvenile population. To establish full compliance with de minimis exceptions to section 223(a)(12)(A) of the JJDP Act, the rate cannot exceed 29.4 per 100,000 juvenile population.

2. South Dakota is not in compliance with section 223(a)(13) of the JJDP Act. The 1996 Compliance Monitoring Report reflected 65 violations of the sight and sound separation provision of the JJDP Act. Full compliance requires

either: (1) no violations, or (2) that the instances of noncompliance are in violation of State law or policy, do not constitute a pattern or practice, are unlikely to recur, and the State has developed an acceptable plan to eliminate noncompliant incidents. South Dakota did not meet the eligibility criteria specified above.

3. South Dakota is not in compliance with the jail and lockup removal requirement of section 223(a)(14) of the JJDP Act. South Dakota reported 262 violations, resulting in a noncompliance rate of 131.68 juveniles per 100,000 population. The maximum de minimis rate is no more than 9 per 100,000 juvenile population.

The State's noncompliance incidents can be directly attributed to the passage of South Dakota State law 26–7(a)26, which took effect July 1, 1996. This law permits apparent, alleged, or adjudicated Children In Need of Services (CHINS) between the ages of fourteen and seventeen years to be held in an adult jail or lockup for up to seven days and defines separation from adult prisoners in terms of physical separation only. The South Dakota legislature also passed SB41 during the 1998 legislative session. This new law permits the commitment of adjudicated CHINS offenders to the Department of Corrections secure training centers. This legislation, scheduled to take effect July 1, 1998, can be expected to move South Dakota further out of compliance with the JJDP Act core requirements.

C. Problems To Be Addressed

South Dakota has not been able to successfully address the core requirements of the JJDP Act due to State laws that sanction violations, a lack of local policies that promote the coordination of available resources, and a limited number of alternative resources available to communities. Local jurisdictions, therefore, are using secure facilities to detain or confine juveniles in a manner inconsistent with sections 223(a)(12)(13), and (14) for a number of reasons:

1. The lack of policies regarding the issues of juveniles in secure confinement consistent with section 223(a)(13) and (14), and the secure confinement of status offender juveniles in violation of section 223(a)(12)(A) of the JJDP Act;

2. The lack of coordination and cooperation among juvenile justice system agencies including schools, law enforcement, prosecution, the judiciary, jails, corrections, public and private service providers, and local public interest groups, which contributes to placement of juveniles in jails and lockups that violate the section 223(a)(12)(A), (13), and (14) of the JJDP Act;

3. The lack of a flexible network of services and programs that is responsive to local jurisdiction's needs and capabilities. This network should focus upon jurisdictions with the most difficult barriers to meeting the core requirements of the JJDP Act; and

4. The lack of alternative services which can be sustained over time with local resources including, but not limited to:

a. availability of appropriate secure juvenile facilities for the detention of juvenile criminal-type offenders;

b. intensive supervision in a child's home as a placement alternative and use of home detention, including electronic monitoring;

c. emergency foster care, shelter care, group care, and independent living arrangements; and

d. crisis intervention services, short-term residential crisis intervention programs, and non-secure holdovers that can be used for conflict mediation, emergency holding, and provision of emergency attention for youth with physical or emotional problems.

II. Program Goals and Objectives

In accordance with section 223(d) of the JJDP Act, the goal of this program is to assist South Dakota in developing a range of secure and nonsecure alternatives and revising associated policies to move the State toward compliance with section 223(a)(12)(A), the deinstitutionalization of status offenders and nonoffenders, section 223(a)(13), the separation of juveniles from adults in adult jails and lockups, and section 223(a)(14), the removal of juveniles from adult jails and lockups requirements. To achieve these goals, and thus ensure a fair and effective system for juvenile custody, applicants must provide each of the following:

A. A succinct statement describing an understanding of the goals and objectives of the program.

B. A problem statement to include a discussion of the applicant's understanding of:

1. State laws impacting the placement of juveniles in adult jails and lockups and status offenders and non-offenders in secure detention or correctional facilities, and the issues surrounding the removal of such juveniles from the facilities;

2. What the monitoring data indicates about the multiple jurisdictions' compliance in relation to the measurable core requirements of the JJDP Act where the applicant is proposing to contract for the development of alternative placements to adult jails and lockups;

3. State legislative, judicial and executive branch activities related to supervision and protection of status offenders and non-offenders and jail removal;

4. How the applicant plans to impact, in measurable terms, the goal of meeting the core requirements of the JJDP Act, in South Dakota, by providing community-based alternative placements to adult jails and lockups; and

5. The applicant's ability to establish and maintain a working relationship with the South Dakota State Advisory Group (SAG), and the South Dakota Department of Corrections in order to enhance the project's impact on the effort within the State to meet the JJDP Act core requirements.

C. Program Strategy

OJJDP anticipates entering into a cooperative agreement with an applicant to contract for community-based placement alternatives to adult jails and lockups and provide technical assistance to, and coordination among, multiple service providers involved in the Nonparticipating State Program.

Applicants should describe the proposed approach and timeline for achieving program goals and objectives. The timeline needs to address the development of policies and procedures, a training plan for project employees, a plan for the provision of program services, and public awareness efforts on the core requirements of the JJDP Act. A discussion of how the goals and objectives of the program will be accomplished, a description of the products to be prepared, and other anticipated outcomes should also be included. A plan for assessing the effectiveness of the overall program must be described.

The selected recipient will be expected to establish and/or maintain a working relationship with the South Dakota SAG and the South Dakota Department of Corrections. In order to have the greatest impact on advancing the effort within the State to meet the JJDP Act core requirements, the recipient will be expected to use the most recent monitoring data available in making site selections for the establishment of community-based alternatives to adult jails and lockups.

The applicant must describe in detail how the proposed strategy will:

1. Provide technical assistance to the contractors providing community-based placement alternatives to adult jails and lockups on program implementation and evaluation;

2. Provide coordination among contractors participating in the Nonparticipating State Grant program to ensure that the individual and collective efforts are enhancing the State's ability to meet the core requirements of the JJDP Act;

3. Undertake a public information effort to inform public officials and citizens about the core requirements of the JJDP Act and best practices in juvenile justice and delinquency prevention programming.

4. Establish or maintain an ongoing working relationship with the South Dakota SAG and South Dakota Department of Corrections.

D. Program Implementation Plan

Applicants should prepare a plan, including timelines and milestones, that outlines the major activities involved in implementing the program and describe how they will allocate available resources to implement the program and how the program will be managed.

E. Organizational Capability

Applicants must demonstrate that they are eligible to compete for an award on the basis of eligibility criteria established in this solicitation.

1. Organizational Experience

Applicants must concisely describe their experience with respect to the eligibility criteria described in Section IV. Applicants must demonstrate how their experience and capabilities will enable them to achieve the goals and objectives of this initiative.

2. Capability of Working With Other Organizations in the State

Applicants must demonstrate that they have discussed this program with local and State elected public officials or their staffs, the South Dakota Department of Corrections, key decision makers in the juvenile justice system such as juvenile court judges, associations of those involved in juvenile justice, the boards of public and private youth service providers, the South Dakota SAG, and other groups whose cooperation or participation is essential to the success of the program. The applicant must describe how it will be able to obtain the aforementioned cooperation or participation.

3. Financial Capability

In addition to the assurances provided in Part V, Assurances (OJP Form 4000/3), OJP procedures require private nonprofit applicants to demonstrate that their organization has or can establish fiscal controls and accounting procedures which assure that Federal funds available under this announcement are disbursed and accounted for properly.

OJP procedures require nongovernmental applicants having no recent history with OJP, to complete a financial capability questionnaire. This questionnaire must be completed by an independent auditor and submitted to the awarding agency before the award is made. Copies of the form (Accounting System and Financial Capability Questionnaire—OJP Form 7120/1) will be provided with the materials as described in Section V, and must be prepared and submitted along with the application.

III. Dollar Amount and Duration

A. The budget and project period for this program will be two years (from the date of award). A cooperative agreement in the amount of $1,200,000 is available from fiscal years 1997 and 1998 Formula Grant funds reallocated for award under the Nonparticipating State Program on a competitive basis to a statewide private nonprofit agency currently operating in South Dakota. Of this amount, $960,000 will be available to contract for local community-based placement alternatives to adult jails and lockups for both delinquent and status offender populations, with the remaining $240,000 available to manage the contracts and provide technical assistance to, and coordination among, the contract recipients. The recipient will be required to make available to Indian Tribes, at a minimum, the same amount that the State of South Dakota would have been required to pass-through to Tribes under section 223(a)(5)(C) of the JJDP Act. ($68,845) The Financial assistance provided under this program requires no matching contribution in accordance with Part C of Title II of the JJDP Act, except as provided under B., below.

B. No more than one-fourth of the funds received by a public or private organization may be used for construction or renovation purposes. Use of funds for construction is limited to innovative, community-based facilities for fewer than 20 persons and must be approved in advance by OJJDP. All construction funds must be matched dollar-for-dollar, in cash, by the local jurisdiction.

IV. Eligibility Criteria

Applications are invited from private nonprofit agencies operating statewide in the State of South Dakota that agree to operate their programs and services, whether or not supported with Federal grant funds, in a manner consistent with the JJDP Act core requirements and, can demonstrate knowledge and experience in developing and/or implementing programs and projects statewide and at the local level. To be eligible for consideration, an applicant must address the following:

A. An understanding of the intent of the statutory requirements of the JJDP Act and the general approaches for implementing the requirements at the local level;

B. Knowledge of, and experience with, juvenile justice systems, local jails, lockups, and secure juvenile detention facilities, the specific problems, strategies, and program alternatives necessary to achieve the objectives of this program, ability to use monitoring data specific to targeted jurisdictions to indicate the project's impact on JJDP Act compliance, and the ability to provide community-based alternative placements to adult jails and lockups;

C. Capability to develop management and fiscal systems necessary for the proper administration of Federal funds;

D. Capability to fulfill the activities and responsibilities identified in the Program Strategy section of this announcement;

E. Capability to work effectively with local and State elected public officials, South Dakota Department of Corrections officials, key decision makers in the juvenile justice system, boards of public and private youth service providers, and the South Dakota SAG which exists within the State for the purpose of achieving the objectives of this program;

F. Capability to analyze project impact in light of monitoring data specific to jurisdictions that have reported high numbers of noncompliant incidents;

G. Provide an explanation of how all their agency programs and services will operate in a manner consistent with the core requirements of the JJDP Act;

H. Provide a discussion of the status of the State with regard to deinstitutionalization of status and nonoffenders, separation of juveniles and adults in secure custody, and removal of juveniles from adult jails and lockups in accordance with the requirements of the JJDP Act and OJJDP's implementing regulations; and

I. Capability to develop, submit for approval, and utilize approved policies and procedures for the implementation of community-based services and placement options programs, a timeline for development of the policies and procedures, a training plan for project employees, a timetable for the provision of program services, and a strategy to educate the public about the program and solicit community support for the

proposed community-based placement alternatives.

The applicant must describe how the provision of the proposed services will directly impact, in measurable terms, the State's ability to meet the core requirements of the JJDP Act.

V. Program Application Requirements

Only applicants who agree to operate in a manner consistent with the core requirements of the JJDP Act and that provide an assurance that they will work toward the goal of bringing the State into compliance with the core requirements of the JJDP Act will be eligible for an award. All applicants must submit a completed Standard Form 424, Application for Federal Assistance; Standard Form 424A, Budget Information; OJP Form 4000/3, Program Narrative and Assurances; and OJP Form 4061/6, Certifications. All applications must include the information required by this specific solicitation and the Standard Form 424. The narrative must not exceed 35 pages in length (excluding forms, assurances, and appendixes) and must be submitted on 8½ by 11-inch paper, double spaced on one side of the paper in a standard 12-point font. This is necessary to maintain fair and uniform standards among all applicants. If the narrative does not conform to these standards, OJJDP will deem the application ineligible for consideration.

The SF–424 must appear as a cover sheet for the entire application. The project summary should follow the SF–424. All other forms must then follow. Applicants must sign: OJP forms 4000/3 and 4061/6, Certifications Regarding Lobbying; Debarment, Suspension and other Responsibility Matters; and Drug-Free Workplace Requirements. The applicant's signature on this form provides for compliance with certification requirements under 28 CFR Part 69, ''New Restrictions on Lobbying'' and 28 CFR Part 67, ''Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants).'' The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Justice determines to award the covered transaction, grant, or cooperative agreement. Applicants are requested to submit the original signed application (SF–424) and two copies to OJJDP.

Applicants that are receiving other funds in support of the proposed activity should identify other organizations that will provide financial assistance to the program and indicate the amount of funds to be contributed during the program period. Provide the title of the project, name of the public and private grantor, and amount to be contributed during the program period. Give a brief description of the program. In addition to the above requirements, the following information should be included in the application.

If this program is closely related to a project supported by funds awarded by another agency, the following information must be provided :

A. A list of the names of any organizational units that will assist in any part of this other particular program activity.

B. The title of the other project, the name of the public or private grantor, and the amounts requested or to be contributed during this program/budget period.

C. A brief description of the program.

Applications and copies must be sent to the following address:Gregory C. Thompson, State Representative, Office of Juvenile Justice and Delinquency, Prevention, SRAD, 810 7th Street, NW, 8th Floor,Washington, D.C. 20531.

OJJDP will notify applicants in writing that their applications have been received. Subsequently, applicants will be notified by letter as to the decision made regarding whether or not their submission has been selected for funding.

When submitting joint applications with more than one organization, the relationships among the parties must be set forth in the application. As a general rule, organizations that describe their working relationship as primarily cooperative or collaborative when developing products and delivering services will be considered co-applicants. In the event of a co-applicant submission, one co-applicant must be designated the payee and, as such, will receive and disburse project funds and be responsible for the supervision and coordination of the activities of the other co-applicant. Under this arrangement, each organization would agree to be jointly and separately responsible for all project funds and services. Each co-applicant must sign the SF–424 and indicate their acceptance of the conditions of joint and separate responsibility with the other co-applicant.

All procurement transactions, whether negotiated or competitively bid and without regard to dollar value, shall be conducted in a manner so as to provide maximum open and free competition. All sole source procurement in excess of $100,000 must receive prior approval of the awarding agency.

VI. Procedures and Criteria for Selection

All applicants will be evaluated and rated by an OJJDP staff panel according to general selection criteria below. Selection criteria determine each applicant's responsiveness to minimum program application requirements, organizational capability, and thoroughness and innovativeness in responding to strategic issues related to project implementation. OJJDP staff reviewers will use the following criteria to rate applications.

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State and local governments, nonprofit organizations, and institutions of higher education are governed by OMB Circular A–133, as amended. Whether an audit is required under this circular is dependent upon the amount of Federal funds that are expended during the recipient's fiscal year. If the organization expends $300,000 or more per year in Federal funds, the organization shall have a single audit conducted in accordance with the OMB Circular A–133.

VIII. Civil Rights Compliance

A. All recipients of OJJDP assistance including any contractors, must comply with the nondiscrimination requirements of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended; Title VI of the Civil Rights Act of 1964; section 504 of the Rehabilitative Act of 1973 as amended; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; and the Department of Justice Nondiscrimination Regulations (28 CFR part 42, subparts C, D, E, and G).

B. In the event a Federal or State court or administrative agency makes a finding of discrimination, after a due process hearing, on the grounds of race, color, religion, national origin or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office for Civil Rights (OCR) of the Office of Justice Programs.

C. Applicants shall maintain and submit to OJJDP upon request, timely, complete and accurate data establishing the fact that no person or persons will be or have been denied or prohibited from participation in, benefits of, or denied or prohibited from obtaining employment in connection with any program activity funded in whole or in part with funds made available under this program because of their race, national origin, sex, religion, handicap or age. In the case of any program under which the primary recipient of Federal funds extends financial assistance to any other recipient or contracts with any other person(s) or group(s) shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to assure its civil rights compliance obligations under a grant award.

IX. Immigration and Naturalization Service Requirements

Organizations funded under the South Dakota Nonparticipating State Program must agree to complete and keep on file, as appropriate, the Immigration and Naturalization Service Employment Eligibility Form (I–9). This form is to be used by the recipient of Federal funds to verify that persons employed by the recipient are eligible to work in the United States.

X. Submission Requirements

This program announcement is a request for proposals from nonprofit agencies operating statewide in the State of South Dakota. The applications and necessary forms will be provided upon request by calling (202) 307–5924. Applicants must submit an original signed application and two copies to OJJDP.

Applications must be received by mail or hand delivered to OJJDP by 5:00 p.m. EST October 19, 1998. Those applications sent by mail should be addressed to: SRAD/OJJDP, United States Department of Justice, 810 7th Street, NW, 8th Floor, Washington, DC 20531. Hand delivered applications must be taken to the SRAD, 8th Floor, 810 7th Street, NW, Washington, DC between the hours of 8:00 a.m. and 5:00 p.m. except Saturdays, Sundays or Federal holidays.

Shay Bilchik,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

Appendix—Definitions of Terms

1. *Adult jail.* A locked facility administered, by State, county, or local law enforcement and public or private correctional agencies. The purpose of such facility is to detain adults charged with violating criminal law pending trial. Facilities used to hold convicted adult criminal offenders, usually sentenced for less than one year, are also considered adult jails.

2. *Adult lockup.* Similar to an adult jail except that an adult lockup is generally a municipal or police facility of a temporary nature which does not hold persons after they have been formally charged.

3. *Criminal-type offender.* A juvenile offender who has been adjudicated for conduct which would, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult (i.e. a criminal-type offense).

4. *Accused juvenile offender.* A juvenile on whom a petition has been filed in the juvenile court or other action has occurred alleging that such juvenile is a juvenile offender, (i.e., a criminal-type offender or a status offender), but no final adjudication has been made by the juvenile court.

5. *Adjudicated juvenile offender.* A juvenile who the juvenile court has determined through an adjudicative procedure is a juvenile offender, (i.e., a criminal-type offender or a status offender).

6. *Facility.* A place, an institution, a building or part thereof, a set of buildings or an area, whether or not enclosing a building or set of buildings, that is used for the lawful custody and treatment of juveniles and that may be owned and/or operated by public and private agencies.

7. *Juvenile offender.* An individual within a juvenile court's jurisdiction for purposes of adjudication and treatment based on age and offense limitations as defined by State law (i.e., a criminal-type offender or a status offender).

8. *Lawful custody.* The exercise of care, supervision and control over a juvenile offender or non-offender pursuant to the provisions of the law, a judicial order or decree.

9. *Non-offender.* A juvenile who is subject to the jurisdiction of the juvenile court—usually under abuse, dependency, or neglect statutes—for reasons other than legally prohibited conduct of the juvenile.

10. *Nonparticipating State.* A State which chooses not to submit a plan, fails to submit a plan, or submits a plan which does not meet the requirements of section 223 of the JJDP Act and thus is not participating in the Formula Grants Program authorized by Part B of Title II of the JJDP Act for a particular fiscal year; or a State found ineligible to receive program funds because of failure to achieve or maintain substantial compliance with the JJDP Act, its implementing regulation (28 CFR Part 23), or a plan or application submitted pursuant to Part B of Title II of the JJDP Act.

11. *Secure.* As used to define a detention or correctional facility this term describes residential facilities which include construction fixtures designed to physically restrict the movements and activities of persons in custody such as locked rooms and buildings, fences, or other physical structures. It does not include facilities where physical restriction of movement or activity is provided solely through facility staff.

12. *Status offender.* A juvenile offender who has been charged with or adjudicated for conduct which would not, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult.

13. *Valid Court Order.* The term means a court order given by a juvenile court judge to a juvenile who was brought before the court and made subject to a court order; who received, before the issuance of such order, the full due process rights guaranteed to such juvenile by the Constitution of the United States; and with respect to whom an appropriate public agency, before the issuance of such order—

(i) reviewed the behavior of such juvenile and the circumstances under which such juvenile was brought before the court and made subject to such order;

(ii) determined the reasons for the behavior that caused such juvenile to be brought before the court and made subject to such order; and

(iii) determined that all dispositions (including treatment), other than placement

in a secure detention facility or a secure correctional facility, have been exhausted or are clearly inappropriate.

The requirements for using the valid court order exception can be found in the Formula Grants Regulation, 28 CFR Part 31, at § 31.303(f).

[FR Doc. 98–22416 Filed 8–19–98; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,363 and NAFTA–02283]

Dana Corporation Marion Forge Division Marion, OH; Notice of Termination of Investigation on Reconsideration

On July 6, 1998, the Department issued a Notice of Affirmative Determination Regarding Application for Reconsideration applicable to workers of the subject firm. The notice was published in the **Federal Register** on July 24, 1998 (63 FR 39905).

By letter of July 27, 1998, the petitioners, comprised of a company official and Local 1667 of the Boilermakers International Union, have requested that the reconsideration be withdrawn because there are no displaced workers at the Marion, Ohio plant.

Consequently, further investigation in this case would service no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 14th day of August 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–22436 Filed 8–19–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under Section 250(b)(1) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Acting Director of the Office Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes actions pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment after December 8, 1993 (date of enactment of Public Law 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Acting Director of OTAA at the U.S. Department of Labor (DOL) in Washington, DC provided such request is filed in writing with the Acting Director of OTAA not later than September 3, 1998.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Acting Director of OTAA at the address shown below not later than September 3, 1998.

Petitions filed with the Governors are available for inspection at the Office of the Acting Director, OTAA, ETA, DOL, Room C–4318, 200 Constitution Avenue, NW., Washington DC 20210.

Signed at Washington, DC this 13th day of August, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

Appendix

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Gillette Company (The) (USWA)	Janesville, WI	04/27/1998	NAFTA–2,354	Writing instruments (pens, ink pencils).
Megas Beauty Care (Co.)	Sparks, NV	03/31/1998	NAFTA–2,355	Cotton balls & coils, chimneystack pads.
Escalator Handrail USA (Wkrs)	Orchard Park, NY	04/30/1998	NAFTA–2,356	Escalator handrails.
J.C. Viramontes (Wkrs)	El Paso, TX	04/30/1998	NAFTA–2,357	Denim apparel.
Western Reserve Products (Wkrs)	Gallatin, TN	04/23/1998	NAFTA–2,358	Plastic window frames for doors.
Meyer Tomatoes (IBT)	King City, CA	04/27/1998	NAFTA–2,359	Tomatoes.
VF Knitwear (Co.)	Hillsville, VA	05/04/1998	NAFTA–2,360	T-shirts and fleece wear.
Gateway Sportswear (Wkrs)	Masontown, PA	05/01/1998	NAFTA–2,361	Women's pants, skirts, and t-shirts.
Rotadyne (Wkrs)	Lancaster, NY	05/01/1998	NAFTA–2,362	Recovering of print rollers.
Sheldahl (Wkrs)	Aberdeen, SD	04/30/1998	NAFTA–2,363	Electronic circuit boards.
Paper Magic Group (The) (Wkrs)	Scranton, PA	04/30/1998	NAFTA–2,364	Halloween masks.
Breed Technologies (Co.)	Brownsville, TX	04/27/1998	NAFTA–2,365	Seat belts and air bags.
Breed Technologies (Co.)	El Paso, TX	04/27/1998	NAFTA–2,365	Seat belts and air bags.
Breed Technologies (Co.)	Douglas, AZ	04/29/1998	NAFTA–2,366	Seat belts and air bags.
Independent Order of Foresters (Wkrs)	San Diego, CA	05/04/1998	NAFTA–2,367	Life insurance services.
U.S. Timber (Wkrs)	Boise, ID	04/27/1998	NAFTA–2,368	Appearance boards (siding, flooring etc).
VF Knitwear (Co.)	Bakersville, NC	05/04/1998	NAFTA–2,369	T-shirts and fleece wear.
VF Knitwear (Co.)	Kinston, NC	05/04/1998	NAFTA–2,369	T-shirts and fleece wear.
Garland Commercial Industries (Co.)	Freeland, PA	05/06/1998	NAFTA–2,370	Commercial cooking equipment.
Toroplast (Wkrs)	McAllen, TX	05/05/1998	NAFTA–2,371	Plastic seat belts housing.

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Sinclair Technologies (CWA)	Tonawanda, NY	05/06/1998	NAFTA–2,372	Communications base station equipment.
EEX Corporation (Wkrs)	Houston, TX	05/06/1998	NAFTA–2,373	Crude oil.
EEX Corporation (Wkrs)	Throughout the State of, LA.	05/06/1998	NAFTA–2,373	Crude oil.
EEX Corporation (Wkrs)	Throughout the State of, MS.	05/06/1998	NAFTA–2,373	Crude oil.
EEX Corporation (Wkrs)	Throughout the State of, NY.	05/06/1998	NAFTA–2,373	Crude oil.
EEX Corporation (Wkrs)	Throughout the State of, WA.	05/06/1998	NAFTA–2,373	Crude oil.
Towne and Country (Co.)	Lugoff, SC	05/07/1998	NAFTA–2,374	Ladies' sportswear.
Dawn (Co.)	Lugoff, SC	05/07/1998	NAFTA–2,374	Ladies' sportswear.
Transcity Terminal Warehouse (IBT)	Indianapolis, IN	04/06/1998	NAFTA–2,375	Warehousing and storage.
Horton Company (The) (UAW)	Jackson, MI	04/23/1998	NAFTA–2,376	Automotive Components (drive & Steering).
Cott Manufacturing (Wkrs)	West Mifflin, PA	05/11/1998	NAFTA–2,377	Line identification markers.
American Lantern (USWA)	Newport, AR	04/30/1998	NAFTA–2,378	Lighting fixtures.
Boise Cascade ()	Emmett, ID	05/07/1998	NAFTA–2,379	
Kimberly Clark (Co.)	Del Rio, TX	05/11/1998	NAFTA–2,380	Nurses caps, shoe covers & stockinettes.
Hasbro Manufacturing Services (Co.)	El Paso, TX	05/11/1998	NAFTA–2,381	Toys
Berg Electronics (Wkrs)	Clearfield, PA	05/12/1998	NAFTA–2,382	Electronic connectors.
Tops Malibu (Wkrs)	Eugene, OR	05/12/1998	NAFTA–2,383	Novelty candles.
MPM Automotive Products (Co.)	Tucson, AZ	05/13/1998	NAFTA–2,384	Marketing of remanufacturing auto parts.
Code Alarm (Wkrs)	Georgetown, TX	05/14/1998	NAFTA–2,385	Wire harnesses for car alarms.
Jostens Photography (Co.)	Webster, NY	05/13/1998	NAFTA–2,386	School photographs.
GL&V Black Clawson-Kennedy (IAMAW).	Watertown, NY	05/13/1998	NAFTA–2,387	Machine paper rolls and dryers.
Paul-Son Gaming Supplies (Wkrs)	Las Vegas, NV	05/08/1998	NAFTA–2,388	Playing cards.
Gates Rubber Company (The) (Co.)	Jefferson, NC	05/12/1998	NAFTA–2,389	Vulcoflex vehicular coolant hoses.
Tri Clover (IAMAW)	Kenosha, WI	05/18/1998	NAFTA–2,390	Tubular fittings.
Buena Vista (Wkrs)	Buena Vista, VA	05/14/1998	NAFTA–2,391	T-shirts, fleece sweatshirts.
Wausau Mosinee Paper (Co.)	Rhinelander, WI	05/15/1998	NAFTA–2,392	Technical specialty paper.
Alps Electric (USA) (Co.)	Huntington Beach, CA	03/12/1998	NAFTA–2,393	Keycaps & plastic parts for computers.
Oxford Industries (Co.)	Wadley, GA	05/18/1998	NAFTA–2,394	Men's dress shirts.
Phillips Van Heusen (Co.)	Geneva, AL	05/18/1998	NAFTA–2,395	Men's dress and casual shirts.
Phillips Van Heusen (Co.)	Ozark, AL	05/18/1998	NAFTA–2, 395	Men's dress and casual shirts.
Phillips Van Heusen (Co.)	Augusta, AR	05/14/1998	NAFTA–2, 396	Men's dress and casual shirts.
Siebe Appliance Controls (Co.)	New Stanton, PA	05/18/1998	NAFTA–2, 397	Appliance controls.
Americold Logistics (Wkrs)	Nampa, ID	05/13/1998	NAFTA–2, 398	Packaging & storage of frozen potatoes.
Robertshaw Controls (Co.)	Long Beach, CA	05/18/1998	NAFTA–2, 399	Gas heating control valves.
Tri Quest Precision Plastics (Co.)	Vancouver, WA	05/18/1998	NAFTA–2, 400	Plastic and components.
Stella Foods (Wkrs)	Green Bay, WI	05/18/1998	NAFTA–2, 401	Administration duties.
Kleinert's Inc. of Florida (Co.)	Largo, FL	05/18/1998	NAFTA–2, 402	Infants apparel.
Eastman Kodak (Co.)	Rochester, NY	05/15/1998	NAFTA–2, 403	Film, black & white photographic paper.
Hovland Manufacturing (Co.)	Cody, WY	05/19/1998	NAFTA–2, 404	Women's denim jeans.
Price Pfister (IBT)	Pacoima, CA	05/21/1998	NAFTA–2, 405	Plumbing fixtures.
Koehler Manufacturing (Co.)	Marlborough, MA	05/20/1998	NAFTA–2, 406	Battery powered portable lighting.
G.F. Wright Steel and Wire (USWA)	Worcester, MA	05/20/1998	NAFTA–2, 407	Woven hardware clothes.
Willamette Industries (WCIW)	Eugene, OR	05/18/1998	NAFTA–2, 408	Softwood lumber.
JPM Company (The) (Co.)	Winnsboro, SC	05/20/1998	NAFTA–2, 409	Cable assemblies and wire harnesses.
Taylor Precision Products (Co.)	Fletcher, NC	05/20/1998	NAFTA–2, 410	Rain gauges and patio dials.
Kowa Printing (GCIU)	Danville, IL	05/21/1998	NAFTA–2, 411	Printing business forms, booklets, books.
St. Gobain (OCAW)	Keasbey, NJ	05/22/1998	NAFTA–2, 412	Refractories.
S.T. and E (Co.)	Punxsutawney, PA	05/26/1998	NAFTA–2, 413	Transportation services.
Sunds Defibrator Woodhandling (IAMAW).	Carthage, NY	05/26/1998	NAFTA–2, 414	Woodchippers machines.
Halmode Apparel (Co.)	New Castle, VA	04/12/1998	NAFTA–2, 415	Maternity dresses, nurses uniforms.
Turner and Minter (Co.)	Eagle Rock, VA	04/12/1998	NAFTA–2, 415	Maternity dresses, nurses uniforms.
Eaton Corporation (Co.)	Salisbury, MD	05/18/1998	NAFTA–2, 416	Circuit breakers for industrial.
Ideas Courier (Wkrs)	Phoenix, AZ	05/26/1998	NAFTA–2, 417	Printed circuit boards.
Celanese—Celco (UNITE)	Narrows, VA	05/26/1998	NAFTA–2,418	Cellulose Acetate.
Strategic Finishing (Wkrs)	Tualatin, OR	05/26/1998	NAFTA–2,419	Painting and metalizing.
ITT Cannon Connectors North America (Co.).	Nogales, AZ	05/26/1998	NAFTA–2,420	Receiving & inspection connectors.

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Ohmite (UPIU)	Huntington, IN	05/29/1998	NAFTA–2,421	Passive electronic components resistors.
MacMillan Bloedel Building Materials (Wkrs).	Spokane, WA	06/01/1998	NAFTA–2,422	Reselling of lumber & lumber products.
Nutri-Metics International (USA) (Wkrs)	Cerritos, CA	06/01/1998	NAFTA–2,423	Packing & shipping of skincare products.
Datagold (Wkrs)	Mocanaqua, PA	06/02/1998	NAFTA–2,424	Pocket file folders.
Philips Components (Wkrs)	Saugerties, NY	06/02/1998	NAFTA–2,425	Soft ferrite cores.
Virginia Apparel (Wkrs)	Rocky Mount, VA	05/28/1998	NAFTA–2,426	Men's & women's cotton shorts & pants.
Run Graphic Communicators (Wkrs)	Portland, OR	06/02/1998	NAFTA–2,427	Commercial printing.
Forest Furniture (Co.)	Lapine, OR	06/02/1998	NAFTA–2,428	Pine furniture.
Cowtown Boots (Wkrs)	El Paso, TX	06/02/1998	NAFTA–2,429	Western-style boots.
J.L. Clark (MPWU)	Rockford, IL	06/08/1998	NAFTA–2,430	Metal tube stamping.
Crown Pacific Limited Partnership (IAMAW).	Sandpoint, ID	06/08/1998	NAFTA–2,431	Lumber types and products.
Champion Pacific Timberlands (Co.)	Lebanon, OR	06/04/1998	NAFTA–2,432	Seedings.
BTR Sealing Systems (UNITE)	Maryville, TN	06/03/1998	NAFTA–2,433	Weather stripping & rubber doorseals.
Magnetek (Co.)	Prairie Grove, AR	06/05/1998	NAFTA–2,434	Fractional horsepower electric motors.
Allied Systems (Co.)	Sherwood, OR	06/08/1998	NAFTA–2,435	Logging equipment.
Wells Lamont (The) (Co.)	El Paso, TX	06/04/1998	NAFTA–2,436	Cut leather for gloves.
Henderson Sewing Machine (Co.)	Andalusia, AL	06/09/1998	NAFTA–2,437	Sewing machines.
Henderson Sewing Machine (Co.)	Multrie, GA	06/09/1998	NAFTA–2,437	Sewing machines.
Henderson Sewing Machine (Co.)	Maryville, TN	06/09/1998	NAFTA–2,437	Sewing machines.
Gould Electronics (IBEW)	Newburyport, MA	06/09/1998	NAFTA–2,438	Electrical fuses.
Berg Electronics Group (IBEW)	Franklin, IN	06/05/1998	NAFTA–2,439	Radio frequency connectors.
Rexworks (USWA)	Milwaukee, WI	06/10/1998	NAFTA–2,440	Cement mixers.
Valories Folk (Wkrs)	Springdale, AR	05/19/1998	NAFTA–2,441	Kitchen products.
Intercraft (Wkrs)	Statesville, NC	06/05/1998	NAFTA–2,442	Picture frames.
Raytheon Systems (UPIU)	Fort Wayne, IN	06/15/1998	NAFTA–2,443	Radios and communication products.
McCabe Packing (Co.)	Springfield, IL	06/10/1998	NAFTA–2,444	Beef carcasses.
Brunswick Bicycles (Co.)	Effingham, IL	06/12/1998	NAFTA–2,445	Bicycles.
BASF (Wkrs)	Santa Ana, CA	06/11/1998	NAFTA–2,446	Polystyrene pellets.
Nocona Boot (Co.)	Nocona, TX	04/30/1998	NAFTA–2,447	Western boots.
Kemet Electronics (Co.)	Simpsonville, SC	06/22/1998	NAFTA–2,448	Tantalum capacitors.
Kemet Electronics (Co.)	Fountain Inn, SC	06/22/1998	NAFTA–2,448	Tantalum capacitors.
Heinz Pet Products	Kankakee, IL	06/22/1998	NAFTA–2,449	Dogfood production machinery parts.
Willamette Industries (Co.)	Saginaw, OR	06/18/1998	NAFTA–2,450	Softwood laminated beams.
Teledyne Electronic Technologies (Co.)	Scottsdale, AZ	06/17/1998	NAFTA–2,451	Industrial solid state relays.
Tarantola Trucking (IBT)	Flemington, NJ	06/18/1998	NAFTA–2,452	Transportation and distribution.
Accuride (UAW)	Henderson, KY	06/15/1998	NAFTA–2,453	Tubed wheel.
General Electric (IUE)	Memphis, TN	06/17/1998	NAFTA–2,454	Lamps.
Gorge Lumber (Co.)	Portland, OR	06/16/1998	NAFTA–2,455	Lumber boards.
Durotest Lighting (IUE)	Clifton, NJ	06/11/1998	NAFTA–2,456	Lamps (incandescent and fluorescent buits).
National Garment (Wkrs)	Columbia, MO	06/18/1998	NAFTA–2,457	Children's clothing.
Trident Automotive	Blytheville, AR	06/16/1998	NAFTA–2,458	Automotive cables.
Bennett Uniform (Co.)	Greensboro, NC	06/22/1998	NAFTA–2,459	Uniform clothing.
Unity Knitting Mill (Wkrs)	Wadesboro, NC	06/25/1998	NAFTA–2,460	Men's and ladies thermal underwear.
Kellermann Logging (Wkrs)	Joseph, OR	06/23/1998	NAFTA–2,461	Logs.
Alcoa Fujikura (Co.)	El Paso, TX	06/23/1998	NAFTA–2,462	Wire harnesses.
Triple A In The USA (Co.)	Bellaire, OH	06/23/1998	NAFTA–2,463	Ladies swimwear and sportswear.
International Jensen (Co.)	Lumberton, NC	06/29/1998	NAFTA–2,464	Automotive loudspeakers.
Paragon Electric (IBEW)	Two Rivers, WI	06/26/1998	NAFTA–2,465	Motor controls.
Sanyo E and E (Co.)	San Diego, CA	06/24/1998	NAFTA–2,466	Refrigerators and freezers.
J.E. Morgan Knitting Mills (Wkrs)	Gilbertsville, PA	06/24/1998	NAFTA–2,467	Thermal underwear.
Pennsylvania Textile (UNITE)	West Hazelton, PA	06/30/1998	NAFTA–2,468	Dying of textiles.
Columbia Lighting (IBEW)	Houston, TX	06/25/1998	NAFTA–2,469	Fluorescent lighting fixtures.
American Meter-Industrial Products Div (IUE).	Erie, PA	06/30/1998	NAFTA–2,470	Natural gas meters.
Angelica Image Apparel (Co.)	Waynesboro, TN	06/25/1998	NAFTA–2,471	Men's and women's work pants and shirts.
General Instrument—Broadband Networks (Co.).	Hickory, NC	07/02/1998	NAFTA–2,472	Digital satellite integrated receiver.
Pfaltzgraff Company (The) (Wkrs)	Bendersville, PA	06/30/1998	NAFTA–2,473	Stoneware and dinnerware.
Pfaltzgraff Company (The) (Wkrs)	Dove, PA	06/30/1998	NAFTA–2,473	Stoneware and dinnerware.
Pfaltzgraff Company (The) (Wkrs)	York, PA	06/30/1998	NAFTA–2,473	Stoneware and dinnerware.
Pfaltzgraff Company (The) (Wkrs)	Thomasville, PA	06/30/1998	NAFTA–2,473	Stoneware and dinnerware.
Johnson Controls (UAW)	Greenfield, OH	07/07/1998	NAFTA–2,474	Armrest and headrest.

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Klamath Veneer (Wkrs)	Klamath Falls, OR	06/30/1998	NAFTA–2,475	Green and day veneer products.
Johnson and Johnson Medical (Co.)	Menlo Park, CA	07/03/1998	NAFTA–2,476	Catheters.
Bosch Automotive Motor Systems (Co.)	Hendersonville, TN	06/29/1998	NAFTA–2,477	Fractional horsepower dc motor.
Sivaco New York (USWA)	Tonawanda, NY	06/26/1998	NAFTA–2,478	Steel wire.
Therm-O-Disc (Co.)	Honeoye Falls, NY	06/26/1998	NAFTA–2,479	Water flow products.
Kodak Polychrome Graphic ()	Binghamton, NY	07/06/1998	NAFTA–2,480	
Parker Hannifin (Wkrs)	Niles, IL	07/06/1998	NAFTA–2,481	Hydraulic valves.
Lucas Varity Kelsey Hayes (UAW)	Mt. Vernon, OH	07/07/1998	NAFTA–2,482	Brakes.
Crown Cork and Seal (Co.)	Arden, NC	07/07/1998	NAFTA–2,483	Metal food containers.
Johnson Control (Wkrs)	Pulaski, TN	07/02/1998	NAFTA–2,484	Headrest lines.
Converters Paperboard (UNITE)	Rockford, MI	06/01/1998	NAFTA–2,485	Paper board for folding cartons.
Bindicator—Berwind (Wkrs)	Port Huron, MI	06/15/1998	NAFTA–2,486	Level instruments.
Walbro (UAW)	Cass City, MI	07/02/1998	NAFTA–2,487	Small engines.
Boydston and Franzen Service (Co.)	Cody, WY	07/09/1998	NAFTA–2,488	Crude oil and natural gas.
Control Elements (Wkrs)	Portland, OR	07/08/1998	NAFTA–2,489	Valves instruments.
TKC Apparel (Wkrs)	Reidsville, GA	07/06/1998	NAFTA–2,490	Garments.
Corel (Wkrs)	Orem, UT	07/03/1998	NAFTA–2,491	Master disks.
Juki Union Special (Wkrs)	Charlotte, NC	07/08/1998	NAFTA–2,492	Automated sewing equipment.
Allied Signal (Co.)	Columbia, SC	07/09/1998	NAFTA–2,493	Nylon yarn.
Gilroy Canning (IBT)	Gilroy, CA	07/08/1998	NAFTA–2,494	Processes tomatoes in paste & puree form.
M and J Clothing Sample (Wkrs)	El Paso, TX	07/03/1998	NAFTA–2,495	Jeans, shorts, jackets, skirts, vests.
Bibb Company (Wkrs)	Roanoke Rapids, NC	07/09/1998	NAFTA–2,496	Table cloths and napkins.
Saint Gobain—The Frick (GMP)	Port Allegany, PA	07/13/1998	NAFTA–2,497	Glass bottles.
Amron L.L.C. (IAMAW)	Waukesha, WI	07/13/1998	NAFTA–2,498	Medium caliber ordnance.
Sheldahl (Co.)	Northfield, MN	07/13/1998	NAFTA–2,499	Flexible printed circuitry.
Group Genesis (Wkrs)	Marion, OH	07/13/1998	NAFTA–2,500	Aircraft.
Bon Worth (Co.)	Spindale, NC	07/07/1998	NAFTA–2,501	Ladies apparel.
Henry I. Siegel (Co.)	Hickman, KY	07/09/1998	NAFTA–2,502	Men's & women's denim jeans & slack.
Gurien Finishing (Co.)	Union City, TN	07/13/1998	NAFTA–2,503	Finished levi jeans.
Fleer Confections (Wkrs)	Mt. Leiurel, NJ	07/16/1998	NAFTA–2,504	Confectionary products.
Homemaker Industries (Co.)	Athens, TN	07/16/1998	NAFTA–2,505	Home floor coverings (braided rugs).
Spray Air USA and Alida Group (Wkrs)	Grangeville, ID	07/20/1998	NAFTA–2,506	Sprayers.
Weslock Brand (Co.)	Compton, CA	07/10/1998	NAFTA–2,507	Residential door locks.
Gentex International—Guest Enterprises (Wkrs).	Brownsville, TX	07/19/1998	NAFTA–2,508	Cutting of materials for t-shirts.
National Textiles (Co.)	Morganton, NC	07/19/1998	NAFTA–2,509	Jersey and fleece casualwear apparel.
Devil Dog (Wkrs)	Wilson, NC	07/16/1998	NAFTA–2,510	Dungarees.
Hubbel Premise Wiring (Wkrs)	Marion, NC	07/16/1998	NAFTA–2,511	Circuit boards.
Koret of California (UNITE)	Wellington, UT	07/09/1998	NAFTA–2,512	Women's apparel.
Crump Wilson Shields Commission (Wkrs).	National Stockyards, IL	07/15/1998	NAFTA–2,513	Wholesale livestock to packers.
Coats American (Co.)	El Paso, TX	07/21/1998	NAFTA–2,514	Sewing thread and zippers.
Syroco (Wkrs)	Siloam Springs, AR	07/22/1998	NAFTA–2,515	Patio chairs.
General Electric Energy—Gas Turbine (Wkrs).	Houston, TX	07/14/1998	NAFTA–2,516	Electricity.
WTD (Wkrs)	Corvallis, OR	07/20/1998	NAFTA–2,517	Dimension lumber studs.
Scientific Atlanta (Wkrs)	Duluth, GA	07/27/1998	NAFTA–2,518	Radio frequency products.
Keptel—Antec (Co.)	Tinton Falls, NJ	07/27/1998	NAFTA–2,519	Fiber trays.
XEL Communications (CO.)	Aurora, Co	07/27/1998	NAFTA–2,520	Printed circuit boards.
Capiral Mercury Apparel—Blanchard (Co.).	Mt. View, AR	07/24/1998	NAFTA–2,521	Men's dress and sport shirts.
Thorn Apple Valley (UFCW)	Detroit, MI	07/13/1998	NAFTA–2,522	Fresh pork.
Industrial Ceramics (Wkrs)	Lima, NY	07/14/1998	NAFTA–2,523	Electrical porcelain.
Try America (CBO)	EL Paso, TX	07/27/1998	NAFTA–2,524	Men's jeans.
Borg Warner Automotive (Co.)	Sterling Heights, MI	07/15/1998	NAFTA–2,525	Torque converters.
National Environmental Products (Co.)	Pompano Beach, FL	06/26/1998	NAFTA–2,526	Climate control actuators.
NACCO Materials Handling Group (Co.)	Flemington, NJ	07/20/1998	NAFTA–2,527	Forklift truck parts.
PacifiCorp (IUOE)	Centralia, WA	07/30/1998	NAFTA–2,528	Coal.
PacifiCorp (IBEW)	Centralia, WA	07/30/1998	NAFTA–2,529	Electrical power.
Dixie Group—Caro-Knit & C-Knit Apparel (Co.).	Jefferson, SC	07/29/1998	NAFTA–2,530	Men's and boys' knit shirts.
Sakhina Fashions (Co.)	Murphy, NC	07/28/1998	NAFTA–2,531	Denim jeans.
General Electric (Wkrs)	Schenectady, NY	07/28/1998	NAFTA–2,532	Steam/gas turbine & generator components.
Siebe Automotive—Robertshaw Controls (Wkrs).	Algood, TN	07/29/1998	NAFTA–2,533	Thermostat line
Key Tronic (Co.)	Spokane, WA	07/22/1998	NAFTA–2, 534	Keyboards for computers.
Procter & Gamble (Co.)	Greenville, NC	07/30/1998	NAFTA–2,535	Always feminine hygiene products.

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Marwi USA (Co.)	Only, IL	07/31/1998	NAFTA–2,536	Bicycles.
Lasting Products (Wkrs)	Dallas, TX	08/03/1998	NAFTA–2,537	Decorative accessories (glass, ceramic).
Whisper Knits (Co.)	Clinton, NC	07/29/1998	NAFTA–2,538	Boys' and men's knit shirts.
Inter Lake Paper (PMWU)	Kimberly, WI	07/31/1998	NAFTA–2,539	Coated freesheet paper grades.
Sonoco Products (Wkrs)	Holyoke, MA	08/03/1998	NAFTA–2,540	Paper machine.
Hewlett-Packard (Co.)	Loveland, CO	08/07/1998	NAFTA–2,541	Computer tape back-up.
Okie Apparel—Dash America (Wkrs)	Hugo, OK	08/04/1998	NAFTA–2,542	Sewing operations.
R.S.I. Home Products—General Marble (Wkrs).	Lincolnton, NC	08/06/1998	NAFTA–2,543	Bathroom cabinet doors.
Oneita Industries (Co.)	Charleston, SC	08/06/1998	NAFTA–2,544	T-shirt sewing.

[FR Doc. 98–22435 Filed 8–19–98; 8:45 am]
BILLING CODE 4510–30–M

MERIT SYSTEMS PROTECTION BOARD

Privacy Act of 1974; Proposed New System of Records

AGENCY: Merit Systems Protection Board.

ACTION: Privacy Act of 1974; Notice of New System of Records.

SUMMARY: As required by the Privacy Act of 1974, 5 U.S.C. 552a, the Merit Systems Protection Board (Board) is publishing a notice proposing establishment of a new system of records. This new records system is the Security Management Records System. These records are used to safeguard MSPB personnel and office space, and to document incidents where security is breached.

DATES: Comments must be received on or before September 21, 1998. This system of records becomes effective as proposed, without further notice, on October 19, 1998, unless comments are received which would result in a contrary determination. Comments may be mailed to the Merit Systems Protection Board, Office of the Clerk of the Board, 1120 Vermont Avenue, NW., Washington, DC 20419, or faxed to the same address on 202–653–7130.

Electronic mail comments may be sent via the Internet to mspb@mspb.gov.

FOR FURTHER INFORMATION CONTACT: Michael H. Hoxie, Office of the Clerk of the Board, 202–653–7200.

Dated: August 17, 1998.

Robert E. Taylor,

Clerk of the Board.

MSPB/INTERNAL–6

SYSTEM NAME:

Security Management Records

SYSTEM LOCATION:

Financial and Administrative Management Division, Merit Systems Protection Board (MSPB), 1120 Vermont Avenue, NW, Washington, DC 20419.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the MSPB, employees of contractors doing business with the MSPB, and visitors to MSPB office space.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of cardkey access logs containing records of access of individual employees, contractors and visitors as they move about MSPB office space using cardkeys issued by the Board.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1204.

PURPOSE(S):

These records are used to safeguard MSPB personnel and office space, and to document incidents where security is breached.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES.

There are no disclosures of this information outside of the MSPB for purposes other than those for which the information was collected, including use by Federal, state and local law enforcement agencies in the event of a violation of law.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in FAMD on a personal computer with standard password access security.

RETRIEVABILITY:

Records are retrieved by the names of the individuals on whom they are maintained, and by automatically assigned control numbers.

SAFEGUARDS:

Access to these records is limited to persons whose official duties require such access. Automated records are protected from unauthorized access through password identification procedures and other system-based protection methods.

RETENTION AND DISPOSAL:

Records documenting access to office space are retained for 90 days and one month's data will be purged leaving 60-days data on the computer at any one time. Computer files will be destroyed by deletion.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Financial and Administrative Management Division, Merit Systems Protection Board, 1120 Vermont Avenue, NW, Washington, DC 20419.

NOTIFICATION PROCEDURES:

Individuals wishing to inquire whether this system of records contains information about them should contact the Clerk of the Board and must follow the MSPB Privacy Act regulations at 5 CFR 1205.11 regarding such inquiries.

RECORD ACCESS PROCEDURES:

Individuals requesting access to their records should contact the Clerk of the Board. Such requests should be addressed to the Clerk of the Board, Merit Systems Protection Board, 1120 Vermont Avenue, NW, Washington, DC 20419. Requests for access to records must follow the MSPB Privacy Act regulations at 5 CFR 1205.11.

CONTESTING RECORD PROCEDURES:

Individuals requesting amendment of records should write the Clerk of the Board. Requests must follow the MSPB Privacy Act regulations at 5 CFR 1205.21.

RECORD SOURCE CATEGORIES:

The individual to whom the information applies; the records maintained in the Board's Financial and Administrative Management Division.

[FR Doc. 98–22450 Filed 8–19–98; 8:45 am]

BILLING CODE 7400–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 98–108]

NASA Advisory Council, Advisory Committee on the International Space Station (ACISS); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Advisory Committee on the International Space Station.

DATES: Wednesday, September 2, 1998, from 8:00 a.m. until 5:30 p.m.; and Thursday, September 3, 1998 from 8:00 a.m. until 11:30 a.m. and from 1:00 p.m. until 2:00 p.m.

ADDRESSES: Lyndon B. Johnson Space Center, Building 1, Room 966, Houston, TX 77058–3696.

FOR FURTHER INFORMATION CONTACT: Mr. W. Michael Hawes, Code M4, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0242.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to seating capacity of the room, from 8:00 a.m. until 5:30 p.m. on Wednesday, September 2, 1998. The meeting will reconvene at 8:00 a.m. until 11:30 a.m. and from 1:00 p.m. until 2:00 p.m. Thursday, September 3, 1998.

The agenda for the meeting is as follows:

–ISS Current Status
–ISS Utilization Overview
–ISS Research Program Managers
–ISS Software Independent Verification and Validation
–ISS PrePlanned Program Improvement

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Matthew Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 98–22361 Filed 8–19–98; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Advanced Computational Infrastructure and Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Advanced Computational Infrastructure & Research (#1185).

Date and Time: September 8, 1998, 8:30 am to 5:00 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Suite 1150, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. John Van Rosendale, Program Director, Advanced Computational Research Program, Suite 1122, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 (703) 306–1962.

Purpose of Meeting: To provide recommendations and advice concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals in the Advanced Computational Research Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Reason for Closing: During the closed session, the Committee will be reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they are disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–22440 Filed 8–19–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Engineering, Committee of Visitors, Division of Engineering Education and Centers; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Committee for Engineering, Committee of Visitors, Division of Engineering Education and Centers (1170)

Date & Time: September 9, 9:00 am–5:00 and September 10 and 11, 8:30 am–5:00 pm

Place: NSF, 4201 Wilson Boulevard, Arlington, VA (see Agenda for Rooms)

Type of Meeting: Part-Open (see Agenda, below)

Contact Person: Dr. William S. Butcher, Senior Engineering Advisor, Division of Engineering Education and Centers, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 306–1380.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including program evaluation, GPRA assessments, and access to privileged materials.

Agenda: Closed: September 9, 1998, 9:00 am–5:00 pm—To review the merit review processes covering funding decisions made during the immediately preceding three/four fiscal years of the Division of Engineering Education and Centers' programs.

Open: September 10, 1998 from 8:30 am–5:00 pm and September 11, 1998 8:30 am to 3:00 pm—To assess the results of NSF program investments in the Engineering Education and Centers Division. This shall involve a discussion and review of results focused on NSF and grantee outputs and related outcomes achieved or realized during the preceding three/four fiscal years. These results may be based on NSF grants or other investments made in earlier years. The Committee will meet as a whole or in sub-groups, as required.

Sub-Group Meeting Locations

[Room # when COV meets as a whole]

	9/9/98	9/10/98	9/11/98
Engineering Research Centers	390	580	580
Engineering Education (Coalitions/CRCD/Action Agenda)	365	530	530
Industry/University/Cooperative Research Centers—(IUCRC/SIUCRC)	730	1020	630
Human Resources	770	1295/1280	680

Dated: August 17, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–22439 Filed 8–19–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Thursday, August 27, 1998.

PLACE: NTSB Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

6997A Aviation Accident Report—In-Flight Icing Encounter and Uncontrolled Collision with Terrain, COMAIR Flight 3272, Embraer EMB–120RT, N265CA, Monroe, Michigan, January 9, 1997.

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

FOR MORE INFORMATION CONTACT: Rhonda Underwood, (202) 314–6065.

Dated: August 18, 1998.

Rhonda Underwood,

Federal Register Liaison Officer.

[FR Doc. 98–22558 Filed 8–18–98; 3:11 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

Use of PRA in Plant-Specific Reactor Regulatory Activities: Final Regulatory Guide and Standard Review Plan Section; Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series, along with its conforming section of the Standard Review Plan. Regulatory Guide 1.174, ''An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis,'' describes a method acceptable to the NRC staff for assessing the nature and impact of changes to a plant's licensing basis when the licensee chooses to support these changes with risk information. The accompanying Standard Review Plan Chapter 19, ''Use of Probabilistic Risk Assessment in Plant-Specific, Risk-Informed Decisionmaking: General Guidance,'' conforms to the guide to provide guidance to the NRC staff in reviewing such changes.

In June 1997, the Nuclear Regulatory Commission issued for public comment a series of draft regulatory guides and Standard Review Plan sections and a draft NUREG document addressing the use of PRA in support of risk-informed regulatory activities. The preparation of these documents followed from the Commission's Policy Statement of August 16, 1995, on the use of PRA methods in nuclear regulatory activities (60 FR 42622). The draft guidance documents were being developed to provide acceptable approaches for using probabilistic risk assessment (PRA) information in support of plant-specific changes to plant licensing bases. The use of such PRA information and guidance by power reactor licensees is voluntary, and alternative approaches may be proposed.

The Commission conducted a workshop on August 11–13, 1997, during the comment period, to provide an overview of the draft documents, to answer questions regarding their intended application, and to solicit comments and suggestions. Comments received from the workshop have been considered in preparing this final general regulatory guide (1.174) and its accompanying Standard Review Plan (Chapter 19) for risk-informed applications. Comments received from the workshop on application-specific guidance documents for technical specifications, inservice testing, and graded quality assurance are currently being considered. These guidance documents will be issued at a later date.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Single copies of regulatory guides, both active and draft, and draft NUREG documents may be obtained free of charge by writing the Reproduction and Distribution Services Section, OCIO, USNRC, Washington, DC 20555–0001; or by fax to (301) 415–2289; or by email to GRW1@NRC.GOV. Active guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161. Copies of active and draft guides and the Standard Review Plan are available for inspection or copying for a fee from the NRC Public Document Room at 2120 L Street NW., Washington, DC; the PDR's mailing address is Mail Stop LL–6, Washington, DC 20555; telephone (202) 634–3273; fax (202) 634–3343. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

I. Background

On August 16, 1995, the Commission published in the **Federal Register** a final policy statement on the Use of Probabilistic Risk Assessment Methods in Nuclear Regulatory Activities (60 FR 42622). The policy statement included the following policy regarding NRC's expanded use of PRA:

1. The use of PRA technology should be increased in all regulatory matters to the extent supported by the state-of-the-art in PRA methods and data and in a manner that complements the NRC's deterministic approach and supports the NRC's traditional defense-in-depth philosophy.

2. PRA and associated analyses (e.g., sensitivity studies, uncertainty analyses, and importance measures) should be used in regulatory matters, where practical within the bounds of the state-of-the-art, to reduce unnecessary conservatism associated with current regulatory requirements, regulatory guides, license commitments, and staff practices. Where appropriate, PRA should be used to support proposals for additional regulatory requirements in accordance with 10 CFR 50.109 (Backfit Rule). Appropriate procedures for including PRA in the process for changing regulatory requirements should be developed and followed. It is, of course, understood that the intent of this policy is that existing rules and regulations shall be complied with unless these rules and regulations are revised.

3. PRA evaluations in support of regulatory decisions should be as realistic as practicable and appropriate supporting data should be publicly available for review.

4. The Commission's safety goals for nuclear power plants and subsidiary numerical objectives are to be used with appropriate consideration of uncertainties in making regulatory judgments on the need for proposing and backfitting new generic requirements on nuclear power plant licensees.

It was the Commission's intent that implementation of this policy statement would improve the regulatory process in three areas:

1. Enhancement of safety decision making by the use of PRA insights.

2. More efficient use of agency resources, and

3. Reduction in unnecessary burdens on licensees.

In parallel with the development of Commission policy on uses of risk assessment methods, the NRC developed an agency-wide implementation plan for applying PRA insights within the regulatory process (SECY–95–079). This implementation plan included tasks to develop a series of regulatory guides and standard review plans (SRPs) on general guidance, inservice inspection (ISI), inservice testing (IST), technical specifications (TS), and graded quality assurance (GQA).

The general regulatory guide, Regulatory Guide 1.174, and its accompanying SRP section, Chapter 19, are intended to help implement the Commission's August 1995 policy on the use of risk information in the regulatory process. These two general documents are the first in the series of risk-informed guidance documents. Together, they provide the basic framework for an approach acceptable to the NRC staff for use by power reactor licensees in preparing proposals for plant-specific changes to their licensing bases using risk information. Alternative approaches may be proposed. Application-specific guidance documents for risk-informed technical specifications, inservice testing, and graded quality assurance are currently being revised to address the public comments that were received; these documents are scheduled to be issued later in 1998. Guidance for inservice inspection is also being developed on a later schedule.

II. Public Comment Summary and Resolution

The public comments on the draft regulatory guidance documents on risk-informed applications were due by September 30, 1997. In addition to comments received at the workshop, the NRC staff received approximately 40 sets of written comments. Some of the more extensive comments were provided by the Nuclear Energy Institute (NEI), in a letter dated September 29, 1997, which provided comments on behalf of the nuclear industry. In its letter, NEI commended the NRC staff for its efforts in developing the draft documents, stating that the industry recognized the significance of the drafts in articulating a framework for the use of risk information in regulatory decisionmaking and that the documents represent a milestone in the evolution of the regulatory process. In addition, the NEI letter expressed concern regarding four policy issues; NEI believes the resolution of these issues is essential to the continued viability and the expansion of risk-informed regulation. The issues cited by NEI were overall cost benefit, use of numerical acceptance guidelines, treatment of uncertainty, and PRA attributes and quality considerations. Each of these areas highlighted by NEI will be addressed in the following discussion of the principal issues.

Comment letters were also received from the Electric Power Research Institute (EPRI), the American Society of Mechanical Engineers (ASME), the owners groups for the four reactor vendors (General Electric, Westinghouse, Combustion Engineering, and Babcock and Wilcox), one vendor (Westinghouse), 18 electric utilities, one national laboratory (Oak Ridge), five technical organizations, five other private industry organizations or individuals, and two anonymous commenters. The following discussion addresses the resolution of the principal issues raised by the commenters. A more complete discussion of the comments received overall is given in the attachment to a memorandum from Mr. Mark A. Cunningham (Chief, Probabilistic Risk Analysis Branch, Division of Systems Technology, Office of Nuclear Regulatory Research) to Mr. M. Wayne Hodges (Director, Division of Systems Technology, Office of Nuclear Regulatory Research) dated January 7, 1998, which is available in the NRC's Public Document Room. The discussion in the attachment covers the resolution of the NRC's specific requests for comments included in the **Federal Register** notice for the workshop (62 FR 34321), other issues raised by the commenters, and the principal issues discussed in this announcement.

Principal Issues

1. Use of 10^{-4} Per Reactor-Year Core Damage Frequency as an Acceptance Guideline

Issue: Comments were received indicating that the use of 10^{-4} per reactor-year core damage frequency (10^{-4}/RY CDF) as an acceptance guideline was overly conservative, that the Commission's Safety Goal Policy quantitative health objectives (QHOs) would be more appropriate for use as goals, and that it was not clear how closely staff reviewers would hold applications to this numerical criteria.

Resolution: Revised Section 2.2.4, ''Acceptance Guidelines,'' of Regulatory Guide 1.174 addresses the use of 10^{-4}/RY CDF as a guideline in evaluating the acceptability of risk-informed applications. The use of 10^{-4}/RY CDF as a subsidiary goal is consistent with past Commission guidance. The guidelines for assessing risk, contained in the regulatory guide and SRP, are based upon the QHOs in the Commission's Safety Goal Policy and upon previous Commission guidance related to implementation of the Safety Goal Policy and regulatory analysis guidelines (Revision 2 of NUREG/BR–0058, ''Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission,'' USNRC, November 1995). Specifically, the guideline value of 10^{-4}/RY for CDF is based upon a June 15, 1990, memorandum from the Commission to the NRC staff on implementation of the Safety Goal Policy, which established a 10^{-5}/RY CDF as a benchmark objective for accident prevention. The guideline value on Δ CDF of 10^{-5}/RY is based upon the guidance in the Commission's regulatory analysis guidelines, which establish 10^{-5}/RY Δ CDF as a cutoff below which the significance of safety issues is not large enough to warrant backfit analysis, assuming a reasonable accident mitigation capability.

Accident mitigation capability is addressed via guidelines on large early release frequency (LERF). The guideline value of 10^{-5}/RY for LERF contained in Regulatory Guide 1.174 is based upon risk analysis results presented in NUREG–1150 (''Severe Accident Risks: An Assessment for Five U.S. Nuclear Power Plants,'' Vol. 3, USNRC, January 1991), which calculated offsite health risks for five nuclear power plants and compared them to the Safety Goal QHOs. Analyses for all five plants calculated health risks well below the QHOs. However, if the results of this analysis were adjusted so that the offsite health risks just met the early fatality QHO (the most limiting QHO), with allowance for the unanalyzed modes of operation (shutdown), and in some cases external events, a corresponding LERF value of 10^{-5}/RY would result for those plants whose calculated offsite health risks are closest to the QHOs.

Site-to-site variations in LERF were judged to be not a large factor (this was also confirmed in a study reported by the Advisory Committee for Reactor Safeguards in a September 19, 1997, letter to Chairman Jackson), and thus a single value for all plants is used. The guideline value of 10^{-6}/RY for ''LERF is based upon the regulatory analysis guidelines that, when used in conjunction with the Δ CDF guidelines discussed above, establish a cutoff below which the significance of safety issue is not large enough to warrant backfit analysis.

Figures 3 and 4 of Section 2.2.4 in Regulatory Guide 1.174 illustrate acceptance guidelines for CDF and

LERF and indicate that for each of these metrics, three regions have been identified for use in screening the acceptability of proposed changes in licensing bases. Region III, shown in the figures and discussed in the text of Regulatory Guide 1.174, has been identified as representing a sufficiently low CDF or LERF increase that, in general, program changes associated with this region may be permitted without a detailed assessment of the baseline CDF/LERF. As discussed in Regulatory Guide 1.174, if there are indications that the baseline CDF or LERF is above the guideline values, additional evaluation would be needed even though the calculated changes in CDF or LERF were small and in Region III. In Section 2.2.5, ''Comparison of PRA Results with the Acceptance Guidelines,'' it is stated that the acceptance guidelines (lines separating the regions) are not to be interpreted in an overly prescriptive manner and that they are intended to provide an indication, in numerical terms, of what is considered acceptable. Graduated shading has been added to the guideline figures to indicate regions in which proposed changes will be subject to gradually more intensive NRC technical and management review. Regarding the use of the QHOs, it is stated that the use of the QHOs in lieu of LERF in support of risk-informed applications is an acceptable approach provided that appropriate consideration is given to the methods and assumptions used in the analysis and in the treatment of uncertainties. Also, in Section 2.2.6, ''Integrated Decisionmaking,'' it is noted that Level 3 PRA information can be submitted and will be considered in support of those cases in which increased NRC management attention is needed during the review (e.g., when the calculated CDF/LERF changes and baseline values are close to the acceptance guidelines).

2. Definition of Risk Neutral

Issue: A number of comments were received indicating a need for a definition of risk neutral applications, and indicating that increased NRC management and technical review should not be required for risk increases below some threshold.

Resolution: See responses to Issues Number 1 and 3 addressing very small increases in risk.

3. Allowance for Very Small Increases in Risk

Issue: Comments stated that facilities with CDFs greater than 10^{-4}/RY should be allowed small risk increases and that the level of effort and information required in submittals was excessive for small risk increases.

Resolution: Section 2.2.4, ''Acceptance Guidelines,'' addresses the treatment of small increases in risk using the metrics of CDF and LERF. As noted in the discussion for Issue Number 1, this section has been revised and now includes a special category of application in which the estimated level of CDF/LERF increase associated with the application is sufficiently low that, in general, program changes associated with this region may be permitted without a detailed assessment of the baseline CDF/LERF. This category is displayed in Figures 3 and 4 of Section 2.2.4.

4. Treatment of Uncertainties

Issue: Comments stated that the inclusion of uncertainty could lead to confusion regarding the decision criteria and that the use of PRA inherently takes care of uncertainty.

Resolution: Several approaches were reconsidered for the treatment of uncertainties, and it was concluded that the approach described in Draft Regulatory Guide DG–1061 appeared to be the most practical and useful approach at this time, although the text needed to be clarified. Uncertainty is addressed in Section 2.2.5, ''Comparison of PRA Results with the Acceptance Guidelines,'' in Regulatory Guide 1.174. In this section, it is noted that it is important, when interpreting the results of a PRA, to develop an understanding of the impact of a specific assumption or choice of model on the prediction. PRA only inherently takes care of those uncertainties modeled in the analysis. Others must be qualitatively or quantitatively addressed. The impact of using alternative assumptions and models may be reasonably evaluated using appropriate sensitivity studies. The major sources of uncertainty should be understood, but it is not necessary, in all cases, to perform elaborate uncertainty evaluations (e.g, propagation of uncertainty distributions).

5. Quality of PRA

Issue: Numerous comments were received indicating concern that the PRA standards included in Draft NUREG–1602, ''The Use of PRA in Risk-Informed Applications'' (USNRC, June 1997), were unnecessarily high for many risk-informed applications. The comments also indicated that the requirements for PRA quality were not clear and that graded levels of PRA quality should be provided for different applications.

Resolution: The issue of PRA quality is addressed in the revised Section 2.2.3, ''Scope, Level of Detail, and Quality of the PRA,'' of Regulatory Guide 1.174. In this section it is stated that PRA quality should be commensurate with the application for which it is intended and with the role that PRA results would play in the integrated decision process. A PRA used in a risk-informed application should be performed in a manner that is consistent with accepted practices, and it should be commensurate with the scope and level of detail, which are also discussed in Section 2.2.3 of Regulatory Guide 1.174. The NRC has not developed its own formal standard nor endorsed an industry standard for PRA quality, but it supports such a standard and expects that one will be available in the future. Draft NUREG–1602 was cited in Draft Regulatory Guide DG–1061 as a potential reference for PRA methods that could be used to support regulatory decisionmaking. There were a number of comments indicating that the ''PRA standard'' represented by Draft NUREG–1602 was excessive for many risk-informed applications that did not require sophisticated or state-of-the-art methods. While Draft NUREG–1602 was not intended to be used universally as a PRA standard, it is acknowledged that it would be more useful to have a standard that addresses the differing needs for PRA scope and detail depending on the application. Accordingly, Draft NUREG–1602 is no longer referenced in Regulatory Guide 1.174, and a separate discussion on PRA quality has been added, including the use of peer reviews or PRA cross comparisons. PRA peer review activities such as those presently being done under various industry PRA certification programs are examples. Peer review, PRA certification, or cross comparison do not replace a staff review in its entirety, and licensees need to justify why the PRA is adequate for the proposed application. In the interim, until a consensus PRA standard is available, the NRC staff will evaluate PRAs submitted in support of specific applications using the guidelines given in Chapter 19 of the Standard Review Plan.

6. Low Safety Significant Components Monitoring Needs

Issue: Comments indicated that the draft guidance placed too much importance on monitoring low safety significant components (LSSCs). The comments also indicated that monitoring performed under the Maintenance Rule should be acceptable for risk-informed programs.

Resolution: Section 2.3, ''Element 3: Define Implementation and Monitoring Program,'' has been revised to clarify the need for monitoring LSSCs. While details for monitoring LSSCs will be provided in the application-specific guidance documents, the following principal needs should be satisfied for all applications. Monitoring programs should be proposed that are capable of adequately tracking the performance of equipment that, when degraded, could alter the conclusions that were key to supporting the acceptance of the program. It follows that monitoring programs should be structured such that SSCs are monitored commensurate with their safety significance. Monitoring that is performed as a part of the Maintenance Rule implementation can be used when the monitoring performed under the Maintenance Rule is sufficient for the SSCs affected by the risk-informed application.

7. Shutdown and Temporary Plant Condition

Issue: Several commenters noted that the guidelines proposed did not distinguish between power operation and shutdown and did not address temporary plant conditions. Separate guidelines for these conditions were suggested.

Resolution: In response to these comments, Section 2.2.4 of Regulatory Guide 1.174 has been expanded to address the shutdown condition. Specific guidance for temporary plant conditions has not been added, but will be considered in a future update of the guide.

8. Documentation Needs

Issue: Many commenters stated that the requirements in the drafts for documentation were excessive and unmanageable, particularly for proposals involving small changes in risk. It was also suggested that certain items of documentation should not be required to be submitted for the staff's initial review, provided that more complete documentation was maintained at the utility for review as necessary.

Resolution: In response to the comments received, Section 3 of Regulatory Guide 1.174 has been reevaluated to determine whether all items listed in the draft were necessary. As a result, a number of documentation items, particularly with regard to the PRA, have been removed in the final regulatory guide, and the SRP has been revised to be consistent.

9. Overall Cost Benefit

Issue: This issue was highlighted by NEI in its comment letter and was also included in a number of other comment letters. A concern was expressed that the resources required by licensees to prepare proposals and to subsequently implement NRC-approved risk-informed changes to the CLB would be too high considering the benefit in terms of burden reduction.

Resolution: The question of how cost beneficial it would be for utilities to prepare proposals for risk-informed changes to their licensing bases and to implement such programs after review and approval by the NRC will only be fully answered after the industry and the NRC gain further experience in these types of programs. Certainly, the pilot plant program proposals, which are currently being reviewed for application to technical specifications, graded quality assurance, and inservice testing and inspection, will provide useful insights into the potential cost savings of these programs. While it is not the NRC's responsibility to ensure that such risk-informed programs are cost beneficial, it is believed that such programs can enhance safety by better focusing utility and NRC resources on the most important safety areas in reactors; this philosophy is consistent with the Commission's Policy Statement on the use of PRA methods in nuclear regulatory activities. During the preparation of this final regulatory guide and standard review plan section, attention was paid to areas in which needs for utility resources could be reduced, thus the cost beneficial aspects of the risk-informed process were improved while still maintaining an appropriate level of safety. Examples in Regulatory Guide 1.174 are Section 2.2.3, ''Scope, Level of Detail, and Quality of the PRA,'' which states that the level of detail required to support an application can vary depending on the application, and not all applications require an expensive, detailed PRA; Section 2.2.4, ''Acceptance Guidelines,'' identifies a special category of risk-informed proposal as having a sufficiently low estimated risk increase that, generally, the proposal would be considered without a detailed assessment of baseline CDF/LERF (i.e., Region III of Figures 3 and 4 in Regulatory Guide 1.174); and in Section 3, ''Documentation,'' where some of the items that were identified in the draft guide and SRP as being needed in program submittals have been removed since they were not believed necessary.

(5 U.S.C. 552(a))

Dated at Rockville, MD, this 31st day of July 1998.

For the Nuclear Regulatory Commission.

Ashok C. Thadani,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 98–22412 Filed 8–19–98; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission For OMB Review; Comment Request for Review of a Revised Information Collection: Form RI 92–19

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for review of a revised information collection. RI 92–19, Application for Deferred or Postponed Retirement: Federal Employees Retirement System (FERS), is used by separated employees to apply for either a deferred or a postponed FERS annuity benefit.

Approximately 1,272 forms are completed annually. We estimate it takes approximately 60 minutes to complete the form. The annual estimated burden is 1,272 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to mbtoomey@opm.gov

DATES: Comments on this proposal should be received on or before September 21, 1998.

ADDRESSES: Send or deliver comments to—

John Crawford, Chief, FERS Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3313, Washington, DC 20415.

and

Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Donna G. Lease, Budget & Administrative Services Division (202) 606–0623.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 98–22363 Filed 8–19–98; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23391; 812–10842]

Diversified Investors Portfolios, et al.; Notice of Application

August 17, 1998.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of Application for an order under the Investment Company Act of 1940 (the ''Act'').

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) of the act from the provisions of section 15(a) of the Act and rule 18f–2 under the Act.

SUMMARY OF APPLICATION: Applicants seek an order to permit them to enter into and materially amend contracts with subadvisers without shareholder approval.

APPLICANTS: Diversified Investors Portfolios (''DIP'') and Diversified Investment Advisors, Inc. (the ''Manager'').

FILING DATE: The application was filed on October 28, 1997, and amended on April 20, 1998. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving the applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 8, 1998, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writers' request, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 4 Manhattanville Road, Purchase, New York 10577, Attention: Robert F. Colby.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Pisto, Senior Counsel, at (202) 942–0527, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. (202) 942–8090).

Applicants' Representations

1. DIP is organized as a New York trust and is registered under the Act as an open-end management investment company. DIP currently consists of thirteen portfolios (the ''Core Portfolios''). Beneficial interests in the Core Portfolios are issued solely in private placement transactions that do not involve any ''public offering'' within the meaning of Section 4(2) of the Securities Act of 1933 (the ''Securities Act''). Investments in the Core Portfolios may only be made by investment companies, insurance company separate accounts (including accounts registered under the Act and accounts not so registered), common or commingled trust funds or similar organizations or entities that are ''accredited investors'' within the meaning of Regulation D under the Securities Act. Each Core Portfolio serves as a master fund in a master/feeder structure. Each registered investment company (or series thereof) which invests its investable assets in a Core Portfolio is referred to as a feeder fund (''Feeder Fund'').

2. DIP has entered into investment management agreements with the Manager with respect to each of the Core Portfolios (each a ''Management Agreement''). The Manager is registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). Under the terms of the Management Agreements, the Manager supervises the overall administration of the Core Portfolios, providing or overseeing the provision of all business, administrative, investment advisory and, if applicable, portfolio management services. For its services, the Manager receives a management fee at an annual rate based on a percentage of the applicable Core Portfolio's average net assets.

3. The Manager seeks to enhance performance of the Core Portfolios and reduce risk by selecting one or more ''specialist'' subadvisers (''Subadvisers''). The Manager selects Subadvisers based on a rigorous process which includes researching each Subadviser's asset class, track record, organizational structure, management team, consistency of performance, assets under management, and other factors. The Manager continuously monitors a Subadviser's performance on both a quantitative and qualitative basis.

4. The specific investment decisions for each Core Portfolio are made by one or more Subadvisers, each of which has discretionary authority to invest all or a portion of the assets of the particular Core Portfolio, subject to general supervision by the Manager and DIP's Broad of Trustees (''Board''). Each Subadviser is or will be registered under the Advisers Act.[1] Each of the Subadvisers receives a subadvisory fee from the Manager at an annual rate based on a percentage of the applicable Core Portfolio's average net assets. Of the thirteen Core Portfolios, eleven currently have one Subadviser, one has two Subadvisers, and one has four Subadvisers.

5. Applicants request an order that would permit the Manager, subject to the oversight by the Board, to enter into and materially amend agreements with Subadvisers (''Subadvisory Agreements'') without shareholder approval. Applicants believe that this relief would enable the Core Portfolios to operate more efficiently and consistently with the Manager-Subadviser structure.

Applicants' Legal Analysis

1. Section 15(a) of the Act makes it unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by a majority of the investment company's outstanding voting securities. Rule 18f–2 provides that each series or class of stock in a series company must approve the matter if the Act requires shareholder approval.[2]

2. Section 6(c) of the Act authorizes the Commission to exempt any person, security, or transaction from any provision of the Act to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

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[1] Each Subadviser will be registered under the Advisers Act unless it is a ''bank'' as defined in the advisers Act or is otherwise excluded from the definition of ''investment adviser'' under section 202(a)(11) of the Advisers Act.

[2] In the case of the Core Portfolios, which are ''master'' funds in a master/feeder structure, shareholder approval requirements under section 15(a) and rule 18f–2 also are governed by the voting provisions set forth in section 1 12(d)(1)(E) of the Act.

3. Applicants request an order under section 6(c) that would exempt them from section 15(a) and rule 18f–2 to permit the Manager, subject to approval by the Board, to enter into and materially amend Subadvisory Agreements without shareholder approval. Applicants request that the relief extend to the existing Core Portfolios as well as future series of DIP and any other registered open-end management investment company advised by the Manager or a person controlling, controlled by, or under common control with the Manager that operates in substantially the same manner as DIP with respect to the Manager-Subadviser structure and complies with the terms and conditions of the application (''Future Fund'').

4. Applicants state that, from the perspective of the investor in a Core Portfolio or Feeder Fund, the role of the Subadviser is comparable to that of the individual portfolio managers employed by other investment advisory firms. The Subadvisers are concerned only with selection of portfolio investments in accordance with a Core Portfolio's investment objective and policies and have no broader supervisory, management or administrative responsibilities with respect to the Core Portfolio. Applicants state that the Core Portfolios thus offer the Manager/Subadviser structure to allow investors the opportunity to invest their assets in a selection of investment disciplines managed by their respective Subadvisers. The Manager, based on its own analyses and experience, determines which Subadvisers are likely to make specific portfolio securities selections which, in the aggregate, will achieve the desired and defined objectives of a particular investment discipline under existing market conditions. Investors also obtain the Manager's constant supervision of these Subadvisers, so that new Subadvisers can be introduced in response to changing market conditions or a Subadviser's performance, in each case in an attempt to improve the overall performance of the Core Portfolios.

5. Applicants believe that investors in a Feeder Fund or Core Portfolio are, in effect, electing to have the Manager select one or more Subadvisers best suited to achieve that Core Portfolio's investment objective. Part of such investor's investment decision is a decision to have those selections made by a professional management organization, such as the Manager, with substantial experience in making such evaluations and selections (or in recommending the termination of Subadvisers, as deemed appropriate by the Manager). Applicants thus believe that the requested relief will allow the Core Portfolio to operate more efficiently and in accordance with investor expectations. Applicants also note that the Management Agreement will remain subject to the shareholder voting requirements of section 15(a).

Applicants' Conditions

1. Before a Core Portfolio may rely on the order requested in the application, the operation of the Core Portfolio in the manner described in the application will be approved by a majority of the outstanding voting securities of the Core Portfolio, within the meaning of the Act, pursuant to voting instructions provided by shareholders of those Feeder Funds investing in such Core Portfolio (or by the unit holders in the case of Feeder Funds that are insurance company separate accounts) that are registered under the Act or other voting arrangements that comply with section 12(d)(1)(E)(iii)(aa) of the Act, if applicable. Before a Future Fund may rely on the order requested in the application, the operation of the Future Fund in the manner described in the application will be approved by a majority of the outstanding voting securities of the Future Fund, within the meaning of the Act, pursuant to voting instructions provided by the shareholders of the Future Fund (or by unit holders in the case of a Future Fund that is an insurance company separate account registered under the Act), in accordance with section 12(d)(1)(E)(iii)(aa) of the Act, or in the case of a Future Fund whose shareholders or unit holders, as the case may be, purchase shares in a public offering on the basis of a prospectus containing the disclosure contemplated by Condition 2 below, by the initial shareholder(s) before the shares of the Future Fund are offered to the public.

2. A Feeder Fund's prospectus, DIP's or Future Fund's offering documents and, if applicable, DIP's or Future Fund's prospectus, will disclose the existence, substance and effect of any order granted pursuant to this application. In addition, the Feeder Funds, the Core Portfolios and Future Funds will hold themselves out as employing the Manager/Subadviser approach described in the application. A Feeder Fund's prospectus, DIP's or Future Fund's offering documents and, if applicable, DIP's or Future Fund's prospectus, will prominently disclose that the Manager has ultimate responsibility to oversee the Subadvisers and recommend their hiring, termination, and replacement.

3. The Manager will provide management and administrative services to the core Portfolios and, subject to the review and approval by the Board, will, as necessary: set each Core Portfolio's overall investment strategies; select Subadvisers; allocate and reallocate, as appropriate, each Core Portfolio's assets among Subadvisers; monitor and evaluate Subadviser performance; and oversee Subadviser compliance with the investment objective, policies and restrictions of the applicable Core Portfolio.

4. At all times, a majority of the Board will be persons who are not ''interested persons'' of DIP, within the meaning of section 2(a)(19) of the Act (the ''Independent Trustees''), and the nomination of new or additional Independent Trustees will be placed within the discretion of the then existing Independent Trustees.

5. Neither the Manager nor a Core Portfolio will enter into a Subadvisory Agreement with any subadviser that is an affiliated person of DIP or the Manager, within the meaning of section 2(a)(3) of the Act (each an ''Affiliated Subadviser''), other than by reason of serving as Subadviser to one or more Core Portfolios, without such Subadvisory Agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Core Portfolio pursuant to voting instructions provided by shareholders of those Feeder Funds investing in such Core Portfolios (or by unit holders in the case of Feeder Funds that are insurance company separate accounts) that are registered under the Act or other voting arrangements that comply with 12(d)(1)(E)(iii)(aa) of the Act, if applicable.

6. When a Subadviser change is proposed for a Core Portfolio with an Affiliated Subadviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the minutes of the meetings of the Board that such change is in the best interests of the applicable Core Portfolio and its investors (including, in the case of a Core Portfolio offered to insurance company separate accounts, the unit holders of any separate account for which that Core Portfolio serves as a funding medium) and does not involve a conflict of interest from which the Manager or the Affiliated Subadviser derives an inappropriate advantage.

7. No director, trustee or officer of DIP or the Manager will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by the director, trustee or officer) any interest in a Subadviser except for ownership of (i) interests in the Manager

or any entity that controls, is controlled by, or is under common control with the Manager; or (ii) less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Subadviser or an entity that controls, is controlled by, or is under common control with a Subadviser.

8. Within 75 days of the hiring of any new Subadviser, the Manager will furnish the shareholders of the applicable Core Portfolio and Feeder Funds (including in the case of a Feeder Fund that is an insurance company separate account, the unit holders of that separate account) all the information that would have been included in a proxy statement. Such information will include any changes in such information caused by the addition of a new Subadviser. To meet this obligation, the Manager will provide the shareholders of the applicable Core Portfolios and Feeder Funds (including in the case of a Feeder Fund that is an insurance company separate account, the unit holders of that separate account) with an information statement meeting the requirements of Regulation 14C and Schedule 14C under the Securities Exchange Act of 1934 (the ''Exchange Act''), as well as the requirements of Item 22 of Schedule 14A under the Exchange Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–22434 Filed 8–19–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26906]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

August 14, 1998.

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 under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments 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 8, 1998, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should 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 September 8, 1998, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

System Energy Resources, Inc. (70–8511)

Entergy Corporation (''Entergy''), P.O. Box 61005, New Orleans, Louisiana 70161, a registered holding company, Entergy's electric generating subsidiary company, System Energy Resources, Inc. (''SERI''), 1340 Echelon Parkway, Jackson, Mississippi 39213; and Entergy's operating subsidiary companies (''Operating Subsidiaries''), Entergy Arkansas, Inc., P.O. Box 551, Little Rock, Arkansas 72203; Entergy Louisiana, Inc., 639 Loyola Avenue, New Orleans, Louisiana 70113; Entergy Mississippi, Inc., P.O. Box 1640, Jackson, Mississippi 39205; and Entergy New Orleans, Inc., 639 Loyola Avenue, New Orleans, Louisiana 70113, have filed a post-effective amendment to their application-declaration under sections 6(a), 7, 9(a), 10, 12(b) and 12(d) of the Act and rules 44, 45 and 54 thereunder.

By orders dated May 9, 1995 (HCAR No. 26287), August 18, 1995 (HCAR No. 26358) and August 27, 1996 (HCAR No. 26561) (''Orders''), the Commission authorized SERI, through December 31, 2000, to issue and sell one or more series of its first mortgage bonds (''Bonds'') and one or more series of its debentures (''Debentures'') in an aggregate principal amount not to exceed $540 million. The Orders also authorized SERI to enter into arrangements for the issuance and sale of tax-exempt revenue bonds (''Tax-Exempt Bonds'') in an aggregate principal amount not to exceed $350 million. In support of the Tax-Exempt Bonds, SERI was authorized to issue and pledge one or more new series of its first mortgage bonds in an aggregate principal amount not to exceed $395 million or obtain one or more irrevocable letters of credit with face amounts of up to $395 million.

In order to provide additional security for its obligations under the Bonds, SERI was authorized to assign to holders of the Bonds certain rights under an agreement with the Operating Subsidiaries to receive operating expense payments from those subsidiaries for the operation of a nuclear powered generating station. SERI was authorized also to assign to holders of the Bonds certain rights under a separate agreement to receive capital contributions from Entergy in amounts sufficient to maintain SERI's equity ratio at a 35% level, as defined in that agreement.

SERI now proposes to increase the aggregate outstanding principal amounts of Bonds and/or Debentures from $540 million to $685 million. In addition, SERI proposes to increase the obligations incurred (''Notes'') in connection with the issuance and sale of Tax-Exempt Bonds from $350 million to $515 million. As authorized in the Orders, the Bonds, Debentures and Notes will have maturities not exceeding 40 years. All other terms and conditions authorized in the Orders will also remain the same.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–22433 Filed 8–19–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Midland, Inc.; Order of Suspension of Trading

August 18, 1998.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Midland, Inc. (''Midland'') because of questions regarding the accuracy and adequacy of information disseminated by and about Midland concerning, among other things: Midland's assets and liabilities; the identity and assets of the companies that Midland has announced plans to acquire; Midland's current operations and business prospects; the composition and involvement in company affairs of Midland's purported management; and the possible misappropriation of assets by Midland officers, and because Midland has failed to file with the Commission a Form 10–KSB for the year

ended December 31, 1997, and Forms 10–QSB for the quarterly periods ended March 31, 1998, and June 30, 1998.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EST, August 18, 1998 through 11:59 p.m. EST, on August 31, 1998.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–22504 Filed 8–18–98; 1:04 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40323; File No. SR–DTC–98–14]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees and Charges

August 14, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on July 10, 1998, The Depository Trust Company (''DTC'') 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 primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change establishes DTC's New York Window fee schedule, which is attached as Exhibit 1.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to establish a fee schedule for the use of DTC's New York Window. The New York Window is a physical securities processing service that DTC provides to its participants. DTC implemented the service after the National Securities Clearing Corporation (''NSCC'') discontinued its Direct Clearing Service and New York Window Service.[3] DTC's fee schedule for its New York Window is based on NSCC's previous fee schedule for its New York Window Service.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[4] and the rules and regulations thereunder because it provides for the equitable allocation of dues, fees, and other charges among the parties who use DTC's New York Window.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

DTC did not solicit any comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[5] and pursuant to Rule 19b–4(e)(2)[6] thereunder because the proposal establishes or changes a due, fee, or other charge imposed by DTC. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–98–14 and should be submitted by September 10, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] On July 13, 1998, DTC began offering its New York Window, and NSCC discontinued providing its Direct Clearing Service and New York Window Service. Securities Exchange Act Release No. 40179 (July 8, 1998), 63 FR 38221 [File Nos. SR–DTC–98–09 and SR–NSCC–98–05].

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(e)(2).

[7] 17 CFR 200.30–3(a)(12).

EXHIBIT 1.—NEW YORK WINDOW FEE SCHEDULE

Services	Present fee	Proposed fee	Comments
Physical Processing			
Over the Window-Receives/Deliveries:			
1–50 Daily	None	$12.00	
51–100 Daily	None	10.00	
101 And up Daily	None	8.00	
Branch Receives	None	3.50	W/SIC Validation.
Branch Receives	None	2.50	W/O Validation.
Envelope Settlement Service/Receives:			
1–100 Daily	None	6.00	
101–150 Daily	None	5.00	
151 And up Daily	None	4.00	
Envelope Settlement Services/Deliveries	None	6.00	
Foss/DSS–Receives/Deliveries (Money Only)	None	3.50	
Transfers	None	15.00	
Reoganizations (One Way)	None	15.00	
Reorganizations (Two Way)	None	18.00	
Underwritings (Coordinating Distribution)	None	35.00	Man-Hour.
Special Handling (Nontransaction Related Support)	None	35.00	Man-Hour.
Custody (Per Cusip)	None	0.05	Business Day.
Return to Firm (Per Security)	None	0.10	
Return to Firm (Per Trip)	None	12.00	
Internal Cross-Receives/Deliveries	None	7.00	
Messenger Service (Accommodation)	None	7.50	Hourly.
Accommodation Handling	None	3.50	
Pass-Through Cost: Transfer Fees/Postage/Etc	None	([1])	
Tri-Party (Internal)	None	7.00	Per Transaction.
Tri-Party (Internal)	None	1.00	Per Security.
Settlement Reconciliation	None	25.00	Per Day.
DTC Processing			
DTC Receives	None	3.00	Per Item.
DTC Delivers	None	3.00	Per Item.
Fed Book Entry Processing			
FED Book Entry Processing-Receives/Delivers	None	3.50	
Pass-Through Charges:			
Receive	None	3.50	Per Transaction (External).
Receive	None	3.00	Per Transaction (Internal).
Deliver	None	5.75	Per Transaction (External).
Deliver	None	3.00	Per Transaction (Internal).
SEG Move	None	1.50	Per Transaction.
Account Maintenance	None	560.00	Per Month.

[1] Cost.

[FR Doc. 98–22364 Filed 8–19–98; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3103]

State of Iowa; Amendment # 3

In accordance with notices from the Federal Emergency Management Agency dated July 15, July 31, and August 6, 1998, the above-numbered Declaration is hereby amended to include the following counties in the State of Iowa as a disaster area due to damages caused by severe storms, tornadoes, and flooding: Adair, Appanoose, Buena Vista, Cerro Gordo, Clay, Clinton, Delaware, Des Moines, Dickinson, Emmet, Floyd, Hancock, Kossuth, Palo Alto, Pocahontas, Webster, and Winnebago. This declaration is further amended to establish the incident period for this disaster as beginning on June 13, 1998 and continuing through July 15, 1998.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Dubuque, Humboldt, Jackson, and Worth Counties in Iowa; Carroll and Whiteside Counties in Illinois; Putnam County, Missouri; and Faribault, Freeborn, and Martin Counties in Minnesota. Any counties contiguous to the above-named primary counties and not listed herein have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is August 31, 1998 and for economic injury the termination date is April 2, 1999.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 11, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98–22362 Filed 8–19–98; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice No. 2848]

United States International Telecommunications Advisory Committee (ITAC), Study Group B, Meeting Notice

The Department of State announces that the United States International Telecommunications Advisory Committee, Telecommunications Standardization Sector (ITAC–T) Study Group B will meet at 9:00 am on

September 24, 1998, at U.S. Department of Commerce, 325 Broadway, Conference Room 3012, Boulder, CO. 80303.

The agenda for the Study Group B meeting will include preparations for ITU–T Study Group 15 meeting in October 1998.

Members of the General Public may attend this meeting and join in the discussions, subject to the instructions of the Chair. Admittance of public members will be limited to seating available.

In this regard, entrance to the meeting please inform Marcie Geissinger, Carole Craig, or Amy Moulton by September 21 at 303–497–5216, fax 3030–497–5993, or mgeissinger@its.bldrdoc.gov if you intend to attend this U.S. Study Group B Meeting. Provide your name, organization, and telephone number.

Dated: July 30, 1998.

Marian R. Gordon,

Chairman, U.S. ITAC for Telecommunications Standardization.

[FR Doc. 98–22357 Filed 8–19–98; 8:45 am]

BILLING CODE 4710–45–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Rotorcraft Draft Advisory Material

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of draft rotorcraft advisory material.

SUMMARY: This is a notice of availability of draft Advisory Circular (AC) material, which provides guidance as to an acceptable means of accomplishing the requirements of proposed rules on the subject of normal and transport category rotorcraft load combination safety requirements and on the subject of normal category rotorcraft maximum weight and passenger seat limitation.

FOR FURTHER INFORMATION CONTACT: Kathy Jones, Rotorcraft Standards Staff, FAA, Rotorcraft Directorate, Aircraft Certification Service, Forth Worth, TX 76193–0110; telephone (817) 222–5359, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: This notice announces the availability of draft AC material. The FAA tasked the Aviation Rulemaking Advisory Committee (ARAC) to develop rulemaking and policy material for normal and transport category rotorcraft. The ARAC process is a means for the public to participate in the drafting of rules and advisory material. The FAA review of the ARAC Working Groups' material resulted in the FAA proposing Notices of Proposed Rulemaking (NPRM's) and AC material. Consequently, NPRM No. 98–6, ''Rotorcraft Load Combination Safety Requirements,'' was published in the **Federal Register** on July 13, 1998 (63 FR 37745). The accompanying AC material is available and will be published in a future revision to AC 27–1A and AC 29–2B (Certification of Normal Category Rotorcraft and Certification of Transport Category Rotorcraft, respectively). NPRM No. 98–4, ''Normal Category Rotorcraft Maximum Weight and Passenger Seat Limitation,'' was published in the **Federal Register** on June 25, 1998 (63 FR 34610). The accompanying AC material is available and will be published in a future revision to AC 27–1A (Certification of Normal Category Rotorcraft).

Issued in Fort Worth, Texas, on August 12, 1998.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–22387 Filed 8–19–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–98–4204]

Notice of Request for Clearance of a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, this notice announces the intention of the FHWA to request the Office of Management and Budget's (OMB) approval of a new information collection. This information collection will be used to provide a baseline to measure improvements in customer satisfaction. The information collected from the survey will help the Office of Budget and Finance to measure the level of satisfaction with the payment process administered by FHWA.

DATES: Comments must be submitted on or before October 19, 1998.

ADDRESSES: All signed, written comments should refer to the docket number that appears in the heading of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, S.W., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 10:00 a.m. to 5:00 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Haldeman, (202) 366–2881, Office of Budget and Finance, Federal Highway Administration, Department of Transportation, 400 Seventh Street, S.W., Washington, DC 20590. Office hours are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Fiscal Vendor Satisfaction Survey.

Background: The mission of the FHWA's Office of Budget and Finance is the administration of fiscal programs to ensure an effective budget process and proper utilization and accounting for agency resources. In addition, the office works to improve the financial management practices of State Highway Agencies. Some of these functions include: (1) The planning, coordination, and administration of FHWA programs, as they relate to the budget process; (2) the allocation and administration of fiscal and ceiling control aspects of personnel resources within employment ceilings, fiscal limitations, and other established criteria; (3) the administration of a nationwide highway project reporting system; and (4) the administration of a system of accounting for agency resources and programs. A survey of FHWA's vendors to be selected at random will provide feedback to help focus on accounting operations and organization toward a customer service/satisfaction-oriented way of doing business. The information will be collected on a standardized questionnaire via mail. Respondents will be advised of the purpose for the survey and the confidentiality of their responses by an accompanying letter. The questionnaire will request respondents if their telephone calls are answered in a timely manner; if their inquiries receive timely responses; if their invoices are paid in a timely fashion; and if the members of the finance staff are accessible, professional, and courteous in providing assistance and resolving payment issues.

The sample size of respondents will be approximately 200. The results of the surveys will be analyzed and presented in a report to management. This report will be used for ongoing improvements to FHWA's payment process.

Respondents: The individuals asked to respond to the survey are employees of private firms from which FHWA procures products and services.

Estimated Average Burden per Response: 10 minutes.

Estimated Total Annual Burden: 33 hours.

Frequency: Annually.

Public Comments Invited: Interested parties are invited to send comments regarding any aspect of this information collection, including, but not limited to: (1) the necessity and utility of the information collection for the proper performance of the functions of the FHWA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB's clearance of this information collection.

Electronic Availability: An electronic copy of this document may be downloaded using a modem and suitable communications software from the **Federal Register** electronic bulletin board service (telephone number: 202–512–1661). Internet users may reach the **Federal Register**'s WWW site at http://www.access.gpo.gov/su__docs.

Authority: Public Law 103–62, dated August 3, 1993.

Issued on: August 12, 1998.

George S. Moore, Jr.

Associate Administrator for Administration.

[FR Doc. 98–22422 Filed 8–19–98; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. RSAC–96–1, Notice No. 13]

Railroad Safety Advisory Committee (RSAC); Working Group Activity Update

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Announcement of Railroad Safety Advisory Committee (RSAC) Working Group Activities.

SUMMARY: FRA is updating its announcement of RSAC's working group activities to reflect the current status of working group activities.

FOR FURTHER INFORMATION CONTACT: Vicky McCully, RSAC Coordinator, FRA, 400 7th Street, S.W. Washington, D.C. 20590, (202) 493–6305 or Grady Cothen, Deputy Associate Administrator for Safety Standards Program Development, FRA, 400 7th Street, S.W., Washington, D.C. 20590, (202) 493–6302.

SUPPLEMENTARY INFORMATION: This notice serves to update FRA's last announcement of working group activities and status reports on 11/5/97 (62 FR 59940). The eighth full Committee meeting was held May 14, 1998. The next meeting of the full Committee is scheduled for September 9, 1998.

Since its first meeting in April of 1996, the RSAC has accepted fifteen tasks. Status for each of the tasks is provided below:

Task 96–1—Revising the Freight Power Brake Regulations. This Task was formally withdrawn from the RSAC on 6/24/97.

Task 96–2—Reviewing and recommending revisions to the Track Safety Standards (49 CFR Part 213). This task was accepted April 2, 1996, and a Working Group was established. Consensus was reached on recommended revisions and an NPRM incorporating these recommendations was published in the **Federal Register** on 7/3/97 (62 FR 36138). The final rule was published in the **Federal Register** on 6/22/98 (63 FR 33991). The effective date of the rule is 9/21/98. Contact: Al MacDowell (202) 493–6206.

Task 96–3—Reviewing and recommending revisions to the Radio Standards and Procedures (49 CFR Part 220). This Task was accepted on April 2, 1996, and a Working Group was established. Consensus was reached on recommended revisions and an NPRM incorporating these recommendations published in the **Federal Register** on 6/26/97 (62 FR 34544). FRA is nearing completion of a final rule. Contact: Gene Cox (202) 493–6319.

Task 96–4—Reviewing the appropriateness of the agency's current policy regarding the applicability of existing and proposed regulations to tourist, excursion, scenic, and historic railroads. This Task was accepted on April 2, 1996, and a Working Group was established. The Working Group is currently monitoring completion of the steam locomotive regulations task. Contact: Grady Cothen (202) 493–6302.

Task 96–5—Reviewing and recommending revisions to Steam Locomotive Inspection Standards (49 CFR Part 230). Tasked to the Tourist and Historic Working Group on July 24, 1996. Consensus was reached on an NPRM and FRA is finalizing the regulatory analysis to accompany publication of the NPRM. Contact: George Scerbo (202) 493–6349.

Task 96–6—Reviewing and recommending revisions to miscellaneous aspects of the regulations addressing Locomotive Engineer Certification (49 CFR Part 240). This Task was accepted on October 31, 1996, and a Working Group was established. Consensus on an NPRM was reached on May 14, 1998, and FRA is finalizing the regulatory analysis to accompany publication of the NPRM. Contact: John Conklin (202) 493–6318.

Task 96–7—Developing On-Track Equipment Safety Standards. This task was assigned to the existing Track Standards Working Group on October 31, 1996, and a Task Force was established. The Task Force has reached agreement in principle on what should be included in a proposed rule and has identified remaining issues to be resolved. Contact: Al MacDowell (202) 493–6236.

◗ *Task 96–8*—This Planning Task evaluated the need for action responsive to recommendations contained in a report to Congress entitled, Locomotive Crashworthiness & Working Conditions. This Task was accepted on October 31, 1996. A Planning Group was formed and reviewed the report, grouping issues into categories.

◗ *Task 97–1*—Developing crashworthiness specifications to promote the integrity of the locomotive cab in accidents resulting from collisions. This Task was accepted on June 24, 1997. A Task Force on engineering issues established by the Working Group on Locomotive Crashworthiness has been actively reviewing collision history and design options and has commissioned additional research that is being guided toward completion over the next few months. Contact: Sean Mehrvazi (202) 493–6237.

◗ *Task 97–2*—Evaluating the extent to which environmental, sanitary, and other working conditions in locomotive cabs affect the crew's health and the safe operation of locomotives, proposing standards where appropriate. This Task was accepted June 24, 1997. The Working Group on Cab Working Conditions is meeting to draft a standard for locomotive sanitary conditions. Task forces on noise and temperature have been formed and are actively meeting to identify and address issues. Contact: Brenda Hattery (202) 493–6326.

◗ *Task 97–3*—Developing event recorder data survivability standards. This Task was accepted on June 24, 1997. An Event Recorder Working Group and Task Force have been established and are actively meeting.

Contact: Edward English (202) 493–6321.

◗ *Task 97–4* and *Task 97–5*—Defining Positive Train Control (PTC) functionalities, describing available technologies, evaluating costs and benefits of potential systems, and considering implementation opportunities and challenges, including demonstration and deployment. *Task 97–6*—Revising various regulations to address the safety implications of processor-based signal and train control technologies, including communications-based operating systems. These three tasks were accepted on September 30, 1997, and assigned to a single Working Group. A Data and Implementation Task Force was formed to address issues such as assessment of costs and benefits and technical readiness. A Standards Task Force was formed to develop PTC standards. The Working Group and task forces are actively meeting. Contact: Grady Cothen (202) 493–6302.

◗ *Task 97–7*—Determining damages qualifying an event as a reportable train accident. This Task was accepted on September 30, 1997. A working group has been formed to address this task.

Contact: Robert Finkelstein (202) 493–6280.

Please refer to the notice published in the **Federal Register** on March 11, 1996 (61 F.R. 9740) for more information about the RSAC.

Issued in Washington, D.C. on August 17, 1998.

S. Mark Lindsey,

Chief Counsel.

[FR Doc. 98–22453 Filed 8–19–98; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from Reebie Associates (WB654–4–8/7/98), for permission to use certain data from the Board's Carload Waybill Samples. A copy of the request may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.8.

Contact: James A. Nash, (202) 565–1542.

Vernon A. Williams,

Secretary.

[FR Doc. 98–22419 Filed 8–19–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33638]

Pacific Harbor Line, Inc.—Operation Exemption—Port of Long Beach

Pacific Harbor Line, Inc. (PHL), a Class III rail carrier,[1] has filed a verified notice of exemption under 49 CFR 1150.41 to acquire operating rights from the City of Long Beach, a municipal corporation, acting through its Board of Harbor Commissioners (the City). PHL will acquire certain operating rights at or adjacent to the City's Port of Long Beach (POLB), on track owned by or leased by POLB.[2]

The transaction was scheduled to be consummated on or after July 31, 1998.

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. 33638, 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 Mark H. Sidman, Esq., Weiner, Brodsky, Sidman & Kider, P.C., 1350 New York Avenue, N.W., Suite 800, Washington, DC 20005–4797.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: August 13, 1998.

[1] PHL became a carrier pursuant to a notice of exemption in *Pacific Harbor Line, Inc.—Operation Exemption—Port of Los Angeles,* STB Finance Docket No. 33411 (STB served Dec. 2, 1997), when it acquired operating rights from the City of Los Angeles, a municipal corporation, acting through its Board of Harbor Commissioners (LA), to provide switching services on track owned by LA's Port of Los Angeles.

[2] Pursuant to the terms of an operating agreement, PHL's operating rights will be for a term of ten years, subject to extension, modification, and earlier termination.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–22420 Filed 8–19–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33607]

David W. Wulfson, Gary E. Wulfson, Lisa W. Cota, Richard C. Szuch, and Peter A. Szuch—Control Exemption—Clarendon & Pittsford Railroad Company, Green Mountain Railroad Corporation, and Vermont Railway, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice of Exemption.

SUMMARY: The Board grants an exemption under 49 U.S.C. 10502, from the prior approval requirements of 49 U.S.C. 11323–25 for petitioners David W. Wulfson, Gary E. Wulfson, Lisa W. Cota, Richard C. Szuch, and Peter A. Szuch to acquire direct control of Vermont Railway, Inc., and Clarendon & Pittsford Railroad Company, and indirect control of Green Mountain Railroad Corporation (GMRC), through their stock ownership of NLR Company, a noncarrier that controls GMRC.

DATES: This exemption will be effective September 19, 1998. Petitions to stay must be filed by August 31, 1998, and petitions to reopen must be filed by September 9, 1998.

ADDRESSES: Send an original and 10 copies of pleadings referring to STB Finance Docket No. 33607 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, send one copy of pleadings to petitioners' representative: Andrew P. Goldstein, Suite 1105, 1750 Pennsylvania Avenue, NW, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC News & Data, Inc., 1925 K Street, NW, Suite 210, Washington, DC 20006. Telephone: (202) 289–4357. [Assistance for the hearing impaired is available through TDD Services (202) 565–1695.]

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: August 10, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 98–22183 Filed 8–18–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Commission to Study Capital Budgeting

AGENCY: Commission to Study Capital Budgeting, Department of the Treasury.

ACTION: Notice of meetings.

SUMMARY: The agenda for the next meeting on Saturday, September 19, 1998, of the Commission to Study Capital Budgeting includes the review and discussion of the first draft of its final report. The final report on capital budgeting is due on December 13, 1998. Meetings are open to the public. Limited seating capacity is available.

DATE, TIME AND PLACE OF THE NEXT COMMISSION MEETING: September 19, 1998, 9:00 a.m. to 5:00 p.m.; White House Conference Center, Truman Room, 726 Jackson Place, NW, Washington, DC 20503.

The Commission is seeking all views on capital budgeting. Interested parties may submit their views to: Dick Emery, Executive Director, President's Commission to Study Capital Budgeting, Old Executive Office Building (Room 258), Washington, DC 20503, Voice: (202) 395–4630, Fax: (202) 395–6170, E-Mail: capital__budget@omb.eop.gov, Website: http://www.whitehouse.gov/WH/EOP/OMB/PCSCB/

FOR FURTHER INFORMATION CONTACT: E. William Dinkelacker, Ph.D., Designated Federal Official, Room 4456 Main Treasury, Washington, DC 20220, Voice: (202) 622–1285, Fax: (202) 622–1294, E-Mail: william.dinkelacker@treas.sprint.com

Angel E. Ray,

Committee Management Officer.

[FR Doc. 98–22366 Filed 8–19–98; 8:45 am]

BILLING CODE 4810–25–U

UNITED STATES INFORMATION AGENCY

Administrative Services to the College and University Affiliations Program (CUAP)

ACTION: Request for Proposals.

SUMMARY: The Office of Academic Programs' Specialized Programs Branch of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition to assist in the administration of the Fiscal Year 1999 College and University Affiliations Program (CUAP) competition. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may apply to assist in the administration of the technical and academic review of approximately 50 to 75 proposals for the Fiscal Year 1999 College and University Affiliations Program competition (E/ASU–99–02).

The CUAP supports partnerships between U.S. and foreign institutions of higher education in specified fields and themes within the humanities, law, business, and the social or environmental sciences.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program cited above is provided through the Fulbright-Hays Act.

Projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects are subject to the availability of funds.

Announcement Title and Number: All communications with USIA concerning this RFP should refer to the announcement's title and reference number, E/ASU–99–03.

Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5 P.M. Washington, D.C. time on Tuesday, October 13, 1998. Faxed application documents will not be accepted.

Documents postmarked by the due date but received at a later date will not be accepted. It is the responsibility of each applicant to ensure compliance with the deadline.

Approximate Program Dates: Grant should begin on or about December 1, 1998 and end approximately five months later.

FOR FURTHER INFORMATION, CONTACT:

The Specialized Programs Branch (E/ASU), Room 349, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547, phone: (202) 619–5289, fax: (202) 401–1433. Send a message via Internet to: affiliat@usia.gov to request a Solicitation Package containing more detailed award criteria. Please request required application forms, and standard guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps. Please read all information before downloading.

To Receive a Solicitation Package Via Fax on Demand: The entire Solicitation Package may be received via the Bureau's ''Grants Information Fax on Demand System'', which is accessed by calling 202–401–7616. Please request a ''Catalog'' of available documents and order numbers when first entering the system.

Please specify USIA Specialized Programs Branch Chief Paul Hiemstra on all inquiries and correspondence. Interested applicants should read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

Submissions: Applicants must follow all instructions given in the Solicitation Package. The original and 7 copies of the application should be sent to: U.S. Information Agency, Ref.: *E/ASU–99–03*, Office of Grants Management, E/XE, Room 326, 301 4th Street, S.W., Washington, D.C. 20547.

Diversity, Freedom and Democracy Guidelines: Pursuant to the Bureau's authorizing legislation, projects must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–

319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' USIA ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Proposals should account for advancement of this goal, in their program contents, to the full extent deemed feasible.

SUPPLEMENTARY INFORMATION:

Overview

Objectives

The recipient of this award will administer the technical and independent academic reviews for the Fiscal year 1999 College and University Affiliations Program. The CUAP is designed to support partnerships between U.S. and foreign institutions of higher education in the humanities, business, and the social or environmental sciences. In fiscal year 1999, awards will be made to strengthen civil society through projects on the rule of law, journalism and media studies, or civic education; and to assist with the development of a foundation for international trust through projects on business relations or environmental cooperation.

The CUAP supports curriculum development, faculty and staff development, educational reform, community outreach and collaborative research through three-year grants of up to $120,000 each.

Guidelines

Project Description

The recipient of this award shall review proposals for compliance with the technical requirements published in the Request for Proposals (RFP) for the FY 1999 CUAP competition. (The FY 1999 CUAP RFP will be provided in the application packet mailed to applicants, and also is available upon request by the applicant, and on the Internet via USIA's website at http://www.usia.gov/education/rfps).

The recipient will also coordinate the academic review of technically eligible, comprehensive proposals and provide the Agency with a detailed academic appraisal report on each eligible proposal, extensively summarizing the panel discussion in terms of the academic review criteria published in the FY 1999 CUAP RFP. The recipient shall arrange for the review of applications geographically by multi-disciplinary panels of experts representing eligible fields and themes. These experts must be highly familiar with the eligible countries and world areas.

Note: USIA may also request that the recipient conduct additional College and University Affiliations Program development activities as an enhancement of the initial award. Program development activities may include assisting E/ASU with preparing a database of CUAP project information involving the compilation of descriptions, statistics and contact information.

In preparing a submission, the applicant shall designate a coordinator, subject to Agency approval, to implement and chair all the technical and academic reviews, and to provide detailed summaries of the academic review discussions. The applicant should plan to prepare correspondence to be sent to CUAP applicants by the agency in response to inquiries regarding the technical and academic review of their proposals, and to notify applicants of the status of their proposals. All official documents should highlight the U.S. government's role as program sponsor and funding source.

Eligibility

Only non-profit organizations based in the Washington, D.C. metropolitan area, with experience in international education and educational exchanges, are eligible to compete for this cooperative agreement award from the agency.

Proposed Budget

Please provide a detailed line-item budget as part of your grant proposal, which translates the activities described in the proposal narrative into specific cost requirements. Please use explanatory notes where necessary to describe the costs included in specific line items and how the amounts were derived. Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as a break-down reflecting both the administrative budget and the program budget.

For further clarification, applicants may provide separate sub-budgets for each program component, phase, location, or activity in order to facilitate USIA decisions on funding.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the program office. Proposals may be reviewed by Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA grants officer. Technical Format Requirements for this competition are included in the check list in the PSI accompanying this RFP.

Panelists will review FY 1999 CUAP proposals received in response to this solicitation according to the following criteria:

1. *Quality of Program Plan/Ability to Achieve Program Objectives:* Proposal agendas and plans should adhere to the program overview and guidelines described above and in the Application Package. Objectives should be reasonable, feasible, and flexible. A proposal should clearly demonstrate how an organization will meet the program's objectives and plan.

2. *Institution's Record/Ability/Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the project's goals. Proposals should demonstrate responsible fiscal management and full compliance with all reporting requirements for any past Agency grants the applicants have administered, as determined by USIA's Office of Contracts.

3. *Cost-Effectiveness/Cost-Sharing:* The overhead and administrative components of proposals, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should attempt to maximize cost-sharing through private sector support as well as institutional direct funding contributions.

4. *Project Evaluation:* Proposals should include an effective evaluation plan which defines and articulates a list of anticipated outcomes clearly related to the project goals and activities, and provide procedures for ongoing project monitoring and mid-term corrective action.

5. *Support of Diversity:* Proposals should demonstrate the applicant's commitment to promoting the awareness and understanding of diversity.

Application Submission

The complete proposal for this competition (E/ASU 99–03) must meet the due date of October 13, 1998. There will be no exception to this deadline.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding.

Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: August 12, 1998.

James D. Whitten,

Acting Associate Director for Educational and Cultural Affairs.

[FR Doc. 98–22206 Filed 8–19–98; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

College and University Affiliations Program (CUAP)

ACTION: Notice—Request for Proposals.

SUMMARY: The Office of Academic Programs of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award program. Accredited, post-secondary educational institutions meeting the provisions described in IRS regulation 26 CFR 1.501(c) may apply to pursue objectives in specified fields and themes within the humanities, the social or environmental sciences, law, or business administration in partnership with overseas institutions of higher education. Awards will be made to support educational partnerships with the general goal of strengthening civil society through projects on the rule of law, journalism and media studies, or civic education; or with the general goal of assisting with the development of a foundation for international trust through projects on business relations or environmental cooperation.

Partner institutions may pursue these goals through exchanges of teachers or administrators for any appropriate combination of teaching, lecturing, college or university teacher and curriculum development, collaborative research, and outreach, for periods ranging from one week (for planning visits) to an academic year. Also eligible as activities to support the pursuit of these objectives in the FY99 program are the establishment and maintenance of Internet and/or e-mail communication facilities as well as interactive distance-learning programs at foreign partner institutions in conjunction with eligible projects. Applicants may propose other project activities not listed in this paragraph that are consistent with the overall goals and activities of the College and University Affiliations Program.

One-way projects that provide technical assistance from one institution to another are strongly discouraged. Substantial project benefits must accrue to all partner institutions, although the benefits may differ significantly for each institution.

The program awards up to $120,000 for a three-year period to defray the costs of travel and per diem, educational materials, and some aspects of project administration. Grants awarded to organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Grants are subject to the availability of funds for Fiscal Year 1999.

Proposed projects must be eligible in terms of country(ies)/locations and themes as described in the section entitled ''Eligibility'' below.

Overall grant-making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program cited above is provided through the Fulbright-Hays Act.

Projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. The POGI, a document describing College and University Affiliation Project Objectives, Goals, and Implementation, is included in the Solicitation Package.

Announcement Title and Number: All communications with USIA concerning this announcement should refer to the College and University Affiliations Program and reference number E/ASU–99–02.

Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on Friday, December 11, 1998. Faxed documents will not be accepted, nor will documents postmarked on December 11, 1998, but received on a later date. It is the responsibility of each applicant to ensure compliance with the deadline.

Approximate program dates: Grants should begin on or about August 1, 1999.

Duration: August 1, 1999—July 31, 2002.

FOR FURTHER INFORMATION CONTACT: Office of Academic Programs; Advising, Teaching, and Specialized Programs Division; College and University Affiliations Program (CUAP), (E/ASU), Room 349, U.S. Information Agency, 301 4th Street, SW, Washington, DC 20547, phone: (202) 619–5289, fax: (202) 401–1433. Send a message via Internet to: affiliat@usia.gov to request a Solicitation Package. The Solicitation Package includes more detailed award criteria; all application forms; and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

To Download a Solicitation Package via Internet: The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps. Please read all information before downloading.

To Receive a Solicitation Package via Fax on Demand: The entire Solicitation Package may be received via the Bureaus' ''Grants Information Fax on Demand System,'' which is accessed by calling 202/401–7616. Please request a ''Catalog'' of available documents and order numbers when first entering the system.

Please specify ''College and University Affiliations Program Officer'' on all inquiries and correspondence. Prospective applicants should read the complete **Federal Register** announcement before addressing inquiries to the College and University Affiliations Program staff or submitting their proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

Submissions: Applicants must follow all instructions given in the Solicitation Package. The original and 10 copies of the complete application, including the documents specified under Tabs A

through I in the ''Project Objectives, Goals, and Implementation'' (POGI) section of the Solicitation Package, should be sent to: U.S. Information Agency, Ref: E/ASU–99–02, Office of Grants Management, E/XE, Room 326, 301 4th St., SW, Washington, DC 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal on a 3.5'' diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to U.S. Information Service (USIS) posts overseas for their review, with the goal of reducing the time needed to make the comments of overseas posts available in the Agency's grant review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, projects must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into the total proposal. Pub. L. 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' USIA ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Proposals should account for advancement of this goal, in their program contents, to the full extent deemed feasible.

Eligibility

U.S. Partner and Participant Eligibility: In the United States, participation in the program is open to accredited two- and four-year colleges and universities, including graduate schools. Applications from consortia of U.S. colleges and universities are eligible. Secondary U.S. partners may include non-governmental organizations as well as non-profit service and professional organizations. The lead U.S. institution in the consortium is responsible for submitting the application. Each application from a consortium must document the lead institutions' authority to represent the consortium. With the exception of outside evaluators on contract with the U.S. institution, participants representing the U.S. institution who are traveling under USIA grant funds must be teachers, post-baccalaureate teaching assistants, or staff from the participating institution(s) and must be U.S. citizens. Post-baccalaureate teaching assistants are eligible for USIA-funded participation in this program only if they are working as part of a team directed by a college or university teacher.

Foreign Partner and Participant Eligibility: Overseas, participation is open to recognized, degree-granting institutions of post-secondary education, which may include established, internationally recognized independent research institutes. Secondary foreign partners may include relevant governmental and non-governmental organizations, as well as non-profit service and professional organizations. Participants representing the foreign institutions must be teachers, post-baccalaureate teaching assistants, or staff who are citizens, nationals, or permanent residents of the country of the foreign partner and who are qualified to hold a valid passport and U.S. J–1 visa.

Ineligibility: A proposal will be deemed technically ineligible if:

(1) It does not fully adhere to the guidelines established herein and in the Solicitation Package;

(2) It is not received by the deadline;

(3) It is not submitted by the U.S. partner;

(4) One of the partner institutions is ineligible;

(5) The foreign country or geographic location is ineligible;

(6) It involves a request to fund exchanges between the United States and more than one country, with the exception of the trilateral partnerships between the United States and two foreign institutions specified below (see the section on eligible countries/ locations for complete details);

(7) The theme or academic discipline is not listed as eligible in the RFP, herein;

(8) the amount requested of USIA exceeds $120,000.

Eligible Themes, Academic Disciplines, and Countries/Locations

Eligible Themes

Proposals submitted in response to this request should be designed to strengthen civil society through projects on the rule of law, journalism or media studies, or civic education; or to assist with the development of a foundation for international trust through projects to encourage business or environmental cooperation. Outreach from academic institutions to larger communities of citizens and practitioners is especially encouraged.

The range of projects for which proposals are encouraged within these themes is suggested in the following descriptions:

(1) Rule of Law projects may include as goals the promotion of democratic and civic values; the expansion of citizens participation in government at all levels; the encouragement of analytical approaches to the development and evaluation of public policy or government performance; or the education of citizens and legal specialists about their civil rights and civic responsibilities. These projects may also focus on the balance between individual rights and group rights; conflict resolution; reconciliation and compromise within the democratic process; the reasonable discussion of social and political issues and policy options; and the practice of majority rule in the context of minority rights.

(2) Media Studies and Journalism projects may focus on the development of media organizations, journalistic ethics and responsibility, investigative journalism, and the development and definition of editorial content and priorities. Projects should be proposed with sensitivity to the relationships of the media with government and the private sector in a democratic society.

(3) Civic Education projects may include such topics as democratic theory and practice; the philosophy and goals of education; the development of learner-oriented teaching methodologies and the training of teachers in their utilization; the importance to a democracy of citizen behavior and social responsibility; and the relationships of public interest groups, educational and religious institutions, governments, and voluntary associations to one another and to society.

(4) Business projects may enable institutions of tertiary education to contribute to economic development and to the extension of relations between and among market economies through trade and investment. Projects in trade and economics may establish or expand mutually beneficial academic programs in business and economics, especially by strengthening educational links to business communities. Projects with the potential for having an adverse

impact on the environment are discouraged.

(5) Environmental Cooperation projects may address environmental issues and public policy approaches to sustainable development in the context of U.S. and global interests. Projects may support the establishment or expansion of environmental policy studies programs through faculty and curriculum development, teaching, or outreach. Within this theme, projects that link the study of free trade and market economics with the environment and sustainable development are encouraged.

Area Studies (including American Studies) are eligible if they address eligible themes in cooperation with one or more of the academic disciplines listed below. Area Studies are understood to include scholarly approaches to the current affairs, politics, society, or culture of the United States or partner country or countries or region(s).

The following two sections list *Eligible Academic Disciplines* (Section A Below) within each eligible theme and *Eligible Countries or Locations* (Section B Below) within six world regions, together with any thematic limitation or emphasis applicable within the region or country. Only those themes and disciplines, countries or locations, and partnership configurations listed are eligible for consideration.

A. Eligible Academic Disciplines

(1) For Rule of Law projects:
Law (Constitutional, Comparative, Administrative, Commercial, Regulatory, and Civil Law; Alternative Dispute Resolution; and Intellectual Property Rights)
Political Science/Government/Public Policy/Public Administration
Conflict Resolution
Area Studies (in combination with one or more of the academic fields listed here)

(2) For Media Studies and Journalism projects:
Journalism (Broadcast, Print, Electronic)
Communications Law
Area Studies (in combination with one or more of the academic fields listed here).

(3) For Civic Education projects:
Higher Education Administration, including Financial Management, Community Service and Outreach, University Governance, Private Sector Relations, and Curriculum Development and Modernization
Secondary-Level Curriculum Development and Teacher Training
Sociology
History
Political Science/Government/Public Policy/Public Administration
Social Studies (especially Curriculum Development and Teacher Training)
Area Studies (in combination with one or more of the academic fields listed here)

(4) For projects in Business:
Economics (Comparative and International)
Business/Business Administration/ Business Management
Financial Management and Markets
International Marketing/International Trade
Commercial Law (including Comparative Law, International Treaties, Intellectual Property Rights)
Area Studies (in combination with one of the academic fields listed here)

(5) For projects on Environmental Cooperation:
Environmental Law and Regulation
Environmental Policy and Resource Management
Environmental Sciences/Natural Resource Sciences
Area Studies (in combination with one or more of the academic fields above)

B. Eligible Countries/Locations

Institutions in the following countries are eligible for a bilateral exchange with a U.S. institution; in addition, trilateral configurations are eligible as noted:

(1) Africa: In addition to bilateral proposals, trilateral configurations involving a college or university in the United States and counterpart institutions in any two of the following countries are eligible, but not required:

Benin (Business, especially Economics and Management; and Higher Education Administration projects only, especially those related to Financial Management, Community Service and Outreach, University Governance, Private Sector Relations, and Curriculum Modernization);

Ghana (Rule of Law only);

Malawi (Higher Education Administration projects only, especially those related to Financial Management, Community Service and Outreach, University Governance, Private Sector Relations, and Curriculum Modernization);

Mozambique (Rule of Law, Civic Education, Environment and Sustainable Development projects only);

Rwanda (Rule of Law only):

Senegal (Higher Education Administration projects only, especially those related to Financial Management, Community Service and Outreach, University Governance, Private Sector Relations, and Curriculum Modernization);

Uganda (Business and Higher Education Administration projects only, especially those related to University Financial Management, Community Service and Outreach, University Governance, Private Sector Relations, and Curriculum Modernization);

Zimbabwe (Rule of Law, Business, and Civic Education only).

(2) American Republics:

Costa Rica (Rule of Law, Business, and Civic Education projects only);

El Salvador (Rule of Law, Business, and Civic Education projects only);

Guatemala (Rule of Law, Business, and Civic Education projects only);

Honduras (Rule of Law, Business, and Civic Education projects only);

Mexico (bilateral projects in Public Administration only; in addition, the program invites proposals for North American Trilateral Linkages that include Mexico and Canada in specified disciplines, as described below);

Nicaragua (Rule of Law, Business, and Civic Education projects only);

Panama (Rule of Law, Business, and Civic Education projects only);

North American Trilateral Exchanges: Projects linking U.S., Canadian, and Mexican institutions are eligible for trilateral affiliations in Teaching Methodology, Business, Public Administration, Trade, Economics, and Environmental Studies.

[**Note:** Eligibility of countries among the American Republics is expected to rotate within a three-year cycle beginning with this solicitation.]

(3) East Asia and the Pacific:

China (Civic Education and Rule of Law only);

Indonesia (Civic Education and Rule of Law only, especially Public Policy or Public Administration);

Laos (Rule of Law, especially Public Administration; Business; and Civic Education only, especially Teacher Training);

Philippines (Rule of Law, especially Administration of Justice; and Civic Education only);

Taiwan (Journalism and Media Studies only, with special interest in issues of journalistic ethics and responsibility);

Thailand (Rule of Law and Civic Education only, with special interest in projects framing either of these themes in the context of American Studies);

Vietnam (Rule of Law, with special interest in Public Administration or Intellectual Property Rights; Civic Education; and Business only).

(4) Eastern and Central Europe and the Newly Independent States: The following countries are eligible for

bilateral partnerships; in addition, trilateral configurations between a college or university in the United States and counterpart institutions in two countries within any one of the following three subregions are eligible, but not required. (Not every country in every subregion is eligible. Cross-subregional trilateral affiliations are ineligible.) For all countries listed, eligible themes are limited to Business and the Rule of Law, with special interest in Public Administration and Public Policy.

Baltics: Estonia, Lithuania;

Balkans: Albania, Bosnia and Hercegovina, Macedonia, Serbia/Montenegro;

Central Europe: Czech Republic, Slovakia.

[**Note:** In addition, institutions interested in partnerships with institutions of tertiary education in countries of the Newly Independent States should consult a separate request for proposals that will be announced by the Office of Academic Programs for the N.I.S. College and University Partnerships Program. For information about this program, contact the Office of Academic Programs; Advising, Teaching, and Specialized Programs Division (NISCUPP), (E/ASU), Room 349, U.S. Information Agency, 301 4th Street, SW, Washington, DC 20547, phone: (202) 619–5289, fax: (202) 401–1433.]

(5) North Africa, Near East, and South Asia: The following countries are eligible for bilateral affiliations; in addition; trilateral proposals by U.S. colleges or universities for collaboration with counterpart institutions in two countries *within* any one of the following three *subregions* are eligible but not required. (Not every country in every subregion is eligible. *Cross-subregional* trilateral affiliations are ineligible.) Any eligible theme for discipline may be proposed for any country. Applicants are invited to contact USIS posts in the early stages of proposal development, especially in cases where the U.S. institution lacks recent experience in the region.

Gulf: Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, United Arab Emirates, Yemen;

Near East/North Africa: Israel, Gaza, West Bank, Jordan, Lebanon (proposals for linkages with Lebanese institutions that include distance education and/or Internet to facilitate two-way communication are encouraged), Syria, Morocco, Tunisia, Egypt;

South Asia: Bangladesh, India, Nepal, Pakistan, Sri Lanka.

(6) Western Europe and Canada:

Turkey is eligible only for projects in the Rule of Law or Civic Education that hold potential for developing and strengthening democratic institutions; United Kingdom (only Northern Ireland is eligible).

In addition, projects are solicited for the following trilateral configurations:

U.S./Northern Ireland/Republic of Ireland Partnerships: United Kingdom (only Northern Ireland) is eligible for trilateral affiliations with the United States and the Republic of Ireland for projects in Cross-Cultural Communications or Conflict Resolution only.

North American Trilateral Exchanges. Projects linking U.S., Canadian, and Mexican institutions are eligible for trilateral affiliations in Teaching Methodology, Business, Public Administration, Trade, Economics, and Environmental Studies.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: August 13, 1998.

James D. Whitten,

Acting Associate Director for Educational and Cultural Affairs.

[FR Doc. 98–22300 Filed 8–19–98; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

Program Title: Multi-Regional and Regional Projects for International Visitors; Request for Proposals

SUMMARY: The Office of International Visitors (IV) of the United States Information Agency's (USIA) Bureau of Educational and Cultural Affairs announces an open competition for assistance awards. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c)(3)–1 may submit proposals to develop one or more groups (three projects per group) of thematically linked projects for Multi-Regional and Regional Groups of International Visitors traveling in the United States for period of 21 to 30 days. Groups will be comprised of from 12 to 30 American Embassy contacts in the fields of economics, trade, the judiciary, and journalism.

Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on the due date indicated for submission of proposals for each project series described below. Faxed documents will not be accepted, nor will documents postmarked on the proposal due date but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the due date which has been established for each available project series.

Program Information: USIA seeks proposals from non-profit organizations for development and implementation of four sets of three professional programs for USIA-sponsored International Visitor participants. A separate proposal is required for each project. Each series will be focussed on a broad substantive theme. Interested organizations should submit one proposal for each set of linked projects, but within the ''Narrative'' and ''Detailed Budget'' sections (Tabs C and D on the Proposal Submission Checklist found at the end of the Proposal Submission Instructions (PSI)) applicant should treat each of the three projects individually with a separate detailed project proposal and budget.

More detailed descriptions of the MRPs and RPs will be included in the Solicitation Package under ''Preliminary Project Summaries.'' Participants in the projects will be foreign leaders or potential leaders selected by U.S. embassy committees abroad. Each group will typically consist of from 12 to 30 foreign visitors in addition to the two to three American English language escort officers (ELEOs) or foreign language Escort Interpreters (E/I's) selected by USIA, who accompany them. Most projects will be 21 to 30 days in length. Most projects will begin in Washington, DC, with an orientation and overview of the issues and a central examination of federal policies regarding these issues. Well-paced project itineraries include programs in four or five communities. Project itineraries will ideally include urban and rural small communities and diverse geographical and cultural regions of the U.S., as appropriate to the project theme. Projects should provide opportunities for participants to experience the diversity of American society and culture. Depending on the size and theme of the project, the

participants in Multi-Regional or Regional group projects can be divided into smaller sub-groups for simultaneous visits to different communities, with subsequent opportunities to share their experiences with the full group once it is reunited.

Projects may provide opportunities for the visitors to share a meal of similar experience (home hospitality) in the home of Americans of diverse occupational, age, gender and ethnic groups. Some projects might include an opportunity for an overnight stay (home stay) in an American home. The participants may be provided opportunities to address student, civic and professional groups in relaxed and informal settings. For some projects, ''shadowing'' experiences with American professional colleagues may be proposed. As appropriate, opportunities for site visits and hands-on experiences that are relevant to project themes may be included. All projects should include demonstrations of the Internet and discussions on how it can be productively used in the context of each project theme. Projects should also allow time for participants to reflect on their experiences, and to share observations with project colleagues. Participants should have opportunities to visit cultural and tourist sites which complement the program theme. Arrangements for community visits must be made through affiliates of the National Council for International Visitors (NCIV). (The NCIV is a national network of private citizen organizations located in more than one hundred U.S. communities, which arranges local programs for international visitors.) In cities where there is no such council, the applicant will arrange the local programs.

The applicant should demonstrate the potential to develop projects, as described, on a variety of program themes. The applicant is expected to have e-mail capability to consult with USIA program officers, and access to internet resources. USIA will provide close coordination and guidance throughout the duration of the award.

Series One: Economics and Trade.

Deadline for Submission: October 6, 1998.

Project One

Title: U.S. Trade and World Markets (I).

Type: Multi-Regional.

Dates: January 14–February 4, 1999.

Officer: E/VP—Janet Beard.

Telephone: (202) 205–3058.

Fax: (202) 205–0792.

E-Mail Address: jbeard@usia.gov.

This project will concentrate on the institutions, industries, and federal and local offices concerned with trade development and investment. Participants will hear perspectives of U.S. trade policy from federal executive and congressional speakers, lobbying organizations, unions, media, and state officials. The project will include site visits to representative sectors of the U.S. economy, such as industry, agriculture, and high-technology firms.

Project Two

Title: U.S. Financial System.

Type: Multi-Regional.

Dates: July 22–August 12, 1999.

Officer: E/VP–Janet Beard.

Telephone: (202) 205–3058.

Fax: (202) 205–0792.

E-Mail Address: jbeard@usia.gov.

This project will review the U.S. banking and financial system, including industry regulation, trends in domestic and foreign investment, and the roles and differences between different players in the financial marketplace. Domestic and international finance issues studied will include changing global finance flows, small community banking, project finance, stock exchanges, and economic trends' analysis.

Project Three

Title: U.S. Trade and World Markets (II).

Type: Multi-Regional.

Dates: September 9–30, 1999.

Officer: E/VP—Janet Beard.

Telephone: (202) 205–3058.

Fax: (202) 205–0792.

E-Mail Address: jbeard@usia.gov.

See description under Project One.

Series Two: Journalism.

Deadline for Submission: November 10, 1998.

Project One

Title: Radio Broadcasting.

Type: Multi-Regional.

Dates: February 25–March 8, 1999.

Officer: E/VP—Jay Taylor.

Telephone: (202) 205–3058.

Fax: (202) 205–0792.

E-Mail Address: jtaylor@usia.gov.

This project will address responsible and independent journalism while providing an opportunity to upgrade technological knowledge and journalistic skills. It will consist of visits to a wide variety of radio stations in the U.S., including commercial, public, religious, national, and local stations. Participants will hear discussions of broadcasting regulations and journalist ethics, observe programming, news gathering, interviewing and production techniques, and learn about the impact of technology on radio broadcasting in the U.S.

Project Two

Title: Print Journalism.

Type: Multi-Regional.

Dates: May 13–June 3, 1999.

Officer: E/VP—Jay Taylor.

Telephone: (202) 205–3058.

Fax: (202) 205–0792.

E-Mail Address: jtaylor@usia.gov

This project will provide participants an overview of print media practices, traditions, and institutions in the U.S. It will acquaint participants with how independent media, with access and freedom to convey information and opinions, form an integral part of America's open and democratic society. The group will study journalism in its American operational context. Featured topics will be: reporting skills; ethical considerations and accountability; editorial decision-making; newspaper administration and management; journalism education and training; and research, distribution, and production technology.

Project Three

Title: Television Broadcasting.

Type: Multi-Regional.

Dates: August 12–September 2, 1999.

Officer: E/VP—Jay Taylor.

Telephone: (202) 205–3058.

Fax: (202) 205–0792.

E-Mail Address: jtaylor@usia.gov

This project will provide an overview of the impact of television on American society, including education, marketing and commerce, news coverage, jurisprudence, technological innovations, social and ethical issues, as well as entertainment. Its role in the socialization of American youth will also be examined. Interactive educational and public service television will be highlighted as well as the use of television in the distance learning process.

Series Three: Africa and Economic Development.

Deadline for Submission: December 4, 1998.

Project One

Title: Economic Reform and Private Sector Expansion.

Type: Africa Regional (French-Speaking).

Dates: February 22–March 13, 1999.

Officer: E/VGA—Miriam Guichard.

Telephone: (202) 205–9596.

Fax: (202) 205–7974.

E-Mail Address: mguichar@usia.gov or sknott@usia.gov

The American experience has been that a strong private sector is the engine of economic growth and development,

while government plays an essential role in regulating, rather than controlling or owning, the production of goods and provision of services. Meanwhile, many African nations are taking increasingly dramatic steps, some voluntarily and some under great pressure from multi-national donor organizations, towards structural adjustment and privatization. In this process, many African government officials, journalists, academics, and businesses people are themselves dedicated to a vision of economic prosperity through private sector expansion, while others lack confidence in the private sector to provide for society's needs.

This project is designed to show the participants the size and scope of the private sector, government's role in both promoting and regulating business, and the effects on society, both positive and negative, of a competitive free-market economic system operating in conjunction with government supports for population sectors in need. Specific focus will be placed on how communities and regions in the U.S. promote economic diversification and expansion, and how the rule of law protects both business and citizens, including labor. Other segments will focus on how essential services (e.g. utilities) as well as basic commodities are provided through the private sector in the U.S. Finally, while this program will shift away from a previous focus on ''privatization'', it will touch on efforts by federal, state, and local governments to privatize some work, as well as to borrow traditional private-sector competitive approaches.

Project Two

Title: Women as Economic Partners in Nation-Building.
Type: Africa Regional (English- and French-Speaking).
Dates: April 27–May 16, 1999.
Officer: E/VGA—Audrey Ford.
Telephone: (202) 205–9596.
Fax: (202) 205–7974.
E-Mail Address: aford@usia.gov.

Over the years, Africans as well as donor nations have come to realize that little or no economic development is possible without the full participation of women, and African women have increasingly begun to organize to promote their own economic development and independence. Given the historical context of American women's increased economic involvement and activism, as well as current debates focused on issues related to women's economic position in the U.S., it is likely that International Visitors on this topic and their American interlocutors will have much to share, and perhaps new initiatives to undertake together. This program will focus on how women network and organize in the U.S. to promote economic opportunity and private enterprise, as well as to strengthen the community, the society, and the nation. Emphasis will be placed on private sector as well as national, state and local government support for efforts to increase women's economic strength and their voice in policy-making.

Project Three

Title: Global Business and Trade.
Type: Africa Regional (English-Speaking)
Dates: July 12–31, 1999.
Officer: E/VGA—Mary Ann Ignatius.
Telephone: (202) 205–9596.
Fax: (202) 205–7974.
E-Mail Address: mai@usia.gov.

This project is intended for economic and trade specialists from both public and private sectors, policy planners, academics, and economic journalists, and the focus is specific: The formation and objectives of U.S. trade policy within the context of a highly decentralized, liberal and competitive economic system. Visitors will examine the domestic political, economic and social concerns that affect U.S. trade policy, including the overriding U.S. commitment to maintaining a globally competitive position. Particular emphasis will be placed on the implication of these factors for U.S.-Africa trade relations, and strategies that African countries can pursue to increase their competitive position and foster more effective trade relations. In addition to addressing global and U.S.-Africa trade issues, visitors will also take a look at how federal, state, and local government in the U.S. all work to promote international trade and investment, as well as strategies employed by the private sector.

Series Four: The Rule of Law.
Deadline for Submission: January 15, 1999.

Project One

Title: Independent Judiciary and the Rule of Law.
Type: Near East-South Asian Regional (Arabic-Speaking).
Dates: April 19–May 8, 1999.
Officer: E/VGN—Alice Shifflett.
Telephone: (202) 205–9596.
Fax: (202) 205–7974.
E-Mail Address: ashiffle@usia.gov.

Judicial reform is an issue of great interest to many throughout the Arab world, whether as part of a process of moving towards democratization and greater government accountability, or as part of an effort to combine or reconcile civil and religious law, or simply as part of an effort to improve the economic and investment climate. This project will seek to provide visitors with a thorough overview of the U.S. legal system, emphasizing the principles of judicial independence, as well as the structure of the federal, state, and municipal court systems. Key judicial issues such as environmental law, anti-drug laws, civil rights, and legal aid will be examined, as well as other topics to be determined by the particular interests of the visitors. Through meetings at a wide range of U.S. government institutions, as well as site visits to court sessions and law school classes, participants in this project will also examine the administration of the U.S. legal system, including funding, legal education and training, and administrative innovations such as computerized case management and alternative dispute resolution.

Project Two

Title: Administration of Justice.
Type: American Republics Regional (Spanish-Speaking).
Dates: June 7–25, 1999.
Officer: E/VGR—Colleen Fowler.
Telephone: (202) 205–9596.
Fax: (202) 205–7974.
E-Mail Address: cfowler@usia.gov.

Judicial systems in Latin America are seeking to modernize their court procedures and introduce new approaches to legal problems, while at the same time dealing with the ongoing challenge to ensure the fundamental rule of law and an open and transparent legal process. This project will examine the role the rule of law plays in the United States, with a focus on topics relating to civil justice modernization. Topics will include a range of issues such as case management, alternative dispute resolution, arbitration mechanisms, and mediation techniques. Issues of legal reform and judicial training will be addressed, and the visitors (to include lawyers, judges, academicians and court officials, as well as community leaders, and journalists) will have opportunities throughout to compare their legal systems and to exchange perspectives on the management of these systems. Topics for meetings at the federal, state, and municipal levels will include how a bill becomes law, the jurisdiction of federal and state courts, the role of U.S. and state's attorneys, juvenile justice, the impact and objectives of new anti-crime and sentencing guidelines legislation, nominations of federal judges, and judicial ethics. The program will include discussion of white-collar and

high-tech crime, including corruption, embezzlement, and just-workplace issues, and visitors will also look at current trends in legal education.

Project Three

Title: The Rule of Law and an Independent Judiciary.

Type: Africa Regional (French-Speaking).

Dates: August 9–28, 1999.

Officer: E/VGA—Nancy Falne.

Telephone: (202) 205–9596.

Fax: (202) 205–7974.

E-Mail Address: nfalne@usia.gov.

The rule of law is an essential foundation stone in political and economic development, and while African justice officials, lawyers, judges, magistrates, law professors, and legal journalists may recognize this fact, they often face severe obstacles in both creating an independent judiciary and in managing an effective legal system with scarce resources. This program will endeavor to give visitors an overview of the rule of law and its complexity within the U.S. federal system, as well as the role of the Constitution as a framework for lawmakers. Emphasis will be placed on the independence of the U.S. judicial system, and the means of guaranteeing protection of the rights of the minority in a democracy, including civil and human rights. The visitors will also look at alternatives to traditional court proceedings, such as arbitration and mediation. In addition, the program will explore the nuts and bolts of how the U.S. judicial system operates, including legal training, case management, and the working relationship between the judiciary and the police.

To Download a Solicitation Package via Internet

The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps. Please read all information before downloading.

To Receive a Solicitation Package via Fax on Demand

The entire Solicitation Package may be received via the Bureau's ''Grants Information Fax on Demand System'', which is accessed by calling 202/401–7616. The ''Table of Contents'' listing available documents and order numbers should be the first order when entering the system.

To Receive a Solicitation Package by Mail, Contact

For Multi-Regional Projects (MRPs): U.S. Information Agency, Group Projects Division, E/VP, Room 255, 301 4th Street, S.W., Washington, D.C. 20547.

For Regional Projects (RPs): U.S. Information Agency, Grants Division, E/VG, Room 255, 301 4th Street, S.W., Washington, D.C. 20547.

On all inquiries and correspondence, please specify the name(s) of the USIA Program Officer(s) as they appear on the ''Officer(s)'' line for each of the above projects. Interested applicants should read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

Submissions: Applicants must follow all instructions given in the Solicitation Package. The original and 12 copies of the application should be sent to: U.S. Information Agency, Ref.: E/V–99–1, Series Title: Office of Grants Management, E/XE, 301 4th Street, S.W., Room 336, Washington, D.C. 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal on a 3.5″ diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to USIS posts overseas for their review.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' USIA ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Proposals should account for advancement of this goal in their program contents, to the full extent deemed feasible.

Visa Requirements

Program participants will travel on J–1 visas arranged by USIA. Projects must comply with J–1 visa regulations. Please refer to program specific guidelines in the Solicitation Package for further details.

Budget

Organizations are required to submit a comprehensive line-item budget in accordance with the intructions in the Solicitation Package. Cost items must be clearly categorized as administrative costs, group project costs, or program costs. Applicants must use the budget format presented in the ''1999 Guidelines for Proposals Submitted to the USIA Office of International Visitors'' for all budget submissions. There must be a summary budget as well as a detailed breakdown showing the administrative budget, group project budget and program budget. Proposed staffing and costs associated with staffing must be appropriate to fulfillment of all project requirements, which will include close consultation with the responsible E/V Program Officer throughout development and implementation of the program. Proposed costs may not exceed the guideline amounts.

Combined administrative and indirect costs proposed should be controlled and are subject to negotiation. Cost sharing is encouraged and, if applicable, must be shown in the budget presentation. The Agency anticipates that awards to cover administrative and indirect costs (where applicable) will be less than $20,400.

Organizations that have received a renewal assistance award from the Agency for the Office of International Visitors must submit a budget showing all administrative costs associated with the projects for which application is made. Any award to such an organization pursuant to this announcement may be adjusted to reflect the status of the renewal award. Renewal award recipients must identify individuals or organizations to whom they have already paid honoraria in FY 1999 if they propose to pay an additional honorarium for any projects included in this announcement.

The Agency welcomes proposals from organizations that have not received USIA grants or assistance awards in the past. Agency requirements stipulate that ''Grants awarded to eligible organizations with less than four years

of experience in conducting international exchange programs will be limited to $60,000.'' It is not expected that any of the projects in this announcement will cost $60,000 or less. It is, therefore, incumbent on organizations to demonstrate four years of successful experience in conducting international exchange programs to be eligible for an assistance award.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as USIA Geographic Area Offices and the USIA post(s) overseas, where appropriate. Eligible proposals will be forwarded to panels of USIA officers for advisory review. Proposals may also be reviewed by the Office of General Counsel or by other Agency elements. Final funding decisions are at the discretion of USIA's Associate Director for Education and Cultural Affairs. Final technical technical authority for assistance awards (grants or cooperative agreements) resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered:

1. Quality of the program idea: Proposals should exhibit originality, substance, precision, and relevance to Agency mission, and be responsive to all goals and requirements stated in the RFP, Preliminary Project Summaries and the ''1999 Guidelines for Proposals Submitted to the United States Information Agency Office of International Visitors.''

2. Program planning: The proposed program and work plan should include a planning and implementation time-line, describe any preliminary planning undertaken, and demonstrate logistical capability to implement the program as described.

3. Ability to achieve project objectives: Objectives should be well designed, reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the project's objectives.

4. Multiplier effect/impact: Proposed projects should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. Support of Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (program venue and project evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

6. Institutional Capacity: Proposed personnel and institutional resources should be adequate and appropriate to achieve effective implementation and fulfillment of the project's goals.

7. Institution's Record/Ability: Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Federal assistance awards, if any. The Agency will consider the past performance of prior USIA award recipients and the demonstrated potential of new applicants. All applicants must demonstrate a minimum of four years of successful experience in conducting international exchange programs.

8. Cost-effectiveness: The administrative and indirect cost components of the proposals, including salaries, should be kept as low as possible and should not exceed the amount stated above.

9. Cost-sharing: Consideration will be given to proposed cost-sharing through other private sector support as well as institutional contributions.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and to the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.''

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. The U.S. Information Agency projects, programs and assistance awards are subject to the availability of funds and sufficient number of participant nominations.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase budgets in accordance with the needs of the program and the availability of funds.

Government Reporting Requirements

Awards made will be subject to periodic reporting and evaluation requirements.

In order to account better for the spending of public funds, the Government Performance and Results Act of 1993 (GPRA) requires federal agencies and departments to establish standards for measuring their performance and effectiveness. Each Executive Branch Agency and Department must develop a strategic plan describing its overall goals and objectives, annual performance plans containing *quantifiable* measures of its progress, and performance reports describing its success in meeting those goals and measures. USIA will be looking to our partner organizations to measure and report in three areas: (1) program efficiency (resource costs versus outputs); (2) program effectiveness (degree to which program goals are achieved; and (3) program impact (outcomes).

For general administrative assistance awards, such as this, specific program results will be worked out on an individual project basis. USIA will work closely with its partner organizations to define specific project results, coordinate the gathering of information, and evaluate the projects according to the three areas listed above. Please note that USIA advances six strategic goals (National Security, Economic Prosperity, Democracy, Law Enforcement, Foundation of Trust, and Free Exchange of Information) and you may be asked to administer projects and measure outcomes for each. Project outcomes will be based on country or region goals as well as the Bureau of Educational and Cultural Affairs' goals to expose foreign leaders (participants) to American ideas, values and society, increase American's understanding of foreign cultures and society, foster linkages between U.S. and foreign individuals and institutions, and to

generate cost sharing and other forms of financial leveraging for programs.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: August 13, 1998.

James D. Whitten,

Acting Associate Director for Educational and Cultural Affairs.

[FR Doc. 98–22299 Filed 8–19–98; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

US Based Training Program (USBT); Request for Proposals

SUMMARY: The Advising and Student Services Branch of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award. Public and private nonprofit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c)(3)–1 may apply to develop one training program for USIA-affiliated overseas educational advisers to take place in spring 1999. The basic function of an overseas educational adviser is to provide accurate, objective information to foreign audiences on U.S. study opportunities at accredited academic institutions, and to guide students and professionals in selecting a program appropriate to their needs. Participants will be drawn from educational advisers working at USIA-affiliated overseas educational advising centers. The training program is intended for approximately fifteen to eighteen participants. The program must be at least two and one half weeks in duration and must include workshops on advising issues of concern, an internship or other form of substantive professional stayover at a U.S. academic institution(s), and attendance at the national NAFSA: Association of International Educators Conference. USIA anticipates awarding up to $150,000 to one organization to administer this program.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.''

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

Announcement Title and Number: All communications with USIA concerning this RFP should refer to the announcement's title and reference number E/ASA–99–05.

Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5:00 p.m. Washington, D.C. time on Thursday, October 1, 1998. Faxed documents will not be accepted at any time. Documents postmarked by the due date but received at a later date will not be accepted.

FOR FURTHER INFORMATION CONTACT: The Office of Academic Programs, Advising and Student Services Branch, *E/ASA,* U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547, telephone: (202) 619–5434, fax: (202) 401–1433, E-mail: dmora@usia.gov, to request a Solicitation Package containing more detailed criteria. Please request required application forms and standard guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps. Please read all information before downloading.

To Receive a Solicitation Package Via Fax on Demand: The entire Solicitation Package may be received via the Bureau's ''Grants Information Fax on Demand System,'' which is accessed by calling 202/401–7616. Please request a ''Catalog'' of available documents and order numbers when first entering the system.

Please specify USIA Program Officer Dorothy Mora on all inquiries and correspondences. Interested applicants should read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

Submissions: Applicants must follow all instructions given in the Solicitation Package. The original and eight copies of the application should be sent to: U.S. Information Agency, Ref.: *E/ASA–99–05,* Office of Grants Management, E/XE, Room 326, 301 4th Street, S.W., Washington, D.C. 20547.

Diversity, Freedom and Democracy Guidelines: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' USIA ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Proposals should account for advancement of this goal in their program contents, to the full extent deemed feasible.

SUPPLEMENTARY INFORMATION:

Overview

The training program's objectives are twofold: to strengthen and develop the skills of overseas educational advisers; and to build a corps of knowledgeable advisers who are skilled as trainers and can advance the field of educational advising in their home countries with new and current expertise, techniques and knowledge of applicable technology. Each component of the training program should be designed to provide detailed, hands-on learning in areas such as facilitating access to U.S. higher education, communicating cross-culturally, and managing an advising center. Special attention should be given to the use of technology, both as a necessary advising skill, and as a potential tool to develop new and creative advising approaches. Similarly, a significant emphasis should be placed on outreach, partnership and cost-sharing strategies and skills development.

Guidelines

1. Participants

For the purposes of this RFP, eligible advisers are defined as those who have demonstrated the skills associated with the four major components of overseas educational advising: (1) basic knowledge of the U.S. and home country educational systems; (2) basic knowledge of the U.S. higher education application process; (3) demonstrated educational advising and cross-cultural communication skills; and (4) demonstrated office management skills as they relate to an overseas advising center. In addition, each participant must demonstrate leadership and a commitment to the profession. Approximately 15–18 participants are expected for this training program. Participants will be selected by USIA based on nominations from overseas posts. To be eligible, an adviser must have at least two to five years of experience and a demonstrated commitment to the field of overseas advising.

2. Program Design

USIA invites organizations to submit creative and flexible program plans which can be tailored, in close consultation with E/ASA, to the selected advisers' individual needs. However, the proposal should still include an overall project framework which identifies objectives, an implementation plan and measurable, expected outcomes.

Possible topics to incorporate in the program include: degree equivalency and accreditation; international student admissions; financial aid; standardized testing; ESL programs; immigration and visa issues; fields of study; cultural adjustment/U.S. societal diversity; specialized Internet usage; distance learning; proposal writing; fundraising; public relations and marketing; determining appropriate fees for students and others, given each host country's environment; trends in advising center cost sharing and training and management of volunteer staff.

3. Timing/Program Phases

The program should include attendance at, and active participation in, the spring national NAFSA conference where workshops and seminars address various issues of current interest to international educators and overseas advisers and where the opportunity to brainstorm and to share information plays an important part. Advisers should have opportunities to present and/or participate in panels and pre-conference/conference workshops. In 1999, the national conference is scheduled for May 23–28 in Denver, Colorado. In addition, the program should include an internship experience at a U.S. college or university. Ideally, advisers should be on campus while classes are in session to optimize their experience through interaction with students.

4. Logistics

The recipient organization will be responsible for arrangements associated with this program. These include organizing a coherent progression of activities, providing international and domestic travel arrangements for all advisers, making lodging and local transportation arrangements, orienting and debriefing advisers, preparing any necessary support material, locating host campuses and working with host institutions and experts in the field of higher education and overseas advising to achieve maximum program effectiveness through hands-on applications and training and direct involvement in the administration of practices and policies in institutions of higher education.

5. Evaluation/Follow-Up

The proposal must include a detailed evaluation and follow-up plan. Special emphasis should be given to designing a program which incorporates outcome measurement strategies that assess its ultimate effectiveness.

6. Visa/Insurance/Tax Requirements

The program must comply with B–1 tourist visa regulations. Participant health and accident insurance will be provided to the overseas advisers by USIA; the recipient organization will be responsible for enrolling participants in USIA's insurance program and providing any necessary assistance should medical care be needed. Administration of the program must be in compliance with reporting and withholding regulations for federal, state, and local taxes as applicable. Recipient organizations should demonstrate tax regulation adherence in the proposal narrative and budget.

7. Printed Materials

Drafts of all printed materials developed for this program should be submitted to E/ASA for review and approval. All official documents should highlight the U.S. government's role as program sponsor and funding source. USIA requests that it receive the copyright use and be allowed to distribute any of this material if it sees fit to do so.

Proposed budget

Applicants must submit a comprehensive line item budget based on the budget guidelines in the PSI for the entire program. USIA's grant assistance, up to $150,000 in total, is expected to constitute only a portion of the total project funding. Cost sharing is required and the proposal should list other anticipated sources of support.

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as a breakdown reflecting both the administrative budget and the program budget. For further clarification, applicants may provide separate sub-budgets for each program component, phase, location, or activity in order to facilitate USIA decisions on funding.

Allowable costs for the program include the following:

(1) Salaries and fringe benefits; travel and per diem;

(2) Other direct costs, inclusive of rent, utilities, etc.;

(3) Indirect expenses, auditing costs;

(4) Participant program costs; i.e., international/domestic travel, per diem, conference attendance, resource materials. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the program office, as well as the USIA Area Offices. Proposals may be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the program idea

Proposals should exhibit originality, substance, precision, and relevance to Agency mission.

2. Program planning

A detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. Ability to achieve program objectives

Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. Multiplier effect/impact

Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. Support of diversity

Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

6. Institutional capacity

Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

7. Institution's Record/Ability

Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. Project Evaluation

Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended. Successful applicants will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

9. Cost-effectiveness

The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

10. Cost-sharing

Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: August 13, 1998.

James D. Whitten,

Acting Associate Director for Educational and Cultural Affairs.

[FR Doc. 98–22298 Filed 8–19–98; 8:45 am]

BILLING CODE 8230–01–M

Corrections

Federal Register

Vol. 63, No. 161

Thursday, August 20, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–372–000]

Overthrust Pipeline Company; Notice of Tariff Filing

Correction

In notice document 98–21820, beginning on page 43695, in the issue of Friday, August 14, 1998, the docket number should appear as set forth above.

BILLING CODE 1505–01–D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4370–N–01]

Fiscal Year 1999 Multifamily Housing Mortgage and Housing Assistance Restructuring Program Request for Qualifications

Correction

In notice document 98–22029 beginning on page 44102 in the issue of Monday, August 17, 1998 make the following correction:

On page 44105, third column, fifth line from the bottom, ''September 27, 1998'' should read ''August 27, 1998''.

BILLING CODE 1505–01–D

Federal Register

Thursday
August 20, 1998

Part II

Federal Deposit Insurance Corporation

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 303, 333, 337, 341, 347, and 359

RIN 3064–AC02

Filing Procedures and Delegations of Authority; Unsafe and Unsound Banking Practices; Registration of Transfer Agents; International Banking; Management Official Interlocks; and Golden Parachutes and Indemnification Payments

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is amending its regulations governing application, notice and request procedures and delegations of authority by streamlining, modernizing, and clarifying current policies and practices. The final rule provides qualifying well-capitalized and well-managed insured depository institutions and their holding companies expedited processing procedures for several major types of filings, including deposit insurance, branch, and merger applications. The final rule also centralizes substantially all filing procedures found throughout the FDIC's regulations within this rule for ease of reference. It reorganizes the requirements of each major filing type into a separate regulatory subpart that will contain all information necessary to submit a filing to the agency, as well as any relevant internal agency delegations of authority. In addition the rule incorporates statutory changes to its application procedures made by the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA). Finally, technical changes are being made to related regulations to conform to these changes.

This action is being taken in accordance with section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRIA) which requires the federal banking agencies to review and streamline their regulations and policies in order to improve efficiency, reduce unnecessary regulatory burden, eliminate unwarranted constraints on credit availability, and remove inconsistencies and outmoded and duplicative requirements.

The final rule seeks to reduce burden on insured depository institutions by imposing regulatory requirements only where needed to address safety and soundness concerns or accomplish other statutory responsibilities of the FDIC. The final rule also strives to more closely align the FDIC's application processing regulations with those of the other banking agencies.

DATES: These revisions are effective October 1, 1998. It is not considered practicable to permit early compliance with these revisions.

FOR FURTHER INFORMATION CONTACT: Division of Supervision: Christie A. Sciacca, Associate Director, (202) 898–3671; Mark S. Schmidt, Associate Director, (202) 898–6918; Jesse G. Snyder, Assistant Director, (202) 898–6915; John M. Lane, Assistant Director, (202) 898–6771; Division of Compliance and Consumer Affairs: Steven D. Fritts, Associate Director, (202) 942–3454, and Louise N. Kotoshirodo, Review Examiner (202) 942–3599. Legal Division: Susan van den Toorn, Counsel, Regulation and Legislation Section (202) 898–8707, and Nancy Schucker Recchia, Counsel, Regulation and Legislation Section (202) 898–8885. For administrative enforcement issues: Grovetta N. Gardineer, Counsel, Compliance and Enforcement Section (202) 898–3728, and Philip P. Houle, Counsel, Compliance and Enforcement Section (202) 898–3722. For international banking: Christopher Spoth, Assistant Director, Division of Supervision, (202) 898–6611, and Jamey G. Basham, Counsel, Regulation and Legislation Section, Legal Division (202) 898–7265, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

Part 303 of the FDIC's regulations (12 CFR part 303) generally describes the procedures to be followed by both the FDIC and applicants with respect to applications, notices, or requests (collectively ''filings'') required to be filed by statute or regulation. Additional information concerning processing is contained in related FDIC statements of policy. Part 303 also sets forth delegations of authority from the FDIC's Board of Directors to the Directors of the Division of Supervision (DOS), the Division of Compliance and Consumer Affairs (DCA), the General Counsel, the Executive Secretary, and, in some cases, their designees to act on certain filings and enforcement matters.

The final rule makes comprehensive changes to part 303 as part of the FDIC's systematic review of its regulations and policy statements undertaken in accordance with section 303(a) of the CDRIA (12 U.S.C. 4803(a)). Section 303(a) of CDRIA requires the FDIC, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Office of Thrift Supervision (federal banking agencies) to streamline and modify their regulations and written policies in order to improve efficiency, reduce unnecessary costs, and eliminate unwarranted constraints of credit availability. The statute also requires each of the federal banking agencies to remove inconsistencies and outmoded and duplicative requirements from their regulations and written policies and to work together to make uniform regulations that implement common statutory or supervisory policies.

II. Discussion

The final rule accomplishes the goals of section 303(a) of the CDRIA in several important ways.

- New expedited processing procedures have been introduced for certain well-capitalized and well-managed banks. Expedited procedures will reduce processing time for applications submitted by qualifying institutions and will add more certainty to the timing of regulatory action. They will also allow the FDIC to focus its resources on applications that do not fall within the new expedited review procedure and therefore are more likely to present safety and soundness risks or raise CRA or compliance concerns.
- Some applications are processed as notices. For example, applications to establish a branch or relocate a main office or a branch processed under expedited procedures generally will be deemed approved 21 days after receipt of a substantially complete application.
- Regulations and guidelines issued by the federal banking agencies implementing common statutes have been made more uniform. This is particularly true of filings regarding merger transactions, changes in bank control, and change in directors or senior executive officers.
- Filing contents have been clarified and streamlined wherever practical.
- The procedural requirements for virtually all applications and notices have been centralized in part 303.
- Delegations of authority from the FDIC's Board of Directors to the Directors of DOS and DCA, the General Counsel, and the Executive Secretary to act on certain filings and enforcement matters have been updated.
- Duplicative and outdated material has been removed from existing part 303. An example is the elimination of the requirement for an application to establish or relocate a remote service facility because a remote service facility is not a branch pursuant to section 2204 of the Economic Growth and Regulatory

Paperwork Reduction Act of 1996 (12 U.S.C. 36).

Concurrently with the adoption of this final rule, the FDIC is also publishing elsewhere in today's **Federal Register** three revised statements of policy relating to filing procedures. These statements of policy pertain to Applications for Deposit Insurance, Bank Merger Transactions, and Liability of Commonly Controlled Institutions. Additionally, notices of rescission of the statements of policy on Applications to Establish a Domestic Branch (includes Remote Service Facilities) and Applications to Relocate Main Office or Branch (includes Remote Service Facilities) are published elsewhere in today's **Federal Register**.

III. General Discussion of Comments

The FDIC published in the **Federal Register** a notice soliciting comment on proposed part 303, 62 FR 52810, October 9, 1997. In response to that request, the FDIC received fifteen comment letters. Eight comment letters were received from community groups, five from bank trade associations, one from a law firm, and one from a bank holding company. Fourteen comment letters were received regarding five notices to amend, revise or rescind related statements of policy. These notices were published elsewhere in the **Federal Register** of October 9, 1997. In addition, one of the comment letters on part 303 contained comments on four of the related statements of policy. Final action on the five related statements of policy is published elsewhere in today's **Federal Register**.

The FDIC carefully considered each of the comment letters and made a number of changes to the final regulation in response to such comments and suggestions. Virtually all the comments received on the proposed regulation directly or indirectly addressed the concept of expedited processing for well-managed and well-capitalized depository institutions. While numerous commenters expressed strong support for expedited processing, others expressed a concern that expediting the application process would have an adverse effect on the enforcement of the Community Reinvestment Act of 1977 (12 U.S.C. 1811 *et seq.*) (CRA).

The agency wishes to stress that it is neither the intent nor effect of expedited processing to weaken review of an applicant's performance under the CRA. In response to concerns expressed, the FDIC has increased the period of time during which the public may comment on an application for federal deposit insurance from 15 days to 30 days. In addition, the FDIC is committed to placing a listing of all applications for deposit facilities subject to public comment on the agency's home page on the World Wide Web. The issues raised regarding expedited processing are addressed in more detail in the discussion of comments related to subpart A.

Several commenters suggested that timelines be established for filings not eligible for expedited processing. On May 6, 1996, the FDIC issued a Financial Institutions Letter (FIL–26–96) to all FDIC-insured institutions listing target time frames for each type of filing. The FDIC intends to monitor processing of applications that do not qualify for expedited processing in accordance with these internal guidelines. These guidelines, however, generally do not apply to filings that raise novel legal or policy issues, are the subject of a CRA protest, or involve a historic site. It is the intent of the FDIC to act on all filings as promptly as resources and prudence permit.

The following subpart by subpart discussion identifies and discusses comments and changes to the proposal that are being adopted. A table summarizing the sections of chapter 12 that are changed by the final rule is included at the end of this preamble.

IV. Final Rule

A. Subpart A—Rules of General Applicability

Subpart A of the proposal clarified and simplified the rules generally applicable to the processing of filings required by regulation or statute by reorganizing the general rules of procedure into one subpart. Proposed subpart A explained the availability of expedited processing by defining which depository institutions would be eligible for such processing, setting forth the process itself, and the criteria under which the FDIC might remove a filing from expedited processing. Proposed subpart A also contained public notice requirements, provisions for public access to filings, hearing procedures, and appeals and nullification procedures. Additionally, subpart A set forth general principles governing delegations of authority from the Board of Directors to certain FDIC officials and defined certain terms used throughout the proposed rule.

Definitions. Proposed § 303.2 alphabetized the current definitions and added several new definitions utilized elsewhere in the proposal. With the exception of the comments discussed below regarding the definition of ''eligible depository institution,'' no comments were received on any of the definitions in proposed § 303.2.

The proposal defined ''eligible depository institution'' to establish criteria that institutions must meet to qualify for expedited processing, as set forth in § 303.11. Proposed § 303.2(r) defined the term ''eligible depository institution'' as a depository institution that meets the following five criteria: (1) received an FDIC-assigned composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (UFIRS) as a result of its most recent federal or state examination;[1] (2) received a satisfactory or better CRA rating from its primary federal regulator at its most recent examination; (3) received a compliance rating of 1 or 2 from its primary federal regulator at its most recent examination; (4) is well-capitalized as defined in the appropriate capital regulation and guidance of the institution's primary federal regulator; and (5) is not subject to a cease and desist order, consent order, prompt corrective action directive, written agreement, memorandum of understanding, or other administrative agreement with its primary federal regulator or chartering authority. In the proposal the FDIC specifically sought comment on whether the above eligibility standards are appropriate.

The FDIC received numerous comment letters on the definition of ''eligible depository institution.'' The commenters were divided in their views as to the appropriateness of the eligibility criteria.

Commenters who supported the proposed definition and the concept of expedited processing confirmed the FDIC's belief that the criteria for eligibility are appropriate to ensure that only well-capitalized and well-managed institutions that do not present any supervisory, compliance or CRA concerns receive expedited processing.

A number of commenters expressed concern that by using CRA ratings as one of the criteria for an eligible depository institution, the FDIC was establishing a ''safe harbor'' against public challenge to an applicant's CRA performance. The commenters were further concerned that the FDIC's expedited processing of applications meeting the definitional criteria would have an adverse impact on the CRA and its enforcement. Two commenters opposing the use of CRA ratings as eligibility criteria for expedited processing cited concerns that CRA

[1] An FDIC-assigned composite UFIRS rating may be based on the FDIC's own examination or based on the review of examination reports prepared by state banking authorities or the other federal banking agencies.

ratings are not a suitable criteria because the CRA evaluation procedures are still being developed and are not yet uniformly rigorous.

It is neither the purpose nor the effect of the eligible depository institution concept to adversely affect enforcement of the CRA. In fact, § 303.11(c)(2) explicitly enables the FDIC to remove a filing from expedited processing if, among other things, the FDIC receives a CRA protest that warrants additional investigation or review, or the appropriate regional director (DCA) determines that the filing presents a significant CRA or compliance concern. Thus, as discussed in greater detail below, § 303.11(c)(2) provides that the FDIC will fully and carefully consider all CRA protests and CRA or compliance concerns that are determined to be significant.

The FDIC has taken a number of steps to promote consistent application of the CRA, both internally and on an interagency basis. Full implementation of the new CRA regulation was delayed for two years in order to collect uniform lending data upon which to base the FDIC's examination of large banks and thrifts. To familiarize examiners with the new standards and to promote their consistent application, the federal banking agencies conduct regular joint examiner training sessions. In addition, the agencies have jointly developed written guidance for examiners, financial institutions and the public. Further, the agencies are currently initiating an interagency review of a sample of each agency's CRA performance evaluations for large institutions and the agencies will also examine a limited number of large institutions using interagency teams of examiners.

Two other commenters expressed concern that the CRA rating is an inappropriate criterion for determining the eligibility of a depository institution for expedited processing for any filing that is not an application for a deposit facility as defined by the CRA. The FDIC reserves expedited processing for well-capitalized and well-managed banks. An institution's performance under the CRA reflects on the quality of its management. While an institution must have a satisfactory or better CRA rating to be eligible for expedited processing, regardless of the type of application being made, the FDIC will not consider CRA performance in deciding upon the merits of an application if such application is not for a deposit facility. Proposed § 303.5 sets forth those filings for which an institution's CRA record will be taken into account in deciding upon the merits of the application (deposit insurance, merger transactions, and establishment or relocation of a branch or main office, including the relocation of an insured branch of a foreign bank).

The FDIC recently published a final rule which revises and consolidates its international banking regulations (12 CFR part 347) and a proposed rule for comment that would revise its regulations governing the activities and investments of insured state banks and savings associations (12 CFR part 362). 63 FR 17056, April 8, 1998; 62 FR 47969, September 12, 1997. These rulemakings contain expedited procedures and definitions of an ''eligible'' type of institution which generally parallel proposed § 303.2(r). One comment received on proposed part 347 noted that although a bank must have a satisfactory or better CRA rating in order to meet that part's definition of eligibility, ''special purpose'' banks which are exempt from CRA are not assigned CRA ratings. Under the FDIC's CRA regulations at 12 CFR part 345, special purpose banks are not subject to examination under the FDIC's CRA regulations (12 CFR 345.11(c)(3)). The FDIC does not intend to apply the CRA element of the definition of an eligible depository institution to a special purpose bank which is not subject to examination under the FDIC's CRA regulations. Language to this effect has been added to the definition of ''eligible depository institution'' in § 303.2 of the final rule.

In the final rule the FDIC includes the term ''organizer'' in the proposed definition of ''insider,'' in § 303.2(u) to make clear that the FDIC considers organizers to be insiders, similar to incorporators. This change is consistent with other provisions of part 303.

The FDIC adopts proposed § 303.2 with the revisions to § 303.2 (r) and (u) indicated above.

General filing procedures. Proposed § 303.3 set forth general procedures for submitting filings under part 303, including where forms may be obtained and to whom they should be sent. Procedures are also designated for filing when no form is prescribed. Specific filing requirements are set forth in the appropriate subparts of the rule.

No comments were received on this section. The FDIC adopts this section as proposed with a minor stylistic change to make the meaning of the section more clear.

Computation of time. Proposed § 303.4 clarified that the FDIC uses a calendar day rule and begins computing the relevant period on the day after an event occurs (for example, the day after receipt of a filing or newspaper publication).

No comments were received on this section. The FDIC adopts this section as proposed.

Effect of CRA performance on filings. Proposed § 303.5 stated that CRA performance will be considered in connection with applications to establish a domestic branch or relocate a domestic branch or main office, merger applications, and deposit insurance applications, and clarified that CRA applies to applications to relocate an insured branch of a foreign bank. Although this information is currently contained in 12 CFR Part 345 (Community Reinvestment Act), the FDIC believes that an explicit statement concerning the filings covered by CRA better serves the public and the banking industry than providing a cross-reference.

The only specific comment received on proposed § 303.5 found that the information contained in proposal was useful information worth highlighting in subpart A. The FDIC adopts this section as proposed.

Investigations and examinations. Proposed § 303.6 made clear that certain FDIC officials have general delegated authority to examine or investigate and evaluate facts related to any filing under chapter 12. This provides needed flexibility to evaluate factual and legal issues that arise during the course of a filing.

No comments were received on this section. The FDIC adopts this section as proposed.

Public notice requirements. Proposed § 303.7 set forth the general requirements for providing notice of a filing to the public. The proposal required an applicant to provide prior notice of, and the opportunity to comment on, a filing to establish a domestic branch, relocate a domestic branch or the main office, relocate an insured branch of a foreign bank, engage in a merger transaction or other business combination, initiate a change of control transaction, or request deposit insurance. Where applicable, specific publication requirements appear in the appropriate paragraphs of part 303.

No comments were received on proposed paragraphs (a), (b), (d) or (e). The FDIC adopts these paragraphs as proposed with minor stylistic changes to make the meaning of the paragraphs clearer. In particular, § 303.7(b) has been refined in the final rule to make clear that where the notice of filing has been published prior to submission of the filing to the FDIC, the applicant should include confirmation of such publication with the filing. This will

further ensure that possible delays due to defective notices are avoided.

Proposed § 303.7(c) provided applicants with the choice of giving public notice by using a sample notice or drafting a notice that incorporates certain specified information and is tailored to the needs of the institution. This choice was designed to reduce burden on the banking industry by providing more flexibility in the required form of notice while, at the same time, requiring all applicants to provide the public with the same basic information.

Two comments were received on this paragraph, both of which were generally favorable. Both commenters supported the flexibility that the FDIC proposed to offer to banks to meet their notification requirements. One of the commenters urged the FDIC to monitor the notices being used to ensure that all parties operate on the same basis and so there is no confusion about the content of the notice. The FDIC seeks to ensure that applicants comply consistently with public notice requirements by requiring each applicant to submit a copy of the public notice for content verification.

The FDIC has made minor modifications to § 303.7(c). The language of the final rule clarifies that applications to relocate a main office are included within the notice requirement. The language has been further modified to make clear that the public notice must state that photocopies of nonconfidential portions of an application will be provided by the appropriate regional office upon request. This requirement is included in current § 303.6(f)(4).

The FDIC adopts proposed § 303.7(c) with the revisions discussed above.

The final rule includes a provision at § 303.7(f) that was not included in the proposal. Section 303.7(f) provides that where public notice is required, the FDIC may determine on a case by case basis that unusual circumstances surrounding a particular filing warrant modification of publication requirements. This new provision was added in response to a comment on subpart D, pertaining to merger transactions. The comment suggested that the FDIC require notices regarding merger transactions to be published in languages other than English in communities with significant non-English speaking populations.

The FDIC appreciates the concern reflected in this comment. Rather than limit applicability to situations involving merger applications and non-English publication, however, the FDIC has instead added a more broadly-focused provision. Under the new § 307.7(f) the FDIC may determine on a case-by-case basis that unusual circumstances surrounding a particular filing warrant modification of the publication requirements. It is intended that this provision will be applied sparingly and with the purpose of making publication more meaningful, not as a means of altering the publication requirements to suit the convenience of the parties or as a means of curing defective publications.

Public Access to Filings. Proposed § 303.8 set forth the procedures by which the FDIC makes the non-confidential portions of filings that are subject to a public notice requirement available to the public. Under the proposed rule, the FDIC makes such portions available for inspection upon request, not more than one business day after the regional office receives such request.

A number of the commenters made specific suggestions as to how the FDIC might make applications and filings more accessible to the public. These suggestions included making a list of pending applications available on the FDIC's World Wide Web page; providing copies of filings within three days of receiving a request for filings; and mailing notices of all pending applications to all individuals and groups who request to be included on a mailing list.

The FDIC has adopted various of the commenters' suggestions for expediting the public's receipt of information related to the filing of applications. The FDIC currently has a World Wide Web site with significant information of interest to the public. The FDIC will include at its World Wide Web site a page that will provide the public with prompt notice of all applications filed for deposit facilities that are subject to public comment. This page will be available when the final rule becomes effective and may be found at www.fdic.gov. In addition, the FDIC is committed to mailing the public portions of an application file to a requester within three business days of the appropriate regional office's receipt of the request to view the file. In some instances this may result in a filing becoming public prior to the publication of notice required by § 303.7.

The FDIC also will continue existing practices designed to provide information to the public on applications that are subject to the CRA. The FDIC will continue to provide updated lists of pending applications on a regular basis to all individuals or groups who have submitted a request to the appropriate regional director (DOS) to be included on this mailing list. In addition, it will continue to be the policy of the FDIC to provide the non-confidential portions of application files for public inspection at the appropriate regional office. The final rule adds language to clarify this latter policy. The FDIC believes that these practices will facilitate the public's ability to provide meaningful comments.

In addition, the final rule adds a reference to part 309 of the FDIC rules and regulations. This regulation sets forth the FDIC's procedures for processing requests for information pursuant to the Freedom of Information Act (FOIA) (5 U.S.C. 552). Part 309 of the FDIC rules and regulations was recently revised to reflect changes to the FOIA as a result of the Electronic Freedom of Information Act Amendments of 1996 (63 FR 29, January 2, 1998).

The FDIC believes that these changes to its procedures and continued commitment to existing practices will greatly facilitate the public's access to filings made to the FDIC and the public's ability to consider and comment upon such filings.

Public comments. Currently, interested parties may comment on a pending filing until the date of final disposition. Proposed § 303.9(a) provided that comments would be accepted only during a defined comment period in order to add certainty to the filing process for both the public and the applicant. The FDIC believes that closing the comment period on a date certain eliminates the risk of final action being delayed due to a late comment or of final action being taken while a comment is being transmitted to the FDIC.

Currently, the only basis for extension of the comment period is for ''good cause.'' In order to provide the public with adequate time to submit meaningful comments, proposed § 303.9(b)(2) granted the appropriate regional director (DOS) three bases upon which to extend or reopen the public comment period: (1) if the applicant failed to file all required information on a timely basis to permit review by the public or made a request for confidential treatment not granted by the FDIC that delayed the public availability of that information; (2) if any person requesting an extension of time satisfactorily demonstrated to the FDIC that additional time was necessary to develop factual information that might materially affect the application; or (3) for good cause.

Further, proposed § 303.9(b)(4) clarified that the FDIC will provide copies of all comments to the applicant

and that the applicant will be given an opportunity to respond.

Several of the commenters fully supported the proposed defined comment period because it will reduce the current level of uncertainty that applicants face in making applications to the FDIC. Two of these commenters suggested that the defined comment period in the proposal would create a desirable shift of focus from enforcing CRA through the applications process to enforcing CRA through the examination process. One of these commenters believed that the ''good cause'' basis for an extension of the comment period is unnecessary because the other conditions for an extension are sufficiently comprehensive. Another commenter recommended that the FDIC take all possible regulatory action necessary to ensure that public notice is made so as to ensure that public commenters cannot seek delay based upon allegations of inadequate notice.

Other commenters were strongly opposed to the proposed defined periods of time for comment. These commenters stated that the current flexibility in comment periods has been important in allowing the public to comment on applications covered by CRA. These commenters were concerned that the streamlined process will not provide enough time and opportunity to discover the filing of an application, conduct the necessary analysis and research and to write and submit any comments to the FDIC. They also question whether the FDIC's current decision making process has been delayed because of open public comment periods. Some of these commenters focused on the role that the applications process plays in enforcing CRA and were concerned that the proposal would weaken an enforcement tool that has been important to community groups.

The commenters were also divided on their beliefs as to whether the actual periods of time permitted for public comment in the specific subparts were adequate. The commenters who supported the proposed revision generally believed that the comment periods provided for in the various subparts were sufficient. The commenters who opposed proposed § 303.9 generally believed that the specific time periods were too short.

The FDIC believes that proposed § 303.9 strikes an appropriate balance between providing more certainty and expediency in the applications process and giving the public an opportunity to comment on an institution's CRA performance. The public comment period prompted by an application is not intended to be the exclusive opportunity for the public to inform the FDIC of concerns. Comments may be submitted to the FDIC at any time if an individual or a group has a concern about an institution's CRA program. It is not necessary to wait for an application to be filed. All CRA comments will be considered by DCA. By closing the comment period, the FDIC will eliminate delaying final action because of late comments. In addition, the DOS regional director or deputy director may extend or reopen the comment period as discussed above. The FDIC believes that this flexibility will enable it to consider all relevant information as part of the decision making process and to complete that process in a timely manner.

As discussed previously, the FDIC has adopted certain suggestions of commenters to make filings and applications more accessible to the public in a more expeditious manner. Listing applications on the FDIC's World Wide Web site, providing access to public files within one day of receipt of a request, and mailing copies of public files within three days of receiving a request are all designed to make it easier for the public to provide timely comments. The FDIC believes these measures will help offset any adverse effect of defined comment periods.

The FDIC adopts this section as proposed with a minor stylistic change to make the intent clear.

Hearings and other meetings. Proposed § 303.10 simplified the current rules concerning hearing procedures contained in § 303.6 (h), (i), and (j) and updated those provisions to reflect current FDIC practices. Proposed § 303.10 (c) and (d) provided that the appropriate regional director (DOS) may grant or deny a request for a hearing and that the regional director's denial of such a request is a final agency determination that is not appealable to the FDIC Board of Directors.

One commenter endorsed the proposal to allow community groups to request public hearings on pending applications because they afford opportunities for public housing residents, persons with limited literacy skills, and other citizens unlikely to submit written comments to offer their views. This and another commenter suggested that FDIC adopt a mandatory hearing procedure like that of the Office of Thrift Supervision (OTS).

A third commenter appreciated the publication of procedures in proposed § 303.10 as a source of clarity for community groups and other commenters. This commenter recognized that informal meeting procedures might prove helpful in providing additional avenues for commenters to pursue and hoped that the informal meetings would not preclude the use of hearings. This commenter sought assurance that hearings will serve the purpose of providing additional opportunity for commenters to develop the record and insure that such venue is readily accessible. This commenter opposed the preclusion of appeals of decisions denying hearing requests, believing that the Board of Directors is better suited to weigh competing issues, consider overall public interest, and ensure that the standards for judging hearing requests are consistently and fairly applied.

The FDIC believes that proposed § 303.10 represents an equitable and balanced approach because it continues to provide a basis for an individual to request a hearing, but provides more clarity with respect to the circumstances under which the FDIC will grant such a request. Delegation of authority to the regional director (DOS) places the authority to make decisions closer to the specific situation. The regional director is the most senior-level regional official and will have direct knowledge of the record of the institution or institutions and communities involved. The FDIC believes the regional director (DOS) is thus well suited to decide whether additional submissions would benefit the decision making process. The OTS hearing procedure emphasizes informal meetings as prerequisites to formal hearings. If the issues are not resolved at such meetings OTS will conduct formal meetings. The FDIC's procedure also provides for informal meetings. The FDIC generally will grant a request for a hearing only if the FDIC determines that written submissions would be insufficient or that a hearing otherwise would be in the public interest.

Proposed § 303.10 has been revised to specifically include hearings and other proceedings in connection with nullification, revocation, amendment, withdrawal, and suspension of decisions on filings discussed below and in § 303.11(g). Additionally, the final rule makes clear that Legal Division consultation is required prior to taking action on a hearing request pursuant to § 303.10(c) or denying a hearing request pursuant to § 303.10(d). In addition, § 303.10(e)(2) has been modified slightly to clarify that the presiding officer in a hearing under this section shall be the regional director (DOS or DCA) or his or her designee or such other person as may be named by the FDIC Board of Directors or the

Director (DOS or DCA). This restates the FDIC's current practice as set forth in current part 303.

The FDIC adopts § 303.10 as proposed with the revisions discussed above and other minor stylistic changes to make the intent clear.

Decisions on filings. Proposed § 303.11 contained general provisions governing the process of deciding upon filings made under part 303, including the general procedures related to the decision making process; the authority of the FDIC Board of Directors to modify any of the procedures contained in part 303; and new provisions concerning multiple transactions, abandonment of filings, and nullification of decisions.

No comments were received on proposed § 303.11 (a), (b), (d), (e), (g). The FDIC adopts these paragraphs as proposed.

Proposed § 303.11(c) set forth the general provisions pertaining to expedited processing. Under the proposal, expedited processing is automatically given to institutions meeting the definition of an ''eligible depository institution'' (with a few exceptions where other conditions apply) unless the appropriate regional director or deputy regional director (DOS) removes the filing from expedited processing. Therefore, an applicant need not request expedited processing or even identify itself as an eligible institution. A filing may be removed from expedited processing pursuant to proposed § 303.11(c)(2) if: (1) for filings subject to public notice, an adverse comment is received that warrants additional investigation or review; (2) for filings subject to evaluation of CRA performance, a CRA protest is received that warrants additional investigation or review, or the appropriate regional director (DCA) determines that the filing presents a significant CRA or compliance concern; (3) for any filing, the appropriate regional director (DOS) determines that the filing presents a significant supervisory concern, or raises a significant legal or policy issue; or (4) for any filing, the appropriate regional director (DOS) determines that other good cause exists for removal. Under the proposal, if a filing is removed from expedited processing, the applicant will be promptly informed in writing of the reason. With the exception of filings made under subpart J (International Banking), proposed § 303.11(c)(1) provided that for filings where the appropriate regional director has not been delegated approval authority, the filing will generally be removed from expedited processing.

As discussed above, the general concept of expedited processing generated numerous comments both in support of the proposal and opposed to it. The final rule is designed to balance the concerns of removing undue delays from the application process with the need to assess legitimate CRA concerns fairly.

One commenter recommended that the mandatory removal from expedited processing of any application that is subject to a substantial CRA protest or otherwise meets the standards of § 303.11(c)(2). This commenter also believed that the FDIC's clarification of ''significant CRA protest'' in § 303.11(c)(3) of the proposed rule established a dual standard for distinguishing between areas in which the institution seeks to expand and areas where it currently has a presence but is not expanding. This commenter believed that if an institution's CRA performance is less than satisfactory in any geographic area, that fact alone should be grounds for its application to be removed from expedited processing, not whether the application is for expansion in that area or some other area.

It is the policy and practice of the FDIC to investigate all CRA protests to the extent considered necessary. As a practical matter this will require the majority of protested applications to be removed from expedited processing. It may be possible to resolve some protests during the expedited processing period. This is especially true of applications for deposit insurance which have an expedited processing period of sixty days. The FDIC provided guidance on what will constitute a ''significant CRA concern'' under § 303.11(c)(2) by way of example. In that paragraph the FDIC recognized that an applicant's overall CRA rating could be satisfactory, but the applicant could also have a less than satisfactory rating or performance in the particular geographic area to be affected by the filing. In such a circumstance the FDIC might require additional time to fully and fairly evaluate the filing and, if necessary, would remove the filing from expedited processing. The FDIC believes that the proposal provided the flexibility to fully evaluate local CRA concerns without undermining the intent of expedited processing.

Two commenters recommended the proposed rule be revised to include a requirement for an abbreviated CRA examination in the case of a CRA protest.

The FDIC believes that the proposed regulation and FDIC practice provides the FDIC with the flexibility to conduct a targeted CRA examination if such is necessary or appropriate under the circumstances. DCA's standard review of an applicant's record will include a review of current and previous CRA examination reports, the applicant's correspondence file, any complaints filed against the applicant, and any other pertinent information available. In addition, § 303.6 allows the Board of Directors, the Director, Deputy Director, associate directors, appropriate regional directors and deputy regional directors (DOS and DCA) to examine or investigate and evaluate facts related to any filings under this chapter to the extent necessary to reach an informed decision.

The same two commenters that suggested an abbreviated CRA examination also requested that the FDIC provide a detailed written statement of the basis for acting on protested applications.

The FDIC included in the proposed rule several opportunities for the applicant and the public to obtain written information regarding disposition of a filing. Proposed § 303.11(a) provided that the FDIC will notify both the applicant and any person who makes a written request of the final disposition of a filing. When the FDIC denies a filing, proposed § 303.11(a) provides that the FDIC will immediately notify the applicant in writing of the reasons for the denial. This written notification is placed in the public file and remains available at the appropriate regional office for 180 days after the final decision. For any filing covered by the hearing procedures of § 303.10, § 303.10(k) requires the FDIC to notify the applicant and all participants of the final disposition of a filing and provide a statement of the reasons for the final disposition. By adopting these provisions in the final rule, the FDIC believes it has appropriately balanced the interests of those seeking information on filing disposition with those who seek a streamlined process. Additionally, it has been the FDIC's recent practice and will continue to be the agency's practice to prepare an Order and Statement in conjunction with the approval or denial of any application subject to an unresolved CRA protest. Orders and Statements are available to the public as part of the public file of an application and are available in the FDIC's public reading room.

The FDIC adopts § 303.11(c) as proposed with minor technical changes to § 303.11(c)(1) and (3) to clarify the intended meaning of those paragraphs.

Appeals and requests for reconsideration. Proposed § 303.11(f) contained the FDIC's procedures governing petitions for reconsideration of a denied filing. The proposal clarified

that these procedures cover only requests for reconsideration of filings that do not otherwise have appeal procedures provided by other regulation or written guidance, and that decisions to deny a hearing request are nonappealable. No comments were received on proposed § 303.11(f).

The proposal modified the FDIC's appeals process. Under the proposal, a regional director or deputy regional director (DOS or DCA) could approve, but not deny, a petition for reconsideration. However, the Director or Deputy Director (DOS or DCA) could approve or deny a petition. If the petition were granted, the filing would be reconsidered by the Board of Directors if the filing was originally denied by the Board of Directors or denied by the Director, Deputy Director, or an associate director (DOS or DCA). The Director or Deputy Director (DOS or DCA) could reconsider the filing if the filing was originally denied by a regional director or deputy regional director. All decisions on requests for reconsideration and all reconsideration of denied filings require consultation with or the concurrence of the Legal Division. Proposed § 303.11(f) also clarified that a decision on a petition for reconsideration by the Director or Deputy Director (DOS or DCA) is a final agency decision and is not appealable to the Board of Directors.

The final rule changes the proposal regarding the FDIC officials who will act upon requests for reconsideration that are granted. Section 303.11(f)(5)(i) of the proposed rule provided that where reconsideration was granted for a filing within the scope of § 303.11(f) that was originally denied by the Director, Deputy Director or associate director (DOS or DCA), the appeal of the denial would be decided by the Board of Directors. Section 303.11(f)(5)(ii) of the final rule provides that such appeals will be decided by the FDIC's Supervisory Appeals Review Committee (SARC). The SARC is an existing committee established by the Board of Directors with delegated authority to consider appeals of material supervisory determinations such as examination ratings, material disputed asset classifications, determinations regarding violations of laws and regulations, as set forth in the **Federal Register** on March 25, 1995, 60 FR 15923. These existing functions of the SARC continue unchanged by the revision to § 303.11(f).

The FDIC believes that the SARC is an appropriate body to reconsider the original denial of a filing made by the Director, Deputy Director or associate director (DOS or DCA). The SARC includes the FDIC's most senior managers with expertise in the areas necessary to a comprehensive understanding of the issues presented by the reconsideration of denied filings. The SARC is comprised of the following FDIC officials: Vice Chairperson of the Board of Directors, the General Counsel, the Director of DOS, the Director of DCA, the Director of the Division of Insurance, and the Ombudsman.

The proposed rule did not contain time frames within which the FDIC should act on requests for reconsideration. Although no comments were received that specifically raised this issue, the final rule includes such time frames to assist applicants. Newly added § 303.11(f)(6) provides that the appropriate regional director (DOS or DCA) will notify an applicant of the FDIC's decision to grant or deny a request for reconsideration within 15 days of receipt of the request for reconsideration. If the FDIC grants a request for reconsideration, it will notify the applicant of its final decision within 60 days of the receipt of the request for reconsideration.

The FDIC adopts § 303.11(f) with revisions discussed above and certain minor stylistic changes to the language to make the intent clear.

Nullification, withdrawal, revocation, amendment, and suspensions of decisions on filings. The FDIC received no comments on proposed § 303.11(g). The final rule has been modified to clarify the FDIC's authority and procedures regarding nullification of decisions on filings and related actions. These changes are a logical extension from the proposed rule. The final rule clarifies the scope of the FDIC's nullification authority to include the authority to withdraw, revoke, amend, and suspend decisions on filings (collectively ''nullification'').

As proposed, § 303.11(g) would have authorized the FDIC to nullify a decision on a filing whenever: (a) the FDIC became aware of any material misrepresentation or omission by an applicant after the FDIC rendered a decision on a filing, (b) an applicant failed to inform the FDIC of a material change in circumstances which arose after the filing had been submitted to the FDIC and before the FDIC's decision on it, or (c) a decision on a filing was contrary to law, regulation, or FDIC policy, or was granted due to clerical or administrative error, or to a material mistake of law or fact.

The final rule refines the substantive criteria necessary for the FDIC to take one of these actions and states in more detail the procedures to be followed. The substantive grounds have been refined by eliminating matters contrary to ''FDIC policy'' and ''material mistakes of law or fact'' from the final rule. The FDIC has determined that a nullification should continue to extend to decisions on filings that are contrary to law or regulation and that the latter is inclusive of ''material mistakes of law and fact.'' The FDIC has also clarified one of the grounds for action contained in § 303.11(g). The proposed rule would have given the FDIC authority to issue a nullification on a filing if the applicant failed to inform the FDIC of a material change in circumstance which arose after the filing was submitted to the FDIC and before the FDIC's decision on it. Under the final rule, the FDIC may issue a nullification on a filing if at anytime the FDIC becomes aware of any material misrepresentation or omission relating to the filing, or of material change in circumstance that occurred prior to the consummation of the transaction or commencement of the activity authorized by the decision on the filing, or if the decision on the filing is contrary to law or regulation or was granted due to clerical or administrative error. The grounds for nullification are contained in revised § 303.11(g)(1).

The FDIC has added procedures for use in nullification actions in § 303.11(g)(2) and (3) to insure that the rights of the applicant are protected in that the applicant will receive notice of the FDIC's intent to nullify a decision on a filing and will have an opportunity to respond to the notice. The final rule also details the manner in which the FDIC would provide written notification of the proposed action and the reason therefor to the applicant. Final § 303.11(g)(2) also provides that the FDIC may in certain cases issue temporary orders without issuing a prior notice of intent to an applicant. In such cases, the applicant is still provided an opportunity to respond after issuance of the order.

Final § 303.11(g)(3) has been redesignated ''Response to notice of intent or temporary order.'' This section provides that an applicant may file a written response to a notice of intent within 15 days of service of the notice. A written response should include: (a) an explanation as to why the proposed action is not warranted and (b) any other relevant information, mitigating circumstances, documentation, or other evidence. As a general rule, it is expected that these matters will be resolved on written submissions. An applicant may request a hearing with oral arguments and testimony under § 303.10, although such hearings will not usually be granted unless resolution on the basis of written submissions is inadequate. Final § 303.11(g)(3) also

provides that an applicant's failure to file a written response within the 15-day period constitutes a waiver of the opportunity to respond and consent to the nullification, whether or not a temporary order had been issued.

Final § 303.11(g) did not discuss whether authority was to be delegated in connection with the exercise of the authority to nullify decisions on filings. In final § 303.11(g)(5), the FDIC Board of Directors retains the authority to issue a notice of intent to nullify if the decision on the filing was originally made by the Board. For decisions on filings under this § 303.11(g) that were not originally acted on by the Board, authority is delegated to the Director and Deputy Director (DOS and DCA) and, where confirmed in writing by the appropriate Director, to an associate director, to issue notices of intent and temporary and final orders, after consultation with the Legal Division. The appropriate Director may also designate regional directors and deputy regional directors to issue notices of intent and final orders. Delegated authority is to be exercised by the official who acted on the original filing or by an official or equivalent or higher authority.

General delegations of authority. Proposed § 303.12 consolidated the general principles governing delegations of authority from the Board of Directors to FDIC officials. Specific delegations of authority are contained in appropriate subparts.

No comments were received on this section. Changes were made to proposed § 303.12(a), (c), (e) to limit the application of § 303.12 to part 303 rather than to the entire chapter as proposed. Section 303.12(e) of the proposal has been further modified slightly in the final rule to make clear that actions taken by FDIC officials may be relied upon by the public as actions authorized by the FDIC. The FDIC adopts the remainder of the section as proposed.

Delegations of authority to DOS and DCA officials. Proposed § 303.13 contained delegations of authority to DOS and DCA officials to enable them to carry out the FDIC's applications function in the following areas: CRA protests, adequacy of filings, and the National Historic Preservation Act of 1966, (16 U.S.C. 470 *et seq.*) (NHPA).

Where a CRA protest is filed and remains unresolved, proposed § 303.13(a) delegated authority to the regional director or deputy regional director (DCA) to concur that approval of any filing subject to CRA is consistent with the purposes of CRA. Previously, receipt of any CRA protest caused a filing to be forwarded to DCA in Washington for review. For purposes of determining when to commence processing of a filing, proposed § 303.13(b) delegated authority to DOS officials to determine whether a filing is substantially complete. This provision also clarified that the standard to initiate the processing period is the receipt of a substantially complete filing.

Several commenters opposed the delegation of authority contained in proposed § 303.13(a) to make decisions and to act on CRA protested applications. These commenters objected to the removal of such authority from the presidentially appointed and accountable Board of Directors who they believed are in a better position to weigh the issues involved. These commenters were concerned that the CRA might not be applied consistently by various FDIC offices and that the increasing consolidation of the banking industry accompanied by interstate expansion would result in decisions being made by regional directors without complete understanding of a particular institution and its CRA record.

The FDIC is committed to careful and conscientious fulfillment of its CRA obligations. The FDIC believes there are adequate safeguards and checks in place to ensure that it is deliberate and fair in its actions involving consideration of CRA performance in the application process and to ensure consistency among regional offices. Internal procedures require regional offices to notify DCA in Washington of the receipt of a protest within specific time frames. In addition, as discussed below in the appropriate paragraphs, the FDIC has revised the delegation of authority where a CRA protest is unresolved. Proposed §§ 303.26, 303.46 and 303.184 provided that where a CRA protest was unresolved at the regional level, the Director or Deputy Director (DOS) could approve the protested filing. The final rule makes clear that the Director or Deputy Director (DOS) may approve such a filing only with the concurrence of the Director or Deputy Director (DCA). This clarification will ensure that those FDIC officials with relevant expertise will act together to approve any application under this part that is subject to an unresolved CRA protest. Moreover, under § 303.12(b)(1), the Board of Directors has not delegated the authority to act upon filings involving significant policy concerns, unique legal issues or other areas meriting special attention. Any filings involving these concerns would have to be decided by the FDIC Board of Directors.

Proposed § 303.13(c) contained a delegation of authority permitting DOS officials to enter into certain memoranda of agreement to facilitate the FDIC's ability to comply with the National Historic Preservation Act. No comments were received on this paragraph.

The final rule adds § 303.13(d) to delegate the authority necessary to modify publication requirements as set forth in § 303.7(f).

The FDIC adopts § 303.13 as proposed with the addition of § 303.13(d).

B. Subpart B—Deposit Insurance

Subpart B of the proposal reorganized and clarified the filing and processing procedures for an applicant to follow in applying for deposit insurance for a proposed or existing noninsured depository institution, for an interim depository institution (when required), and for continuation of deposit insurance for a state bank upon withdrawing from membership in the Federal Reserve System. Proposed subpart B updated the regulation to reflect current statutory requirements and current FDIC policy for processing such applications. Finally, subpart B of the proposal set forth the delegations of authority and criteria under which DOS may approve such applications. The final rule should be read in conjunction with the FDIC's revised statement of policy on Applications for Deposit Insurance found elsewhere in today's **Federal Register**.

Four commenters submitted comments in response to subpart B of the proposed rule. The FDIC has carefully considered these comments. The comments are summarized below in the following discussion of substantive changes to the regulatory text.

Filing procedures. Proposed § 303.21 set forth general procedures for filing applications for deposit insurance. No comments were received on this section. The FDIC adopts this section as proposed with minor changes to § 303.21(b) to make clear that deposit insurance applications for interim institutions are subject to the provisions of subpart B and § 303.62(b)(2), and to refine the intended definition of ''interim institution.'' This change is described more fully below and at § 303.24.

Processing. Proposed § 303.22(a) provided for the expedited processing of applications for deposit insurance for proposed depository institutions which will be subsidiaries of an ''eligible depository institution'' or an ''eligible holding company.'' Proposed § 303.22(b) provided for standard processing for those applications not

processed pursuant to expedited processing. Under expedited processing, applications would be processed within 60 days of receipt of a substantially complete application or 5 days after the expiration of the comment period, whichever is later. Heretofore, the time period for processing deposit insurance applications has generally been within 120 days. The proposal provided that final action may be withheld until the FDIC has assurance that permission to reorganize the proposed depository institution will be granted by the chartering authority. An eligible depository institution is defined in § 303.2(r) of the proposal. An eligible holding company is defined in § 303.22(a) of the proposal as a bank or thrift holding company which has consolidated assets of $150 million or more; has an assigned composite rating of 2 or better; and has at least 75 percent of its consolidated depository institution assets in eligible depository institutions. The proposal further provided that if the FDIC did not act within the expedited processing period, such inaction would not constitute an automatic or default approval.

Three commenters questioned the definition of an ''eligible holding company.'' One commenter suggested that only the composite rating be considered. Another commenter suggested that the size criteria be lowered to $100 million. The FDIC intends to achieve the expedited processing time frame for acting on applications for deposit insurance by eligible holding companies by performing a more limited investigation of the application than for those subject to standard processing. In order to provide such treatment, the FDIC must be confident that the sponsoring organization has sufficient financial and management resources to justify streamlined processing. The composite rating and size criteria as proposed are meant to be indicators of such strength. Therefore, the final rule does not change this aspect of the proposal. In addition, it should be noted that some applications that appear to meet the expedited criteria as a matter of first impression may be removed from expedited processing if sufficient management and capital resources are not present to give the FDIC sufficient comfort in utilizing expedited procedures. Likewise, the FDIC has the option of processing an application within the expedited time frame, even if the sponsor does not technically meet the eligibility definition. The FDIC intends to process all applications as expeditiously as prudence and its resources permit.

One commenter observed that it would be possible for an eligible holding company to receive expedited treatment even if some of its subsidiary institutions have less than satisfactory ratings. This is correct; however, if the condition of any of the subsidiary banks raises a safety or soundness, compliance or CRA concern, the regional director has the option of removing the application from expedited processing in accordance with the provisions of § 303.11(c)(2).

One commenter pointed out that a company which does not already control an insured depository institution cannot receive expedited treatment. The FDIC does not believe it appropriate to grant expedited treatment to applicants which do not have an established record of successfully managing an insured depository institution.

One commenter suggested an expedited processing time of 120 days, which has been the FDIC's internal time line for all deposit insurance applications. The FDIC believes it is practical to process an application from an eligible depository institution or eligible holding company in 60 days. However, applications for deposit insurance are not treated as notices, so they are not deemed to be approved by the passage of time. As set forth in § 303.11(c)(2) the FDIC can remove an application from expedited processing for a variety of reasons, including good cause. Removal of an application from expedited processing enables the FDIC to take additional time to consider a particular application that might present unique issues.

The FDIC adopts this section as proposed with a technical change to conform to the longer comment period described below and at § 303.23.

Public notice and comment period. Proposed § 303.23(a) provided that notice shall be published as close as practicable to the filing date but not more than five days before the filing date. This provided assurance that the public portion of the application file will be available for inspection during the comment period.

Under the proposal § 303.23(a) would have required interested parties to file comments with the appropriate regional director (DOS) on or before the 15th day following the date of publication. Two of the commenters believed that the proposed 15-day comment period was too short. In response to this concern, the proposed comment period under § 303.23(a) has been increased to 30 days in the final rule. Interested parties are required to file comments with the regional director on or before the 30th day following the date of publication. Also, the appropriate regional director (DOS) may extend or reopen the comment period for good cause.

The FDIC adopts this section with the longer public comment period discussed above.

Application for deposit insurance for an interim depository institution. Proposed § 303.24 defined an interim depository institution as an institution formed or organized solely to facilitate a merger transaction that would be reviewed by one of the four federal banking agencies and that would not open for business. The proposal described the requirements for a filing for deposit insurance for an interim depository institution and indicated the intent of the FDIC to take final action on such an application within 21 days after receipt of a substantially complete application unless the applicant was advised to the contrary.

No comments were received on this section.

Sections 303.21(b) and 303.24 have been revised in the final rule to cross-reference appropriate provisions of subpart D (Merger Transactions) of this part, § 303.60 *et. seq.* An interim institution is defined in § 303.21(b) of the final rule as a state or federally chartered depository institution that does not operate independently but exists solely as a vehicle to accomplish a merger transaction. A separate application for deposit insurance for an interim institution is not required in connection with merger transactions that require FDIC approval under subpart D. However, subject to the provisions of § 303.62(b)(2), a separate deposit insurance application is required for a state chartered interim institution if the related merger transaction is subject to approval by a federal banking agency other than the FDIC. Federally chartered interim depository institutions are deemed to be insured upon the issuance of a charter by the appropriate federal banking agency and an application for deposit insurance with the FDIC is not required. The FDIC believes that the changes to these two sections will ensure consistency among subparts B and D.

The filing required by § 303.24(b) of the final rule consists of a brief letter application and a copy of the related merger transaction. It is anticipated that the FDIC will consult with the federal banking agency reviewing the merger application and that final action on the deposit insurance application will be taken within 21 days after receipt of a substantially complete application. If

additional review by the FDIC is warranted, the applicant will be so advised in writing.

Continuation of deposit insurance upon withdrawing from membership in the Federal Reserve System. Proposed § 303.25 set forth the application procedure for the continuation of a state bank's deposit insurance upon its withdrawal from membership in the Federal Reserve System. No comments were received on this section. The FDIC adopts this section as proposed with minor technical revisions to clarify that the correspondence referred to in § 303.25(a)(1), (2) is with the appropriate Federal Reserve Bank.

Delegation of authority. Proposed § 303.26 sets forth the delegations of authority relevant to applications for deposit insurance. The specific criteria that must be met before delegated authority can be exercised, such as initial capitalization, reasonableness of legal fees and other expenses, projected profitability, investment in fixed assets and financial arrangements involving insiders, including stock financing arrangements, were updated to reflect current policy, and are discussed in the revised statement of policy on Applications for Deposit Insurance published elsewhere in today's **Federal Register**. The revised statement of policy is cross-referenced in the final rule to avoid duplication.

Proposed § 303.26(a)(1) delegated authority to the Director and the Deputy Director (DOS), and where confirmed in writing, to an associate director, and the appropriate regional director and deputy regional director (DOS) to approve applications for deposit insurance for proposed depository institutions subject to specified criteria. The criteria set forth in paragraph (v) provided that an application could be approved by the regional director or deputy regional director (DOS) only where no CRA protest, as defined in § 303.2(l), had been filed which remained unresolved, or where such protest remained unresolved, the appropriate DCA official concurred that approval would be consistent with purposes of the CRA, and the applicant agreed in writing to any conditions imposed regarding the CRA. Under the proposal, where a protested application remained unresolved the Director, Deputy Director or associate director (DOS) could approve the application without DCA concurrence. While no commenters specifically addressed this provision, several commenters raised general concerns regarding the FDIC's delegation of authority to act upon CRA protested applications. As discussed above, the FDIC believes that it is desirable to vest authority to act on protested applications in officials most likely to be personally familiar with the institution or institutions and communities involved. Section 303.26(a)(1) has been revised in the final rule to restrict the authority of the Director, Deputy Director and associate director (DOS) to act upon CRA protested applications by requiring them to obtain DCA concurrence before approving such applications. The FDIC believes that this revision will ensure that those FDIC officials with relevant expertise will act together to approve any application under this section that is subject to an unresolved CRA protest.

The FDIC adopts this section with the revisions discussed above.

Proposed § 303.27 set forth authority retained by the Board of Directors. No comments were received on this section. The FDIC adopts this section as proposed.

C. Subpart C—Establishment and Relocation of Domestic Branches and Offices

The proposal significantly revised the portion of part 303 that implements section 18(d) of the FDI Act (12 U.S.C. 1828(d)) which requires insured state nonmember banks to obtain the prior written consent of the FDIC in order to establish a domestic branch, relocate the main office, or relocate a branch. The major changes in the proposal provided for expedited processing for eligible depository institutions and new definitions for ''messenger service,'' ''mobile,'' ''temporary,'' and ''seasonal'' branches. The proposal excluded remote service units including automated teller machines and automated loan machines from the definition of a branch. Requirements related to interstate branching were also addressed in the proposal. Because of the comprehensive treatment of branches, the proposal also recommended rescinding the Statements of Policy regarding Applications to Relocate a Main Office or Branch and Applications to Establish a Domestic Branch. Both statements were considered obsolete and unnecessary considering the revisions to subpart C and are rescinded elsewhere in today's **Federal Register**.

The FDIC received three comments specifically on this subpart and numerous comments addressing expedited processing, the public comment period and the delegations of authority regarding CRA protested applications. The FDIC carefully considered all the comments, and the final rule reflects changes made in response to those comments as well as technical changes to the proposal.

Definitions. Proposed § 303.41(a) clarified that remote service units, including automated loan machines, are not branches. These exclusions are a result of statutory changes contained in section 2204 of EGRPRA (12 U.S.C. 36). Two commenters supported this change in the definition.

With regard to the definition of ''branch relocation,'' two commenters suggested that the FDIC explicitly make reference to the Policy Statement Concerning Branch Closing Notices and Policies (2 FDIC Law, Regulations and Related Acts 5391 (August 10,1993)) within the definition of ''branch relocation'' in order to ensure that the new definition is read as incorporating all of the guidance in the policy statement. The FDIC agrees that it would be useful to make reference to the policy statement and has provided the reference in the definition of a branch relocation.

Filing procedures. The proposed regulation at § 303.42(b)(2) provided filing procedures for messenger services and mobile branches. Specifically, the FDIC proposed that the geographic location for a mobile branch be designated as to which community or communities are to be served. The FDIC sought comment on whether such a designation is appropriate but received no specific response. The FDIC is, however, making a clarification in the final regulation to require that filings specify the community or communities in which the vehicle will operate and the manner in which it will be used.

One commenter recommended that applications for mobile branches be subject to abbreviated FDIC review and public notice procedures because of their unique characteristics and the substantial public convenience offered by these facilities. The FDIC has carefully considered the comment but believes that with the adoption of expedited processing for eligible institutions that a special provision for a more limited review is unnecessary.

In addition, proposed § 303.42(b) has been modified to include references to two FDIC statements of policy, one of which gives guidance on the National Environmental Policy Act of 1969 (42 U.S.C 4321 *et seq.*) (NEPA) (2 FDIC Law, Regulations and Related Acts 5185, March 31, 1980), and the other provides guidance on the NHPA (2 FDIC Law, Regulations and Related Acts 5175 (March 31, 1980). The language in § 303.42(b)(5) has been modified to simply require a statement as to whether or not the particular site for a branch or branch relocation is included, or is eligible for inclusion, in the National Register of Historic Places, including

documentation of consultation with the State Historic Preservation Officer, as appropriate. The proposed regulation required a statement as to whether or not the particular site is included in or is eligible for inclusion in the National Register as well as a statement that clearance has been or will be obtained from the State Historic Preservation Officer. This change has been made in anticipation of a programmatic agreement with the Advisory Council on Historic Preservation and subsequent change in the FDIC's Statement of Policy on NHPA to reflect exclusions of certain categories of properties from the NHPA.

With regard to the establishment of certain interstate de novo branches, the proposal at § 303.42(b)(8) required the applicant to provide a statement that the applicant has requested that the host state provide to the appropriate regional director (DOS) written confirmation that the applicant has complied with the state's filing requirements and that the applicant has also submitted to the host state bank supervisor a copy of the filing with the FDIC to establish and operate a de novo branch. This requirement has been deleted in the final regulation and the FDIC will make direct requests to the state supervisor in those limited cases where such confirmation is required. As a result of this deletion, the remainder of the section has been renumbered.

Processing. The proposal at § 303.43(a), provided expedited processing for applications for the establishment and relocation of domestic branches and offices for eligible depository institutions. The expedited processing procedures were contained in § 303.11(c), and provided that an application submitted by an eligible depository institution as defined in § 303.2(r) will be acknowledged in writing by the FDIC and receive expedited processing unless the FDIC removes the application from expedited processing for any of the reasons set forth in § 303.11(c)(2). Section 303.43(a) provided that the FDIC may remove an application from expedited processing at any time before the approval date and will promptly notify the applicant in writing of the reason for such action. Absent such removal, an application processed under expedited processing will be deemed approved on the latest of the following: (1) the 21st day after receipt of a substantially complete application by the FDIC, (2) the 5th day after expiration of the comment period described in § 303.44, or (3) in the case of an application to establish and operate a de novo branch in a state that is not the applicant's home state and in which the applicant does not maintain a branch, the 5th day after the FDIC receives from the host state confirmation that the applicant has both complied with the filing requirements of the host state and submitted a copy to the host state bank supervisor of the application filed with the FDIC. One commenter objected to the expedited processing provisions, arguing that they treat such filings as notices and would subvert the spirit of the CRA. The FDIC believes such concerns are unwarranted since the FDIC intends to carefully review all applications for CRA and other safety and soundness and compliance concerns regardless of the expedited processing time frames. The FDIC has also provided for provisions for removal from expedited processing in certain circumstances as enumerated in § 303.11(c)(2).

Public notice requirements. The public notice requirements of the proposal required that to relocate a main office the applicant publish notice in the community in which the main office is currently located and in the community to which the main office proposes to relocate, and that such notice be published at least once each week on the same day for two consecutive weeks. The proposal provided that for the relocation of branches, a notice shall be published once in a newspaper in the community in which the branch is located. One commenter objected to this provision and recommended that two newspaper publications be required to conform with the requirement for main office relocation. The FDIC believes that since a branch relocation can only occur in the same immediate neighborhood, that only one publication in that community is necessary. Furthermore, a single publication is consistent with the requirements of the other federal banking agencies.

In order to eliminate the uncertainty regarding the close of the comment period, proposed § 303.44 provided that comments must be received by the appropriate Regional Director (DOS) within 15 days after the date of the last newspaper publication and proposed § 303.9 provided for extension or reopening of the comment period in certain situations. The FDIC received numerous comments on the length of the comment period. Several comments supported the comment period, however, a number of commenters objected to the 15-day comment period. Several commenters suggested that a public comment period of 30 days after the last publication while one commenter suggested the FDIC adopt a processing time frame of 45 days as provided in part 5 of the Office of the Comptroller of the Currency's regulations. One commenter suggested that the comment period should not commence until the FDIC has received a complete application. One commenter thought that the application and notice provisions were generally reasonable, but suggested that the application review deadline be changed to 15 days after receipt of a substantially complete application or five days after the public comment period expires, whichever is later. The commenter argued that branch applications and relocations are relatively simple activities and should, therefore, be processed quickly. On balance, the FDIC believes a 15-day comment period provides adequate time for the public to comment on the establishment or relocation of a branch. The regulation provides for two publications and a 21-day comment period for a main office relocation. The FDIC also commits to place all applications subject to the CRA on its World Wide Web site within three days of receipt in order to provide prompt notification of all filings. The FDIC has also given its regional directors wide discretion to extend the comment periods in order to provide the public with an adequate amount of time to submit a meaningful analysis. With regard to the processing or review deadline being changed to 15 days after receipt of a substantially complete application, the FDIC believes the 21 day processing period is responsive to the industry and that it is not feasible to commit to a shorter time frame. For these reasons, the FDIC is adopting the timeframes as proposed.

Special provisions. Section 303.45 of the proposed regulation added several new provisions regarding procedures for opening temporary branches in emergency or disaster situations, re-designating a main office, and providing for the expiration of approved applications.

The proposed regulation at § 303.45(a) clarified procedures for establishing temporary branches in emergency or disaster situations. The proposal provided that in the case of an emergency or disaster at a main office or branch which requires that an office be immediately relocated to a temporary location, the applicant notify the appropriate regional director (DOS) within 3 days of such temporary location. In such limited cases, the FDIC will accept initial notification by whatever means appropriate. The FDIC is making this limited exception to allow for the public's need to have uninterrupted access to banking services. However, the final regulation

does require that, within 10 days of a such a temporary relocation, the bank submit a written application to the appropriate regional director (DOS). The FDIC received one comment specifically supporting the inclusion of such temporary facilities since it will make it easier for institutions to relocate a branch or main office in the event of an emergency.

Proposed § 303.45(b) regarding relocation of a main office and simultaneous redesignation of an existing office as the main office has been modified to make clear that in such circumstances only a single application is required.

Proposed § 303.45(c) provided that approval of an application expires if a branch has not commenced business or if a relocation has not been completed within 18 months of approval. One commenter supported the expiration of the approval but suggested an extension should be possible where extenuating circumstances warrant. The FDIC has provided for such extension of time in subpart M of the final regulation.

Delegation of Authority. Proposed § 303.46 delegated authority to the Director and Deputy Director, and where confirmed in writing, to an associate director, and the appropriate regional director and deputy regional director (DOS) to approve applications listed in this subpart subject to specific criteria. The criteria set forth in paragraph (c)(5) provided that an application could be approved by the regional director or deputy regional director (DOS) only where no CRA protest as defined in § 303.2(l) had been filed which remained unresolved, or where such protest remained unresolved, the appropriate DCA official concurred that approval would be consistent with the purposes of the CRA and the applicant agreed in writing to any conditions imposed regarding the CRA. Under the proposal, where a protested application remained unresolved the Director, Deputy Director or associate director (DOS) could approve the application without DCA concurrence. While no commenters specifically addressed this provision, several commenters raised general concerns regarding the FDIC's delegation of authority to act upon CRA protested applications. As discussed above, the FDIC believes that it is desirable to vest authority to act on protested applications in officials most likely to be personally familiar with the institution or institutions and communities involved. Section 303.46(c)(5) has been revised in the final rule to restrict the authority of the Director, Deputy Director and associate director (DOS) to act upon CRA protested applications by requiring them to obtain DCA concurrence before approving such an application. The FDIC believes that this revision will ensure that those FDIC officials with relevant expertise will act together to approve any application under this subpart that is subject to an unresolved CRA protest.

Modification has been made to § 303.46(c)(7) to reflect the deletion of proposed § 303.42(b)(8) which had required applicants to request and provide a statement from the host state which provided certain confirmations. As noted above, the FDIC will make such inquiries.

After consideration of the comments, the FDIC adopts subpart C with the above-noted modifications.

D. Subpart D—Merger Transactions

Proposed subpart D consolidated and reorganized the various provisions of part 303 governing transactions subject to FDIC approval under section 18(c) of the FDI Act (12 U.S.C. 1828(c)) (Bank Merger Act). The primary changes reflected in the proposal were the addition of an expedited processing procedure, the addition of various definitions applicable to merger transactions, and the addition of references to other statutory or regulatory provisions often applicable to merger transactions.

The FDIC received three comments specifically addressing proposed subpart D and numerous comments addressing expedited processing and the delegations of authority regarding CRA protested applications. The FDIC has carefully considered these comments. The comments are summarized below in the following discussion of the regulatory text.

First, however, the FDIC notes that the title of this subpart has been changed from ''Mergers'' to ''Merger Transactions.'' The use of the term ''merger transaction'' is meant to be inclusive of all types of transactions (including mergers, consolidations, and transfers of deposit liabilities) covered by the Bank Merger Act. When the term ''merger'' is used in the regulation, it is used to reference only a true merger.

Scope. Proposed § 303.60 set forth the scope of the subpart. One commenter suggested that a cross reference to the FDIC's Statement of Policy on Bank Merger Transactions be added to the proposal. Section 303.60 of the final rule includes such a reference to the Statement of Policy which is also published in today's issue of the **Federal Register**. The FDIC adopts this section with the suggested reference.

Definitions. Proposed § 303.61 added definitions regarding merger transactions. No comments were received regarding the definitions. The FDIC adopts this section as proposed, with minor, nonsubstantive editorial changes.

Transactions requiring prior approval. Proposed § 303.62 detailed the types of transactions requiring the prior written approval of the FDIC under subpart D. No comments were received regarding the transactions covered. The FDIC adopts this section as proposed with minor editorial changes.

Filing procedures. Proposed § 303.63 provided guidance regarding the filing procedures for applications required under the subpart. No comments were received on the filing procedures. The FDIC adopts this section as proposed, with minor, nonsubstantive editorial changes.

Processing. Proposed § 303.64 included the addition of an expedited processing procedure. This procedure would be available when all parties to a merger transaction are eligible depository institutions (as defined in § 303.2(r)), and the resulting institution would be well-capitalized immediately after the merger transaction.

One commenter suggested that the expedited processing period of 45 days be reduced to 30 days for smaller, less complex transactions where the total assets of the resultant institution would be less than $500 million. Another commenter recommended that the expedited processing period be increased to 60 days. The final rule retains the 45 day processing time line. The FDIC believes that this provides sufficient time to act on applications that do not raise unique issues or are not subject to CRA protests. Protested applications or applications which raise unique issues generally would be removed from expedited processing. While it might be possible to resolve all relevant safety and soundness issues arising in the context of smaller merger transactions in less than 45 days, the statutory requirement of a 30 day publication period and the requirement to consult with the Attorney General and other bank regulatory agencies regarding the competitive factors does not make it feasible to establish a shorter time frame for action.

One commenter generally supported the expedited processing proposal but suggested that the eligibility criteria be expanded to include otherwise eligible proposals where an ineligible target institution has core deposits equal to 10 percent or less of the acquiror's core deposits. In response to this comment, a provision has been added in the final

rule that permits expedited processing for transactions involving an eligible acquiror and an ineligible seller if the amount of total assets to be transferred to the acquiror is no more than 10 percent of the acquiror's total assets. The FDIC believes that, absent other issues, such a transaction would be less likely than larger acquisitions to raise safety and soundness concerns.

The FDIC adopts this section with the changes noted above, along with limited minor changes.

Public notice requirements. Section 303.65 of the proposal set forth the requirements for providing public notice of merger transactions, the required content of such notices, and a predictable period of 35 days during which the public may submit comments on proposed non-emergency merger transactions. In addition, the proposal permitted the initial public notice of a proposed transaction to be published up to 5 days before the merger application is filed with the FDIC. Under the existing regulations, the notice could not be published until the application had been filed with the FDIC.

One commenter opposed the proposal to permit merger applicants to publish notice of a proposed transaction before a completed application has been filed with the FDIC. Another commenter generally supported the proposal but objected to the 35 day comment period. One commenter also suggested a shorter comment period for smaller and less complex transactions, such as those resulting in an institution with less than $500 million in combined assets. In contrast, another commenter urged a longer comment period than that proposed. This commenter suggested that the public comment period should extend through the fifth day prior to FDIC action on the application (specifically, 5 days before the end of the 60-day minimum processing period urged by the commenter).

The final rule continues to provide for a fixed comment period. The FDIC believes this will provide prospective commenters the assurance that they will have a definite number of days for submitting comments after publication of the last notice of a proposed transaction. The final regulation revises the length of the public comment period to a 30-day public comment period rather than the 35-day period proposed. Upon reflection, the FDIC does not believe it is necessary to provide for a longer comment period than required by the Bank Merger Act. The final rule moves the last publication date for public notice of the transaction from the 30th day after initial publication to the 25th day. This ensures that prospective commenters will typically have 5 days after the last publication to express their views on a proposed merger transaction. The FDIC notes that the final rule provides flexibility for the FDIC to extend or reopen a comment period for reasons specified in subpart A of the final rule.

Regarding the suggestion that the comment period be extended to 5 days before the end of the processing period, the FDIC notes that the expedited processing period in § 303.64(a) is a maximum period, not a minimum. Thus, simple transactions requiring only the most cursory review, for example, might be approved sooner than 45 days after the date of the application. Because the processing time required for any given application cannot be predicted in advance, the closing date for comments on the application cannot both be predictable and end a certain number of days before the FDIC makes a decision on the application.

Proposed § 303.65(a) provided generally that an applicant for a merger transaction must publish notice of the proposed transaction on at least three occasions at approximately two-week intervals. No comments were received on this provision. The final rule revises this requirement to provide that such notice must be published on at least three occasions at approximately equal intervals. The FDIC makes this change to conform with changing the date of the last publication to the 25th day after the initial publication, as discussed above.

Proposed § 303.65(b)(1) set forth an exception to the publication requirements where the FDIC determines that an emergency requires expeditious action. This exception tracks a statutory exception. Under this provision of the proposal, notice shall be published twice, with the second of the two notices to be published on the 10th day after the first publication. The final rule requires the second notice to be published on the 7th day after the first publication. Based upon the statutory 10-day processing period, this change allows the public 3 days to comment after the second publication.

One commenter suggested that the FDIC require notices regarding merger transactions to be published in languages other than English in communities with significant non-English speaking populations. Rather than limit applicability to situations involving merger applications and non-English publication, however, the FDIC has instead added a more broadly-focused provision in subpart A. Specifically, under the new § 303.7(f) the FDIC may determine on a case-by-case basis that unusual circumstances surrounding a particular filing warrant modification of the publication requirements. It is intended that this provision will be applied sparingly and with the purpose of making publication more meaningful, not as a means of altering the publication requirements to suit the convenience of the parties or as a means of curing defective publications.

The FDIC adopts § 303.65 with the modifications discussed above and minor, non-substantive, editorial changes.

Delegations of authority. Proposed § 303.66 set forth the delegations of authority to designated FDIC officials to approve under the Bank Merger Act any application filed under this subpart for approval of a merger transaction for which the specified criteria are satisfied. The specific criteria that must be met before delegated authority can be exercised, such as capital requirements, competitive effects and geographic markets were updated to reflect current FDIC policy.

Proposed § 303.66(b) delegated authority to the Director and Deputy Director, and where confirmed in writing, to an associate director, and the appropriate regional director and deputy regional director (DOS) to approve merger applications, subject to specific criteria. The criteria set forth in § 303.66(b)(5) provided that an application could be approved by the regional director or deputy regional director (DOS) only where no CRA protest as defined in § 303.2(l) had been filed which remained unresolved, or where such protest remained unresolved, the appropriate DCA official concurred that approval would be consistent with the purposes of the CRA, and the applicant agreed in writing to any conditions imposed regarding the CRA. Under the proposal, where a CRA protest remained unresolved the Director, Deputy Director or associate director (DOS) could approve the application without DCA concurrence. While no commenters specifically addressed this provision, several commenters raised general concerns regarding the FDIC's delegation of authority to act upon CRA protested applications. As discussed above, the FDIC believes that it is desirable to vest authority to act on protested applications in officials most likely to be personally familiar with the institution or institutions and communities involved. Sections 303.66(c) and (d) have been revised in the final rule to restrict the authority of the Director, Deputy Director and associate director (DOS) to act upon CRA protested applications by requiring

them to obtain DCA concurrence before approving such an application. The FDIC believes that this revision will ensure that those FDIC officials with relevant expertise will act together in deciding whether to approve a merger application that is subject to an unresolved CRA protest.

Regarding competitive effects which are considered under proposed §§ 303.66(f) and (g), one commenter urged that the regulation provide guidance as to the composition of relevant geographic markets to be used in analyzing competitive effects. The Statement of Policy on Bank Merger Transactions (published elsewhere in today's **Federal Register**), to which a cross reference has been added in new § 303.60, includes a discussion on relevant geographic markets. Relevant geographic markets are best defined on a case-by-case basis, considering such factors as the location of the offices of the particular merging parties. Beyond the factors referred to in the Statement of Policy, the FDIC does not believe that any more specific factors can be identified that could be applied for all merger transactions, successfully, accurately, and without undue burden. This same commenter expressed concern that the benefits of expedited processing might be undermined if the FDIC waited for the Attorney General's competitive-factors reports before acting on a merger application. In response, we note that the Bank Merger Act allows the Attorney General 30 calendar days to provide a competitive factors report. The report is commonly provided within or near this period unless competition issues are raised that the Department of Justice believes merit more extensive examination. If there are such issues, it is likely that the application would be removed from expedited processing.

One commenter further suggested that language be added to the final rule that would preclude FDIC consideration of any factor unless that factor is specifically referred to in the regulation. The FDIC believes such a provision would be ill advised and not in the public interest. General categories of considerations specified in the Bank Merger Act and other relevant statutes are identified in the Statement of Policy on Bank Merger Transactions (published elsewhere in today's **Federal Register**). The necessity of expressly enumerating each and every factor to be considered within these categories would result in a regulation of unwieldy length.

Proposed § 303.66(f) provided that if the Attorney General does not provide a competitive factors report and certain delegation criterion are satisfied, the appropriate regional director (DOS) may request a written opinion from the FDIC's General Counsel or designee as to whether the proposed merger might have a significantly adverse effect on competition. Since the request for a written opinion was permissive, the language has been deleted from the final rule. The FDIC notes that nothing would prohibit a regional director from requesting such an opinion.

The FDIC adopts this section with the revisions discussed above.

Authority retained by the FDIC Board of Directors. Proposed § 303.27 set forth authority retained by the Board of Directors. No comments were received on this section. The FDIC adopts this section as proposed.

E. Subpart E—Change in Bank Control

The proposal substantially reorganized, clarified, and simplified the FDIC's regulation implementing the Change in Bank Control Act of 1978. The changes, developed in consultation with the other federal banking agencies, harmonize the scope and procedural requirements of the FDIC's regulation with those of the other federal banking agencies and reduce unnecessary burden. In addition, a common form which may be used to satisfy the notice requirements of the Change in Control Act has been adopted by the four federal banking agencies and is available from any FDIC regional office.

The proposal defined the previously undefined term ''acting in concert'' to clarify the scope of the regulation. It also incorporated the current FDIC position that the acquisition of a loan in default that is secured by voting shares of an insured state nonmember bank is presumed to be an acquisition of the underlying shares. Further, the proposal lengthened the period of time for notifying the FDIC from 30 to 90 days for shares acquired in satisfaction of a debt previously contracted in good faith or through testate or intestate succession or a bona fide gift. In the case of shares acquired in satisfaction of a debt previously contracted, the proposal added language that reflects FDIC practice of requiring the acquiror of a defaulted loan secured by a controlling amount of a state nonmember bank's voting securities to file a notice before the loan is acquired.

The proposal also reduced regulatory burden on persons whose ownership percentage increases as the result of a redemption of voting shares by the issuing bank or the action of a third party not within the acquiring person's control. In these situations, the proposal permits the person affected by the bank or third party action to file a notice within 90 calendar days after receiving notice of the transaction. Currently, these persons must file notice under the Change in Bank Control Act prior to the action that increases the person's percentage ownership, and, because these persons cannot control the third party action that causes the increased percentage ownership, they are often put in violation of the Change in Bank Control Act and the FDIC's Rules and Regulations.

The proposal provided more flexible timing for newspaper announcements of filings under the Change in Bank Control Act by permitting notificants to publish the announcement as close as practicable to filing the notice of change in control. The proposal removed the requirement that the notificant have confirmation that the FDIC has accepted the notice before publishing the announcement.

The proposal deleted the provision governing notices filed in contemplation of a public tender offer which permits an acquiror to delay publication of the newspaper announcement. None of the other federal banking agencies has such a provision.

The FDIC received two comments regarding the proposal. One commenter supported the proposed changes to the regulation and the other did not object to the changes proposed. The FDIC adopts this section as proposed.

F. Subpart F—Change of Director or Senior Executive Officer

The proposed rule implemented the amendments to section 32 of the FDI Act and set forth the circumstances under which an insured state nonmember bank must give the FDIC prior notice of a change in any member of its board of directors or any senior executive officer and the procedures for filing such notice, as well as applicable delegations of authority. The proposed rule also strived to harmonize the procedural requirements of the FDIC's regulation with those of the other federal banking agencies and to reduce any unnecessary regulatory burden. In addition, a common application form providing the notice requirements of section 32 has been adopted by the federal banking agencies and is available from any FDIC regional office.

Section 2208 of EGRPRA (12 U.S.C. 1843) amended section 32 by eliminating the prior notice requirement for institutions and holding companies that are chartered for less than two years or that have undergone a change in control within the preceding two years. However, institutions and holding companies that are not in compliance with minimum capital requirements or

are otherwise in ''troubled condition'' remain subject to the prior notice requirement. In addition, EGRPRA provided that prior notice will be required if the agency determines, in connection with its review of a capital restoration plan required under section 38 of the FDI Act (governing prompt corrective action) or otherwise, that such prior notice is appropriate. Also, the EGRPRA amendments provided the agencies with more latitude to determine the prior notice period and allowed the agencies up to 90 days to issue a notice of disapproval. Although the EGRPRA amendments provided the agencies with authority to increase the prior notice period to 90 days, the proposed subpart F retained the 30-day prior notice currently required but allowed the agency to extend the time to act on a notice by up to an additional 60 days. The FDIC specifically sought public comment on the 30-day time frame.

Two comments were received on the proposal. One commenter generally supported the changes in the proposal. Another commenter suggested that any extension of the 30 day processing period be limited to an additional 30 days rather than 60 days.

The final rule retains the FDIC's ability to extend the 30 day notice for up to an additional 60 days. The FDIC expects to act on the vast majority of these cases within 30 days. It is anticipated that this additional 60-day period would be used infrequently. In all such cases, the notificant will be advised in writing prior to expiration of the 30-day prior notice period of the reason the FDIC could not take action and of the projected additional time needed.

The final rule adopts subpart F as proposed, with minor technical changes.

G. Subpart G—Activities and Investments of Insured State Banks

The part 303 proposal reserved subpart G for filing procedures related to activities and equity investments of insured state banks which are currently contained in part 362 (12 CFR 362). Part 362 implements section 24 of the FDI Act (12 U.S.C. 1831a), which was created by the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. 102–242, 105 Stat. 2236), and governs the circumstances in which insured state banks may engage in activities which are not permissible for national banks.

The FDIC has an outstanding notice of proposed rulemaking to make comprehensive revisions to part 362. 62 FR 47969, September 12, 1997. In connection with these revisions, the FDIC proposes to eliminate certain application procedures which are outdated, and also to authorize certain activities to be approved by the FDIC on an expedited basis. At the time the FDIC issued its part 303 proposal, the FDIC could not determine whether its 362 proposal or its part 303 proposal would be finalized first. In order to deal with this problem, the application procedures which implement the proposed revisions to part 362 concerning state bank activities were issued in subpart E of the part 362 proposal. The part 303 proposal advised members of the public taking an interest in the FDIC's application procedures for the activities of insured state banks under part 362 to review the part 362 proposal for the specifics of such application procedures. Both proposals also advised the public that it is the FDIC's intent to place the part 362 application procedures relating to state bank activities in subpart G of part 303 at such time as both rules are final.

One commenter responding to the part 303 proposal addressed certain substantive aspects of the part 362 proposal. The FDIC will take this comment into consideration when the FDIC finalizes part 362.

The final rule for part 303 will continue to reserve subpart G. When the FDIC issues the final rule for part 362, the final version of the application procedures proposed in subpart E of the part 362 proposal will be issued as final rule amendments to subpart G of part 303. In the interim, insured state banks operating under the current version of part 362 will continue to look to the current version of part 362 itself for application procedures until the revisions to part 362 become effective.

H. Subpart H—Filings by Savings Associations

Subpart H of the proposal was reserved for filing procedures related to activities of insured savings associations and subsidiaries of insured savings associations that were, at the time of the proposal, contained in § 303.13 of part 303 (12 CFR 303.13). Section 303.13 implemented sections 28 and 18(m) of the FDI Act (12 U.S.C. 1831e and 12 U.S.C. 1828(m)) which were both enacted as part of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Pub. L. 101–73, 103 Stat. 484). Provisions of § 303.13 generally governed the circumstances in which a state savings association could engage in activities which are not permissible for a federal savings association, and also required all insured savings associations to notify the FDIC prior to establishing or acquiring a subsidiary or engaging in any new activities through a subsidiary.

As part of the FDIC's currently outstanding notice of proposed rulemaking to revise part 362, the FDIC proposed to address the substantive issues covered by § 303.13 as subparts C and D of the revised part 362. 62 FR 47969, September 12, 1997. The part 362 proposal harmonizes, to the extent possible given the differences in the underlying statutes, the treatment of activities of insured state banks and the activities of insured state savings associations. In addition, the proposal retains the statutory notice procedure for all savings associations establishing or acquiring subsidiaries or engaging in any new activities through a subsidiary. In connection with these revisions, the FDIC proposed to eliminate certain one-time application procedures that are outdated, and also to authorize certain activities to be approved by the FDIC on an expedited basis. As noted above, at the time that the FDIC issued its part 303 and part 362 proposals the FDIC could not determine whether its part 362 proposal or its part 303 proposal would be finalized first. To compensate for this timing issue, the application and notice procedures that implement the proposed revisions to part 362 concerning savings associations were issued in subpart F of the 362 proposal. The preamble to proposed part 303 advised readers to review the part 362 proposal for the specifics of such application and notice procedures. Both proposals also advised the public that it is the FDIC's intent to ultimately place the part 362 application and notice procedures relating to savings associations in subpart H of part 303 at such time as both rules are final.

Since part 303 is now being finalized and part 362 will be finalized at a later date, former § 303.13 is being redesignated, without substantive change, as subpart H of part 303. Savings associations that were operating under former § 303.13 will now look to subpart H. At such time as part 362 is finalized, however, these interim procedures will be replaced with the application procedures adopted with part 362.

No comments were received regarding the reservation of subpart H. Comments were received, however, on the proposed part 362, and those comments are being considered in the course of the part 362 rulemaking.

The procedures being adopted at this time preserve without substantive change the former § 303.13, and redesignates it as subpart H, § 303.140 through § 303.148. The subpart makes

several technical and format changes and deletes obsolete references. First, it adds a *Scope* section describing the contents of subpart H. Second, the final rule inserts subheadings in the text in order to conform the format with the rest of the final part 303. Third, the final rule removes obsolete references to filing deadlines that expired years ago. Fourth, it makes certain technical changes throughout to conform the terminology used in subpart H with that used in part 303. For example, ''appropriate regional director (DOS)'' has been substituted for ''(DOS) regional director for the region in which the state savings association's principal office is located.''

The FDIC adopts this section with the above-referenced modifications.

I. Subpart I—Mutual-to-Stock Conversions

Proposed Subpart I contained the procedures for filing and processing the prior notice required of state-chartered mutual savings banks that propose to convert to stock form. The proposed regulatory text was almost identical to that contained in § 303.15; however a delegation of authority was added to allow the Director and Deputy Director (DOS) to issue a notice of intent not to object to a proposed conversion transaction that is determined not to pose a risk to the institution's safety or soundness, violate any law or regulation, present a breach of fiduciary duty, and or raise any unique legal or policy issues. The proposal provided that the substantive regulation regarding mutual-to-stock conversions remain in § 333.4 of this chapter (12 CFR Part 333).

The FDIC received three comments on proposed subpart I, which are summarized below in the following discussion of substantive changes to the regulatory text.

Filing procedures. As proposed, § 303.161 only stated that a notice shall provide a description of the proposed conversion and include all materials that have been filed with any state or federal banking regulator and any state or federal securities regulator. Copies of all agreements entered into as part of the conversion process were also required. An insured mutual savings bank chartered by a state that does not require the filing of a conversion application was merely required to notify the FDIC of the proposed conversion and provide any materials requested by the FDIC. No further guidance was given to institutions on what the notice should contain. One commenter believed that FDIC's request of ''any'' materials from a state-chartered mutual savings bank not required to file a state application is overly broad and does not provide sufficient guidance. The commenter recommended that the FDIC specify the types of materials the FDIC may request in that situation. The FDIC believes the suggestion is well founded and, upon reflection, believes that it is appropriate to specify the required content of a notice whether or not a filing is being made with the chartering authority. As a result, § 303.161 has been expanded to give more guidance with regard to the content of the filing.

New § 303.161(c), ''Content of notice,'' provides a comprehensive listing of the materials to be included in a complete notice. The required contents include the plan of conversion, certified board resolutions relating to the plan, a business plan, a description of employee benefit plans, a proxy statement and offering circular, a copy of the charter and bylaws, etc. The listing in no way expands on the materials currently required and imposes no new requirements. It is believed that this comprehensive listing of contents will better enable applicants to file a substantially complete notice and make it less likely that FDIC will find it necessary to request additional information prior to acceptance of an application for processing. The informational requirements in § 333.4 of this chapter relating to appraisal reports and business plans are incorporated into the listing.

To further clarify requirements, reference is made to the possibility that related applications for deposit insurance and mergers transactions may be required, depending upon how the transaction is structured. Other editorial changes were made to clarify intent, but in no way alter the substance of the requirements.

The FDIC adopts this section with the increased guidance as discussed above.

Waiver from compliance. The proposed regulation did not contain procedures for requesting a waiver from compliance with the substantive requirements regarding conversions contained in § 333.4 of this part since such provisions were contained in § 333.4 of this chapter. The FDIC has decided to move these provisions relating to the procedural requirements for requesting a waiver from compliance of the requirements of § 333.4 of this chapter and subpart I of this part to the revised § 303.162 so that all notice and waiver provisions for mutual to stock conversions are contained in one subpart. No substantive changes were made to the waiver procedures in the transfer from § 333.4 to § 303.162.

Processing. Proposed § 303.163 lists the factors to be considered by the FDIC in evaluating the notice filed by an institution seeking to convert from mutual to stock form.

With regard to processing procedures, two commenters believed that the proposed 60-day notice processing period, as well as the 60-day extension, should be shortened. One commenter suggested that the notice period begin immediately upon filing of the notice.

The FDIC believes the existing 60-day notice period is appropriate. For notices that involve significant legal or policy issues, a shorter processing period is not practical. Likewise, the 60-day extension period is viewed as appropriate; however, the FDIC anticipates that any extension of the notice period will be only as long as necessary to accomplish a complete review. The FDIC believes that conversion transactions not involving significant legal or policy issues generally can be reviewed by DOS within the initial 60-day period. Regarding commencement of the 60-day notice period, the FDIC believes it is only practical to begin the period when substantially all of the material required to make a decision is readily available for review. The final rule is modified to clarify that a notice will be accepted when it is deemed ''substantially complete.''

One commenter suggested that the FDIC staff issue only one set of written comments that would include comments from all FDIC staff members reviewing the notice rather than forwarding comments from the various reviewers as separate communications. The FDIC believes that combining all the comments from the various offices within the FDIC would neither expedite processing nor facilitate prompt resolution of issues, but instead would slow the entire review process. Since a notice may raise a number of different types of regulatory issues, FDIC staff with varying areas of expertise are routinely called upon to evaluate certain aspects of a notice. The current system allows the notificant to receive comments on an on-going basis and thus begin to cure any defects in the notice without undue delay.

The FDIC has replaced the term ''notice of intent not to object'' with the term ''letter of non-objection'' to better describe the final nature of the action.

The FDIC adopts this section with the changes noted above and other editorial changes to clarify intent.

Delegation of authority. Section § 303.164 of the proposed rule provided for delegation of authority to the Director (DOS) and the Deputy Director

to issue non-objection letters when the proposed conversion is determined not to pose a risk to the converting institution's safety and soundness, violate any law or regulation, present a breach of fiduciary duty, or raise any unique legal or policy issues. Two commenters viewed the proposed delegation of authority as favorable and agreed that the proposed delegation of authority would reduce notice processing times. One of these commenters, however, recommended that the FDIC provide guidelines in a statement of policy or financial institution letter specifying what constitutes a ''routine transaction'' eligible for non-objection under delegated authority. At this time, the FDIC believes providing specific statements of policy or financial institution letters on what constitutes a ''routine transaction'' is not necessary; however, the Board may in the future consider the issuance of a statement of policy addressing issues relating to the mutual-to-stock conversion process.

A third commenter objected to any delegation of authority to issue a letter of non-objection. The Board has acted on numerous conversion notices over the last four years and has provided staff with considerable guidance regarding the kinds of transaction that are not objectionable. Cases which raise unique legal or policy issues or otherwise do not meet the criteria outlined in the regulation will continue to be reviewed by the Board.

After careful consideration of the comments, the FDIC is adopting the delegation of authority as proposed.

J. Subpart J—International Banking

Subpart J centralizes application requirements relating to the foreign activities of insured state nonmember banks and the U.S. activities of insured branches of foreign banks.

Proposed Interim Application Procedures

The part 303 proposal contained four interim application procedures.[2] At the time the FDIC issued the part 303 proposal, the FDIC had an outstanding notice of proposed rulemaking to revise the substantive rules underlying the interim procedures. 62 FR 37748, July 15, 1997 (part 347 proposal). The FDIC could not at that time determine whether the part 303 proposal would be finalized before the part 347 proposal, and the interim procedures would have been necessary in that event. Subpart D of the part 347 proposal contained the permanent versions of the four application procedures, designed to work with the substantive revisions made to the FDIC's international banking operations under the part 347 proposal. However, on April 8, 1998 the FDIC published the final rule for part 347, thus eliminating the need for the interim procedures. 63 FR 17056, April 8, 1998. The FDIC received no public comments on the interim procedures.

Transfer of Application Procedures from Part 347

The final rule for part 303 transfers the four application procedures contained in subpart D of part 347 to subpart J of part 303. Section 347.402 of this chapter, on establishing, moving or closing a foreign branch of a state nonmember bank under § 347.103 of this chapter, has been transferred to § 303.182. Section 347.403 of this chapter, on investment by insured state nonmember banks in foreign organizations under § 347.108 of this chapter, has been transferred to § 303.183. Section 347.404 of this chapter, on exemptions from the insurance requirement for a state branch of a foreign bank under § 347.306 of this chapter, has been transferred to § 303.186. Section 347.405, on approval for an insured state branch of a foreign bank to conduct activities not permissible for federal branches under § 347.213 of this chapter, has been transferred to § 303.187. The FDIC has made certain technical changes to the language of the procedures to integrate them with the rest of part 303, but these changes in language have not changed the substance of the procedures.

In § 303.183, setting out application procedures for investment by insured state nonmember banks in foreign organizations under § 347.108 of this chapter, the FDIC has added one requirement. If an insured state nonmember bank owns 50 percent or more of the voting equity interests of a foreign organization or otherwise controls the organization, and the insured state nonmember bank divests itself of such ownership, the insured state nonmember bank is required to notify the FDIC by letter within 30 days. This requirement has been added to parallel the requirement for notice upon closure of a foreign branch under § 303.182(d).

In connection with the part 347 rulemaking, the FDIC received public comments on the four application procedures contained in subpart D of part 347. The preamble to the final rule for part 347 contains a discussion of the FDIC's consideration of the comments and a description of the application processes. 63 FR 17056 April 8, 1998.

Noninterim Application Procedures

Proposed part 303 also contained two application procedures which are not of an interim nature: the procedure for moving an insured branch of a foreign bank, and the procedure for merger transactions involving an insured branch of a foreign bank. The definition of an ''eligible insured branch'' at § 303.181(c)(2) has been modified to make it consistent with § 303.2(r)(2), clarifying that the CRA rating requirement does not apply to institutions which are not subject to CRA examinations.

Moving an Insured Branch of a Foreign Bank

Proposed § 303.184 addressed applications by any insured branch of a foreign bank which wishes to move from one location to another under section 18(d)(1) of the FDI Act (12 U.S.C. 1828(d)). The FDIC proposed that § 303.184 parallel proposed subpart C, since the FDIC's consent to these applications is legally subject to the same statutory considerations as applications to establish or relocate a domestic branch or to relocate the main office of an insured state nonmember bank. This included expedited processing for an eligible insured branch, and a definition of ''eligible insured branch'' which paralleled the general § 303.2(r) definition of ''eligible depository institution,'' with appropriate changes to take into account the different supervisory rating system and capital requirements applicable to insured branches.

The FDIC received no comments on proposed § 303.184.

The FDIC has made two changes to § 303.184 in the final rule. The language in § 303.184(a)(2)(iv) has been modified to simply require a statement as to whether or not a particular site for a branch is included in or eligible for inclusion in the National Register of Historic Places, including documentation of consultation with the State Historic Preservation Officer as appropriate. Proposed § 303.184(d) delegated authority to the Director and Deputy Director, and where confirmed in writing, to an associate director, and the appropriate regional director and deputy regional director (DOS) to approve applications to move an insured branch of a foreign bank, subject to specific criteria. The criteria set forth

[2] These were procedures for: (1) establishing, moving, or closing a foreign branch of a state nonmember bank, § 303.182; (2) investment by state nonmember banks in foreign organizations, § 303.183; (3) exemptions from the insurance requirement for a state branch of a foreign bank, § 303.186; and (4) approval for an insured state branch of a foreign bank to conduct activities not permissible for federal branches, § 303.187.

in paragraph 303.184(d)(1)(v) provided that an application could be approved by the regional director or deputy regional director (DOS) only where no CRA protest as defined in § 303.2(l) had been filed which remained unresolved, or where such protest remained unresolved, the appropriate DCA official concurred that approval would be consistent with the purposes of the CRA, and the applicant agreed in writing to any conditions imposed regarding the CRA. Under the proposal, where a protested application remained unresolved the Director, Deputy Director or associate director (DOS) could approve the application without DCA concurrence. While no commenters specifically addressed this provision, several commenters raised general concerns regarding the FDIC's delegation of authority to act upon CRA protested applications. As discussed above, the FDIC believes that it is desirable to vest authority to act on protested applications in officials most likely to be personally familiar with the communities involved. Section 303.184(d) has been revised in the final rule to restrict the authority of the Director, Deputy Director and associate director (DOS) to act upon CRA protested applications by requiring them to obtain DCA concurrence before approving such an applications. The FDIC believes that this revision will ensure that those FDIC officials with relevant expertise will act together to approve any application under this section that is subject to an unresolved CRA protest.

Merger Transactions Involving an Insured Branch of a Foreign Bank

An insured branch of a foreign bank meets the definition of an insured depository institution under section 3 of the FDI Act (12 U.S.C. 1813) and is therefore subject to the Bank Merger Act. The FDIC proposed § 303.185, in order to give insured branches conducting merger transactions which are subject to FDIC approval the benefit of the same streamlined application processing proposed for domestic institutions in subpart D of part 303. Proposed § 303.185 clarified that an eligible insured branch as defined in subpart J generally is eligible for the expedited processing available to an eligible depository institution in subpart D. Similarly, § 303.185 clarifies that a transaction in which an insured branch is merged with other branches, agencies, or subsidiaries located in the United States of the same foreign bank parent is eligible for disposition under the enhanced delegations applicable to corporate reorganizations.[3]

Proposed § 303.185 also incorporated a point explained in Advisory Opinion FDIC–96–12 (May 13, 1996) concerning the treatment of an insured branch under section 44 of the FDI Act (12 U.S.C. 1831u) as added by section 102 of the Interstate Act. Section 44 permits the responsible federal regulator to approve an interstate merger transaction involving the acquisition of a branch of an insured bank without the acquisition of the entire bank, but approval is possible only if the state in which the branch is located expressly permits out-of-state banks to acquire a branch of the bank without acquiring an entire bank. In contrast, section 44 permits the responsible federal regulator to approve an interstate merger transaction involving the acquisition of an entire bank if the state in which the bank is located has not adopted legislation to opt out of interstate merger transactions. Proposed § 303.185 treated interstate merger transactions involving an insured branch under the latter approach. Express state authority permitting out-of-state banks to acquire a branch of the bank without acquiring the entire bank is required only if a foreign bank has more than one insured branch in the affected state and proposes to sell fewer than all of them to the same acquiror. If such state authority does not exist, the FDIC requires the foreign bank to sell all of its insured branches in that state to the same affiliated or unaffiliated acquiror.

The FDIC received no comments on proposed § 303.185.

In the final rule, the FDIC has made no changes to the above-described portions of § 303.185 governing merger transactions involving insured branches of foreign banks. However, the FDIC has added another subsection to the final version of § 303.185. Section 303.185(b) of the final rule addresses certain transactions in which a U.S. insured depository institution acquires deposits from a foreign organization at a location in a foreign country, as described below. The Bank Merger Act (12 U.S.C. 1828(c)) requires these transactions to be reviewed and approved by the FDIC prior to consummation. Although these transactions are likely to be rare, the FDIC has added section 303.185(b) to the final rule, highlighting the existence of the statutory approval requirement in the interest of providing helpful guidance to the industry. These transactions are subject to Bank Merger Act approval in accordance with the procedures contained in subpart D of part 303.

With one exception discussed in the following paragraphs, nothing in the statutory language or legislative history of the Bank Merger Act indicates that Congress intended the statute to apply to a U.S. insured depository institution's acquisitions in foreign countries. The competitive factors to be analyzed under the Act are by their terms concerned solely with effects in the U.S. While the financial and management factors could be germane, most foreign acquisitions are already subject to approval by federal bank regulators, since section 25 of the Federal Reserve Act (12 U.S.C. 601) or section 18(l) of the FDI Act requires banking agency approval before an insured bank may acquire stock (or other evidences of ownership) of foreign banks or organizations. While certain acquisitions structured as mergers or purchase and assumption transactions do not involve stock acquisition subject to approval under these statutes, the insured bank frequently will establish a foreign branch office in the foreign country as part of the transaction, requiring federal banking agency approval under section 25 of the Federal Reserve Act or section 18(d)(2) of the FDI Act.

Section 18(c)(1)(B) of the Bank Merger Act requires FDIC approval whenever an insured depository institution assumes liability to pay any deposits or similar liabilities of any noninsured bank or institution. Section 18(c)(1)(B), in referring to an assumption of liability to pay deposits, expressly includes a parenthetical reference to liabilities which are ordinarily excluded from the statutory definition of a ''deposit'' in section 3(l) of the FDI Act under the proviso in section 3(l)(5) (12 U.S.C. 1813(l)(5)). This reference was added to the Bank Merger Act in 1978, by the Financial Institutions Regulatory and Interest Rate Control Act, Pub. L. 95–630 (FIRIRCA). The legislative history of FIRIRCA states that the reference was added to make it clear that the FDIC's approval is necessary in connection with an insured bank's assumption of the deposit liabilities of a foreign noninsured bank. S. Rep. No. 95–323, 95th Cong., 1st Sess. (1977) at 29; H.R. Rep. No. 95–1383, 95th Cong., 1st Sess. (1977) at 45.

Section 3(l) defines the term ''deposit'' for purposes of the FDI Act. At the time of the FIRIRCA amendment,

[3] If the foreign bank parent itself is not primarily engaged in business in the United States, and is involved in some merger transaction or other combination outside the United States which does not result in any corresponding merger transaction in the United States with respect to an insured branch, section 18(c)(11) of the FDI Act (12 U.S.C. 1828(c)) provides that no approval is required, since no party to the transaction is primarily engaged in business in the United States.

the section 3(l)(5) proviso stated that the definition of a deposit, or an insured deposit, did not include any obligation of a bank which was payable only at a bank office located in a foreign country. *See* 12 U.S.C.A. 1813(l)(5) (West 1980). Under the language of the proviso, there was the potential for the liabilities of the FDIC's insurance fund to be increased when a U.S. insured bank acquired deposit liabilities from a foreign bank in a foreign country, such as by assuming the deposits of a branch of a foreign bank in another country in connection with acquiring the branch in that country. After the deposits had been assumed by the U.S. insured bank, the depositors might be heard to argue their deposits were payable at the insured bank's home office in the U.S., since it would be unlikely that their deposit agreements with the foreign bank, which had no U.S. offices, had contained provisions prohibiting payment in the U.S. Absent the parenthetical added to section 18(c)(1)(B) by FIRIRCA, these assumption transactions were arguably not subject to review by the FDIC, since the liabilities being assumed, in the hands of the foreign bank, did not meet the deposit definition. The FDIC took the position that section 18(c)(1)(B) would apply, since the deposits might be within the section 3(l) definition upon consummation of the assumption, and Congress, in an abundance of caution, added the parenthetical to clarify the issue. By extension, a merger or consolidation resulting in a U.S. insured bank's acquisition of deposit liabilities also required approval under section 18(c)(1)(A).[4] From approximately 1978 to 1994, the FDIC gave Bank Merger Act approval to several insured bank acquisitions abroad.

Subsequent additions to section 3(l)(5) have reduced the potential for a foreign acquisition to directly increase the liability of the deposit insurance funds. In 1994, section 326 of CDRIA amended section 3(l)(5), eliminating the proviso and adding a new statutory test. Any obligation which is carried on the books of an institution's office in a foreign country is excluded from the definition of deposit unless, among other things, the contract evidencing the obligation provides by express terms, and not by implication, that the deposit is payable at an office in the U.S. *See* 12 U.S.C. 1813(l)(5)(A) (West Supp. 1998). The addition of this express contractual element means that depositors holding foreign bank deposits abroad, whose deposits are assumed by a U.S. insured depository institution abroad, cannot argue that the assumption, standing alone, qualifies their claims for treatment as ''deposits'' under the FDI Act. The U.S. insured depository institution would have to enter into a new contract with the depositor containing such a term. If a particular transaction involved a U.S. institution's assumption of foreign bank deposit contracts which contained such a term prior to the assumption, the deposits might satisfy the section 3(l) definition. But, given industry practices, this scenario is not likely to arise, and even if it did, the issue would be clearly apparent to the U.S. institution.

Although CDRIA eliminated the section 3(l)(5) proviso to which the parenthetical in section 18(c)(1)(B) refers, and CDRIA's additions to the deposit definition in section 3(l)(5) have narrowed the category of acquisitions presenting the risk which the section 18(c)(1)(B) parenthetical was designed to address, the parenthetical in section 18(c)(1)(B) still requires a Bank Merger Act application for any assumption of foreign deposits from a noninsured foreign institution which directly increases the potential insured deposit liabilities of the deposit insurance funds. A merger or consolidation with a noninsured foreign institution having the same effect also requires FDIC approval under section 18(c)(1)(A), since section 18(c)(1)(A) uses the same ''noninsured bank or institution'' language found in section 18(c)(1)(B). In order to highlight this statutory requirement for the benefit of the industry, the FDIC has added § 347.185(b). This section states that the FDIC's Bank Merger Act approval is required for any merger transaction in which an insured depository institution becomes directly liable for obligations which will, after the merger transaction, be treated as deposits under section 3(l)(5)(A)(i)–(ii) of the FDI Act (12 U.S.C. 1813(l)(5)(A)(i)–(ii)), as a result of a merger or consolidation with a foreign organization or an assumption of liabilities of a foreign organization. As noted above, such merger applications are to be submitted and processed under the procedures contained in subpart D of part 303.

K. Subpart K—Prompt Corrective Action

Section 38 of the FDI Act (12 U.S.C. 1831*o*), which governs prompt corrective action, restricts or prohibits certain activities based on an institution's capital category, and requires an insured institution to submit a capital restoration plan when it becomes undercapitalized. Subpart K as proposed set forth procedures for making applications under section 38.

The FDIC did not receive any comments specifically on subpart K. The FDIC is adopting the subpart as proposed, with the exception of one nonsubstantive change.

This change is to § 303.207(b)(6), which requires critically undercapitalized institutions to obtain the FDIC's approval before paying excessive compensation or bonuses. The proposed regulatory language mistakenly cross referenced part 359 of the FDIC's rules as guidance for evaluating what compensation might be excessive, whereas it is part 364 of the FDIC's rules that governs excessive compensation. The final rule correctly cites part 364. The remainder of the paragraph has been removed, because appropriate guidance is now contained in part 364. *See* 57 FR 44866, 44883, September 29, 1992.

L. Subpart L—Section 19 of the FDI Act (Consent to Service of Persons Convicted of Certain Criminal Offenses)

Section 19 of the FDI Act (12 U.S.C. 1829) prohibits any person convicted of any crime involving dishonesty, breach of trust, or money laundering, or who has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for any such offense, from (i) continuing as or becoming an institution-affiliated party, (ii) owning or controlling directly or indirectly an insured depository institution, or (iii) otherwise participating in the conduct of the affairs of FDIC-insured depository institutions, without the FDIC's prior written consent.

Proposed subpart L did not substantially amend current section 19 application procedures, but brought together all information on section 19 which was previously contained in various sections of old part 303. Section 303.222 of the proposal clarified the FDIC's position that the prior consent of the FDIC is required before a person approved under section 19 to participate in the affairs of a particular institution may participate in the affairs of another insured institution.

As stated in the proposal, on July 24, 1997, the FDIC Board of Directors published for comment a proposed Statement of Policy on Section 19 which contains interpretations of the statutory language (62 FR 39840). Section L should be read in conjunction with the proposed policy statement for a more complete understanding of the FDIC's

[4] This was because the parenthetical in section 18(c)(1)(B) established that the term ''noninsured bank or institution'' in section 18(c)(1)(B) included foreign organizations, and section 18(c)(1)(A) also covers mergers or consolidations with any ''noninsured bank or institution.''

position on section 19. When the final Statement of Policy is adopted, the FDIC may find it necessary to revise subpart L accordingly.

The FDIC received no comments on the proposed subpart L and is adopting the subpart as proposed.

M. Subpart M—Other Filings

As proposed, subpart M contained the procedural requirements and delegations of authority for miscellaneous filings which did not warrant treatment as separate subparts. Under the proposal, all information relating to a particular filing is brought together in a self-contained section under a standardized format. The proposal also provided for new expedited review procedures for certain applications.

Proposed part 303 contemplated that the filing procedures for requesting an exemption from the statutory bar on management interlocks pursuant to the Depository Institutions Management Interlocks Act (12 U.S.C. 3207) and the FDI Act (12 U.S.C. 1823(k)) would continue to be contained in part 348 of this chapter (12 CFR part 348). After further consideration, and in the interest of placing all of the application procedures in part 303 to the greatest extent possible, the FDIC has decided to move the procedural requirements and delegation of authority for filings for management official interlocks from part 348 to part 303. Such filing requirements are now found in new § 303.250 and the remainder of the subpart has been renumbered in light of this additional provision. The inclusion of these filing procedures is considered a technical change by the FDIC. No substantive changes have been made to these procedures.

The FDIC and other federal banking agencies are engaged in a rulemaking to amend their respective management official interlocks regulations to conform to recent statutory changes, modernize and clarify rules, and reduce unnecessary regulatory burden where feasible. Once this rulemaking is completed, the applications procedures and delegations of authority for management official interlocks will be revised to bring them into conformity with the amended interlocks regulations. This will be done subsequent to this part 303 rulemaking by means of a final rule without notice and comment since such changes are purely technical in nature.

Reduce or retire capital stock or capital debt instruments. Section 303.241 reorganized and clarified procedures for applications to reduce or retire capital stock, notes or debentures pursuant to section 18(i)(1) of the FDI Act (12 U.S.C. 1828(i)(1)). The FDIC received one comment specifically with regard to the expedited review procedures for these types of applications. The commenter supported the eligibility of these types of applications for expedited procedures. The FDIC is adopting this section as proposed.

Exercise of trust powers. The FDIC proposed to amend part 303 to create a new section relating to trust applications that brings together all the trust application procedures as well as the related delegations of authority into one centralized location. The FDIC received one comment regarding this section which supported the eligibility of trust applications for expedited procedures. The FDIC is adopting this section as proposed.

Brokered deposit waivers. The proposal reorganized the regulations regarding applications to accept brokered deposits by adequately capitalized insured depository institutions. In the proposal, the application procedures were placed in § 303.243 and the substantive rules regarding the acceptance of brokered deposits remained in § 337.6. The proposal retained expedited processing for brokered deposit waivers yet modified it to parallel the requirements for an ''eligible depository institution'' in § 303.2(r), with the exception of the well-capitalized criteria. The FDIC received no specific comments on this section and is adopting the section as proposed.

Golden parachutes and severance plan payments. The proposal revised the regulatory provisions regarding applications to make excess nondiscriminatory severance plan payments and golden parachute payments by insured depository institutions or depository institution holding companies. The FDIC's regulations with respect to such payments are codified at part 359. The FDIC received no specific comment on the proposed changes and is adopting the section as proposed, with minor technical changes.

Waiver of liability for commonly controlled depository institutions. Proposed § 303.245 provided application procedures for an insured depository institution to request a waiver of liability pursuant to section 5(e) of the FDI Act (12 U.S.C. 1815(e)). These procedures were part of the FDIC's Statement of Policy Regarding Liability of Commonly Controlled Depository Institutions, which provided guidance to the industry as to the manner in which the FDIC will administer the provisions of section 5(e) of the FDI Act. The FDIC received no specific comments on this section and is adopting the section as proposed.

The statement of policy is being revised elsewhere in today's **Federal Register** to remove these procedures for requesting a conditional waiver of the cross-guaranty liability from the statement of policy and to indicate that they may be found in § 303.245.

Insurance fund conversions. The proposal revised regulations regarding filings for insurance fund conversions at § 303.246 to reformat the filing requirements and delete references to and procedures regarding insurance fund conversions qualifying as exceptions to the insurance fund conversion moratorium imposed in section 5(d) of the FDI Act (12 U.S.C. 1815(d)(2)(A)(ii)). The FDIC received no specific comments on this section and is adopting the section as proposed.

Conversion with diminution of capital. Section 303.247 of the proposal reorganized and clarified filing procedures pursuant to section 18(i)(2) of the FDI Act (12 U.S.C. 1828(i)(2)) to convert from an insured federal depository institution to a state nonmember bank where the capital stock or surplus of the resulting bank will be less than the capital stock or surplus, respectively, of the converting institution at the time of the shareholder's meeting approving such conversion. The FDIC received no specific comments on the section and is adopting the section as proposed.

Continue or resume status as an insured institution following termination under section 8 of the FDI Act. Proposed § 303.248 pertains to applications by depository institutions for permission to continue or resume their insured status after termination of insurance under section 8 of the FDI Act (12 U.S.C. 1818). This section covers institutions whose deposit insurance continues in effect for any purpose or for any length of time under the terms of FDIC orders terminating deposit insurance. However, it does not cover any operating non-insured depository institutions which were previously insured by the FDIC or any non-insured, non-operating depository institutions whose charters have not been surrendered or revoked. Institutions not covered by this section are required to file *de novo* applications for FDIC insurance. The FDIC received no specific comments on this section and is adopting the section as proposed.

Truth in Lending Act—Relief from reimbursement. Proposed § 303.249 established procedures for an initial request for relief from reimbursement

pursuant to the Truth in Lending Act (15 U.S.C. 1601 *et seq.*) and Regulation Z (12 CFR part 226) (Truth in Lending). The proposal set forth new procedures specifically for Truth in Lending cases and provided that applicants may file initial requests for relief within 60 days after receipt of the compliance report of examination containing the request to conduct a file search and make restitution to affected customers. The proposal provided that requests for reconsideration would be handled under the FDIC's general petition for reconsideration provision located at proposed § 303.11(f). Specifically, the proposal provided that if reconsideration of an initial denial of a request for relief was granted, the merits of the request for relief would have been reconsidered by the Board of Directors if the request for relief was originally denied by the Director, Deputy Director or associate director (DCA). Additionally, if the request for relief was originally denied by a regional director or deputy regional director, the merits of the request for relief would have been reconsidered by the Director or Deputy Director (DCA).

No comments were received regarding this section.

To assist applicants, § 303.249(d) of the final rule provides that the FDIC will notify the applicant in writing of its determination on the initial request for relief within 60 days of the FDIC's receipt of such request. The FDIC adopts this section as proposed with this modification.

Modifications of conditions. The proposal reorganized and clarified the procedures for requests to modify a previously issued FDIC approval of a filing. A new criteria for exercise of delegated authority by DOS officials was added requiring Legal Division consultation to modify conditions if Legal Division consultation was required in connection with the original filing. In the final regulation, the section has been redesignated as § 303.251 as a result of an addition to the subpart and the necessity to renumber certain sections. The FDIC is adopting this section as proposed, with the section number modification.

Extensions of time. Proposed § 303.251 reorganized and clarified the procedures for requests seeking an extension of time to fulfill a condition required in an approval issued by the FDIC, or to consummate a transaction which was the subject of an approval by the FDIC.

The FDIC is making two changes to this section in the final regulation. First, the FDIC is revising the proposal to make clear that multiple extensions of time will be allowed. The FDIC does not believe it is necessary to specify the exact number of extensions rather, the final regulation provides that an extension of time may not exceed one year; however, more than one extension may be granted regarding a particular filing. Second the FDIC has changed the section designation to § 303.252 as a result of an addition to the subpart resulting in the necessity to renumber certain sections. The FDIC is adopting this section with the above-stated modifications.

N. Subpart N—Enforcement Delegations

Proposed subpart N contained several changes to the FDIC's enforcement delegations of authority, which are discussed in detail in the proposal (62 FR 52827, October 7, 1997). No comments were received on the proposed subpart, therefore the FDIC adopts the subpart as proposed, with certain minor technical revisions to conform the language delegating authority with the delegations of authority in other subparts of this part 303, and the following clarifications.

Civil money penalties. Proposed § 303.269 provided delegation of authority, with one exception, to the Director and Deputy Director (DOS) and the Director and Deputy Director (DCA) to issue final orders to pay civil money penalties, whether or not a notice of charges has been issued in a case. The one exception was to delegate to the General Counsel the authority to levy and enforce civil money penalties for the late, inaccurate, false or misleading filing of Reports of Condition and Income, Home Mortgage Disclosure Act Reports, CRA reports (*see* 12 CFR 345.42), and all other required reports. This exception has been deleted in the final regulation as the Board believes that such delegation to the General Counsel is not consistent with the other delegations and that the decision to issue such orders should be vested in the Directors and Deputy Director (DOS or DCA) with the concurrence of the General Counsel.

Acceptance of written agreements. Proposed § 303.274 continued in effect FDIC delegations of authority to accept written agreements in lieu of orders to terminate deposit insurance and to issue cease-and-desist orders under sections 8(a) and (b) of the FDI Act (12 U.S.C. 1818(a) and (b)). Proposed § 303.274(c) added a new provision giving authority to the Director and Deputy Director (DOS and DCA) and, where confirmed in writing by the appropriate Director, to an associate director, or to the appropriate regional director or deputy regional director to enter into written agreements with insured institutions and institution-affiliated parties that contain conditions precedent to FDIC's nonobjection to a filing. A clarification has been added to the final regulation providing that an insured institution will not be disqualified from being treated as ''well-capitalized'' for prompt corrective action purposes because of having entered into a written agreement with the FDIC or its primary federal regulator in conjunction with a filing unless the written agreement expressly states to the contrary.

Modification and termination of section 8(e) prohibition orders. Proposed, § 303.275(e) authorized modification or termination of orders issued under section 8(e) of the Act (12 U.S.C. 1818(e)) if a respondent established any one of the three factors listed in § 303.275(e). The use of the word ''or'' rather than ''and'' in paragraph (2) was a clerical error and has been corrected in the final regulation.

V. Other Regulatory Changes

A. Part 333—Extension of Corporate Powers

The FDIC is making technical revisions to § 333.4 which governs the substantive requirements for conversions of insured mutual state savings banks to the stock form of ownership. Paragraph (b) of § 333.4 sets forth the procedural requirements for requesting any waiver from compliance with the requirement of § 333.4 due to conflicts with state law. Paragraph (b) is deleted from § 333.4 and moved to § 303.162 with two changes. The first change allows an institution to file a written request for waiver of compliance with § 333.4 or subpart I of 12 CFR part 303. The second change provides two circumstances for which a waiver may be sought: when compliance would be in conflict with state law or for any other good cause shown. Paragraphs (c)(4)(i) and (ii) are also deleted from § 333.4 because they are now included in § 303.161, which sets forth the filing procedures and the specific contents of the notice of intent to convert to stock form. Paragraph (c)(4)(i) required the submission of a full appraisal report on the value of the converting bank and the pricing of the stock to be sold in the conversion. This requirement is now located at § 303.161(c)(6). The requirements in § 333.4(c)(4)(i) fully describing the manner in which an appraisal must be prepared have been deleted as unnecessary because of the banking industry's knowledge of acceptable valuation practices. In addition, the Office of Thrift

Supervision's regulations governing mutual to stock conversions set forth in detail the requirements for an acceptable appraisal at 12 CFR § 563b.7(f), and may be used as guidance in this area. Paragraph (c)(4)(ii) required the submission of a business plan and is now located at § 303.161.(3).

B. Part 337—Unsafe and Unsound Banking Practices

As part of the FDIC's effort to review and streamline its regulations pursuant to Riegle Community Development and Regulatory Improvement Act of 1994 (*see* Pub. L. 103–325, 108 Stat. 2160, section 337) (CDRIA), the FDIC proposed centralizing virtually all filing procedures in part 303 of this chapter, including filing procedures for brokered deposit waivers. 62 FR 52810, October 7, 1997. Specifically, the proposal moved the procedures for an adequately capitalized insured depository institution to obtain a waiver of the restrictions on accepting or renewing brokered deposits from § 337.6 (12 CFR part 337) to § 303.243 (12 CFR part 303). At the same time, technical amendments were proposed to part 337 to reflect these changes and to reflect certain changes in the statutory definition of ''deposit broker'' as a result of the CDRIA. Under the proposal, the amended statutory language was incorporated in the FDIC's regulatory definition of ''deposit broker'' at § 337.6(a)(5)(iii). The FDIC received no comments on these changes and is, therefore, adopting part 337 as proposed.

C. Part 341—Registration of Transfer Agents

The FDIC proposed to place in a new § 341.7 certain delegations of authority to the DOS regarding the registration of transfer agents subject to section 17A(c)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1(c)(1)) (Exchange Act). 62 FR 52867, October 9, 1997. In its proposed § 341.7, authority is delegated to DOS to act on disclosure matters regarding Sections 17 and 17A of the Exchange Act. However, the FDIC proposed that the Board of Directors retain its authority to act on disclosure matters when such matters involve exemptions from registration requirements pursuant to section 17A(c)(1) of the Exchange Act. No comments were received on proposed § 341.7, and the FDIC adopts this section as proposed.

D. Part 346—Foreign Banks

The FDIC proposed to relocate, from § 303.8(f) of the current rule to § 346.19, a delegation of authority for DOS to accept the pledge agreements by which insured branches of foreign banks pledge assets for the benefit of the FDIC. The FDIC received no public comments on the proposal. On April 8, 1998, the FDIC published a final rule consolidating three parts of the FDIC's rules on international operations, including part 346, into a single part 347. 63 FR 17056, April 8, 1998. Section 347.210 of the new rule contains the delegation in question, so the proposal to relocate § 303.8(f) is no longer necessary.

E. Part 347—International Banking

As discussed in connection with subpart J, the FDIC is transferring four application procedures presently contained in part 347 to subpart J of part 303. The amendments in this rulemaking delete the interim application procedures from part 347.

F. Part 348—Management Official Interlocks

The FDIC proposed to place certain delegations of authority to DOS related to management official interlocks in 12 CFR part 348, as a result of the changes to be made in 12 CFR part 303. 62 FR 52867, October 7, 1997. The FDIC received no public comment on the proposal. The FDIC has determined, however, to place the proposed delegations in subpart M of part 303, rather than part 348, as part of new filing procedures for requesting an exemption from the statutory bar on management interlocks. The delegation of authority is now contained in § 303.250(f).

G. Part 359—Golden Parachute and Indemnification Payments

Part 359 contains the rules regarding the making of excess nondiscriminatory severance plan payments and golden parachute payments by insured depository institutions or depository institution holding companies. The proposal contemplated amending 12 CFR part 359 by moving information regarding filing instructions from § 359.6 to § 303.244 and providing appropriate cross references. In addition, the proposal provided a listing of application contents. These elements were expanded in the proposal to assist an applicant in preparing a complete filing. No comments were received on these technical amendments and the FDIC adopts this section as proposed.

VI. Regulatory Text Deleted From Part 303

As a result of the comprehensive revision of part 303, a number of provisions currently found in part 303 are not being included in the final part 303 because these matters are covered elsewhere or are no longer needed. Those items are summarized below:

Section 303.2(c)—Special procedures for remote service facilities. Notice procedures for remote service facilities, along with related delegations of authority and the definition of ''remote service facility'' have been deleted because EGRPRA excludes such facilities from the definition of a branch.

Section 303.11(c)—Request for review. This section merely stated that an aggrieved party may request the Board of Directors to review any action taken under authority delegated under the former §§ 303.7, 303.8, and 303.9. Numerous avenues now exist for appeal, such as those found under new § 303.11(f) (Appeals and requests for reconsideration) and part 308 (Uniform Rules of Practice and Procedure). Broad authority to challenge delegations of authority is unnecessary and is not in keeping with the Board's recent resolution on delegations of authority which has been codified in part in § 303.12 (General rules governing delegations of authority).

Section 303.12—OMB control number assigned pursuant to the Paperwork Reduction Act. This section is deleted in its entirety because this same material also appears in § 304.7, Display of control numbers, of this chapter.

Several delegations of authority are also being eliminated:

Section 303.8(b)—Disclosure laws and regulations. The delegations related to part 335 (Securities of nonmember insured banks) are now contained in part 335 of this chapter. The delegations to administer part 341 (Registration of Securities Transfer Agents) are moved to part 341 of this chapter.

Section 303.8(c)—Security devices and procedures and bank service arrangements. This delegation was to administer the provisions of part 326 (Minimum Security Devices and Procedures). There are no longer any application procedures related to part 326, so therefore no delegations of authority are required.

Section 303.8(d)—In emergencies. This was a delegation to staff to manage the FDIC's affairs in the event an enemy attack renders the Board of Directors unable to perform its normal management functions. The Board has determined that no such delegation is necessary and has deleted the provision.

Section 303.8(h)—Application or notices for membership or resumption of business. This delegation permitted DOS officials to provide comments to other federal regulators on applications

or notices for membership in the Federal Reserve System, or for conversion of a state bank to a national bank. This delegation is being deleted as unnecessary.

Section 303.8(i)—Depository Institutions Disaster Relief Act of 1992 (DIDRA). The provisions of DIDRA that were the subject of these delegations have expired and thus the delegations are removed.

VII. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) the FDIC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (''OMB'') control number.

Collections approved as part of the Part 303 proposed rule. The proposed rule invited public comment on two collections of information contained that were submitted to the Office of Management and Budget (OMB) for review. The first collection is located in Subpart C (Establishment and Relocation of Domestic Branches and Offices) of the regulation which sets forth the application requirements and procedures for insured state nonmember banks to establish a branch, relocate a main office, and relocate a branch subject to the approval by the FDIC. The information collected is used by the FDIC to evaluate the factors required by statute and to determine whether to grant consent. No public comment was received about this collection. OMB approved this collection under control number 3064–0070 through November 30, 2000. The second collection is located in Subpart M (Other filings), Section 303.242 (Exercise of trust powers) which sets forth the application procedures relating to the FDIC's approval to exercise trust powers. Each application submitted by a bank is evaluated by the FDIC to verify the qualifications of bank management to administer a trust department to ensure that the bank's financial condition will not be jeopardized as a result of trust operations. No public comment was received about this collection. OMB approved this collection under control number 3064–0025 through November 30, 2000.

Other Collections of Information. The final part 303 also addresses other collections of information for which public comment and OMB approval were sought separate from the part 303 notice of proposed rulemaking discussed above. Nothing in the final part 303 is intended to change any of these collections. Specifically, Subpart B (Deposit Insurance) addresses a collection approved by OMB under control number 3064–0001 which expires on July 31, 2000. Subpart D (Merger Transactions) addresses a collection approved by OMB under control number 3064–0015 which expires on September 30, 1998. The merger application collection was the subject of an interagency solicitation of public comment concerning the PRA aspects of a single, interagency form for affiliated and nonaffiliated merger transactions. 63 Fed. Reg. 3182 (Jan. 21, 1998) and was submitted to OMB for review and further public comment. Subpart E (Change in Bank Control) addresses a collection approved by OMB under control number 3064–0019 which expires on January 31, 2000. Subpart F (Change of Director or Senior Executive Officer) addresses a collection approved by OMB under control number 3064–0097 which expires on January 31, 2000. Subpart G (Activities and Investments of Insured State Banks), addresses a collection approved by OMB under control number 3064–0111, and Subpart H (Filings by Savings Associations), addresses a collection approved under control number 3064–0104, both of which expire on November 30, 2000.

Subpart I (Mutual-to-Stock Conversions) addresses a collection approved by OMB under control number 3064–0117 which expires on July 31, 2000. Subpart J (International Banking) addresses two collections approved by OMB under control numbers 3064–0114 and 3064–0125, both of which expire on July 31, 2000. Subpart K (Prompt Corrective Action) addresses a collection approved by OMB under control number 3064–0115 which expires on July 31, 1999. Subpart L (Section 19 of the FDIC Act—Consent to service of persons convicted of certain criminal offenses) addresses a collection approved by OMB under control number 3064–0018 which expires on July 31, 2000. Subpart M (Other Filings) § 303.241 (Reduce or retire capital stock or capital debt instruments) addresses a collection approved by OMB under control number 3064–0079 which expires on November 30, 2000. Subpart M (Other Filings) § 303.243 (Brokered deposits) addresses a collection approved by OMB under control number 3064–0099 which expires on August 31, 1998.

Modification of collection: Title of the collection: The rule will modify an information collection previously approved by OMB titled ''Foreign Branching and Investment by Insured State Nonmember Banks'' under control number 3064–0125.

Summary of the collection: The collection consists of applications for establishing or closing a foreign branch, acquiring stock of a foreign organization and records and reports which a state nonmember bank must maintain after it has established a foreign branch or organization.

Need and use of the information: The FDIC needs the additional information required by this change, to better assess the condition, management, and risk to the fund posed by institutions involved in operating foreign organizations, and also for use in connection with authorizing other institutions to conduct such operations under section 18(l) of the FDI Act (12 U.S.C. 1828(l)).

Changes to the collection: The rule will modify the collection by adding, at § 303.183(d), a requirement that, if an insured state nonmember bank holding 50 percent or more of the voting equity interests of a foreign organization or otherwise controlling the foreign organization divests itself of such ownership or control, the insured state nonmember bank shall file a notice, in the form of a letter, including the name, location, and date of divestiture of the foreign organization, with the appropriate DOS regional director no later than 30 days after the divestiture.

Respondents: State nonmember banks.

Estimated annual burden:

Frequency of response: Occasional.

Number of responses: 2.

Average number of hours to prepare a response: 1.

Total annual burden: 2.

With respect to this modification of a collection, comment is solicited on:

(i) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(iii) The quality, utility, and clarity of the information to be collected; and

(iv) Ways to 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.

The collection of information contained at § 303.183(d) of the final rule and described above has been submitted to OMB for review. Comments on the collection of information should be sent to the desk

officer for the FDIC: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503. Copies of comments should also be sent to: Steven F. Hanft, FDIC Clearance Officer, Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429, (202) 898–3907. 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]. OMB will make a decision concerning the change in the information collection 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. Unless the FDIC publishes a notice to the contrary, the public may assume that the change in the collection was approved within 60 days of this publication.

Ongoing review. Public comment and OMB review of all collections contained in part 303 will occur as part of the regular cycle of review under the PRA. Nonetheless, the FDIC welcomes comment about the PRA aspects of this regulation. Comment specifically about PRA related issues should identify the Paperwork Reduction Act and any particular subpart and/or collection for which consideration is desired. Such comments should be sent to Steven F. Hanft (FDIC) at the above address.

VIII. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1966 (SBREFA) (Title II, Pub. L. 104–11) provides generally for agencies to report rules to Congress for review. The reporting requirement is triggered when a federal agency issues a final rule. Accordingly, the FDIC will file the appropriate reports with Congress as required by SBREFA.

The Office of Management and Budget has determined that this final revision of part 303 does not constitute a ''major rule'' as defined by SBREFA.

IX. Regulatory Flexibility Act

Pursuant to Section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA) it is hereby certified that this final rule will not have a significant adverse economic impact on a substantial number of small entities. Accordingly, a final regulatory flexibility analysis is not required. This regulation will reduce the regulatory burden on the financial institutions to which this rule applies, regardless of size, by consolidating, simplifying and clarifying existing regulatory requirements. This regulation will not increase the burden on such institutions.

The FDIC prepared and published an initial regulatory flexibility analysis (IRFA) pursuant to Section 603 of the RFA as part of the proposed rulemaking. In that analysis the FDIC estimated the number of small entities to be affected by the proposal and stated its belief that any economic impact on such small entities would be beneficial because the rule serves to reduce regulatory burden. The proposal specifically sought comment on that belief. No comments received addressed the initial regulatory analysis. As discussed in the ''Supplementary Information'' section to this rule, many of the commenters supported the provisions of this rule which streamline the application process and make it less burdensome for the regulated financial institutions. The FDIC has carefully considered all comments received and adopts the final rule without amendments that would change the belief stated in the IRFA.

X. Derivation Table

Revised provision	Original provision	Comments
303.0		Added.
303.1	303.0(a)	Revised.
303.2	303.0(b)	No change.
(a)	303.0(b)(13)	No change.
(b)	303.0(b)(29)	No change.
(c)	303.0(b)(30)	Revised.
(d)	303.0(b)(25)	No change.
(e)		Added.
(f)		Added.
(g)	303.0(b)(12)	Revised.
(h)	303.0(b)(6)	No change.
(I)	303.0(b)(26)	No change.
(j)		Added.
(k)	303.0(b)(1)	No change.
(l)	303.0(b)(30)	Revised.
(m)		Added.
(n)	303.0(b)(8)	Revised.
(o)	303.0(b)(3)	No change.
(p)	303.0(b)(2)	No change.
(q)	303.0(b)(4),(5)	No change.
(r)		Added.
(s)		Added.
(t)		Added.
(u)		Added.
(v)	303.0(b)(14)	No change.
(w)		Added.
(x)		Added.
(y)		Added.
(z)	303.0(b)(24)	No change.
(aa)	303.0(b)(17)	No change.
(bb)	303.0(b)(15)	No change.
(cc)	303.0(b)(11)	No change.
(dd)	303.0(b)(7),(9)	Revised.

Revised provision	Original provision	Comments
(ee)(1)	303.0(b)(16)	No change.
(2)	303.0(b)(18)	No change.
(3)	303.0(b)(19)	No change.
(4)	303.0(b)(20)	No change.
(5)	303.0(b)(21)	No change.
(6)	303.0(b)(22)	No change.
(ff)	303.0(b)(31)	No change.
(gg)	303.0(b)(27)	Revised.
(hh)	303.0(b)(28)	Revised.
303.3	303.0(a)	Revised.
303.4	303.6(1)	Added.
303.5		Added.
303.6	303.6(b)	Revised.
303.7(a)	303.6(a),(b)	Revised.
(b)	303.6(f)(1)(iii)	Revised.
(c),(d),(e),(f)		Added.
303.8(a)	303.6(g)(1),(2)	Revised.
(b)	303.6(g)(3)	Revised.
303.9(a)	303.6(f)(3)	Revised.
303.9(b)(1)		Added.
(2)	303.6(f)(4)	Revised.
(3)	303.6(f)(5)	No change.
(4)		Added.
303.10(a)		Added.
(b),(c)	303.6(h)	Revised.
(d)		Added.
(e)	303.6(i)	Revised.
(f)	303.6(i)(2)	Revised.
(g)	303.6(j)(5)	Revised.
(h)	303.6(j)(1–4)	Revised.
(i)	303.6(j)(6)	Revised.
(j)	303.6(h)(3)	Revised.
(k)	303.6(k)	Revised.
(l)	303.6(l)	Revised.
(m)	303.6(m)	Revised.
303.11(a)	303.6(d)	Revised.
(b)		Added.
(c)		Added.
(d)		Added.
(e)		Added.
(f)	303.6(e)	Revised.
(g)		Added.
303.12(a)	303.11(a)	Revised.
(b)		Added.
(c),(d)	303.10(a)	Revised.
(e),(f)	303.11(a)(1)	Revised.
303.13	303.8(g)	No change.
303.13(a)		Added.
303.13(b)		Added.
303.13(c)	303.8(g)(1)	No change.
303.14(d)		Added.
303.20	303.1	Revised.
303.21	303.1	Revised.
303.22		Added.
303.23(a)	303.6(f)(1)	Revised.
(b)	303.6(f)(1)(ii)	No change.
303.24		Added.
303.25		Added.
303.26(a)(1)	303.7(d)(1)	Revised.
303.26(a)(2)	303.7(f)(1)(vi)	Revised.
303.26(b)	303.7(d)(2)	Revised.
(c)	303.7(d)(3)	Revised.
(d)	303.7(b)(4)	Revised.
303.27	303.10(b)(2)	Revised.
303.40(a)	303.2	Revised.
(b),(c),(d)		Added.
303.41(a)	303.2(a)(footnote 2)	Revised.
(b)	303.2(a)	No change.
(c),(d),(e)		Added.
303.42(a),(b),(c),(d)	303.2(a)	Revised.
303.43(a),(b)		Added.
303.44(a)	303.6(f)(1)	Revised.
(b)	303.69(f)(3),(4)	Revised.
(c)	303.6(f)(2)	Revised.

Revised provision	Original provision	Comments
303.45(a),(b),(c)		Added.
303.46(a),(b),(c)	303.7(a)	Revised.
303.60		Added.
303.61(a)	303.3(a),(b)	Revised.
(b)	303.7(f)(1)(v)	Revised.
(c)	303.7(f)(1)(v)	Revised.
(d)	303.3(d)	Revised.
(e)		Added.
303.62(a)	303.3	Revised.
(b)		Added.
303.63(a)	303.3(a),(e)	Revised.
(b)	303.3(a)	Revised.
(c)		Added.
(d)	303.3(d)	Revised.
303.64		Added.
303.65	303.6(f)(1),(3)	Revised.
303.66(a)(1)	303.7(b),(f)	Revised.
(2),(3)		Added.
(b)	303.7(b)	Revised.
(c)	303.7(b)(2),(5)	Revised.
(d)	303.7(f)(1)(v),(vi)	Revised.
(e)	303.10(b)(1)(i),(iii),(iv)	Revised.
(f)	303.7(b)(3)	Revised.
(g)	303.8(e)	Revised.
303.67	303.10(b)(1)	Revised.
303.80		Added.
303.81(a)	303.4(a)	Revised.
(b)		Added.
(c)	303.4(a) (footnote 3)	No change.
(d)	303.4(a) (footnote 4)	No change.
303.82(a)		Added.
(b)	303.4(a)	Revised.
(c)		Added.
(d), (e)	303.4(a)	Revised.
303.83(a)(1) thru (b)(1)	303.4(c)	Revised.
(b)(2), (3)		Added.
303.84(a)	303.4(b)(1)	Revised.
(b)	303.4(b)(5)	No change.
303.85		Added.
303.86(a)(1), (2)	303.4(b)(2)(i)	Revised.
(a)(3)		Added.
(a)(4), (5)	303.4(b)(3)(ii)	Revised.
(a)(6)	303.4(b)(6)	Revised.
303.87	303.7(c)	Revised.
303.100		Added.
303.101(a)		Added.
(b)	303.14(a)(3)	Revised.
(c)	303.14(a)(4)	Revised.
303.102(a), (b)	303.14(b)	Revised.
(c), (d)	303.14(c)(2)	Revised.
303.103(a)	303.14(c)(1)	Revised.
(b)	303.14(c)(4)	Revised.
(c)	303.14(d)	Revised.
303.104	303.14(e)	Revised.
303.140		Added
303.141	303.13(a)	No change.
303.142	303.13(b)	No change.
303.143	303.13(c)	No change.
303.144	303.13(d)	No change.
303.145	303.13(e)	No change.
303.146	303.13(f)	No change.
303.147	303.13(g)	No change.
303.148	303.13(h)	No change.
303.160		Added.
303.161(a), (b)	303.15(a)	Revised.
303.161(c)	303.15(b)	Revised.
303.161(d)	303.15(c)	No change.
303.161(e)	303.15(d)	No change.
303.161(f)		Added.
303.162		Added.
303.163(a)	303.15(c)(1)	No change.
303.163(b)	303.15(c)(2)	No change.
303.163(c)	303.15(e)	No change.
303.163(d)	303.15(e)	No change.

Revised provision	Original provision	Comments
303.163(e)	303.15(f)	No change.
303.163(f)	303.15(g)	No change.
303.164		Added.
303.180		Added.
303.181		Added.
303.182(a)		Added.
303.182(b)	303.2(a)	Revised.
303.182(c)		Added.
303.182(d)	347.3(a)	Revised.
303.182(e)	303.7(a)	Revised.
303.183(a), (b), (c), (d)	303.5(d)	Revised.
303.183(e)	303.7(f)(2)(ii)	Revised.
303.184	303.2, 303.6, 303.7	Revised.
303.185		Added.
303.186	346.6(b)	Revised.
303.187	346.101	Revised.
303.200		Added.
303.201	303.5(e)	No change.
303.202	303.5(e)	No change.
303.203	303.5(e)(1)	No change.
303.204	303.5(e)(2)	No change.
303.205	303.5(e)(3)	No change.
303.206	303.5(e)(4)	No change.
303.207	303.5(e)(5)	Revised.
303.208	303.7(f)(1)(ix)	No change.
303.220		Added.
303.221		Added.
303.222		Added.
303.223		Added.
303.224(a),(b),(c),(d)	303.7(e)	Revised.
(e)	303.10(b)(3)	No change.
303.240		Added.
303.241(a)		Added.
(b),(c),(d)	303.5(b)	Revised.
(e),(f),(g)		Added.
(h)	303.7(f)(1)(iii)	No change.
303.242(a)		Added.
(b),(c),(d)	303.5(b)	Revised.
(e),(f)		Added.
(g),(h)	303.7(a)(2)	No change.
303.243(a),(b),(c)	337.6(d),(e)	No change.
(d),(e),(f)		Added.
(g)	337.6(c),(e)	No change.
(h)	337.6(e), 303.7(f)(1)(viii)	Revised.
303.244(a),(b),(c),(d),(e)	359	Revised.
(f)	303.7(g)	No change.
303.245		Added.
303.246(a),(b),(c),(d)	303.5(a)	Revised.
(e)		Added.
(f)	303.7(f)(4)	Revised.
303.247	303.3(c)	Revised.
303.248	303.5(c)	Revised.
303.249		Added.
303.250		Added.
303.250(a),(b),(c),(d),(e)		Added.
(h)	303.7(f)(1)(vii), 303.7(f)(2)(i)	Revised.
303.251(a),(b),(c),(d),(e)		Added.
(f)	303.7(f)(14)(iv)	Revised.
303.252(a),(b),(c),(d),(e)		Added.
(f)	303.8(a)	No change.
303.260		Added.
303.261	303.9(a)	Revised.
303.262		Added.
303.263	303.9(b)	Revised.
303.264	303.9(c)	Revised.
303.265	303.9(d)	Revised.
303.266	303.9(e)	Revised.
303.267	303.9(f)	Revised.
303.268		Added.
303.269	303.9(g)	Revised.
303.270		Added.
303.271	303.9(h)	Revised.
303.272	303.9(i)	Revised.
303.273	303.9(k)	Revised.

Revised provision	Original provision	Comments
303.274	303.9(l)	Revised.
303.275	303.9(m)	Revised.
303.276	303.9(n)	Revised.
303.277	303.9(o)	Revised.
03.278	303.10(c)	Revised.

List of Subjects

12 CFR Part 303

Administrative practice and procedure, Authority delegations (Government agencies), Bank deposit insurance, Banks, banking, Bank merger, Branching, Foreign branches, Foreign investments, Golden parachute payments, Insured branches, Interstate branching, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 333

Banks, banking, Corporate powers.

12 CFR Part 337

Banks, banking, Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 341

Banks, banking, Reporting and recordkeeping requirements, Securities.

12 CFR Part 347

Authority delegations (Governmental agencies), Bank deposit insurance, Banks, banking, Credit, Foreign banking, Foreign investments, Insured branches, Investments, Reporting and recordkeeping requirements, United States investments abroad.

12 CFR Part 359

Bank deposit insurance, Banks, banking, Golden parachute payments, Indemnity payments.

For the reasons set forth in the preamble and under the authority of 12 U.S.C. 1819(a)(Tenth), the FDIC Board of Directors hereby amends 12 CFR chapter III as follows:

1. Part 303 is revised to read as follows:

PART 303—FILING PROCEDURES AND DELEGATIONS OF AUTHORITY

Authority: 12 U.S.C. 378, 1813, 1815, 1816, 1817, 1818, 1819, (Seventh and Tenth), 1820, 1823, 1828, 1831e, 1831p–1, 1835a, 3104, 3105, 3108; 3207; 15 U.S.C. 1601–1607.

§ 303.0 Scope.

(a) This part describes the procedures to be followed by both the FDIC and applicants with respect to applications, requests, or notices (filings) required to be filed by statute or regulation. Additional details concerning processing are explained in related FDIC statements of policy. This part also sets forth delegations of authority from the FDIC's Board of Directors to the Directors of the Division of Supervision (DOS), the Division of Compliance and Consumer Affairs (DCA), the General Counsel of the Legal Division, the Executive Secretary, and, in some cases, their designees to act on certain filings and enforcement matters.

(b) Additional application procedures may be found in the following FDIC regulations:

(1) 12 CFR part 327—Assessments (Request for review of assessment risk classification);

(2) 12 CFR part 328—Advertisement of Membership (Application for temporary waiver of advertising requirements);

(3) 12 CFR part 345—Community Reinvestment (CRA strategic plans and requests for designation as a wholesale or limited purpose institution);

Subpart A—Rules of General Applicability

§ 303.1 Scope.

This subpart A prescribes the general procedures for submitting filings to the FDIC which are required by statute or regulation. This subpart also prescribes the procedures to be followed by the FDIC, applicants and interested parties during the process of considering a filing, including public notice and comment. This subpart explains the availability of expedited processing for eligible depository institutions (defined in § 303.2(r)). Certain terms used throughout this part are also defined in this subpart. Finally, this subpart sets forth general principles governing delegations of authority by the FDIC's Board of Directors.

§ 303.2 Definitions.

For purposes of this part:

(a) *Act* or *FDI Act* means the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*).

(b) *Adjusted part 325 total assets* means adjusted 12 CFR part 325 total assets as calculated and reflected in the FDIC's Report of Examination.

(c) *Adverse comment* means any objection, protest, or other adverse written statement submitted by an interested party relative to a filing. The term adverse comment shall not include any comment concerning the Community Reinvestment Act (CRA), fair lending, consumer protection, or civil rights that the appropriate regional director or deputy regional director (DCA) determines to be frivolous (for example, raising issues between the commenter and the applicant that have been resolved). The term adverse comment also shall not include any other comment that the appropriate regional director or deputy regional director (DOS) determines to be frivolous (for example, a non-substantive comment submitted primarily as a means of delaying action on the filing).

(d) *Amended order to pay* means an order to forfeit and pay civil money penalties, the amount of which has been changed from that assessed in the original notice of assessment of civil money penalties.

(e) *Applicant* means a person or entity that submits a filing to the FDIC.

(f) *Application* means a submission requesting FDIC approval to engage in various corporate activities and transactions.

(g) *Appropriate FDIC region, appropriate FDIC regional office, appropriate regional director, appropriate deputy regional director, appropriate regional counsel* mean, respectively, the FDIC region, and the FDIC regional office, regional director, deputy regional director, and regional counsel, which the FDIC designates as follows:

(1) When an institution or proposed institution that is the subject of a filing or administrative action is not and will not be 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 or proposed institution that is the subject of a filing or administrative action is or will be 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.

(h) *Associate director* means any associate director of the Division of Supervision (DOS) or the Division of Compliance and Consumer Affairs (DCA) or, in the event such titles become obsolete, any official of equivalent authority within the respective divisions.

(i) *Book capital* means total equity capital which is comprised of perpetual preferred stock, common stock, surplus, undivided profits and capital reserves, as those items are defined in the instructions of the Federal Financial Institutions Examination Council (FFIEC) for the preparation of Consolidated Reports of Condition and Income for insured banks.

(j) *Comment* means any written statement of fact or opinion submitted by an interested party relative to a filing.

(k) *Corporation* or *FDIC* means the Federal Deposit Insurance Corporation.

(l) *CRA protest* means any adverse comment from the public related to a pending filing which raises a negative issue relative to the Community Reinvestment Act (CRA) (12 U.S.C. 2901 *et seq.*), whether or not it is labeled a protest and whether or not a hearing is requested.

(m) *Deputy Director* means the Deputy Director of the Division of Supervision (DOS) or the Deputy Director of the Division of Compliance and Consumer Affairs (DCA) or, in the event such titles become obsolete, any official of equivalent or higher authority within the respective divisions.

(n) *Deputy regional director* means any deputy regional director of the Division of Supervision (DOS) or the Division of Compliance and Consumer Affairs (DCA) or, in the event such titles become obsolete, any official of equivalent authority within the same FDIC region of DOS or DCA.

(o) *DCA* means the Division of Compliance and Consumer Affairs or, in the event the Division of Compliance and Consumer Affairs is reorganized, such successor division.

(p) *DOS* means the Division of Supervision or, in the event the Division of Supervision is reorganized, such successor division.

(q) *Director* means the Director of the Division of Supervision (DOS) or the Director of the Division of Compliance and Consumer Affairs (DCA) or, in the event such titles become obsolete, any official of equivalent or higher authority within the respective divisions.

(r) *Eligible depository institution* means a depository institution that meets the following criteria:

(1) Received an FDIC-assigned composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (UFIRS) as a result of its most recent federal or state examination;

(2) Received a satisfactory or better Community Reinvestment Act (CRA) rating from its primary federal regulator at its most recent examination, if the depository institution is subject to examination under part 345 of this chapter;

(3) Received a compliance rating of 1 or 2 from its primary federal regulator at its most recent examination;

(4) Is well-capitalized as defined in the appropriate capital regulation and guidance of the institution's primary federal regulator; and

(5) Is not subject to a cease and desist order, consent order, prompt corrective action directive, written agreement, memorandum of understanding, or other administrative agreement with its primary federal regulator or chartering authority.

(s) *Filing* means an application, notice or request submitted to the FDIC under this part.

(t) *General Counsel* means the head of the Legal Division of the FDIC or any official within the Legal Division exercising equivalent authority for purposes of this part.

(u) *Insider* means a person who is or is proposed to be a director, officer, organizer, or incorporator of an applicant; a shareholder who directly or indirectly controls 10 percent or more of any class of the applicant's outstanding voting stock; or the associates or interests of any such person.

(v) *Institution-affiliated party* shall have the same meaning as provided in section 3(u) of the Act (12 U.S.C. 1813(u)).

(w) *NEPA* means the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

(x) *NHPA* means the National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*).

(y) *Notice* means a submission notifying the FDIC that a depository institution intends to engage in or has commenced certain corporate activities or transactions.

(z) *Notice of assessment of civil money penalties* means a notice of assessment of civil money penalties, findings of fact and conclusions of law, and order to pay issued pursuant to sections 7(a)(1), 7(j)(15), 8(i) or 18(h) of the Act (12 U.S.C. 1817(a)(1), 1817(j)(15), 1818(i), or 1828(h)), section 106(b) of the Bank Holding Company Act (12 U.S.C. 1972), section 910(d) of the International Lending Supervision Act of 1983 (12 U.S.C. 3909), or any other provision of law providing for the assessment of civil money penalties by the FDIC.

(aa) *Notice of charges* means a notice of charges and of hearing setting forth the allegations of unsafe or unsound practices or violations and fixing the time and place of the hearing issued under section 8(b) of the Act (12 U.S.C. 1818(b)).

(bb) *Notice to primary regulator* means the notice described in section 8(a)(2)(A) of the Act concerning termination of deposit insurance (12 U.S.C. 1818(a)(2)(A)).

(cc) *Regional counsel* means a regional counsel of the Legal Division or, in the event the title becomes obsolete, any official of equivalent authority within the Legal Division. The authority delegated to a regional counsel may be exercised, when confirmed in writing by the regional counsel, by a deputy regional counsel, or any official of equivalent or higher authority in the Supervision and Legislation Branch of the Legal Division.

(dd) *Regional director* means any regional director in the Division of Supervision (DOS) or the Division of Compliance and Consumer Affairs (DCA), or in the event such titles become obsolete, any official of equivalent authority within the respective divisions.

(ee) *Section 8 orders:*

(1) *Section 8(a) order* means an order terminating the insured status of a depository institution under section 8(a) of the Act (12 U.S.C. 1818(a)).

(2) *Section 8(b) order, cease-and-desist order* means a final order to cease and desist issued under section 8(b) of the Act (12 U.S.C. 1818(b)).

(3) *Section 8(c) order, temporary cease-and-desist order* means a temporary order to cease and desist issued under section 8(c) of the Act (12 U.S.C. 1818(c)).

(4) *Section 8(e) order* means a final order of removal or prohibition issued under section 8(e) of the Act (12 U.S.C. 1818(e)).

(5) *Section 8(e)(3) order, temporary order of suspension* means a temporary order of suspension or prohibition issued under section 8(e)(3) of the Act (12 U.S.C. 1818(e)(3)).

(6) *Section 8(g) order* means an order of suspension or order of prohibition issued under section 8(g) of the Act (12 U.S.C. 1818(g)).

(ff) *Standard conditions* means the conditions that any FDIC official acting under delegated authority may impose as a routine matter when approving a

filing, whether or not the applicant has agreed to their inclusion. The following conditions, or variations thereof, are standard conditions:

(1) That the applicant has obtained all necessary and final approvals from the appropriate federal or state authority or other appropriate authority;

(2) That if the transaction does not take effect within a specified time period, or unless, in the meantime, a request for an extension of time has been approved, the consent granted shall expire at the end of the specified time period;

(3) That until the conditional commitment of the FDIC becomes effective, the FDIC retains the right to alter, suspend or withdraw its commitment should any interim development be deemed to warrant such action; and

(4) In the case of a merger transaction (as defined in § 303.61(a)), including a corporate reorganization, that the proposed transaction not be consummated before the 30th calendar day (or shorter time period as may be prescribed by the FDIC with the concurrence of the Attorney General) after the date of the order approving the merger transaction.

(gg) *Tier 1 capital* shall have the same meaning as provided in § 325.2(t) of this chapter.

(hh) *Total assets* shall have the same meaning as provided in § 325.2(v) of this chapter.

§ 303.3 General filing procedures.

Unless stated otherwise, filings should be submitted to the appropriate regional director (DOS). Forms and instructions for submitting filings may be obtained from any FDIC regional office (DOS). If no form is prescribed, the filing should be in writing; be signed by the applicant or a duly authorized agent; and contain a concise statement of the action requested. For specific filing and content requirements, consult the appropriate subparts of this part. The FDIC may require the applicant to submit additional information.

§ 303.4 Computation of time.

For purposes of this part, the FDIC begins computing the relevant period on the day after an event occurs (*e.g.*, the day after a substantially complete filing is received by the FDIC or the day after publication begins) through the last day of the relevant period. When the last day is a Saturday, Sunday or federal holiday, the period runs until the end of the next business day.

§ 303.5 Effect of Community Reinvestment Act performance on filings.

Among other factors, the FDIC takes into account the record of performance under the Community Reinvestment Act (CRA) of each applicant in considering a filing for approval of:

(a) The establishment of a domestic branch;

(b) The relocation of the bank's main office or a domestic branch;

(c) The relocation of an insured branch of a foreign bank;

(d) A transaction subject to the Bank Merger Act; and

(e) Deposit insurance.

§ 303.6 Investigations and examinations.

The Board of Directors, Directors of (DOS) or (DCA), the associate directors, or the appropriate regional director or appropriate deputy regional director (DOS) or (DCA) acting under delegated authority may examine or investigate and evaluate facts related to any filing under this chapter to the extent necessary to reach an informed decision and take any action necessary or appropriate under the circumstances.

§ 303.7 Public notice requirements.

(a) *General.* The public must be provided with prior notice of a filing to establish a domestic branch, relocate a domestic branch or the main office, relocate an insured branch of a foreign bank, engage in a merger transaction, initiate a change of control transaction, or request deposit insurance. The public has the right to comment on, or to protest, these types of proposed transactions during the relevant comment period. In order to fully apprise the public of this right, an applicant shall publish a public notice of its filing in a newspaper of general circulation. For specific publication requirements, consult subparts B (Deposit Insurance), C (Branches and Relocations), D (Merger Transactions), E (Change in Bank Control), and J (International Banking) of this part.

(b) *Confirmation of publication.* The applicant shall mail or otherwise deliver a copy of the newspaper notice to the appropriate regional director (DOS) as part of its filing, or, if a copy is not available at the time of filing, promptly after publication.

(c) *Content of notice.* (1) The public notice referred to in paragraph (a) of this section shall consist of the following:

(i) Name and address of the applicant(s). In the case of an application for deposit insurance for a de novo bank, include the names of all organizers or incorporators. In the case of an application to establish a branch, include the location of the proposed branch or, in the case of an application to relocate a branch or main office, include the current and proposed address of the office. In the case of a merger application, include the names of all parties to the transaction. In the case of a notice of acquisition of control, include the name(s) of the acquiring parties. In the case of an application to relocate an insured branch of a foreign bank, include the current and proposed address of the branch;

(ii) Type of filing being made;

(iii) Name of the depository institution(s) that is the subject matter of the filing;

(iv) That the public may submit comments to the appropriate FDIC regional director (DOS);

(v) The address of the appropriate FDIC regional office (DOS) where comments may be sent (the same location that where the filing will be made);

(vi) The closing date of the public comment period as specified in the appropriate subpart of this part; and

(vii) That the nonconfidential portions of the application are on file in the regional office and are available for public inspection during regular business hours; photocopies of the nonconfidential portion of the application file will be made available upon request.

(2) The requirements of paragraphs (c)(1)(iv) through (vii) of this section may be satisfied through use of the following notice:

> Any person wishing to comment on this application may file his or her comments in writing with the regional director (DOS) of the Federal Deposit Insurance Corporation at its regional office [insert address of regional office] not later than [insert closing date of the public comment period specified in the appropriate subpart of part 303]. The non-confidential portions of the application are on file in the regional office and are available for public inspection during regular business hours. Photocopies of the nonconfidential portion of the application file will be made available upon request.

(d) *Multiple transactions.* The FDIC may consider more than one transaction, or a series of transactions, to be a single filing for purposes of the publication requirements of this section. When publishing a single public notice for multiple transactions, the applicant shall explain in the public notice how the transactions are related. The closing date of the comment period shall be the closing date of the longest public comment period that applies to any of the related transactions.

(e) *Joint public notices.* For a transaction subject to public notice requirements by the FDIC and another

federal or state banking authority, the FDIC will accept publication of a single joint notice containing all the information required by both the FDIC and the other federal agency or state banking authority, provided that the notice states that comments must be submitted to the FDIC and, if applicable, the other federal or state banking authority.

(f) Where public notice is required, the FDIC may determine on a case-by-case basis that unusual circumstances surrounding a particular filing warrant modification of the publication requirements.

§ 303.8 Public access to filing.

(a) *General.* For filings subject to a public notice requirement, any person may inspect or request a copy of the non-confidential portions of a filing (the public file) until 180 days following final disposition of a filing. Following the 180-day period, non-confidential portions of an application file will be made available in accordance with paragraph (c) of this section. The public file generally consists of portions of the filing, supporting data, supplementary information, and comments submitted by interested persons (if any) to the extent that the documents have not been afforded confidential treatment. To view or request photocopies of the public file, an oral or written request should be submitted to the appropriate regional director (DOS). The public file will be produced for review not more than one business day after receipt by the regional office of the request (either written or oral) to see the file. The FDIC may impose a fee for photocopying in accordance with § 309.5(c) of this chapter at the rates the FDIC publishes annually in the **Federal Register**.

(b) *Confidential treatment.* (1) The applicant may request that specific information be treated as confidential. The following information generally is considered confidential:

(i) Personal information, the release of which would constitute a clearly unwarranted invasion of privacy;

(ii) Commercial or financial information, the disclosure of which could result in substantial competitive harm to the submitter; and

(iii) Information, the disclosure of which could seriously affect the financial condition of any depository institution.

(2) If an applicant requests confidential treatment for information that the FDIC does not consider to be confidential, the FDIC may include that information in the public file after notifying the applicant. On its own initiative, the FDIC may determine that certain information should be treated as confidential and withhold that information from the public file.

(c) *FOIA requests.* A written request for information withheld from the public file, or copies of the public file following closure of the file 180 days after final disposition, should be submitted pursuant to the Freedom of Information Act (5 U.S.C. 552) and part 309 of this chapter to the FDIC, Office of the Executive Secretary, 550 17th Street, N.W., Washington, D.C. 20429.

§ 303.9 Comments.

(a) *Submission of comments.* For filings subject to a public notice requirement, any person may submit comments to the appropriate FDIC regional director (DOS) during the comment period.

(b) *Comment period*—(1) *General.* Consult appropriate subparts of this part for the comment period applicable to a particular filing.

(2) *Extension.* The appropriate regional director or deputy regional director (DOS) may extend or reopen the comment period if:

(i) The applicant fails to file all required information on a timely basis to permit review by the public or makes a request for confidential treatment not granted by the FDIC that delays the public availability of that information;

(ii) Any person requesting an extension of time satisfactorily demonstrates to the FDIC that additional time is necessary to develop factual information that the FDIC determines may materially affect the application; or

(iii) The appropriate regional director or deputy regional director (DOS) determines that other good cause exists.

(3) *Solicitation of comments.* Whenever appropriate, the appropriate regional director (DOS) may solicit comments from any person or institution which might have an interest in or be affected by the pending filing.

(4) *Applicant response.* The FDIC will provide copies of all comments received to the applicant and may give the applicant an opportunity to respond.

§ 303.10 Hearings and other meetings.

(a) *Matters covered.* This section covers hearings and other proceedings in connection with filings and determinations for or by:

(1) Deposit insurance by a proposed new depository institution or operating non-insured institution;

(2) An insured state nonmember bank to establish a domestic branch or to relocate a main office or domestic branch;

(3) Relocation of an insured branch of a foreign bank;

(4)(i) Merger transaction which requires the FDIC's prior approval under the Bank Merger Act (12 U.S.C. 1828(c));

(ii) Except as otherwise expressly provided, the provisions of this section shall not be applicable to any proposed merger transaction which the FDIC Board of Directors determines must be acted upon immediately to prevent the probable failure of one of the institutions involved, or must be handled with expeditious action due to an existing emergency condition, as permitted by the Bank Merger Act (12 U.S.C. 1828(c)(6));

(5) Nullification of a decision on a filing; and

(6) Any other purpose or matter which the FDIC Board of Directors in its sole discretion deems appropriate.

(b) *Hearing requests.* (1) Any person may submit a written request for a hearing on a filing:

(i) To the appropriate regional director (DOS) before the end of the comment period; or

(ii) To the appropriate regional director (DOS or DCA), pursuant to a notice to nullify a decision on a filing issued pursuant to § 303.11(g)(2)(i) or (ii).

(2) The request must describe the nature of the issues or facts to be presented and the reasons why written submissions would be insufficient to make an adequate presentation of those issues or facts to the FDIC. A person requesting a hearing shall simultaneously submit a copy of the request to the applicant.

(c) *Action on a hearing request.* The appropriate regional director (DOS or DCA), after consultation with the Legal Division, may grant or deny a request for a hearing and may limit the issues that he or she deems relevant or material. The FDIC generally grants a hearing request only if it determines that written submissions would be insufficient or that a hearing otherwise would be in the public interest.

(d) *Denial of a hearing request.* If the appropriate regional director (DOS or DCA), after consultation with the Legal Division, denies a hearing request, he or she shall notify the person requesting the hearing of the reason for the denial. A decision to deny a hearing request shall be a final agency determination and is not appealable.

(e) *FDIC procedures prior to the hearing*—(1) *Notice of hearing.* The FDIC shall issue a notice of hearing if it grants a request for a hearing or orders a hearing because it is in the public interest. The notice of hearing shall state the subject and date of the filing, the time and place of the hearing, and the issues to be addressed. The FDIC shall

send a copy of the notice of hearing to the applicant, to the person requesting the hearing, and to anyone else requesting a copy.

(2) *Presiding officer.* The presiding officer shall be the Regional Director (DOS or DCA) or his or her designee or such other person as may be named by the Board or the Director (DOS or DCA). The presiding officer is responsible for conducting the hearing and determining all procedural questions not governed by this section.

(f) *Participation in the hearing.* Any person who wishes to appear (participant) shall notify the appropriate regional director (DOS or DCA) of his or her intent to participate in the hearing no later than 10 days from the date that the FDIC issues the Notice of Hearing. At least 5 days before the hearing, each participant shall submit to the appropriate regional director (DOS or DCA), as well as to the applicant and any other person as required by the FDIC, the names of witnesses, a statement describing the proposed testimony of each witness, and one copy of each exhibit the participant intends to present.

(g) *Transcripts.* The FDIC shall arrange for a hearing transcript. The person requesting the hearing and the applicant each shall bear the cost of one copy of the transcript for his or her use unless such cost is waived by the presiding officer and incurred by the FDIC.

(h) *Conduct of the hearing.*—(1) *Presentations.* Subject to the rulings of the presiding officer, the applicant and participants may make opening and closing statements and present and examine witnesses, material, and data.

(2) *Information submitted.* Any person presenting material shall furnish one copy to the FDIC, one copy to the applicant, and one copy to each participant.

(3) *Laws not applicable to hearings.* The Administrative Procedure Act (5 U.S.C. 551 *et seq.*), the Federal Rules of Evidence (28 U.S.C. Appendix), the Federal Rules of Civil Procedure (28 U.S.C. Rule 1 *et seq.*), and the FDIC's Rules of Practice and Procedure (12 CFR part 308) do not govern hearings under this section.

(i) *Closing the hearing record.* At the applicant's or any participant's request, or at the FDIC's discretion, the FDIC may keep the hearing record open for up to 10 days following the FDIC's receipt of the transcript. The FDIC shall resume processing the filing after the record closes.

(j) *Disposition and notice thereof.* The presiding officer shall make a recommendation to the FDIC within 20 days following the date the hearing and record on the proceeding are closed. The FDIC shall notify the applicant and all participants of the final disposition of a filing and shall provide a statement of the reasons for the final disposition.

(k) *Computation of time.* In computing periods of time under this section, the provisions of § 308.12 of the FDIC's Rules of Practice and Procedure (12 CFR 308.12) shall apply.

(l) *Informal proceedings.* The FDIC may arrange for an informal proceeding with an applicant and other interested parties in connection with a filing, either upon receipt of a written request for such a meeting made during the comment period, or upon the FDIC's own initiative. No later than 10 days prior to an informal proceeding, the appropriate regional director (DOS or DCA) shall notify the applicant and each person who requested a hearing or oral presentation of the date, time, and place of the proceeding. The proceeding may assume any form, including a meeting with FDIC representatives at which participants will be asked to present their views orally. The appropriate regional director (DOS or DCA) may hold separate meetings with each of the participants.

(m) *Authority retained by FDIC Board of Directors to modify procedures.* The FDIC Board of Directors may delegate authority by resolution on a case-by-case basis to the presiding officer to adopt different procedures in individual matters and on such terms and conditions as the Board of Directors determines in its discretion. Such resolution shall be made available for public inspection and copying in the Office of the Executive Secretary under the Freedom of Information Act (5 U.S.C. 552(a)(2)).

§ 303.11 Decisions.

(a) *General procedures.* The FDIC may approve, conditionally approve, deny, or not object to a filing after appropriate review and consideration of the record. The FDIC will promptly notify the applicant and any person who makes a written request of the final disposition of a filing. If the FDIC denies a filing, the FDIC will immediately notify the applicant in writing of the reasons for the denial.

(b) *Authority retained by FDIC Board of Directors to modify procedures.* In acting on any filing under this part, the FDIC Board of Directors may by resolution adopt procedures which differ from those contained in this part when it deems it necessary or in the public interest to do so. The resolution shall be made available for public inspection and copying in the Office of the Executive Secretary under the Freedom of Information Act (5 U.S.C. 552(a)(2)).

(c) *Expedited processing.* (1) A filing submitted by an eligible depository institution as defined in § 303.2(r) will receive expedited processing as specified in the appropriate subparts of this part unless the appropriate regional director or deputy regional director (DOS) determines to remove the filing from expedited processing for any of the reasons set forth in paragraph (c)(2) of this section. Except for filings made pursuant to subpart J of this part (International Banking), expedited processing will not be available for any filing that the appropriate regional director (DOS) does not have delegated authority to approve.

(2) *Removal of filing from expedited processing.* The appropriate regional director or deputy regional director (DOS) may remove a filing from expedited processing at any time prior to final disposition if:

(i) For filings subject to public notice under § 303.7, an adverse comment is received that warrants additional investigation or review;

(ii) For filings subject to evaluation of CRA performance under § 303.5, a CRA protest is received that warrants additional investigation or review, or the appropriate regional director (DCA) determines that the filing presents a significant CRA or compliance concern;

(iii) For any filing, the appropriate regional director (DOS) determines that the filing presents a significant supervisory concern, or raises a significant legal or policy issue; or

(iv) For any filing, the appropriate regional director (DOS) determines that other good cause exists for removal.

(3) For purposes of this section, a significant CRA concern includes, but is not limited to, a determination by the appropriate regional director (DCA) that, although a depository institution may have an institution-wide rating of satisfactory or better, a depository institution's CRA rating is less than satisfactory in a state or multi-state metropolitan statistical area, or a depository institution's CRA performance is less than satisfactory in a metropolitan statistical area as defined in 12 CFR 345.12 (MSA) or in the non-MSA portion of a state in which it seeks to expand through approval of an application for a deposit facility as defined in 12 U.S.C. 2902(3).

(4) If the FDIC determines that it is necessary to remove a filing from expedited processing pursuant to paragraph (c)(2) of this section, the FDIC promptly will provide the applicant with a written explanation.

(d) *Multiple transactions.* If the FDIC is considering related transactions, some or all of which have been granted expedited processing, then the longest processing time for any of the related transactions shall govern for purposes of approval.

(e) *Abandonment of filing.* A filing must contain all information set forth in the applicable subpart of this part. To the extent necessary to evaluate a filing, the FDIC may require an applicant to provide additional information. If information requested by the FDIC is not provided within the time period specified by the agency, the FDIC may deem the filing abandoned and shall provide written notification to the applicant and any interested parties that submitted comments to the FDIC that the file has been closed.

(f) *Appeals and requests for reconsideration.*—(1) *General.* Appeal procedures for a denial of a change in bank control (subpart E of this part), change in senior executive officer or board of directors (subpart F of this part) or denial of an application pursuant to section 19 of the FDI Act (subpart L of this part) are contained in 12 CFR part 308, subparts D, L, and M, respectively. For all other filings covered by this chapter for which appeal procedures are not provided by regulation or other written guidance, the procedures specified in paragraphs (f) (2) through (5) of this section shall apply. A decision to deny a request for a hearing is a final agency determination and is not appealable.

(2) *Filing procedures.* Within 15 days of receipt of notice from the FDIC that its filing has been denied, any applicant may file a request for reconsideration with the appropriate regional director (DOS), if the filing initially was submitted to DOS, or the appropriate regional director (DCA), if the filing initially was submitted to DCA.

(3) *Content of filing.* A request for reconsideration must contain the following information:

(i) A resolution of the board of directors of the applicant authorizing filing of the request if the applicant is a corporation, or a letter signed by the individual(s) filing the request if the applicant is not a corporation;

(ii) Relevant, substantive information that for good cause was not previously set forth in the filing; and

(iii) Specific reasons why the FDIC should reconsider its prior decision.

(4) *Delegation of authority for requests for reconsideration.* (i) Authority is delegated to the Director and Deputy Director (DOS) and (DCA), as appropriate and, where confirmed in writing by the appropriate Director, to an associate director and the appropriate regional director and deputy regional director, to grant a request for reconsideration, after consultation with the Legal Division.

(ii) Authority is delegated to the Director and Deputy Director (DOS) and (DCA), as appropriate and, where confirmed in writing, to an associate director, to deny a request for reconsideration, after consultation with the Legal Division. Such a denial is a final agency decision and is not appealable.

(5) *Reconsideration of the filing.* If a request for reconsideration is granted pursuant to this paragraph (f), the filing will be reconsidered as follows:

(i) The Board of Directors will reconsider any such filing if the filing was originally denied by the Board of Directors.

(ii) Authority is delegated to the FDIC's Supervisory Appeals Review Committee to reconsider any such filing if the filing was originally denied by the Director or Deputy Director or an associate director (DOS) or (DCA), and to make the final agency decision on such filing, after consultation with the Legal Division.

(iii) Authority is delegated to the Director or Deputy Director (DOS) or (DCA), as appropriate, to reconsider any such filing that was originally denied by a regional director or deputy regional director, and to make the final agency decision on such filing, after consultation with the Legal Division.

(iv) Notwithstanding paragraphs (f)(5)(ii) and (iii) of this section, no reconsideration of a filing that originally required Legal Division concurrence may be acted upon without Legal Division concurrence.

(6) *Processing.* The appropriate regional director (DOS or DCA) will notify the applicant whether reconsideration will be granted or denied within 15 days of receipt of a request for reconsideration. If a request for reconsideration is granted pursuant to this paragraph (f), the FDIC will notify the applicant of the final agency decision on such filing within 60 days of its receipt of the request for reconsideration.

(g) *Nullification, withdrawal, revocation, amendment, and suspension of decisions on filings.*—(1) *Grounds for action.* (i) Except as otherwise provided by law or regulation, the FDIC may nullify, withdraw, revoke, amend or suspend a decision on a filing if it becomes aware at anytime:

(A) Of any material misrepresentation or omission related to the filing or of any material change in circumstance that occurred prior to the consummation of the transaction or commencement of the activity authorized by the decision on the filing; or

(B) That the decision on the filing is contrary to law or regulation or was granted due to clerical or administrative error.

(ii) Any person responsible for a material misrepresentation or omission in a filing or supporting materials may be subject to an enforcement action and other penalties, including criminal penalties provided in Title 18 of the United States Code.

(2) *Notice of intent and temporary order.* (i) Except as provided in paragraph (g)(2)(ii) of this section, before taking action under this paragraph (g), the FDIC shall issue and serve on an applicant written notice of its intent to take such action. A notice of intent to act on a filing shall include:

(A) The reasons for the proposed action; and

(B) The date by which the applicant may file a written response with the FDIC.

(ii) The FDIC may issue a temporary order on a decision on a filing without providing an applicant a prior notice of intent if the FDIC determines that:

(A) It is necessary to reevaluate the impact of a change in circumstance prior to the consummation of the transaction or commencement of the activity authorized by the decision on the filing; or

(B) The activity authorized by the filing may pose a threat to the interests of the depository institution's depositors or may threaten to impair public confidence in the depository institution.

(iii) A temporary order shall provide the applicant with an opportunity to make a written response in accordance with paragraph (g)(3) of this section.

(3) *Response to notice of intent or temporary order.* An applicant may file a written response to a notice of intent or a temporary order within 15 days from the date of service of the notice or temporary order. The written response should include:

(i) An explanation of why the proposed action or temporary order is not warranted; and

(ii) Any other relevant information, mitigating circumstance, documentation, or other evidence in support of the applicant's position. An applicant may also request a hearing under § 303.10. Failure by an applicant to file a written response with the FDIC to a notice of intent or a temporary order within the specified time period, shall constitute a waiver of the opportunity to respond and shall constitute consent to a final order under this paragraph (g).

(4) *Effective date.* All orders issued pursuant to this section shall become effective immediately upon issuance unless otherwise stated therein.

(5) *Retained and delegated authority.* The FDIC Board of Directors retains authority to issue notices of intent and temporary and final orders under this paragraph (g), as to any decision on a filing originally acted on by the Board. For decisions on filings under this paragraph (g) that were not originally acted on by the Board, authority is delegated to the Director and Deputy Director (DOS and DCA) and, where confirmed in writing by the appropriate Director, to an associate director or the appropriate regional director or deputy regional director, to issue notices of intent and final orders, after consultation with the Legal Division. Authority is delegated to the Director and Deputy Director (DOS and DCA) and, where confirmed in writing by the appropriate Director, to an associate director, to issue temporary orders under this paragraph (g), after consultation with the Legal Division. This delegated authority may be exercised only by the official who acted on the original filing or an official of equivalent or higher authority.

§ 303.12 General rules governing delegations of authority.

(a) *Scope.* This section contains general rules governing the FDIC Board of Director's delegations of authority under this part. These principles are procedural in nature only and are not substantive standards. All delegations of authority, confirmations, limitations, revisions, and rescissions under this part must be in writing and maintained with the Office of the Executive Secretary.

(b) *Authority not delegated.* Except as otherwise expressly provided, the FDIC Board of Directors does not delegate its authority.

(1) The FDIC Board of Directors retains and does not delegate the authority to act on agreements with foreign regulatory or supervisory authorities, matters that would establish or change existing Corporation policy, matters that might attract unusual attention or publicity, or involve an issue of first impression notwithstanding any existing delegation of authority.

(2) The FDIC Board of Directors retains the authority to act on any filing or enforcement matter upon which any member of the Board of Directors wishes to act, even if the authority to act on such filing or enforcement matter has been delegated.

(c) *Exercise of delegated authority not mandated.* Any FDIC official with delegated authority under this part may elect not to exercise that authority.

(d) *Action by FDIC officials.* In matters where the FDIC Board of Directors has neither specifically delegated nor retained authority, FDIC officials may take action with respect to matters which generally involve conditions or circumstances requiring prompt action to protect the interests of the FDIC and to achieve flexibility in and expedite its operations and the exercise of FDIC functions under this part.

(e) *Construction.* The delegations of authority contained in this part are to be broadly construed in favor of the existence of authority in FDIC officials who act under delegated authority. Any exercise of authority under this part by an FDIC official is conclusive evidence of that official's authority.

(f) *Written confirmations, limitations, revisions or rescissions.* Where the FDIC Board of Directors has delegated authority to the Director (DOS), Director (DCA) or the General Counsel, or their respective designees, each shall have the right to confirm, limit, revise, or rescind any delegation of authority issued or approved by them, respectively, to any subordinate official(s).

§ 303.13 Delegations of authority to officials in the Division of Supervision and the Division of Compliance and Consumer Affairs.

(a) *CRA protests.* Where a CRA protest is filed and remains unresolved, authority is delegated to the Director and Deputy Director (DCA) and, where confirmed in writing by the Director, to an associate director or the appropriate regional director or deputy regional director to concur that approval of any filing subject to CRA is consistent with the purposes of CRA.

(b) *Adequacy of filings.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to determine whether a filing is substantially complete for purposes of commencing processing.

(c) *National Historic Preservation Act.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to enter into memoranda of agreement pursuant to regulations of the Advisory Council on Historic Preservation which implement the National Historic Preservation Act of 1966 (16 U.S.C. 470).

(d) *Modification of publication requirements.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to modify the publication requirements for a particular filing where the unusual circumstances surrounding the filing warrant such modification.

Subpart B—Deposit Insurance

§ 303.20 Scope.

This subpart sets forth the procedures for applying for deposit insurance for a proposed depository institution or an operating noninsured depository institution under section 5 of the FDI Act (12 U.S.C. 1815). It also sets forth the procedures for requesting continuation of deposit insurance for a state-chartered bank withdrawing from membership in the Federal Reserve System and for interim institutions chartered to facilitate a merger transaction. Related delegations of authority are also set forth.

§ 303.21 Filing procedures.

(a) Applications for deposit insurance shall be filed with the appropriate regional director (DOS). The relevant application forms and instructions for applying for deposit insurance for an existing or proposed depository institution may be obtained from any FDIC regional office (DOS).

(b) An application for deposit insurance for an interim depository institution shall be filed and processed in accordance with the procedures set forth in § 303.24, subject to the provisions of § 303.62(b)(2) regarding deposit insurance for interim institutions. An interim institution is defined as a state- or federally-chartered depository institution that does not operate independently but exists solely as a vehicle to accomplish a merger transaction.

(c) A request for continuation of deposit insurance upon withdrawing from membership in the Federal Reserve System shall be in letter form and shall provide the information prescribed in § 303.25.

§ 303.22 Processing.

(a) *Expedited processing for proposed institutions.* (1) An application for deposit insurance for a proposed institution which will be a subsidiary of an eligible depository institution as defined in § 303.2(r) or an eligible holding company will be acknowledged

in writing by the FDIC and will receive expedited processing unless the applicant is notified in writing to the contrary and provided with the basis for that decision. An eligible holding company is defined as a bank or thrift holding company that has consolidated assets of $150 million or more, has an assigned composite rating of 2 or better, and has at least 75 percent of its consolidated depository institution assets comprised of eligible depository institutions. The FDIC may remove an application from expedited processing for any of the reasons set forth in § 303.11(c)(2).

(2) Under expedited processing, the FDIC will take action on an application within 60 days of receipt of a substantially complete application or 5 days after the expiration of the comment period described in § 303.23, whichever is later. Final action may be withheld until the FDIC has assurance that permission to organize the proposed institution will be granted by the chartering authority. Notwithstanding paragraph (a)(1) of this section, if the FDIC does not act within the expedited processing period, it does not constitute an automatic or default approval.

(b) *Standard processing.* For those applications that are not processed pursuant to the expedited procedures, the FDIC will provide the applicant with written notification of the final action when the decision is rendered.

§ 303.23 Public notice requirements.

(a) *De novo institutions and operating noninsured institutions.* The applicant shall publish a notice as prescribed in § 303.7 in a newspaper of general circulation in the community in which the main office of the depository institution is or will be located. Notice shall be published as close as practicable to, but no sooner than five days before, the date the application is mailed or delivered to the appropriate regional director (DOS). Comments by interested parties must be received by the appropriate regional director (DOS) within 30 days following the date of publication, unless the comment period has been extended or reopened in accordance with § 303.9(b)(2).

(b) *Exceptions to public notice requirements.* No publication shall be required in connection with the granting of insurance to a new depository institution established pursuant to the resolution of a depository institution in default, or to an interim depository institution formed solely to facilitate a merger transaction, or for a request for continuation of federal deposit insurance by a state-chartered bank withdrawing from membership in the Federal Reserve System.

§ 303.24 Application for deposit insurance for an interim institution.

(a) *Application required.* Subject to § 303.62(b)(2), a deposit insurance application is required for a state-chartered interim institution if the related merger transaction is subject to approval by a federal banking agency other than the FDIC. A separate application for deposit insurance for an interim institution is not required in connection with any merger requiring FDIC approval pursuant to subpart D of this part.

(b) *Content of separate application.* A letter application for deposit insurance for an interim institution, accompanied by a copy of the related merger application, shall be filed with the appropriate regional director (DOS). The letter application shall briefly describe the transaction and contain a statement that deposit insurance is being requested for an interim institution that does not operate independently but exists solely as a vehicle to accomplish a merger transaction which will be reviewed by a federal banking agency other than the FDIC.

(c) *Processing.* An application for deposit insurance for an interim depository institution will be acknowledged in writing by the FDIC. Final action will be taken within 21 days after receipt of a substantially complete application, unless the applicant is notified in writing that additional review is warranted. If the FDIC does not act within the expedited processing period, it does not constitute an automatic or default approval.

§ 303.25 Continuation of deposit insurance upon withdrawing from membership in the Federal Reserve System.

(a) *Content of application.* To continue its insured status upon withdrawal from membership in the Federal Reserve System, a state-chartered bank shall submit a letter application to the appropriate regional director (DOS). A complete application shall consist of the following information:

(1) A copy of the letter, and any attachments thereto, sent to the appropriate Federal Reserve Bank setting forth the bank's intention to terminate its membership;

(2) A copy of the letter from the Federal Reserve Bank acknowledging the bank's notice to terminate membership;

(3) A statement regarding any anticipated changes in the bank's general business plan during the next 12-month period; and

(4)(i) A statement by the bank's management that there are no outstanding or proposed corrective programs or supervisory agreements with the Federal Reserve System.

(ii) If such programs or agreements exist, a statement by the applicant that its Board of Directors is willing to enter into similar programs or agreements with the FDIC which would become effective upon withdrawal from the Federal Reserve System.

(b) *Processing.* An application for deposit insurance under this section will be acknowledged in writing by the FDIC. The appropriate regional director (DOS) shall notify the applicant, within 15 days of receipt of a substantially complete application, either that federal deposit insurance will continue upon termination of membership in the Federal Reserve System or that additional review is warranted and the applicant will be notified, in writing, of the FDIC's final decision regarding continuation of deposit insurance. If the FDIC does not act within the expedited processing period, it does not constitute an automatic or default approval.

§ 303.26 Delegation of authority.

(a) *Proposed depository institutions.* (1) Authority is delegated to the Director and the Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to approve applications for deposit insurance for proposed depository institutions. For the delegate to exercise this authority, the criteria in paragraphs (a)(1)(i) through (a)(1)(v) of this section must be satisfied and the applicant shall have agreed in writing to comply with any conditions imposed by the delegate, other than those listed in paragraph (d) of this section which may be imposed without the applicant's consent:

(i) The factors set forth in section 6 of the Act (12 U.S.C. 1816) have been considered and favorably resolved;

(ii) No unresolved management interlocks, as prohibited by the Depository Institution Management Interlocks Act (12 U.S.C. 3201 *et seq.*), part 348 of this chapter or any other applicable implementing regulation, exist;

(iii) The application is in conformity with the standards and guidelines for the granting of deposit insurance established in the FDIC statement of policy ''Applications for Deposit Insurance'' (2 FDIC Law, Regulations and Related Acts (FDIC) 5349; see § 309.4(a) and (b) of this chapter for availability);

(iv) Compliance with the CRA, the NEPA, the NHPA and any applicable related regulations, including 12 CFR part 345, has been considered and favorably resolved; and

(v) No CRA protest as defined in § 303.2(l) has been filed which remains unresolved or, where such a protest has been filed and remains unresolved, the Director (DCA), Deputy Director (DCA), an associate director (DCA) or the appropriate regional director (DCA) or deputy regional director (DCA) concurs that approval is consistent with the purposes of the CRA and the applicant agrees in writing to any conditions imposed regarding the CRA.

(2) Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to approve applications for deposit insurance filed by or on behalf of proposed interim depository institutions formed or organized solely for the purpose of facilitating a merger transaction which will be reviewed by a responsible agency as defined in section 18(c)(2) of the FDI Act. For the delegate to exercise this authority, the criteria in paragraphs (a)(1)(i) through (a)(1)(v) of this section must be satisfied and the applicant must agree in writing to comply with any conditions imposed by the delegate, other than those listed in paragraph (d) of this section which may be imposed without the applicant's consent.

(b) *Operating noninsured depository institutions.* Authority is delegated to the Director and the Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to approve applications for deposit insurance by operating noninsured depository institutions. For the delegate to exercise this authority, the following criteria must be satisfied and the applicant must have agreed in writing to comply with any condition imposed by the delegate, other than those listed in paragraph (d) of this section which may be imposed without the applicant's consent:

(1) The applicant is determined to be eligible for federal deposit insurance for the class of institution to which the applicant belongs in the state (as defined in section 3(a) of the Act (12 U.S.C. 1813(a)) in which the applicant is located;

(2) The factors set forth in section 6 of the Act (12 U.S.C. 1816) have been considered and favorably resolved;

(3) No unresolved management interlocks, as prohibited by the Depository Institution Management Interlocks Act (12 U.S.C. 3201 *et seq.*), part 348 of this chapter or any other applicable implementing regulation, exist;

(4) The application is in conformity with the standards and guidelines for the granting of deposit insurance to operating noninsured depository institutions established in the FDIC statement of policy ''Applications for Deposit Insurance'' (2 FDIC Law, Regulations and Related Acts (FDIC) 5349);

(5) Compliance with the CRA, the NEPA, the NHPA, and any applicable related regulations, including 12 CFR part 345, has been considered and favorably resolved; and

(6) No CRA protest as defined in § 303.2(l) has been filed which remains unresolved or, where such a protest has been filed and remains unresolved, the Director (DCA), Deputy Director (DCA), an associate director (DCA) or the appropriate regional director (DCA) or deputy regional director (DCA) concurs that approval is consistent with the purposes of the CRA and the applicant agrees in writing to any conditions imposed regarding the CRA.

(c) *Continuation of deposit insurance upon withdrawing from membership in the Federal Reserve System.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director to approve continuation of federal deposit insurance where the applicant has agreed in writing to comply with any conditions imposed by the delegate, other than the standard conditions defined in § 303.2(ff) which may be imposed without the applicant's written consent.

(d) *Conditions that may be imposed under delegated authority.* Following are conditions which may be imposed by a delegate in approving applications for deposit insurance without affecting the authority granted under paragraphs (a) and (b) of this section:

(1) The applicant will provide a specific amount of initial paid-in capital;

(2) With respect to a proposed depository institution that has applied for deposit insurance pursuant to this subpart, the Tier 1 capital to assets leverage ratio (as defined in the appropriate capital regulation and guidance of the institution's primary federal regulator) will be maintained at not less than eight percent throughout the first three years of operation and that an adequate allowance for loan and lease losses will be provided;

(3) Any changes in proposed management or proposed ownership to the extent of 10 percent or more of stock, including new acquisitions of or subscriptions to 10 percent or more of stock shall be approved by the FDIC prior to the opening of the depository institution for business;

(4) The applicant will adopt an accrual accounting system for maintaining the books of the depository institution;

(5) Where applicable, deposit insurance will not become effective until the applicant has been granted a charter as a depository institution, has authority to conduct a depository institution business, and its establishment and operation as a depository institution have been fully approved by the appropriate state and/or federal supervisory authority;

(6) Where deposit insurance is granted to an interim institution formed or organized solely to facilitate a related transaction, deposit insurance will only become effective in conjunction with consummation of the related transaction;

(7) Where applicable, a registered or proposed bank holding company, or a registered or proposed thrift holding company, has obtained approval of the Board of Governors of the Federal Reserve System or the Office of Thrift Supervision to acquire voting stock control of the proposed depository institution prior to its opening for business;

(8) Where applicable, the applicant has submitted any proposed contracts, leases, or agreements relating to construction or rental of permanent quarters to the appropriate regional director for review and comment;

(9) Where applicable, full disclosure has been made to all proposed directors and stockholders of the facts concerning the interest of any insider in any transactions being effected or then contemplated, including the identity of the parties to the transaction and the terms and costs involved. An insider is one who is or is proposed to be a director, officer, or incorporator of an applicant; a shareholder who directly or indirectly controls 10 or more percent of any class of the applicant's outstanding voting stock; or the associates or interests of any such person;

(10) The person(s) selected to serve as the principal operating officer(s) shall be acceptable to the appropriate regional director (DOS);

(11) The applicant will have adequate fidelity coverage;

(12) The depository institution will obtain an audit of its financial statements by an independent public

accountant annually for at least the first three years after deposit insurance is effective, furnish a copy of any reports by the independent auditor (including any management letters) to the appropriate FDIC regional office within 15 days after their receipt by the depository institution and notify the appropriate FDIC regional office within 15 days when a change in its independent auditor occurs; and

(13) Any standard condition defined in § 303.2(ff).

§ 303.27 Authority retained by the FDIC Board of Directors.

Without limiting the Board of Director's authority, the Board of Directors retains authority to deny applications for deposit insurance and approve applications for deposit insurance where the applicant does not agree in writing to comply with any condition imposed by the FDIC, other than the standard conditions listed in §§ 303.2(ff) and 303.26(d), which may be imposed without the applicant's written consent.

Subpart C—Establishment and Relocation of Domestic Branches and Offices

§ 303.40 Scope.

(a) *General.* This subpart sets forth the application requirements, procedures and the delegations of authority for insured state nonmember banks to establish a branch, relocate a branch or main office, and retain existing branches after the interstate relocation of the main office subject to the approval by the FDIC pursuant to sections 13(f), 13(k), 18(d) and 44 of the FDI Act.

(b) *Merger transaction.* Applications for approval of the acquisition and establishment of branches in connection with a merger transaction under section 18(c) of the FDI Act (12 U.S.C. 1828(c)), are processed in accordance with subpart D (Merger Transactions) of this part.

(c) *Insured branches of foreign banks and foreign branches of domestic banks.* Applications regarding insured branches of foreign banks and foreign branches of domestic banks are processed in accordance with subpart J (International Banking) of this part.

(d) *Interstate acquisition of individual branch.* Applications requesting approval of the interstate acquisition of an individual branch or branches located in a state other than the applicant's home state without the acquisition of the whole bank are treated as interstate bank merger transactions under section 44 of the FDI Act (12 U.S.C. 1831a(u)), and are processed in accordance with subpart D (Merger Transactions) of this part.

§ 303.41 Definitions.

For purposes of this subpart:

(a) *Branch* includes any branch bank, branch office, additional office, or any branch place of business located in any State of the United States or in any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands at which deposits are received or checks paid or money lent. A branch does not include an automated teller machine, an automated loan machine, or a remote service unit. The term branch also includes the following:

(1) A *messenger service* that is operated by a bank or its affiliate that picks up and delivers items relating to transactions in which deposits are received or checks paid or money lent. A messenger service established and operated by a non-affiliated third party generally does not constitute a branch for purposes of this subpart. Banks contracting with third parties to provide messenger services should consult with the appropriate regional director (DOS) to determine if the messenger service constitutes a branch.

(2) A *mobile branch,* other than a messenger service, that does not have a single, permanent site and uses a vehicle that travels to various locations to enable the public to conduct banking business. A mobile branch may serve defined locations on a regular schedule or may serve a defined area at varying times and locations.

(3) A *temporary branch* that operates for a limited period of time not to exceed one year as a public service, such as during an emergency or disaster situation.

(4) A *seasonal branch* that operates at various periodically recurring intervals, such as during state and local fairs, college registration periods, and other similar occasions.

(b) *Branch relocation* means a move within the same immediate neighborhood of the existing branch that does not substantially affect the nature of the business of the branch or the customers of the branch. Moving a branch to a location outside its immediate neighborhood is considered the closing of an existing branch and the establishment of a new branch. Closing of a branch is covered in the FDIC Statement of Policy Concerning Branch Closing Notices and Policies (2 FDIC Law, Regulations, Related Acts 5391; see § 309.4 (a) and (b) of this chapter for availability).

(c) *De novo branch* means a branch of a bank which is established by the bank as a branch and does not become a branch of such bank as a result of:

(1) The acquisition by the bank of an insured depository institution or a branch of an insured depository institution; or

(2) The conversion, merger, or consolidation of any such institution or branch.

(d) *Home state* means the state by which the bank is chartered.

(e) *Host state* means a state, other than the home state of the bank, in which the bank maintains, or seeks to establish and maintain, a branch.

§ 303.42 Filing procedures.

(a) *General.* An applicant shall submit an application to the appropriate regional director (DOS) on the date the notice required by § 303.44 is published, or within 5 days after the date of the last required publication.

(b) *Content of filing.* A complete letter application shall include the following information:

(1) A statement of intent to establish a branch, or to relocate the main office or a branch;

(2) The exact location of the proposed site including the street address. With regard to messenger services, specify the geographic area in which the services will be available. With regard to a mobile branch specify the community or communities in which the vehicle will operate and the manner in which it will be used;

(3) Details concerning any involvement in the proposal by an insider of the bank as defined in § 303.2(u), including any financial arrangements relating to fees, the acquisition of property, leasing of property, and construction contracts;

(4) A statement on the impact of the proposal on the human environment, including, information on compliance with local zoning laws and regulations and the effect on traffic patterns for purposes of complying with the applicable provisions of the NEPA and the FDIC Statement of Policy on NEPA (2 FDIC Law, Regulations, Related Acts 5185; see § 309.4 (a) and (b) of this chapter for availability);

(5) A statement as to whether or not the site is eligible for inclusion in the National Register of Historic Places for purposes of complying with applicable provisions of the NHPA and the FDIC Statement of Policy on NHPA (2 FDIC Law, Regulations, Related Acts 5175; see § 309.4 (a) and (b) of this chapter for availability) including documentation of consultation with the State Historic Preservation Officer, as appropriate;

(6) Comments on any changes in services to be offered, the community to be served, or any other effect the proposal may have on the applicant's compliance with the CRA;

(7) A copy of each newspaper publication required by § 303.44, the name and address of the newspaper, and date of the publication;

(8) When an application is submitted to relocate the main office of the applicant from one state to another, a statement of the applicant's intent regarding retention of branches in the state where the main office exists prior to relocation.

(c) *Undercapitalized institutions.* Applications to establish a branch by applicants subject to section 38 of the FDI Act (12 U.S.C. 1831*o*) also should provide the information required by § 303.204. Applications pursuant to sections 38 and 18(d) of the FDI Act (12 U.S.C. 1831*o* and 1828(d)) may be filed concurrently or as a single application.

(d) *Additional information.* The appropriate regional director (DOS) may request additional information to complete processing.

§ 303.43 Processing.

(a) *Expedited processing for eligible depository institutions.* An application filed under this subpart by an eligible depository institution as defined in § 303.2(r) will be acknowledged in writing by the FDIC and will receive expedited processing, unless the applicant is notified in writing to the contrary and provided with the basis for that decision. The FDIC may remove an application from expedited processing for any of the reasons set forth in § 303.11(c)(2). Absent such removal, an application processed under expedited processing will be deemed approved on the latest of the following:

(1) The 21st day after receipt by the FDIC of a substantially complete filing;

(2) The 5th day after expiration of the comment period described in § 303.44; or

(3) In the case of an application to establish and operate a de novo branch in a state that is not the applicant's home state and in which the applicant does not maintain a branch, the 5th day after the FDIC receives confirmation from the host state that the applicant has both complied with the filing requirements of the host state and submitted a copy of the application with the FDIC to the host state bank supervisor.

(b) *Standard processing.* For those applications which are not processed pursuant to the expedited procedures, the FDIC will provide the applicant with written notification of the final action when the decision is rendered.

§ 303.44 Public notice requirements.

(a) *Newspaper publications.* For applications to establish or relocate a branch, a notice as described in § 303.7(b) shall be published once in a newspaper of general circulation. For applications to relocate a main office, notice shall be published at least once each week on the same day for two consecutive weeks. The required publication shall be made in the following communities:

(1) *To establish a branch.* In the community in which the main office is located and in the communities to be served by the branch (including messenger services and mobile branches).

(2) *To relocate a main office.* In the community in which the main office is currently located and in the community to which it is proposed the main office will relocate.

(3) *To relocate a branch.* In the community in which the branch is located.

(b) *Public comments.* Comments by interested parties must be received by the appropriate regional director (DOS) within 15 days after the date of the last newspaper publication required by paragraph (a) of this section, unless the comment period has been extended or reopened in accordance with § 303.9(b)(2).

(c) *Lobby notices.* In the case of applications to relocate a main office or a branch, a copy of the required newspaper publication shall be posted in the public lobby of the office to be relocated for at least 15 days beginning on the date of the last published notice required by paragraph (a) of this section.

§ 303.45 Special provisions.

(a) *Emergency or disaster events.* (1) In the case of an emergency or disaster at a main office or a branch which requires that an office be immediately relocated to a temporary location, applicants shall notify the appropriate regional director (DOS) within 3 days of such temporary relocation.

(2) Within 10 days of the temporary relocation resulting from an emergency or disaster, the bank shall submit a written application to the appropriate regional director (DOS), that identifies the nature of the emergency or disaster, specifies the location of the temporary branch, and provides an estimate of the duration the bank plans to operate the temporary branch.

(3) As part of the review process, the appropriate regional director (DOS) will determine on a case by case basis whether additional information is necessary and may waive public notice requirements.

(b) *Redesignation of main office and existing branch.* In cases where an applicant desires to redesignate its main office as a branch and redesignate an existing branch as the main office, a single application shall be submitted. The appropriate regional director (DOS) may waive the public notice requirements in instances where an application presents no significant or novel policy, supervisory, CRA, compliance or legal concerns. A waiver will be granted only to a redesignation within the applicant's home state.

(c) *Expiration of approval.* Approval of an application expires if within 18 months after the approval date a branch has not commenced business or a relocation has not been completed.

§ 303.46 Delegation of authority.

(a) *Approval of applications.* (1) Where the applicant agrees in writing to comply with any conditions imposed by the delegate, other than the standard conditions defined in § 303.2(ff) which may be imposed without the applicant's written consent, authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to approve the following applications:

(i) Establish a branch;

(ii) Establish and operate a de novo branch in a state that is not the applicant's home state and in which the applicant does not maintain a branch;

(iii) Relocate a main office (including an application to relocate a main office to another state and retain existing branches); and

(iv) Relocate a branch.

(2) For the delegate to exercise this authority, the criteria in paragraphs (c)(1) through (c)(7) of this section must be satisfied.

(3) Where the applicant does not agree in writing to comply with any condition imposed by the delegate, authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director to approve the applications listed in paragraph (a)(1) of this section.

(b) *Denial of applications.* (1) Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to deny an application to establish a temporary branch.

(2) Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director to deny an application for consent to:

(i) Establish a branch;

(ii) Establish and operate a de novo branch in a state that is not the applicant's home state and in which the applicant does not maintain a branch;

(iii) Relocate a main office (including an application to relocate a main office to another state and retain existing branches); and

(iv) Relocate a branch.

(c) *Criteria for delegated authority.* The following criteria must be satisfied before the authority delegated in paragraph (a) of this section may be exercised:

(1) The factors set forth in section 6 of the FDI Act (12 U.S.C. 1816) have been considered and favorably resolved except that this criterion does not apply to applications to establish messenger services and temporary branches;

(2) The applicant meets the capital requirements set forth in 12 CFR part 325 and the FDIC ''Statement of Policy on Capital Adequacy'' (12 CFR part 325, appendix B) or agrees in writing to increase capital so as to be in compliance with the requirements of 12 CFR part 325 before or at the consummation of the transaction which is the subject of the filing, except that this criterion does not apply to applications to establish messenger services and temporary branches, or to relocate branches or main offices;

(3) Any financial arrangements which have been made in connection with the proposed branch or relocation and which involve the applicant's insiders are fair and reasonable in comparison to similar arrangements that could have been made with independent third parties;

(4) Compliance with the CRA, the NEPA, the NHPA, and any applicable related regulations, including 12 CFR part 345, has been considered and favorably resolved;

(5) No CRA protest as defined in § 303.2(l) has been filed which remains unresolved or, where such a protest has been filed and remains unresolved, the Director (DCA), Deputy Director (DCA), an associate director (DCA) or the appropriate regional director or deputy regional director (DCA) concurs that approval is consistent with the purposes of the CRA and the applicant agrees in writing to any conditions imposed regarding the CRA;

(6) An applicant with one or more existing branches in a state other than the applicant's home state has not failed the credit needs test in a host state under section 109 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (12 U.S.C. 1835a);

(7) Additionally, for applications submitted to establish and operate a de novo branch in a state that is not the applicant's home state and in which the applicant does not maintain a branch:

(i) Confirmation by the appropriate regional director (DOS) that the applicant has complied with that state's filing requirements and that the applicant also has submitted to the host state bank supervisor a copy of its FDIC filing to establish and operate a de novo branch;

(ii) Determination by the FDIC that the applicant is adequately capitalized as of the date of the filing and will continue to be adequately capitalized and adequately managed upon consummation of the transaction;

(iii) Confirmation that the host state has in effect a law that meets the requirements of section 18(d)(4)(A) of the FDI Act (12 U.S.C. 1828(d)(4)(A)); and

(iv) Compliance with section 44(b)(3) of the FDI Act (12 U.S.C. 1831u(b)(3)); and

(8) Additionally, for applications submitted to relocate a main office from one state to another where the applicant seeks to retain branches in the state where the applicant's main office exists prior to an interstate relocation of the main office, confirmation that the filing meets the requirements of section 18(d)(3)(B) of the FDI Act (12 U.S.C. 1828(d)(3)(B)).

Subpart D—Merger Transactions

§ 303.60 Scope.

This subpart sets forth the application requirements, procedures, and delegations of authority for transactions subject to FDIC approval under the Bank Merger Act, section 18(c) of the FDI Act (12 U.S.C. 1828(c)). Additional guidance is contained in the FDIC ''Statement of Policy on Bank Merger Transactions'' (2 FDIC Law, Regulations, Related Acts (FDIC) 5145; see § 309.4 (a) and (b) of this chapter for availability).

§ 303.61 Definitions.

For purposes of this subpart:

(a) *Merger transaction* includes any transaction:

(1) In which an insured depository institution merges or consolidates with any other insured depository institution or, either directly or indirectly, acquires the assets of, or assumes liability to pay any deposits made in, any other insured depository institution; or

(2) In which an insured depository institution merges or consolidates with any noninsured bank or institution or assumes liability to pay any deposits made in, or similar liabilities of, any noninsured bank or institution, or in which an insured depository institution transfers assets to any noninsured bank or institution in consideration of the assumption of any portion of the deposits made in the insured depository institution.

(b) *Corporate reorganization* means a merger transaction between commonly-owned institutions, between an insured depository institution and its subsidiary, or between an insured depository institution and its holding company, provided that the merger transaction would have no effect on competition or otherwise have significance under the statutory standards set forth in section 18(c) of the FDI Act (12 U.S.C. 1828(c)). For purposes of this paragraph, institutions are commonly-owned if more than 50 percent of the voting stock of each of the institutions is owned by the same company, individual, or group of closely-related individuals acting in concert.

(c) *Interim merger transaction* means a merger transaction (other than a purchase and assumption transaction) between an operating depository institution and a newly-formed depository institution or corporation that will not operate independently and that exists solely for the purpose of facilitating a corporate reorganization.

(d) *Optional conversion* (Oakar transaction) means a merger transaction in which an insured depository institution assumes deposit liabilities insured by the deposit insurance fund (either the Bank Insurance Fund (BIF) or the Savings Association Insurance Fund (SAIF)) of which that assuming institution is not a member, and elects not to convert the insurance covering the assumed deposits. Such transactions are covered by section 5(d)(3) of the FDI Act (12 U.S.C. 1815(d)(3)).

(e) *Resulting institution* refers to the acquiring, assuming or resulting institution in a merger transaction.

§ 303.62 Transactions requiring prior approval.

(a) *Merger transactions.* The following merger transactions require the prior written approval of the FDIC under this subpart:

(1) Any merger transaction, including any corporate reorganization, interim merger transaction, or optional conversion, in which the resulting institution is to be an insured state nonmember bank; and

(2) Any merger transaction, including any corporate reorganization or interim

merger transaction, that involves an uninsured bank or institution.

(b) *Related provisions.* Transactions covered by this subpart also may be subject to other provisions or application requirements, including the following:

(1) *Interstate merger transactions.* Merger transactions between insured banks that are chartered in different states are subject to the provisions of section 44 of the FDI Act (12 U.S.C. 1831u). In the case of a merger transaction that consists of the acquisition by an out of state bank of a branch without acquisition of the bank, the branch is treated for section 44 purposes as a bank whose home state is the state in which the branch is located.

(2) *Deposit insurance.* An application for deposit insurance will be required in connection with a merger transaction between a state-chartered interim institution and an insured depository institution if the related merger application is being acted upon by a federal banking agency other than the FDIC. If the FDIC is the federal banking agency responsible for acting on the related merger application, a separate application for deposit insurance is not necessary. Procedures for applying for deposit insurance are set forth in subpart B of this part. An application for deposit insurance will not be required in connection with a merger transaction (other than a purchase and assumption transaction) of a federally-chartered interim institution and an insured institution, even if the resulting institution is to operate under the charter of the federal interim institution.

(3) *Deposit insurance fund conversions.* Procedures for conversion transactions involving the transfer of deposits from BIF to SAIF or from SAIF to BIF are set forth in subpart M of this part at § 303.246.

(4) *Branch closings.* Branch closings in connection with a merger transaction are subject to the notice requirements of section 42 of the FDI Act (12 U.S.C. 1831r–1), including requirements for notice to customers. These requirements are addressed in the ''Interagency Policy Statement Concerning Branch Closings Notices and Policies'' (2 FDIC Law, Regulations, Related Acts (FDIC) 5391).

(5) *Undercapitalized institutions.* Applications for a merger transaction by applicants subject to section 38 of the FDI Act (12 U.S.C. 1831*o*) should also provide the information required by § 303.204. Applications pursuant to sections 38 and 18(c) of the FDI Act (12 U.S.C, 1831*o* and 1828(c)) may be filed concurrently or as a single application.

(6) *Certification of assumption of deposit liability.* An insured depository institution assuming deposit liabilities of another insured institution must provide certification of assumption of deposit liability to the FDIC in accordance with 12 CFR part 307.

§ 303.63 Filing procedures.

(a) *General.* Applications required under this subpart shall be filed with the appropriate regional director (DOS). The appropriate forms and instructions may be obtained upon request from any DOS regional office.

(b) *Merger transactions.* Applications for approval of merger transactions shall be accompanied by copies of all agreements or proposed agreements relating to the merger transaction and any other information requested by the FDIC.

(c) *Interim merger transactions.* Applications for approval of interim merger transactions and any related deposit insurance applications shall be made by filing the forms and other documents required by paragraphs (a) and (b) of this section and such other information as may be required by the FDIC for consideration of the request for deposit insurance.

(d) *Optional conversions.* If the proposed merger transaction is an optional conversion, the merger application shall include a statement that the proposed merger transaction is a transaction covered by section 5(d)(3) of the FDI Act (12 U.S.C. 1815(d)(3)).

§ 303.64 Processing.

(a) *Expedited processing for eligible depository institutions.*—(1) *General.* An application filed under this subpart by an eligible depository institution as defined in § 303.2(r) and which meets the additional criteria in paragraph (a)(4) of this section will be acknowledged by the FDIC in writing and will receive expedited processing, unless the applicant is notified in writing to the contrary and provided with the basis for that decision. The FDIC may remove an application from expedited processing for any of the reasons set forth in § 303.11(c)(2).

(2) Under expedited processing, the FDIC will take action on an application by the date that is the latest of:

(i) 45 days after the date of the FDIC's receipt of a substantially complete merger application; or

(ii) 10 days after the date of the last notice publication required under § 303.65; or

(iii) 5 days after receipt of the Attorney General's report on the competitive factors involved in the proposed transaction; or

(iv) For an interstate merger transaction subject to the provisions of section 44 of the FDI Act (12 U.S.C. 1831u), 5 days after the FDIC receives confirmation from the host state (as defined in § 303.41(e)) that the applicant has both complied with the filing requirements of the host state and submitted a copy of the FDIC merger application to the host state's bank supervisor.

(3) Notwithstanding paragraph (a)(1) of this section, if the FDIC does not act within the expedited processing period, it does not constitute an automatic or default approval.

(4) *Criteria.* The FDIC will process an application using expedited procedures if:

(i) Immediately following the merger transaction, the resulting institution will be ''well-capitalized'' pursuant to subpart B of part 325 of this chapter; and

(ii)(A) All parties to the merger transaction are eligible depository institutions as defined in § 303.2(r); or

(B) The acquiring party is an eligible depository institution as defined in § 303.2(r) and the amount of the total assets to be transferred does not exceed an amount equal to 10 percent of the acquiring institution's total assets as reported in its report of condition for the quarter immediately preceding the filing of the merger application.

(b) *Standard processing.* For those applications not processed pursuant to the expedited procedures, the FDIC will provide the applicant with written notification of the final action taken by the FDIC on the application when the decision is rendered.

§ 303.65 Public notice requirements.

(a) *General.* Except as provided in paragraph (b) of this section, an applicant for approval of a merger transaction must publish notice of the proposed transaction on at least three occasions at approximately equal intervals in a newspaper of general circulation in the community or communities where the main offices of the merging institutions are located or, if there is no such newspaper in the community, then in the newspaper of general circulation published nearest thereto.

(1) *First publication.* The first publication of the notice should be as close as practicable to the date on which the application is filed with the FDIC, but no more than 5 days prior to the filing date.

(2) *Last publication.* The last publication of the notice shall be on the 25th day after the first publication or, if the newspaper does not publish on the 25th day, on the newspaper's

publication date that is closest to the 25th day.

(b) *Exceptions.*—(1) *Emergency requiring expeditious action.* If the FDIC determines that an emergency exists requiring expeditious action, notice shall be published twice. The first notice shall be published as soon as possible after the FDIC notifies the applicant of such determination. The second notice shall be published on the 7th day after the first publication or, if the newspaper does not publish on the 7th day, on the newspaper's publication date that is closest to the 7th day.

(2) *Probable failure.* If the FDIC determines that it must act immediately to prevent the probable failure of one of the institutions involved in a proposed merger transaction, publication is not required.

(c) *Content of notice.*—(1) *General.* The notice shall conform to the public notice requirements set forth in § 303.7.

(2) *Branches.* If it is contemplated that the resulting institution will operate offices of the other institution(s) as branches, the following statement shall be included in the notice required in § 303.7(b):

It is contemplated that all offices of the above-named institutions will continue to be operated (with the exception of [insert identity and location of each office that will not be operated]).

(3) *Emergency requiring expeditious action.* If the FDIC determines that an emergency exists requiring expeditious action, the notice shall specify as the closing date of the public comment period the date that is the 10th day after the date of the first publication.

(d) *Public comments.* Comments must be received by the appropriate regional director (DOS) within 30 days after the first publication of the notice, unless the comment period has been extended or reopened in accordance with § 303.9(b)(2). If the FDIC has determined that an emergency exists requiring expeditious action, comments must be received by the appropriate regional director within 10 days after the first publication.

§ 303.66 Delegation of authority.

(a) *General.*—(1) *Bank Merger Act approval.* Subject to paragraphs (a)(3) and (e) of this section, authority is delegated in paragraphs (b), (c), and (d) of this section to the designated FDIC officials to approve under the Bank Merger Act, 18(c) of the FDI Act (12 U.S.C. 1828(c)), applications filed under this subpart.

(2) *Interstate merger approval.* With respect to an interstate merger transaction covered by section 44 of the FDI Act (12 U.S.C. 1831u), in addition to the authority delegated to any official in paragraph (b), (c), or (d) of this section to approve the merger transaction under the Bank Merger Act, authority is also delegated to such official to approve the merger transaction under section 44. This delegation is subject to paragraph (a)(3) of this section and to the condition that the merger transaction is eligible for FDIC approval under section 44.

(3) *Combined approvals.* The delegations in paragraphs (a)(2), (b), (c), and (d) of this section do not apply to an interstate bank merger transaction covered both by section 44 and by the Bank Merger Act unless the merger transaction is being approved pursuant to delegated authority under both section 44 and the Bank Merger Act.

(b) *Basic delegation.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director, and the appropriate regional director and deputy regional director to approve applications under the Bank Merger Act. For the delegate to exercise this authority, the following criteria must be satisfied:

(1) The resulting institution would meet all applicable capital requirements upon consummation of the transaction (or, where the resulting entity is an insured branch of a foreign bank, would be in compliance with 12 CFR 347.211 upon consummation of the transaction); and

(2) The factors set forth in section 18(c)(5) of the Act (12 U.S.C. 1828(c)(5)) have been considered and favorably resolved; and

(3)(i) The merging institutions do not operate in the same relevant geographic market(s); or

(ii) In each relevant geographic market in which more than one of the merging institutions operate, the resulting institution upon consummation of the merger transaction would hold no more than 15 percent of the total deposits held by banks and/or other depository institutions (as appropriate) in the market; or

(iii) In each relevant geographic market in which more than one of the merging institutions operate, the resulting institution upon consummation of the merger transaction would hold no more than 25 percent of the total deposits held by banks and/or other depository institutions (as appropriate) in the market, and the Attorney General has notified the FDIC in writing that the proposed merger transaction would not have a significantly adverse effect on competition; and

(4) Compliance with the CRA and any applicable related regulations, including 12 CFR part 345, has been considered and favorably resolved; and

(5) No CRA protest as defined in § 303.2(l) has been filed which remains unresolved or, where such a protest has been filed and remains unresolved, the Director (DCA), Deputy Director (DCA), associate director (DCA), the appropriate regional director (DCA), or deputy regional director (DCA) concurs that approval is consistent with the purposes of the CRA, and the applicant agrees in writing to any conditions imposed regarding the CRA; and

(6) The applicant agrees in writing to comply with any conditions imposed by the delegate, other than the standard conditions defined in § 303.2(ff), which may be imposed without the applicant's written consent.

(c) *Additional delegations.* In addition to the delegations otherwise provided for in this section, and subject to the criteria set forth in paragraphs (b)(1), (2), (4), (5), and (6) of this section, authority is delegated to the Director and to the Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director, to approve an application for a merger transaction upon the consummation of which the resulting institution would hold not more than 35 percent of the total deposits held by banks and/or other depository institutions (as appropriate) in any relevant geographic market in which more than one of the merging institutions operate, and the Attorney General has notified the FDIC in writing that the merger transaction would not have a significantly adverse effect on competition.

(d) *Corporate reorganizations; interim merger transactions.* In addition to the delegations otherwise provided for in this section, authority is delegated to the Director and to the Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to approve:

(1) An application for a corporate reorganization or an interim merger transaction that satisfies the criteria set forth in paragraphs (b)(5) and (6) of this section; and

(2) Any related application for deposit insurance.

(e) *Limitations.* The delegations in paragraphs (b) through (d) of this section do not apply if:

(1) The Attorney General has determined that the merger transaction would have a significantly adverse effect on competition; or

(2) The FDIC has made a determination pursuant to section 18 (c)(6) of the FDI Act (12 U.S.C. 1828(c)(6)) that an emergency exists requiring expeditious action or that the transaction must be consummated immediately in order to avoid a probable failure.

(f) *Review of competitive factors reports.* In deciding whether to approve a merger transaction under the authority delegated by this section, the delegate shall review any reports provided by the Attorney General, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Director of the Office of Thrift Supervision in response to a request by the FDIC for reports on the competitive factors involved in the proposed merger transaction.

(g) *Competitive factor reports provided by the FDIC.* Authority is delegated to the Director and the Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to furnish requested reports to the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, or the Director of the Office of Thrift Supervision on the competitive factors involved in any merger transaction subject to approval by one of those agencies, if the delegate determines that the proposed merger transaction would not have a substantially adverse effect on competition.

§ 303.67 Authority retained by the FDIC Board of Directors.

Without limiting the authority of the Board of Directors, the Board of Directors retains authority to act on applications covered by this subpart if the criteria or other conditions for delegation are not satisfied. This includes the retention of authority to deny applications for merger transactions. It further includes retention of authority to approve applications for merger transactions where:

(a) The limitations specified in § 303.66(e) preclude action under delegated authority;

(b) The applicant does not agree in writing to comply with any conditions imposed by the delegate, other than the standard conditions defined in § 303.2(ff), which may be imposed without the applicant's written consent; or

(c) The resulting institution, upon consummation of a merger transaction other than a corporate reorganization, would have more than 35 percent of the total deposits held by banks and/or other depository institutions (as appropriate) in any relevant geographic market in which more than one of the merging institutions operate.

Subpart E—Change in Bank Control

§ 303.80 Scope.

This subpart sets forth the procedures for submitting a notice to acquire control of an insured state nonmember bank pursuant to the Change in Bank Control Act of 1978, section 7(j) of the FDI Act (12 U.S.C. 1817(j)), and delegations of authority regarding such filings.

§ 303.81 Definitions.

For purposes of this subpart:

(a) *Acquisition* means a purchase, assignment, transfer, pledge or other disposition of voting shares, or an increase in percentage ownership of an insured state nonmember bank resulting from a redemption of voting shares.

(b) *Acting in concert* means knowing participation in a joint activity or parallel action towards a common goal of acquiring control of an insured state nonmember bank, whether or not pursuant to an express agreement.

(c) *Control* means the power, directly or indirectly, to direct the management or policies of an insured bank or to vote 25 percent or more of any class of voting shares of an insured bank.

(d) *Person* means an individual, corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, and any other form of entity; and a voting trust, voting agreement, and any group of persons acting in concert.

§ 303.82 Transactions requiring prior notice.

(a) *Prior notice requirement.* Any person acting directly or indirectly, or through or in concert with one or more persons, shall give the FDIC 60 days prior written notice, as specified in § 303.84, before acquiring control of an insured state nonmember bank, unless the acquisition is exempt under § 303.83.

(b) *Acquisitions requiring prior notice.*—(1) *Acquisition of control.* The acquisition of control, unless exempted, requires prior notice to the FDIC.

(2) *Rebuttable presumption of control.* The FDIC presumes that an acquisition of voting shares of an insured state nonmember bank constitutes the acquisition of the power to direct the management or policies of an insured bank requiring prior notice to the FDIC, if, immediately after the transaction, the acquiring person (or persons acting in concert) will own, control, or hold with power to vote 10 percent or more of any class of voting shares of the institution, and if:

(i) The institution has registered shares under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l); or

(ii) No other person will own, control or hold the power to vote a greater percentage of that class of voting shares immediately after the transaction. If two or more persons, not acting in concert, each propose to acquire simultaneously equal percentages of 10 percent or more of a class of voting shares of an insured state nonmember bank, each such person shall file prior notice with the FDIC.

(c) *Acquisitions of loans in default.* The FDIC presumes an acquisition of a loan in default that is secured by voting shares of an insured state nonmember bank to be an acquisition of the underlying shares for purposes of this section.

(d) *Other transactions.* Transactions other than those set forth in paragraph (b)(2) of this section resulting in a person's control of less than 25 percent of a class of voting shares of an insured state nonmember bank are not deemed by the FDIC to constitute control for purposes of the Change in Bank Control Act.

(e) *Rebuttal of presumptions.* Prior notice to the FDIC is not required for any acquisition of voting shares under the presumption of control set forth in this section, if the FDIC finds that the acquisition will not result in control. The FDIC will afford any person seeking to rebut a presumption in this section an opportunity to present views in writing or, if appropriate, orally before its designated representatives at an informal meeting.

§ 303.83 Transactions not requiring prior notice.

(a) *Exempt transactions.* The following transactions do not require notice to the FDIC under this subpart:

(1) The acquisition of additional voting shares of an insured state nonmember bank by a person who:

(i) Held the power to vote 25 percent or more of any class of voting shares of that institution continuously since March 9, 1979, or since that institution commenced business, whichever is later; or

(ii) Is presumed, under § 303.82(b)(2), to have controlled the institution continuously since March 9, 1979, if the aggregate amount of voting shares held does not exceed 25 percent or more of any class of voting shares of the institution or, in other cases, where the FDIC determines that the person has

controlled the bank continuously since March 9, 1979;

(2) The acquisition of additional shares of a class of voting shares of an insured state nonmember bank by any person (or persons acting in concert) who has lawfully acquired and maintained control of the institution (for purposes of § 303.82) after complying with the procedures of the Change in Bank Control Act to acquire voting shares of the institution under this subpart;

(3) Acquisitions of voting shares subject to approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842(a)), section 18(c) of the FDI Act (12 U.S.C. 1828(c)), or section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a);

(4) Transactions exempt under the Bank Holding Company Act: foreclosures by institutional lenders, fiduciary acquisitions by banks, and increases of majority holdings by bank holding companies described in sections 2(a)(5), 3(a)(A), or 3(a)(B) respectively of the Bank Holding Company Act (12 U.S.C. 1841(a)(5), 1842(a)(A), and 1842(a)(B));

(5) A customary one-time proxy solicitation;

(6) The receipt of voting shares of an insured state nonmember bank through a pro rata stock dividend; and

(7) The acquisition of voting shares in a foreign bank, which has an insured branch or branches in the United States. (This exemption does not extend to the reports and information required under paragraphs 9, 10, and 12 of the Change in Bank Control Act of 1978 (12 U.S.C. 1817(j) (9), (10), and (12)).

(b) *Prior notice exemption.* (1) The following acquisitions of voting shares of an insured state nonmember bank, which otherwise would require prior notice under this subpart, are not subject to the prior notice requirements if the acquiring person notifies the appropriate regional director (DOS) within 90 calendar days after the acquisition and provides any relevant information requested by the regional director (DOS):

(i) The acquisition of voting shares through inheritance;

(ii) The acquisition of voting shares as a bona fide gift; or

(iii) The acquisition of voting shares in satisfaction of a debt previously contracted in good faith, except that the acquiror of a defaulted loan secured by a controlling amount of a state nonmember bank's voting securities shall file a notice before the loan is acquired.

(2) The following acquisitions of voting shares of an insured state nonmember bank, which otherwise would require prior notice under this subpart, are not subject to the prior notice requirements if the acquiring person notifies the appropriate regional director (DOS) within 90 calendar days after receiving notice of the acquisition and provides any relevant information requested by the regional director (DOS):

(i) A percentage increase in ownership of voting shares resulting from a redemption of voting shares by the issuing bank; or

(ii) The sale of shares by any shareholder that is not within the control of a person resulting in that person becoming the largest shareholder.

(3) Nothing in paragraph (b)(1) of this section limits the authority of the FDIC to disapprove a notice pursuant to § 303.85(c).

§ 303.84 Filing procedures.

(a) *Filing notice.* (1) A notice required under this subpart shall be filed with the appropriate regional director (DOS) and shall contain all the information required by paragraph 6 of the Change in Bank Control Act, section 7 (j) of the FDI Act, (12 U.S.C. 1817(j)(6)), or prescribed in the designated interagency form which may be obtained from any FDIC regional office.

(2) The FDIC may waive any of the informational requirements of the notice if the FDIC determines that it is in the public interest.

(3) A notificant shall notify the appropriate regional director (DOS) immediately of any material changes in a notice submitted to the regional director (DOS), including changes in financial or other conditions.

(4) When the acquiring person is an individual, or group of individuals acting in concert, the requirement to provide personal financial data may be satisfied by a current statement of assets and liabilities and an income summary, as required in the designated interagency form, together with a statement of any material changes since the date of the statement or summary. The appropriate regional director (DOS) may require additional information if appropriate.

(b) *Other laws.* Nothing in this subpart shall affect any obligation which the acquiring person(s) may have to comply with the federal securities laws or other laws.

§ 303.85 Processing.

(a) *Acceptance of notice.* The 60-day notice period specified in § 303.82 shall commence on the date of receipt of a substantially complete notice. The regional director (DOS) shall notify the person or persons submitting a notice under this subpart in writing of the date the notice is accepted for processing. The FDIC may request additional information at any time.

(b) *Time period for FDIC action; consummation of acquisition.* (1) The notificant(s) may consummate the proposed acquisition 60 days after submission to the regional director (DOS) of a substantially complete notice under paragraph (a) of this section, unless within that period the FDIC disapproves the proposed acquisition or extends the 60-day period.

(2) The notificant(s) may consummate the proposed transaction before the expiration of the 60-day period if the FDIC notifies the notificant(s) in writing of its intention not to disapprove the acquisition.

(c) *Disapproval of acquisition of control.* Subpart D of 12 CFR part 308 sets forth the rules of practice and procedure for a notice of disapproval.

§ 303.86 Public notice requirements.

(a) *Publication—(1) Newspaper announcement.* Any person(s) filing a notice under this subpart shall publish an announcement soliciting public comment on the proposed acquisition. The announcement shall be published in a newspaper of general circulation in the community in which the home office of the state nonmember bank to be acquired is located. The announcement shall be published as close as is practicable to the date the notice is filed with the appropriate regional director (DOS), but in no event more than 10 calendar days before or after the filing date.

(2) *Contents of newspaper announcement.* The newspaper announcement shall conform to the public notice requirements set forth in § 303.7.

(b) *Delay of publication.* The FDIC may permit delay in the publication required by this section if the FDIC determines, for good cause, that it is in the public interest to grant such a delay. Requests for delay of publication may be submitted to the appropriate regional director (DOS).

(c) *Shortening or waiving notice.* The FDIC may shorten the public comment period to a period of not less than 10 days, or waive the public comment or newspaper publication requirements of this paragraph, or act on a notice before the expiration of a public comment period, if it determines in writing either that an emergency exists or that disclosure of the notice, solicitation of public comment, or delay until expiration of the public comment period

would seriously threaten the safety or soundness of the bank to be acquired.

(d) *Consideration of public comments.* In acting upon a notice filed under this subpart, the FDIC shall consider all public comments received in writing within 20 days following the required newspaper publication or, if the FDIC has shortened the public comment period pursuant to paragraph (c) of this section, within such shorter period.

(e) *Publication if filing is subsequent to acquisition of control.* (1) Whenever a notice of a proposed acquisition of control is not filed in accordance with the Change in Bank Control Act and these regulations, the acquiring person(s) shall, within 10 days of being so directed by the FDIC, publish an announcement of the acquisition of control in a newspaper of general circulation in the community in which the home office of the state nonmember bank to be acquired is located.

(2) The newspaper announcement shall contain the name(s) of the acquiror(s), the name of the depository institution involved, and the date of the acquisition of the stock. The announcement shall also contain a statement indicating that the FDIC is currently reviewing the acquisition of control. The announcement also shall state that any person wishing to comment on the change in control may do so by submitting written comments to the appropriate regional director (DOS) of the FDIC (give address of regional office) within 20 days following the required newspaper publication.

§ 303.87 Delegation of authority.

(a) Authority is delegated to the Director and the Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to issue a written notice of the FDIC's intent not to disapprove an acquisition of control of an insured state nonmember bank.

(b) The authority delegated by paragraph (a) of this section shall include the power to:

(1) Act in situations where information is submitted on acquisitions arising out of events beyond the person's control, as set forth in § 303.83(b);

(2) Extend notice periods;

(3) Determine whether a notice should be filed under section 7(j) of the Act (12 U.S.C. 1817(j)) by a person acquiring less than 25 percent of any class of voting shares of an insured state nonmember bank; and

(4) Delay or waive publication, waive or shorten the public comment period, or act on a proposed acquisition of control prior to the expiration of the public comment period, as provided in §§ 303.86(a)(3) and (4).

(c) Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director, to disapprove an acquisition of control of an insured state nonmember bank.

Subpart F—Change of Director or Senior Executive Officer

§ 303.100 Scope.

This subpart sets forth the circumstances under which an insured state nonmember bank must notify the FDIC of a change in any member of its board of directors or any senior executive officer and the procedures for filing such notice, as well as applicable delegations of authority. This subpart implements section 32 of the FDI Act (12 U.S.C. 1831i).

§ 303.101 Definitions.

For purposes of this subpart:

(a) *Director* means a person who serves on the board of directors or board of trustees of an insured state nonmember bank, except that this term does not include an advisory director who:

(1) Is not elected by the shareholders;

(2) Is not authorized to vote on any matters before the board of directors or board of trustees or any committee thereof;

(3) Solely provides general policy advice to the board of directors or board of trustees and any committee thereof; and

(4) Has not been identified by the FDIC as a person who performs the functions of a director for purposes of this subpart.

(b) *Senior executive officer* means a person who holds the title of president, chief executive officer, chief operating officer, chief managing official (in an insured state branch of a foreign bank), chief financial officer, chief lending officer, or chief investment officer, or, without regard to title, salary, or compensation, performs the function of one or more of these positions. *Senior executive officer* also includes any other person identified by the FDIC, whether or not hired as an employee, with significant influence over, or who participates in, major policymaking decisions of the insured state nonmember bank.

(c) *Troubled condition* means any insured state nonmember bank that:

(1) Has a composite rating, as determined in its most recent report of examination of 4 or 5 under the Uniform Financial Institutions Rating System (UFIRS), or in the case of an insured state branch of a foreign bank, an equivalent rating; or

(2) Is subject to a proceeding initiated by the FDIC for termination or suspension of deposit insurance; or

(3) Is subject to a cease-and-desist order or written agreement issued by either the FDIC or the appropriate state banking authority that requires action to improve the financial condition of the bank or is subject to a proceeding initiated by the FDIC or state authority which contemplates the issuance of an order that requires action to improve the financial condition of the bank, unless otherwise informed in writing by the FDIC; or

(4) Is informed in writing by the FDIC that it is in troubled condition for purposes of the requirements of this subpart on the basis of the bank's most recent report of condition or report of examination, or other information available to the FDIC.

§ 303.102 Filing procedures and waiver of prior notice.

(a) *Insured state nonmember banks.* An insured state nonmember bank shall give the FDIC written notice, as specified in paragraph (c)(1) of this section, at least 30 days prior to adding or replacing any member of its board of directors, employing any person as a senior executive officer of the bank, or changing the responsibilities of any senior executive officer so that the person would assume a different senior executive officer position, if:

(1) The bank is not in compliance with all minimum capital requirements applicable to the bank as determined on the basis of the bank's most recent report of condition or report of examination;

(2) The bank is in troubled condition; or

(3) The FDIC determines, in connection with its review of a capital restoration plan required under section 38(e)(2) of the FDI Act (12 U.S.C. 1831*o*(e)(2)) or otherwise, that such notice is appropriate.

(b) *Insured branches of foreign banks.* In the case of the addition of a member of the board of directors or a change in senior executive officer in a foreign bank having an insured state branch, the notice requirement shall not apply to such additions and changes in the foreign bank parent, but only to changes in senior executive officers in the state branch.

(c) *Waiver of prior notice—(1) Waiver requests.* The FDIC may permit an individual, upon petition by the bank to the appropriate regional director (DOS), to serve as a senior executive officer or

director before filing the notice required under this subpart if the FDIC finds that:

(i) Delay would threaten the safety or soundness of the bank;

(ii) Delay would not be in the public interest; or

(iii) Other extraordinary circumstances exist that justify waiver of prior notice.

(2) *Automatic waiver.* In the case of the election of a new director not proposed by management at a meeting of the shareholders of an insured state nonmember bank, the prior 30-day notice is automatically waived and the individual immediately may begin serving, provided that a complete notice is filed with the appropriate regional director (DOS) within two business days after the individual's election.

(3) *Effect on disapproval authority.* A waiver shall not affect the authority of the FDIC to disapprove a notice within 30 days after a waiver is granted under paragraph (c)(1) of this section or the election of an individual who has filed a notice and is serving pursuant to an automatic waiver under paragraph (c)(2) of this section.

(d)(1) *Content of filing.* The notice required by paragraph (a) of this section shall be filed with the appropriate regional director (DOS) and shall contain information pertaining to the competence, experience, character, or integrity of the individual with respect to whom the notice is submitted, as prescribed in the designated interagency form which is available from any FDIC regional office. The regional director or his or her designee may require additional information.

(2) *Modification.* The FDIC may modify or accept other information in place of the requirements of paragraph (d)(1) of this section for a notice filed under this subpart.

§ 303.103 Processing.

(a) *Processing.* The 30-day notice period specified in § 303.102(a) shall begin on the date substantially all information required to be submitted by the notificant pursuant to § 303.102(c)(1) is received by the appropriate regional director (DOS). The regional director shall notify the bank submitting the notice of the date on which the notice is accepted for processing and of the date on which the 30-day notice period will expire. If processing cannot be completed within 30 days, the notificant will be advised in writing, prior to expiration of the 30-day period, of the reason for the delay in processing and of the additional time period, not to exceed 60 days, in which processing will be completed.

(b) *Commencement of service*—(1) *At expiration of period.* A proposed director or senior executive officer may begin service after the end of the 30-day period or any other additional period as provided under paragraph (a) of this section, unless the FDIC disapproves the notice before the end of the period.

(2) *Prior to expiration of period.* A proposed director or senior executive officer may begin service before the end of the 30-day period or any additional time period as provided under paragraph (a) of this section, if the FDIC notifies the bank and the individual in writing of the FDIC's intention not to disapprove the notice.

(c) *Notice of disapproval.* The FDIC may disapprove a notice filed under § 303.102 if the FDIC finds that the competence, experience, character, or integrity of the individual with respect to whom the notice is submitted indicates that it would not be in the best interests of the depositors of the bank or in the best interests of the public to permit the individual to be employed by, or associated with, the bank. Subpart L of 12 CFR part 308 sets forth the rules of practice and procedure for a notice of disapproval.

§ 303.104 Delegation of authority.

The following authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director or deputy regional director to:

(a) Designate an insured state nonmember bank as being in troubled condition;

(b) Grant waivers of the prior notice requirement;

(c) Extend the 30-day processing period for an additional period of up to 60 days in the event of extenuating circumstances; and

(d) Issue notices of disapproval or notices of intent not to disapprove under this subpart.

Subpart G—Activities and Investments of Insured State Banks [Reserved]

Subpart H—Filings by Savings Associations

§ 303.140 Scope.

This subpart sets forth the notice and application procedures necessary for a savings association to engage in certain activities, or to acquire or retain certain investments, in a type or to an extent, not authorized for federal savings associations, prohibits federal and state savings associations from acquiring or retaining certain corporate debt securities, sets forth the notice procedures for a savings association to establish or acquire a subsidiary or conduct any new activity through a subsidiary, sets forth the notice requirements for a federal savings association conducting grandfathered activities, and finally sets forth the delegations of authority with respect to such activities and investments.

§ 303.141 Definitions.

For the purposes of this subpart, the following definitions apply:

(a) As used in §§ 303.142 and 303.143, the term *activity* includes acquiring or retaining any investment other than an equity investment.

(b) *Control* means the power to vote, directly or indirectly, 25 per cent or more of any class of the voting stock 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.

(c) *Corporate debt securities not of investment grade* refers to 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 the Home Owners' Loan Act (12 U.S.C. 1464(c)(1)).

(d) *Equity investment* means any equity security as defined in this section; any partnership interest; any equity interest in real estate as defined in this section; and any transaction which in substance falls into any of these categories, even though it may be structured as some other form of business transaction.

(e) *Equity interest in real estate* means any form of direct or indirect ownership of any interest in real property (whether in the form of an equity interest, partnership, joint venture or other form) which is accounted for as an investment in real estate or real estate joint ventures under generally accepted accounting principles or is otherwise determined to be an investment in a real estate venture under Federal Financial Institutions Examination Council instructions for the preparation of reports of condition. The term *equity interest in real estate* shall not include:

(1) An interest in real property that is primarily used or intended to be used for future expansion by a savings association, its subsidiaries, or its

affiliates as offices or related facilities for the conduct of its business;

(2) An interest in real property that is acquired in satisfaction of a debt previously contracted in good faith, acquired by way of deed in lieu of foreclosure, or acquired in sales under judgments, decrees, or mortgages held by a savings association, provided that the property is not intended to be held for real estate investment purposes but is expected to be disposed of in a timely fashion as permitted by applicable law; and

(3) Interests in real property that are primarily in the nature of charitable contributions to community development.

(f) *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. The term *equity security* does not include any of the foregoing if it is acquired through foreclosure or settlement in lieu of foreclosure.

(g) *Qualified affiliate* means, in the case of a stock savings association, an affiliate other than a subsidiary or an insured depository institution; and, in the case of a mutual savings association, a subsidiary other than an insured depository institution, so long as all of the savings association's investments in, and extensions of credit to, the subsidiary are deducted from the savings association's capital.

(h) The term *service corporation* means any corporation the capital stock of which is available for purchase only by savings associations.

(i) A *significant risk* is understood to be present whenever there is a high probability that any insurance fund administered by the FDIC may suffer a loss.

(j) *Subsidiary* means any corporation, partnership, business trust, association, joint venture, pool, syndicate or other similar business organization directly or indirectly controlled by a savings association. For the purposes of § 303.146, the term does not include an *insured depository institution* as that term is defined in section 3(c)(2) of the FDI Act (12 U.S.C. 1813(c)(2)).

§ 303.142 Engaging other than as agent on behalf of customers in activities not permissible for federal savings associations.

(a) *General.* After January 1, 1990, no state savings association may directly engage, other than as agent on behalf of its customers, in an activity that is not expressly authorized for federal savings associations by the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) or any other statute, regulations issued by the Office of Thrift Supervision (OTS) (12 CFR chapter V), official OTS Regulatory or Thrift Bulletins, or any order or interpretation issued in writing by OTS unless the state savings association obtains the approval of the FDIC.

(b) *Filing procedures*—(1) *Where to file.* Any state savings association that wishes to obtain approval to initiate or continue such an activity, as well as any state savings association that wishes to make, or already has, 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)) must file a letter application with the appropriate regional director (DOS).

(2) *Content of filing.* The letter application shall contain the following information:

(i) A brief description of the activity and the manner in which it is (or will be) conducted;

(ii) A copy, if available, of any feasibility study, management plan, financial projections, business plan, or similar document concerning the conduct of the activity;

(iii) An estimate of the present or expected dollar volume of the activity;

(iv) Resolutions by the board of directors (or the board of trustees in a mutual association) of the savings association authorizing the conduct of such activity and the filing of this submission;

(v) A current statement of the association's assets, liabilities, and capital on both a consolidated and a non–consolidated basis, respectively;

(vi) A discussion by management of its analysis regarding the impact of the proposed activity on the association's earnings, capital adequacy, and general condition;

(vii) A statement by the savings association of whether or not it is in compliance with the fully phased–in capital standards prescribed under section 5(t) of HOLA (12 U.S.C. 1464(t)), including a calculation of the relevant capital ratio; and

(viii) A statement of the authority the savings association is relying upon for the conduct of the activity in the amount set forth in the letter application.

(3) *Additional information.* The appropriate regional director (DOS) may request that the state savings association provide such other information as the director deems appropriate.

(4) *Processing.* Approval will not be granted if it is determined by the FDIC that engaging in the activity poses a significant risk to the affected deposit insurance fund. Furthermore, no savings association will be granted approval unless it is in compliance with the fully phased–in capital standards prescribed in section 5(t) of HOLA. Consequently, no application to engage in an activity after January 1, 1990 should be filed if a state association is not in compliance with the fully phased–in capital requirements.

(5) *Assets held prior to August 9, 1989.* This section shall not be read to require the divestiture by a state savings association of any asset (including a nonresidential real estate loan) it had on its books prior to August 9, 1989 despite the fact that such asset may be held in connection with the conduct of an activity for which the state savings association must obtain the FDIC's approval under this section. A notice describing the activities and those assets is nevertheless required by this section.

§ 303.143 Engaging other than as agent on behalf of customers in activities authorized for federal savings associations but to an extent not so authorized.

(a) *Filing procedures*—(1) *Where and when to file.* Any state savings association that intends to directly engage, other than as agent on behalf of its customers, in an activity expressly authorized to all federal savings associations by statute or regulation adopted by OTS, or an official OTS Regulatory or Thrift Bulletin interpreting such statutes or regulations, in an amount in excess of that permitted for federal savings associations, must file a notice, return receipt requested, with the appropriate regional director (DOS) at least 60 days prior to the initiation of the level of the activity described in the notice.

(2) *Content of filing.* The notice must contain the same information required by § 303.142(b)(2).

(3) *Additional information.* The appropriate regional director (DOS) may request such other information as the appropriate regional director (DOS) deems appropriate.

(b) *Processing.* A state savings association that files a 60–day notice may initiate the level of activity as described in its notice 60 days after the

FDIC accepts the notice as complete, or 60 days after the FDIC accepts as complete the additional information, if any, that has been requested provided that the association is in compliance with the fully phased–in capital standards prescribed in section 5(t) of HOLA and provided that the FDIC does not, prior to that date, pose an objection to the association doing so. A state savings association may initiate the level of activity described in its notice prior to the expiration of the 60–day period if so notified. The continued conduct of the activities as described in the notice is conditioned upon the association's continued compliance with the fully phased–in capital standards and the FDIC's continued non–objection to those activities. The 60–day period may be extended upon notice to the state savings association if the notice as received is incomplete or the notice raises issues that require additional information or time for analysis. If the 60–day period is extended, the state savings association may begin the conduct of the activities only upon receipt of written notification to that effect. No state savings association will be permitted to initiate activities subject to this paragraph if it is determined that to do so would pose a significant risk to the affected deposit insurance fund.

§ 303.144 Equity investments

(a) *General.* No state savings association may directly acquire or retain any equity investment after August 9, 1989 of a type or in an amount that is not expressly authorized for federal savings associations by HOLA, regulations issued by OTS, official OTS Regulatory or Thrift Bulletins, or any order or interpretation issued in writing by OTS.

(b) *Service corporations*—(1) *General.* Paragraph (a) of this section notwithstanding, a state savings association may acquire or retain an equity investment in a service corporation, provided that the service corporation's activities are limited solely to those expressly authorized by HOLA or any other statute, regulations issued by OTS, official OTS Regulatory or Thrift Bulletins, or any order or interpretation issued in writing by OTS, for all service corporations owned by federal savings associations and provided that the investment in such service corporation does not exceed that permissible for a federal savings association pursuant to statute or regulation of OTS.

(2) *Filing procedure*—(i) *Where and when to file.* If either of the two conditions specified in paragraph (b)(1) of this section does not exist, the state association must file a letter application under paragraph (b)(2)(ii) of this section with the appropriate regional director (DOS) requesting permission to acquire or retain the equity investment in the service corporation in question.

(ii) *Content and filing of application.* The letter application required hereby shall contain the information required by § 303.142(b)(2), as it relates both to the service corporation and to its parent state savings association. In addition, the application shall contain: A listing of the officers (contemplated officers) of the service corporation, a listing of any other shareholders of the service corporation (existing or prospective) and their respective holdings, and a listing of the locations (expected locations) of all of the offices of the service corporation.

(iii) *Additional information.* The appropriate regional director (DOS) may request such other information as the appropriate regional director (DOS) deems appropriate.

(3) *Processing.* Approval of the acquisition or retention of an equity investment in a service corporation in which a federal association could not invest will not be granted if the state association is not in compliance with the fully phased-in capital standards prescribed by section 5(t) of HOLA. Consequently, no application to acquire or retain an equity investment in such a service corporation should be filed if a state association is not in compliance with these capital requirements. In addition, approval of the retention or acquisition of such investments will not be granted if the acquisition or retention is determined to pose a significant risk to the affected deposit insurance fund. If an application to retain an investment is denied, the state association must file a divestiture plan with the appropriate regional director (DOS) requesting the FDIC's permission to accomplish divestiture in accordance with said plan.

§ 303.145 Corporate debt securities not of investment grade.

Notwithstanding anything to the contrary in this subpart, no state or federal savings association may, directly or through a subsidiary (other than a subsidiary that is a qualified affiliate), acquire or retain after August 9, 1989 any corporate debt security that is not of investment grade.

§ 303.146 Notice of acquisition or establishment of a subsidiary or the conduct of new activities through a subsidiary.

(a) *General.* No insured savings association may establish or acquire a subsidiary, or conduct any new activity through a subsidiary, without providing the appropriate regional director (DOS) prior notice of the association's intent to do so.

(b) *Filing procedure*—(1) *Where and when to file.* Notice must be sent return receipt requested and be received by the appropriate regional director (DOS) at least 30 days prior to the establishment or acquisition of the subsidiary or the commencement of the new activity.

(2) *Content of filing.* The notice shall contain the same information required to be in a letter application filed pursuant to § 303.142(b)(2) plus the following:

(i) A description of how the activities of the subsidiary will be funded;

(ii) The amount of the insured savings association's investment in the subsidiary and the form of the investment;

(iii) The percentage ownership the insured savings association will have in the subsidiary;

(iv) A listing of the other owners of the subsidiary if any; and

(v) In the case of the acquisition of an existing concern, the terms and conditions of the acquisition including an appraisal, assessment of value, or other substantiation of the purchase price and operating statements for the previous three years (if applicable). If the insured savings association's filing with the OTS under section 18(m)(1) of the FDI Act contains all of the information required, that filing may be submitted to the FDIC in satisfaction of this provision.

(3) *Additional information.* In any case, the appropriate regional director (DOS) may request such additional information as the appropriate regional director (DOS) deems appropriate. In all such cases, the 30-day period will not begin to run until the response to the request for additional information is complete.

(c) *Exception to filing requirement.* Any Federal savings bank that was chartered prior to October 15, 1982 as a savings bank under state law, and any savings association that acquired its principal assets from such an institution, is not required to file prior notice in accordance with paragraph (a) of this section.

(d) *Notice regarding certain subsidiaries holding certain real property*—(1) *Where and when to file.* Paragraph (a) of this section notwithstanding, an insured savings association may establish or acquire one or more subsidiaries whose sole purpose is to hold interests in real property acquired by the savings association that fit the description in § 303.141(e)(2)

provided that the savings association files a written notice, return receipt requested, with the appropriate regional director (DOS) indicating that the association intends to establish or acquire one or more subsidiaries that will be engaged solely in the disposition of such property. Notice must be received by the appropriate regional director (DOS) at least 30 days prior to the establishment or acquisition of any such subsidiary.

(2) *Where and when to file, and content of filing regarding additional subsidiaries.* An association that has filed a notice pursuant to this paragraph (d) may thereafter establish or acquire additional such subsidiaries provided that each time within 14 days after doing so the association notifies the appropriate regional director (DOS) in writing. The notice shall identify the savings association, give the date of the initial notice, identify the new subsidiary, and state the value of the property at the time it was transferred to the subsidiary.

§ 303.147 Notice by federal savings associations conducting grandfathered activities.

Any federal savings association authorized by section 5(i)(4) of HOLA (12 U.S.C. 1464(i)(4)) to make any investment or engage in any activity not otherwise generally authorized to federal savings association by section 5 of HOLA must file a notice with the appropriate regional director (DOS) within 30 days after December 29, 1989 or within 30 days after the date the federal savings association is first able to rely upon section 5(i)(4) of HOLA as a result of the acquisition of an association that is covered by such section. The notice shall briefly describe the activity or investment.

§ 303.148 Delegation of authority.

Authority is delegated to the Director and Deputy Director (DOS), and where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director (DOS), to act on applications and notices filed pursuant to this subpart, and to make any and all determinations called for in regard to the same.

Subpart I—Mutual-to-Stock Conversions

§ 303.160 Scope.

This subpart sets forth the notice requirements, procedures, and delegations of authority for the conversion of an insured mutual state-chartered savings bank to the stock form of ownership. The substantive requirements governing such conversions are contained in § 333.4 of this chapter.

§ 303.161 Filing procedures.

(a) *Prior notice required.* In addition to complying with the substantive requirements in § 333.4 of this chapter, an insured state-chartered mutually owned savings bank that proposes to convert from mutual to stock form shall file with the FDIC a notice of intent to convert to stock form.

(b) *General.* (1) A notice required under this subpart shall be filed in letter form with the appropriate regional director (DOS) at the same time as required conversion application materials are filed with the institution's state regulator.

(2) An insured mutual savings bank chartered by a state that does not require the filing of a conversion application shall file a notice in letter form with the appropriate regional director (DOS) as soon as practicable after adoption of its plan of conversion.

(c) *Content of notice.* The notice shall provide a description of the proposed conversion and include all materials that have been filed with any state or federal banking regulator and any state or federal securities regulator. At a minimum, the notice shall include, as applicable, copies of:

(1) The plan of conversion, with specific information concerning the record date used for determining eligible depositors and the subscription offering priority established in connection with any proposed stock offering;

(2) Certified board resolutions relating to the conversion;

(3) A business plan, including a detailed discussion of how the capital acquired in the conversion will be used, expected earnings for at least a three-year period following the conversion, and a justification for any proposed stock repurchases;

(4) The charter and bylaws of the converted institution;

(5) The bylaws and operating plans of any other entities formed in connection with the conversion transaction, such as a holding company or charitable foundation;

(6) A full appraisal report, prepared by an independent appraiser, of the value of the converting institution and the pricing of the stock to be sold in the conversion transaction;

(7) Detailed descriptions of any proposed management or employee stock benefit plans or employment agreements and a discussion of the rationale for the level of benefits proposed, individually and by participant group;

(8) Indemnification agreements;

(9) A preliminary proxy statement and sample proxy;

(10) Offering circular(s) and order form;

(11) All contracts or agreements relating to solicitation, underwriting, market-making, or listing of conversion stock and any agreements among members of a group regarding the purchase of unsubscribed shares;

(12) A tax opinion concerning the federal income tax consequences of the proposed conversion;

(13) Consents from experts to use their opinions as part of the notice; and

(14) An estimate of conversion-related expenses.

(d) *Additional information.* The FDIC, in its discretion, may request any additional information it deems necessary to evaluate the proposed conversion. The institution proposing to convert from mutual to stock form shall promptly provide such information to the FDIC.

(e) *Acceptance of notice.* The 60-day notice period specified in § 303.163 shall commence on the date of receipt of a substantially complete notice. The appropriate regional director (DOS) shall notify the institution proposing to convert in writing of the date the notice is accepted.

(f) *Related applications.* Related applications that require FDIC action may include:

(1) Applications for deposit insurance, as required by subpart B of this part; and

(2) Applications for consent to merge, as required by subpart D of this part.

§ 303.162 Waiver from compliance.

(a) *General.* An institution proposing to convert from mutual to stock form may file with the appropriate regional director (DOS) a letter requesting waiver of compliance with this subpart or § 333.4 of this chapter:

(1) When compliance with any provision of this section or § 333.4 of this chapter would be inconsistent or in conflict with applicable state law; or

(2) For any other good cause shown.

(b) *Content of filing.* In making a request for waiver under paragraph (a) of this section, the institution shall demonstrate that the requested waiver, if granted, would not result in any effects that would be detrimental to the safety and soundness of the institution, entail a breach of fiduciary duty on part of the institution's management or otherwise be detrimental or inequitable to the institution, its depositors, any other insured depository institution(s),

the federal deposit insurance funds, or to the public interest.

§ 303.163 Processing.

(a) *General considerations.* The FDIC shall review the notice and other materials submitted by the institution proposing to convert from mutual to stock form, specifically considering the following factors:

(1) The proposed use of the proceeds from the sale of stock, as set forth in the business plan;

(2) The adequacy of the disclosure materials;

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

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

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

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

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

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

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

(b) *Additional considerations.* (1) In reviewing the notice and other materials submitted under this subpart, the FDIC will take into account the extent to which the proposed conversion transaction conforms with the various provisions of the mutual-to-stock conversion regulations of the Office of Thrift Supervision (OTS) (12 CFR part 563b), as currently in effect at the time the notice is submitted. Any non-conformity with those provisions will be closely reviewed.

(2) Conformity with the OTS requirements will not be sufficient for FDIC regulatory purposes if the FDIC determines that the proposed conversion transaction would pose a risk to the bank's safety or soundness, violate any law or regulation, or present a breach of fiduciary duty.

(c) *Notice period.* (1) The period in which the FDIC may object to the proposed conversion transaction shall be the later of:

(i) 60 days after receipt of a substantially complete notice of proposed conversion; or

(ii) 20 days after the last applicable state or other federal regulator has approved the proposed conversion.

(2) The FDIC may, in its discretion, extend the initial 60-day period for up to an additional 60 days by providing written notice to the institution.

(d) *Letter of non-objection.* If the FDIC determines, in its discretion, that the proposed conversion transaction would not pose a risk to the institution's safety or soundness, violate any law or regulation, or present a breach of fiduciary duty, then the FDIC shall issue to the institution proposing to convert a letter of non-objection to the proposed conversion.

(e) *Letter of objection.* If the FDIC determines, in its discretion, that the proposed conversion transaction poses a risk to the institution's safety or soundness, violates any law or regulation, or presents a breach of fiduciary duty, then the FDIC shall issue a letter to the institution stating its objection(s) to the proposed conversion and advising the institution not to consummate the proposed conversion until such letter is rescinded. A copy of the letter of objection shall be furnished to the institution's primary state regulator and any other state or federal banking regulator and state or federal securities regulator involved in the conversion.

(f) *Consummation of the conversion.* (1) An institution may consummate the proposed conversion upon either:

(i) The receipt of a letter of non-objection; or

(ii) The expiration of the notice period.

(2) If a letter of objection is issued, then the institution shall not consummate the proposed conversion until the FDIC rescinds such letter.

§ 303.164 Delegation of authority.

(a) Authority is delegated to the Director and Deputy Director (DOS) to issue a letter of non-objection to an institution proposing to convert when the proposed conversion transaction is determined not to pose a risk to the institution's safety or soundness, violate any law or regulation, present a breach of fiduciary duty, and not to raise any unique legal or policy issues. Such authority will be exercised in accordance with the time periods contained in § 303.163, unless the institution proposing to convert agrees to a longer time period.

(b) Authority to approve or deny a waiver under § 303.162 is retained by the Board of Directors.

(c) Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director to accept notices of intent to convert to stock form and to extend the initial 60-day period within which FDIC may object by an additional 60 days.

Subpart J—International Banking

§ 303.180 Scope.

This subpart sets forth procedures for complying with application requirements relating to the foreign activities of insured state nonmember banks, U.S. activities of insured branches of foreign banks, and certain foreign mergers of insured depository institutions. Related delegations of authority are also set forth in the subpart.

§ 303.181 Definitions.

For the purposes of this subpart, the following additional definitions apply:

(a) *Board of Governors* means the Board of Governors of the Federal Reserve System.

(b) *Comptroller* means the Office of the Comptroller of the Currency.

(c) *Eligible insured branch.* An insured branch will be treated as an eligible depository institution within the meaning of § 303.2(r) if the insured branch:

(1) Received an FDIC-assigned composite ROCA rating of 1 or 2 as a result of its most recent federal or state examination, and the FDIC, Comptroller, or Board of Governors have not expressed concern about the condition or operations of the foreign banking organization or the support it offers the branch;

(2) Received a satisfactory or better Community Reinvestment Act (CRA) rating from its primary federal regulator at its most recent examination, if the depository institution is subject to examination under part 345 of this chapter;

(3) Received a compliance rating of 1 or 2 from its primary federal regulator at its most recent examination;

(4) Is well-capitalized as defined in subpart B of part 325 of this chapter; and

(5) Is not subject to a cease and desist order, consent order, prompt corrective action directive, written agreement, memorandum of understanding, or other administrative agreement with any U.S. bank regulatory authority.

(d) *Federal branch* means a federal branch of a foreign bank as defined by § 347.202 of this chapter.

(e) *Foreign bank* means a foreign bank as defined by § 347.202 of this chapter.

(f) *Foreign branch* means a foreign branch of an insured state nonmember

bank as defined by § 347.102 of this chapter.

(g) *Foreign organization* means a foreign organization as defined by § 347.102 of this chapter.

(h) *Insured branch* means an insured branch of a foreign bank as defined by § 347.202 of this chapter.

(i) *Noninsured branch* means a noninsured branch of a foreign bank as defined by § 347.202 of this chapter.

(j) *State branch* means a state branch of a foreign bank as defined by § 347.202 of this chapter.

§ 303.182 Establishing, moving or closing a foreign branch of a state nonmember bank; § 347.103.

(a) *Notice procedures for general consent.* Notice in the form of a letter from an eligible depository institution establishing or relocating a foreign branch pursuant to § 347.103(b) of this chapter shall be provided to the appropriate regional director (DOS) no later than 30 days after taking such action, and include the location of the foreign branch, including a street address, and a statement that the foreign branch has not been located on a site on the World Heritage List or on the foreign country's equivalent of the National Register of Historic Places (National Register), in accordance with section 402 of the National Historic Preservation Act Amendments of 1980 (NHPA Amendments Act) (16 U.S.C. 470a–2). The regional director will provide written acknowledgment of receipt of the notice.

(b) *Filing procedures for other branch establishments.* (1) *Where to file.* An applicant seeking to establish a foreign branch other than under § 347.103(b) of this chapter shall submit an application to the appropriate regional director (DOS).

(2) *Content of filing.* A complete letter application shall include the following information:

(i) The exact location of the proposed foreign branch, including the street address, and a statement whether the foreign branch will be located on a site on the World Heritage List or on the foreign country's equivalent of the National Register, in accordance with section 402 of the NHPA Amendments Act;

(ii) Details concerning any involvement in the proposal by an insider of the applicant, as defined in § 303.2(u), including any financial arrangements relating to fees, the acquisition of property, leasing of property, and construction contracts;

(iii) A brief description of the applicant's business plan with respect to the foreign branch; and

(iv) A brief description of the activities of the branch, and to the extent any activities are not authorized by § 347.103(a) of this chapter, the applicant's reasons why they should be approved.

(3) *Additional information.* The appropriate regional director (DOS) may request additional information to complete processing.

(c) *Processing*—(1) *Expedited processing for eligible depository institutions.* An application filed under § 347.103(c) of this chapter by an eligible depository institution as defined in § 303.2(r) seeking to establish a foreign branch by expedited processing will be acknowledged in writing by the FDIC and will receive expedited processing, unless the applicant is notified in writing to the contrary and provided with the basis for that decision. The FDIC may remove the application from expedited processing for any of the reasons set forth in § 303.11(c)(2). Absent such removal, an application processed under expedited processing is deemed approved 45 days after receipt of a substantially complete application by the FDIC, or on such earlier date authorized by the FDIC in writing.

(2) *Standard processing.* For those applications which are not processed pursuant to the expedited procedures, the FDIC will provide the applicant with written notification of the final action when the decision is rendered.

(d) *Closing.* Notices of branch closing under § 347.103(f) of this chapter, in the form of a letter including the name, location, and date of closing of the closed branch, shall be filed with the appropriate regional director (DOS) no later than 30 days after the branch is closed.

(e) *Delegation of authority.* Authority is delegated to the Director and Deputy Director (DOS) and, if confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director to approve an application under paragraph (c) of this section if the following criteria are satisfied:

(1) The requirements of section 402 the NHPA Amendments Act have been favorably resolved;

(2) The applicant will only conduct activities authorized by § 347.103(a) of this chapter; and

(3) If the foreign branch will be located in a foreign country in which applicable law or practice would limit the FDIC's access to information for supervisory purposes, the delegate is satisfied that adequate arrangements have been made (through conditions imposed in connection with the approval and agreed to in writing by the applicant) to ensure that the FDIC will have necessary access to information for supervisory purposes.

§ 303.183 Investment by insured state nonmember banks in foreign organizations; § 347.108.

(a) *Notice procedures for general consent.* Notice in the form of a letter from an eligible depository institution making direct or indirect investments in a foreign organization pursuant to § 347.108(a) of this chapter shall be provided to the appropriate regional director (DOS) no later than 30 days after taking such action. The appropriate regional director will provide written acknowledgment of receipt of the notice.

(b) *Filing procedures for other investments.* (1) *Where to file.* An applicant seeking to make a foreign investment other than under § 347.108(a) of this chapter shall submit an application to the appropriate regional director (DOS).

(2) *Content of filing.* A complete application shall include the following information:

(i) Basic information about the terms of the proposed transaction, the amount of the investment in the foreign organization and the proportion of its ownership to be acquired;

(ii) Basic information about the foreign organization, its financial position and income, including any available balance sheet and income statement for the prior year, or financial projections for a new foreign organization;

(iii) A listing of all shareholders known to hold ten percent or more of any class of the foreign organization's stock or other evidence of ownership, and the amount held by each;

(iv) A brief description of the applicant's business plan with respect to the foreign organization;

(v) A brief description of any business or activities which the foreign organization will conduct directly or indirectly in the United States, and to the extent such activities are not authorized by subpart A of part 347 of this chapter, the applicant's reasons why they should be approved;

(vi) A brief description of the foreign organization's activities, and to the extent such activities are not authorized by subpart A of part 347 of this chapter, the applicant's reasons why they should be approved; and

(vii) If the applicant seeks approval to engage in underwriting or dealing activities, a description of the applicant's plans and procedures to address all relevant risks.

(3) *Additional information.* The appropriate regional director (DOS) may request additional information to complete processing.

(c) *Processing.*—(1) *Expedited processing for eligible depository institutions.* An application filed under § 347.108(b) of this chapter by an eligible depository institution as defined in § 303.2(r) seeking to make direct or indirect investments in a foreign organization by expedited processing will be acknowledged in writing by the FDIC and will receive expedited processing, unless the applicant is notified in writing to the contrary and provided with the basis for that decision. The FDIC may remove the application from expedited processing for any of the reasons set forth in § 303.11(c)(2). Absent such removal, an application processed under expedited processing is deemed approved 45 days after receipt of a complete application by the FDIC, or on such earlier date authorized by the FDIC in writing.

(2) *Standard processing.* For those applications which are not processed pursuant to the expedited procedures, the FDIC will provide the applicant with written notification of the final action when the decision is rendered.

(d) *Divestiture.* If an insured state nonmember bank holding 50 percent or more of the voting equity interests of a foreign organization or otherwise controlling the foreign organization divests itself of such ownership or control, the insured state nonmember bank shall file a notice in the form of a letter, including the name, location, and date of divestiture of the foreign organization, with the appropriate regional director (DOS) no later than 30 days after the divestiture.

(e) *Delegations of authority.* Authority is delegated to the Director and Deputy Director (DOS) and, if confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director to approve applications under paragraph (c) of this section so long as:

(1) The investment complies with the amount limits in § 347.104 through § 347.107 of this chapter and is in a foreign organization which only conducts such activities as authorized thereunder; and

(2) For foreign investments resulting in the applicant holding 20 percent or more of the voting equity interests of the foreign organization or controlling such organization, if the organization is located in a foreign country in which applicable law or practice would limit the FDIC's access to information for supervisory purposes, the delegate is satisfied that adequate arrangements have been made (through conditions imposed in connection with the approval and agreed to in writing by the applicant) to ensure that the FDIC will have necessary access to information for supervisory purposes.

§ 303.184 Moving an insured branch of a foreign bank.

(a) *Filing procedures.*—(1) *Where and when to file.* An application by an insured branch of a foreign bank seeking the FDIC's consent to move from one location to another, as required by section 18(d)(1) of the FDI Act (12 U.S.C. 1828(d)(1)), shall be submitted in writing to the appropriate regional director (DOS) on the date the notice required by paragraph (c) of this section is published, or within 5 days after the date of the last required publication.

(2) *Content of filing.* A complete letter application shall include the following information:

(i) The exact location of the proposed site, including the street address;

(ii) Details concerning any involvement in the proposal by an insider of the applicant, as defined in § 303.2(u), including any financial arrangements relating to fees, the acquisition of property, leasing of property, and construction contracts;

(iii) A statement of the impact of the proposal on the human environment, including information on compliance with local zoning laws and regulations and the effect on traffic patterns, for purposes of complying with the applicable provisions of the NEPA, and the FDIC ''Statement Policy on NEPA'' (2 FDIC Law, Regulations, Related Acts 5185; see § 309.4 (a) and (b) of this chapter for availability);

(iv) A statement as to whether or not the site is eligible for inclusion in the National Register of Historic Places for purposes of complying with the applicable provisions of the NHPA, and the FDIC ''Statement on NHPA'' (2 FDIC Law, Regulations, Related Acts 5175; see § 309.4 (a) and (b) of this chapter for availability), including documentation of consultation with the State Historic Preservation Officer, as appropriate;

(v) Comments on any changes in services to be offered, the community to be served, or any other effect the proposal may have on the applicant's compliance with the CRA; and

(vi) A copy of the newspaper publication required by paragraph (c) of this section, as well as the name and address of the newspaper and the date of the publication.

(3) *Comptroller's application.* If the applicant is filing an application with the Comptroller which contains the information required by paragraph (a)(2) of this section, the applicant may submit a copy to the FDIC in lieu of a separate application.

(4) *Additional information.* The appropriate regional director (DOS) may request additional information to complete processing.

(b) *Processing.*—(1) *Expedited processing for eligible insured branches.* An application filed by an eligible insured branch as defined in § 303.181(c) will be acknowledged in writing by the FDIC and will receive expedited processing, unless the applicant is notified to the contrary and provided with the basis for that decision. The FDIC may remove an application from expedited processing for any of the reasons set forth in § 303.11(c)(2). Absent such removal, an application processed under expedited processing will be deemed approved on the latest of the following:

(i) The 21st day after the FDIC's receipt of a substantially complete application; or

(ii) The 5th day after expiration of the comment period described in paragraph (c) of this section.

(2) *Standard processing.* For those applications that are not processed pursuant to the expedited procedures, the FDIC will provide the applicant with written notification of the final action as soon as the decision is rendered.

(c) *Publication requirement and comment period.*—(1) *Newspaper publications.* The applicant shall publish a notice of its proposal to move from one location to another, as described in § 303.7(b), in a newspaper of general circulation in the community in which the insured branch is located prior to its being moved and in the community to which it is to be moved. The notice shall include the insured branch's current and proposed addresses.

(2) *Public comments.* All public comments must be received by the appropriate regional director (DOS) within 15 days after the date of the last newspaper publication required by paragraph (c)(1) of this section, unless the comment period has been extended or reopened in accordance with § 303.9(b)(2).

(3) *Lobby notices.* If the insured branch has a public lobby, a copy of the newspaper publication shall be posted in the public lobby for at least 15 days beginning on the date of the publication required by paragraph (c)(1) of this section.

(d) *Delegation of authority.* (1) Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to

an associate director and the appropriate regional director and deputy regional director to approve an application under this section. For the delegate to exercise this authority, the criteria in paragraphs (d)(1)(i) through (d)(1)(vi) of this section must be satisfied:

(i) The factors set forth in section 6 of the FDI Act (12 U.S.C. 1816) have been considered and favorably resolved;

(ii) The applicant is at least adequately capitalized as defined in subpart B of part 325 of this chapter;

(iii) Any financial arrangements which have been made in connection with the proposed relocation and which involve the applicant's directors, officers, major shareholders, or their interests are fair and reasonable in comparison to similar arrangements that could have been made with independent third parties;

(iv) Compliance with the CRA, the NEPA, the NHPA and any applicable related regulations, including 12 CFR part 345, has been considered and favorably resolved;

(v) No CRA protest as defined in § 303.2(l) has been filed which remains unresolved or, where such a protest has been filed and remains unresolved, the Director (DCA), Deputy Director (DCA), an associate director (DCA) or the appropriate regional director or deputy regional director (DCA) concurs that approval is consistent with the purposes of the CRA and the applicant agrees in writing to any conditions imposed regarding the CRA; and

(vi) The applicant agrees in writing to comply with any conditions imposed by the delegate, other than the standard conditions defined in § 303.2(ff) which may be imposed without the applicant's written consent.

(2) Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director, to approve applications under this section which meet all criteria in paragraph (d)(1) of this section except that the applicant does not agree in writing to comply with any condition imposed by the delegate, other than the standard conditions defined in § 303.2(ff) which may be imposed without the applicant's written consent.

(3) Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director, to deny applications under this section.

§ 303.185 Merger transactions involving foreign banks or foreign organizations.

(a) *Merger transactions involving an insured branch of a foreign bank.* Merger transactions requiring the FDIC's prior approval as set forth in § 303.62 include any merger transaction in which the resulting institution is an insured branch of a foreign bank which is not a federal branch, or any merger transaction which involves any insured branch and any uninsured institution. In such cases:

(1) References to an eligible depository institution in subpart D of this part include an eligible insured branch as defined in § 303.181;

(2) The definition of a corporate reorganization in § 303.61(b) includes a merger transaction between an insured branch and other branches, agencies, or subsidiaries in the United States of the same foreign bank; and

(3) For the purposes of § 303.62(b)(1) on interstate mergers, a merger transaction involving an insured branch is one involving the acquisition of a branch of an insured bank without the acquisition of the bank for purposes of section 44 of the FDI Act (12 U.S.C. 1831u) only when the merger transaction involves fewer than all the insured branches of the same foreign bank in the same state.

(b) *Certain merger transactions with foreign organizations outside any State.* Merger transactions requiring the FDIC's prior approval as set forth in § 303.62 include any merger transaction in which an insured depository institution becomes directly liable for obligations which will, after the merger transaction, be treated as deposits under section 3(l)(5)(A)(i)–(ii) of the FDI Act (12 U.S.C. 1813(l)(5)(A)(i)–(ii)), as a result of a merger or consolidation with a foreign organization or an assumption of liabilities of a foreign organization.

§ 303.186 Exemptions from insurance requirement for a state branch of a foreign bank; § 347.206.

(a) *Filing procedures.*—(1) *Where to file.* An application by a state branch for consent to operate as a noninsured state branch, as permitted by § 347.206(b) of this chapter, shall be submitted in writing to the appropriate regional director (DOS).

(2) *Content of filing.* A complete letter application shall include the following information:

(i) The kinds of deposit activities in which the state branch proposes to engage;

(ii) The expected source of deposits;

(iii) The manner in which deposits will be solicited;

(iv) How the activity will maintain or improve the availability of credit to all sectors of the United States economy, including the international trade finance sector;

(v) That the activity will not give the foreign bank an unfair competitive advantage over United States banking organizations; and

(vi) A resolution by the applicant's board of directors, or evidence of approval by senior management if a resolution is not required pursuant to the applicant's organizational documents, authorizing the filing of the application.

(2) *Additional information.* The appropriate regional director (DOS) may request additional information to complete processing.

(b) *Processing.* The FDIC will provide the applicant with written notification of the final action taken.

§ 303.187 Approval for an insured state branch of a foreign bank to conduct activities not permissible for federal branches; § 347.213.

(a) *Filing procedures.*—(1) *Where to file.* An application by an insured state branch seeking approval to conduct activities not permissible for a federal branch, as required by § 347.213(a) of this chapter, shall be submitted in writing to the appropriate regional director (DOS).

(2) *Content of filing.* A complete letter application shall include the following information:

(i) A brief description of the activity, including the manner in which it will be conducted and an estimate of the expected dollar volume associated with the activity;

(ii) An analysis of the impact of the proposed activity on the condition of the United States operations of the foreign bank in general and of the branch in particular, including a copy of the feasibility study, management plan, financial projections, business plan, or similar document concerning the conduct of the activity;

(iii) A resolution by the applicant's board of directors, or evidence of approval by senior management if a resolution is not required pursuant to the applicant's organizational documents, authorizing the filing of the application;

(iv) A statement by the applicant of whether it is in compliance with §§ 347.210 and 347.211 of this chapter, Pledge of assets and Asset maintenance, respectively;

(v) A statement by the applicant that it has complied with all requirements of the Board of Governors concerning applications to conduct the activity in question and the status of each such application, including a copy of the Board of Governors' disposition of such application, if applicable; and

(vi) A statement of why the activity will pose no significant risk to the Bank Insurance Fund.

(3) *Board of Governors application.* If the application to the Board of Governors contains the information required by paragraph (a) of this section, the applicant may submit a copy to the FDIC in lieu of a separate letter application.

(4) *Additional information.* The appropriate regional director (DOS) may request additional information to complete processing.

(b) *Divestiture or cessation.*—(1) *Where to file.* Divestiture plans necessitated by a change in law or other authority, as required by § 347.213(e) of this chapter, shall be submitted in writing to the appropriate regional director (DOS).

(2) *Content of filing.* A complete letter application shall include the following information:

(i) A detailed description of the manner in which the applicant proposes to divest itself of or cease the activity in question; and

(ii) A projected timetable describing how long the divestiture or cessation is expected to take.

(3) *Additional information.* The appropriate regional director (DOS) may request additional information to complete processing.

(c) *Delegation of authority.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to approve plans of divestiture and cessation submitted pursuant to paragraph (b) of this section.

Subpart K—Prompt Corrective Action

§ 303.200 Scope.

(a) *General.* (1) This subpart covers applications filed pursuant to section 38 of the FDI Act (12 U.S.C. 1831*o*), which requires insured depository institutions that are not adequately capitalized to receive approval prior to engaging in certain activities. Section 38 restricts or prohibits certain activities and requires an insured depository institution to submit a capital restoration plan when it becomes undercapitalized. The restrictions and prohibitions become more severe as an institution's capital level declines.

(2) Definitions of the capital categories referenced in this Prompt Corrective Action subpart may be found in subpart B of part 325 of this chapter, § 325.103(b) for state nonmember banks and § 325.103(c) for insured branches of foreign banks.

(b) *Institutions covered.* Restrictions and prohibitions contained in subpart B of part 325 of this chapter apply primarily to insured state nonmember banks and insured branches of foreign banks, as well as to directors and senior executive officers of those institutions. Portions of subpart B of part 325 of this chapter also apply to all insured depository institutions that are deemed to be critically undercapitalized.

§ 303.201 Filing procedures.

Applications shall be filed with the appropriate regional director (DOS). The application shall contain the information specified in each respective section of this subpart, and shall be in letter form as prescribed in § 303.3. Additional information may be requested by the FDIC. Such letter shall be signed by the president, senior officer or a duly authorized agent of the insured depository institution and be accompanied by a certified copy of a resolution adopted by the institution's board of directors or trustees authorizing the application.

§ 303.202 Processing.

The FDIC will provide the applicant with a subsequent written notification of the final action taken as soon as the decision is rendered.

§ 303.203 Applications for capital distributions.

(a) *Scope.* An insured state nonmember bank and any insured branch of a foreign bank shall submit an application for capital distribution if, after having made a capital distribution, the institution would be undercapitalized, significantly undercapitalized, or critically undercapitalized.

(b) *Content of filing.* An application to repurchase, redeem, retire or otherwise acquire shares or ownership interests of the insured depository institution shall describe the proposal, the shares or obligations which are the subject thereof, and the additional shares or obligations of the institution which will be issued in at least an amount equivalent to the distribution. The application also shall explain how the proposal will reduce the institution's financial obligations or otherwise improve its financial condition. If the proposed action also requires an application under section 18(i) of the FDI Act (12 U.S.C. 1828(i)) as implemented by § 303.241 regarding prior consent to retire capital, such application should be filed concurrently with, or made a part of, the application filed pursuant to section 38 of the FDI Act (12 U.S.C. 1831*o*).

§ 303.204 Applications for acquisitions, branching, and new lines of business.

(a) *Scope.* (1) Any insured state nonmember bank and any insured branch of a foreign bank which is undercapitalized or significantly undercapitalized, and any insured depository institution which is critically undercapitalized, shall submit an application to engage in acquisitions, branching or new lines of business.

(2) A new line of business will include any new activity exercised which, although it may be permissible, has not been exercised by the institution.

(b) *Content of filing.* Applications shall describe the proposal, state the date the institution's capital restoration plan was accepted by its primary federal regulator, describe the institution's status in implementing the plan, and explain how the proposed action is consistent with and will further the achievement of the plan or otherwise further the purposes of section 38 of the FDI Act. If the FDIC is not the applicant's primary federal regulator, the application also should state whether approval has been requested from the applicant's primary federal regulator, the date of such request and the disposition of the request, if any. If the proposed action also requires applications pursuant to section 18 (c) or (d) of the FDI Act (mergers and branches) (12 U.S.C. 1828 (c) or (d)), such applications should be filed concurrently with, or made a part of, the application filed pursuant to section 38 of the FDI Act (12 U.S.C. 1831*o*).

§ 303.205 Applications for bonuses and increased compensation for senior executive officers.

(a) *Scope.* Any insured state nonmember bank or insured branch of a foreign bank that is significantly or critically undercapitalized, or any insured state nonmember bank or any insured branch of a foreign bank that is undercapitalized and which has failed to submit or implement in any material respect an acceptable capital restoration plan, shall submit an application to pay a bonus or increase compensation for any senior executive officer.

(b) *Content of filing.* Applications shall list each proposed bonus or increase in compensation, and for the latter shall identify compensation for each of the twelve calendar months preceding the calendar month in which the institution became undercapitalized. Applications also shall state the date the institution's capital restoration plan was accepted by the FDIC, and describe any progress made in implementing the plan.

§ 303.206 Application for payment of principal or interest on subordinated debt.

(a) *Scope.* Any critically undercapitalized insured depository institution shall submit an application to pay principal or interest on subordinated debt.

(b) *Content of filing.* Applications shall describe the proposed payment and provide an explanation of action taken under section 38(h)(3)(A)(ii) of the FDI Act (action other than receivership or conservatorship). The application also shall explain how such payments would further the purposes of section 38 of the FDI Act (12 U.S.C. 1831*o*). Existing approvals pursuant to requests filed under section 18(i)(1) of the FDI Act (12 U.S.C. 1828(i)(1)) (capital stock reductions or retirements) shall not be deemed to be the permission needed pursuant to section 38.

§ 303.207 Restricted activities for critically undercapitalized institutions.

(a) *Scope.* Any critically undercapitalized insured depository institution shall submit an application to engage in certain restricted activities.

(b) *Content of filing.* Applications to engage in any of the following activities, as set forth in sections 38(i)(2) (A) through (G) of the FDI Act, shall describe the proposed activity and explain how the activity would further the purposes of section 38 of the FDI Act (12 U.S.C. 1831*o*):

(1) Enter into any material transaction other than in the usual course of business including any action with respect to which the institution is required to provide notice to the appropriate federal banking agency. Materiality will be determined on a case-by-case basis;

(2) Extend credit for any highly leveraged transaction (as defined in part 325 of this chapter);

(3) Amend the institution's charter or bylaws, except to the extent necessary to carry out any other requirement of any law, regulation, or order;

(4) Make any material change in accounting methods;

(5) Engage in any covered transaction (as defined in section 23A(b) of the Federal Reserve Act (12 U.S.C. 371c(b));

(6) Pay excessive compensation or bonuses. Part 364 of this chapter provides guidance for determining excessive compensation; or

(7) Pay interest on new or renewed liabilities at a rate that would increase the institution's weighted average cost of funds to a level significantly exceeding the prevailing rates of interest on insured deposits in the institution's normal market area. Section 337.6 of this chapter (Brokered deposits) provides guidance for defining the relevant terms of this provision; however this provision does not supersede the general prohibitions contained in § 337.6 of this chapter.

§ 303.208 Delegation of authority.

Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to approve or deny the following applications, requests or petitions submitted pursuant to this subpart:

(a) Applications filed pursuant to section 38 of the FDI Act (12 U.S.C. 1831*o*) (prompt corrective action), including applications to make a capital distribution;

(b) Applications for acquisitions, branching, and new lines of business (except that the delegation is limited to the authority as delegated to approve or deny any concurrent application filed pursuant to section 18 (c) or (d) of the FDI Act (12 U.S.C. 1828 (c) or (d));

(c) Applications to pay a bonus or increase compensation;

(d) Applications for an exception to pay principal or interest on subordinated debt; and

(e) Applications by critically undercapitalized insured depository institutions to engage in any restricted activity listed in this subpart.

Subpart L—Section 19 of the FDI Act (Consent to Service of Persons Convicted of Certain Criminal Offenses)

§ 303.220 Scope.

This subpart covers applications under section 19 of the FDI Act (12 U.S.C. 1829). Pursuant to section 19, any person who has been convicted of any criminal offense involving dishonesty, breach of trust, or money laundering, or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense, may not become, or continue as, an institution-affiliated party of an insured depository institution; own or control, directly or indirectly, any insured depository institution; or otherwise participate, directly or indirectly, in the conduct of the affairs of any insured depository institution without the prior written consent of the FDIC.

§ 303.221 Filing procedures.

(a) *Regional office.* An application under section 19 shall be filed with the appropriate regional director (DOS).

(b) *Contents of filing.* Application forms may be obtained from any FDIC regional office. The FDIC may require additional information beyond that sought in the form, as warranted, in individual cases.

§ 303.222 Service at another insured depository institution.

In the case of a person who has already been approved by the FDIC under this subpart or section 19 of the FDI Act in connection with a particular insured depository institution, such person may not become an institution affiliated party, or own or control directly or indirectly another insured depository institution, or participate in the conduct of the affairs of another insured depository institution, without the prior written consent of the FDIC.

§ 303.223 Applicant's right to hearing following denial.

An applicant may request a hearing following a denial of an application in accordance with the provisions of part 308 of this chapter.

§ 303.224 Delegation of authority.

(a) *Approvals.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director or to the appropriate regional director and deputy regional director, to approve applications made by insured depository institutions pursuant to section 19 of the FDI Act, after consultation with the Legal Division; provided however, that authority may not be delegated to the regional director or deputy regional director where the applicant's primary supervisory authority interposes any objection to such application.

(b) *Denials.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director, to deny applications made by insured depository institutions pursuant to section 19 of the FDI Act.

(c) *Concurrent legal certification.* The authority to deny applications delegated under this section shall be exercised only upon the concurrent certification by the General Counsel and, where confirmed in writing by the General Counsel, his or her designee, that the action taken is not inconsistent with section 19 of the FDI Act.

(d) *Conditions on application approvals.* Regional directors and deputy regional directors acting under delegated authority under this subpart may impose any of the following conditions on the approval of applications, as appropriate in individual cases:

(1) A participant or institution-affiliated party of an institution shall be

bonded to the same extent as others in similar positions; and/or

(2) When deemed necessary, the prior consent of the appropriate regional director (DOS) shall be required for any proposed significant changes in duties and/or responsibilities of the person who is the subject of the application.

(e) *Authority not delegated by FDIC Board of Directors.* The FDIC Board of Directors has not delegated its authority to consider and act upon an application under section 19 of the FDI Act after a hearing held in accordance with the provisions of part 308 of this chapter.

Subpart M—Other Filings

§ 303.240 General.

This subpart sets forth the filing procedures to be followed when seeking the FDIC's consent to engage in certain activities or accomplish other matters as specified in the individual sections contained herein. For those matters covered by this subpart that also have substantive FDIC regulations or related statements of policy, references to the relevant regulations or statements of policy are contained in the specific sections.

303.241 Reduce or retire capital stock or capital debt instruments.

(a) *Scope.* This section contains the procedures to be followed by an insured state nonmember bank to seek the prior approval of the FDIC to reduce the amount or retire any part of its common or preferred stock, or to retire any part of its capital notes or debentures pursuant to section 18(i)(1) of the Act (12 U.S.C. 1828(i)(1)).

(b) *Filing procedures.* Applicants shall submit a letter application to the appropriate regional director (DOS).

(c) *Content of filing.* The application shall contain the following:

(1) The type and amount of the proposed change to the capital structure and the reason for the change;

(2) A schedule detailing the present and proposed capital structure;

(3) The time period that the proposal will encompass;

(4) If the proposal involves a series of transactions affecting Tier 1 capital components which will be consummated over a period of time which shall not exceed twelve months, the application shall certify that the insured depository institution will maintain itself as a well-capitalized institution as defined in part 325 of this chapter, both before and after each of the proposed transactions;

(5) If the proposal involves the repurchase of capital instruments, the amount of the repurchase price and the basis for establishing the fair market value of the repurchase price;

(6) A statement that the proposal will be available to all holders of a particular class of outstanding capital instruments on an equal basis, and if not, the details of any restrictions; and

(7) The date that the applicant's board of directors approved the proposal.

(d) *Additional information.* The FDIC may request additional information at any time during processing of the application.

(e) *Undercapitalized institutions.* Procedures regarding applications by an undercapitalized insured depository institution to retire capital stock or capital debt instruments pursuant to section 38 of the FDI Act (12 U.S.C. 1831*o*) are set forth in subpart K of this part (Prompt Corrective Action), § 303.203. Applications pursuant to sections 38 and 18(i) may be filed concurrently, or as a single application.

(f) *Expedited processing for eligible depository institutions.* An application filed under this section by an eligible depository institution as defined in § 303.2(r) will be acknowledged in writing by the FDIC and will receive expedited processing, unless the applicant is notified in writing to the contrary and provided with the basis for that decision. The FDIC may remove an application from expedited processing for any of the reasons set forth in § 303.11(c)(2). Absent such removal, an application processed under expedited processing will be deemed approved 20 days after the FDIC's receipt of a substantially complete application.

(g) *Standard processing.* For those applications that are not processed pursuant to expedited procedures, the FDIC will provide the applicant with written notification of the final action as soon as the decision is rendered.

(h) *Delegation of authority.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to approve or deny an application pursuant to section 18(i)(1) of the FDI Act (12 U.S.C. 1828(i)) to reduce the amount or retire any part of common or preferred capital stock, or to retire any part of capital notes or debentures.

§ 303.242 Exercise of trust powers.

(a) *Scope.* This section contains the procedures to be followed by a state nonmember bank to seek the FDIC's prior consent to exercise trust powers. The FDIC's prior consent to exercise trust powers is not required in the following circumstances:

(1) Where a state nonmember bank received authority to exercise trust powers from its chartering authority prior to December 1, 1950; or

(2) Where an insured depository institution continues to conduct trust activities pursuant to authority granted by its chartering authority subsequent to a charter conversion or withdrawal from membership in the Federal Reserve System.

(b) *Filing procedures.* Applicants shall submit to the appropriate regional director (DOS) a completed form, ''Application for Consent To Exercise Trust Powers.'' This form may be obtained from any FDIC regional office.

(c) *Content of filing.* The filing shall consist of the completed trust application form.

(d) *Additional information.* The FDIC may request additional information at any time during processing of the filing.

(e) *Expedited processing for eligible depository institutions.* An application filed under this section by an eligible depository institution as defined in § 303.2(r) will be acknowledged in writing by the FDIC and will receive expedited processing, unless the applicant is notified in writing to the contrary and provided with the basis for that decision. The FDIC may remove an application from expedited processing for any of the reasons set forth in § 303.11(c)(2). Absent such removal, an application processed under expedited procedures will be deemed approved 30 days after the FDIC's receipt of a substantially complete application.

(f) *Standard processing.* For those applications that are not processed pursuant to the expedited procedures, the FDIC will provide the applicant with written notification of the final action when the decision is rendered.

(g) *Delegation of authority.* (1) Where the criteria listed in paragraph (g)(2) of this section are satisfied and the applicant agrees in writing to comply with any conditions imposed by the approving FDIC official, other than the standard conditions defined in § 303.2(ff), which may be imposed without the applicant's written consent, authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to approve applications for the FDIC's consent to exercise trust powers.

(2) The following criteria must be satisfied before the authority delegated in paragraph (g)(1) of this section may be exercised:

(i) The factors set forth in section 6 of the FDI Act (12 U.S.C. 1816) have been considered and favorably resolved;

(ii) The proposed management of the trust business is determined to be capable of satisfactorily handling the anticipated business; and

(iii) The applicant's board of directors formally has adopted the FDIC Statement of Principles of Trust Department Management available from any FDIC regional office.

(h) *Denials and certain conditional approvals.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director to:

(1) Deny applications for trust powers; and

(2) Approve applications for trust powers where the criteria listed in paragraph (g)(2) of this section are satisfied but the applicant does not agree in writing to comply with any condition imposed by the delegate, other than the standard conditions defined in § 303.2(ff) which may be imposed without the applicant's written consent.

§ 303.243 Brokered deposit waivers.

(a) *Scope.* Pursuant to section 29 of the FDI Act (12 U.S.C. 1831f) and part 337 of this chapter, an adequately capitalized insured depository institution may not accept, renew or roll over any brokered deposits unless it has obtained a waiver from the FDIC. A well-capitalized insured depository institution may accept brokered deposits without a waiver, and an undercapitalized insured depository institution may not accept, renew or roll over any brokered deposits under any circumstances. This section contains the procedures to be followed to file with the FDIC for a brokered deposit waiver. The FDIC will provide notice to the depository institution's appropriate federal banking agency and any state regulatory agency, as appropriate, that a request for a waiver has been filed and will consult with such agency or agencies, prior to taking action on the institution's request for a waiver. Prior notice and/or consultation shall not be required in any particular case if the FDIC determines that the circumstances require it to take action without giving such notice and opportunity for consultation.

(b) *Filing procedures.* Applicants shall submit a letter application to the appropriate regional director (DOS).

(c) *Content of filing.* The application shall contain the following:

(1) The time period for which the waiver is requested;

(2) A statement of the policy governing the use of brokered deposits in the institution's overall funding and liquidity management program;

(3) The volume, rates and maturities of the brokered deposits held currently and anticipated during the waiver period sought, including any internal limits placed on the terms, solicitation and use of brokered deposits;

(4) How brokered deposits are costed and compared to other funding alternatives and how they are used in the institution's lending and investment activities, including a detailed discussion of asset growth plans;

(5) Procedures and practices used to solicit brokered deposits, including an identification of the principal sources of such deposits;

(6) Management systems overseeing the solicitation, acceptance and use of brokered deposits;

(7) A recent consolidated financial statement with balance sheet and income statements; and

(8) The reasons the institution believes its acceptance, renewal or rollover of brokered deposits would pose no undue risk.

(d) *Additional information.* The FDIC may request additional information at any time during processing of the application.

(e) *Expedited processing for eligible depository institutions.* An application filed under this section by an eligible depository institution as defined in this § 303.243(e) will be acknowledged in writing by the FDIC and will receive expedited processing, unless the applicant is notified in writing to the contrary and provided with the basis for that decision. For the purpose of this section, an applicant will be deemed an eligible depository institution if it satisfies all of the criteria contained in § 303.2(r) except that the applicant may be adequately capitalized rather than well-capitalized. The FDIC may remove an application from expedited processing for any of the reasons set forth in § 303.11(c)(2). Absent such removal, an application processed under expedited procedures will be deemed approved 21 days after the FDIC's receipt of a substantially complete application.

(f) *Standard processing.* For those filings which are not processed pursuant to the expedited procedures, the FDIC will provide the applicant with written notification of the final action as soon as the decision is rendered.

(g) *Conditions for approval.* A waiver issued pursuant to this section shall:

(1) Be for a fixed period, generally no longer than two years, but may be extended upon refiling; and

(2) May be revoked by the FDIC at any time by written notice to the institution.

(h) *Delegation of authority.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to approve or deny brokered deposit waiver applications. Based upon a preliminary review, any delegate may grant a temporary waiver for a short period in order to facilitate the orderly processing of a filing for a waiver.

§ 303.244 Golden parachute and severance plan payments.

(a) *Scope.* Pursuant to section 18(k) of the FDI Act (12 U.S.C. 1828(k)) and part 359 of this chapter, an insured depository institution or depository institution holding company may not make golden parachute payments or excess nondiscriminatory severance plan payments unless the depository institution or holding company obtains permission to make such payments in accordance with the rules contained in part 359 of this chapter. This section contains the procedures to file for the FDIC's consent when such consent is necessary under part 359 of this chapter.

(1) *Golden parachute payments.* A troubled insured depository institution or a troubled depository institution holding company is prohibited from making golden parachute payments (as defined in § 359.1(f)(1) of this chapter) unless it obtains the consent of the appropriate federal banking agency and the written concurrence of the FDIC. Therefore, in the case of golden parachute payments, the procedures in this section apply to all troubled insured depository institutions and troubled depository institution holding companies.

(2) *Excess nondiscriminatory severance plan payments.* In the case of excess nondiscriminatory severance plan payments as provided by § 359.1(f)(2)(v) of this chapter, the FDIC's consent is necessary for state nonmember banks that meet the criteria set forth in § 359.1(f)(1)(ii) of this chapter. In addition, the FDIC's consent is required for all insured depository institutions or depository institution holding companies that meet the same criteria and seek to make payments in excess of the 12-month amount specified in § 359.1(f)(2)(v) of this chapter.

(b) *Filing procedures.* Applicants shall submit a letter application to the

appropriate FDIC regional director (DOS).

(c) *Content of filing.* The application shall contain the following:

(1) The reasons why the applicant seeks to make the payment;

(2) An identification of the institution–affiliated party who will receive the payment;

(3) A copy of any contract or agreement regarding the subject matter of the filing;

(4) The cost of the proposed payment and its impact on the institution's capital and earnings; and

(5) The reasons why consent to the payment should be granted.

(d) *Additional information.* The FDIC may request additional information at any time during processing of the filing.

(e) *Processing.* The FDIC will provide the applicant with a subsequent written notification of the final action taken as soon as the decision is rendered.

(f) *Delegation of authority.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to approve or to deny filings to make:

(1) Excess nondiscriminatory severance plan payments as provided by 12 CFR 359.1(f)(2)(v); and

(2) Golden parachute payments permitted by 12 CFR 359.4.

§ 303.245 Waiver of liability for commonly controlled depository institutions.

(a) *Scope.* Section 5(e) of the FDI Act (12 U.S.C. 1815(e)) creates liability for commonly controlled insured depository institutions for losses incurred or anticipated to be incurred by the FDIC in connection with the default of a commonly controlled insured depository institution or any assistance provided by the FDIC to any commonly controlled insured depository institution in danger of default. In addition to certain statutory exceptions and exclusions contained in sections 5(e)(6), (7) and (8), the FDI Act also permits the FDIC, in its discretion, to exempt any insured depository institution from this liability if it determines that such exemption is in the best interests of the Bank Insurance Fund (BIF) or the Savings Association Insurance Fund (SAIF). This section describes procedures to request a conditional waiver of liability pursuant to section 5 of the FDI Act (12 U.S.C. 1815(e)(5)(A)).

(b) *Definition. Conditional waiver of liability* means an exemption from liability pursuant to section 5(e) of the FDI Act (12 U.S.C. 1815(e)) subject to terms and conditions.

(c) *Filing procedures.* Applicants shall submit a letter application to the appropriate regional director (DOS).

(d) *Content of filing.* The application shall contain the following information:

(1) The basis for requesting a waiver;

(2) The existence of any significant events (e.g., change in control, capital injection, etc.) that may have an impact upon the applicant and/or any potentially liable institution;

(3) Current, and if applicable, pro forma financial information regarding the applicant and potentially liable institution(s); and

(4) The benefits to the appropriate FDIC insurance fund resulting from the waiver and any related events.

(e) *Additional information.* The FDIC may request additional information at any time during the processing of the filing.

(f) *Processing.* The FDIC will provide the applicant with written notification of the final action as soon as the decision is rendered.

(g) *Failure to comply with terms of conditional waiver.* In the event a conditional waiver of liability is issued, failure to comply with the terms specified therein may result in the termination of the conditional waiver of liability. The FDIC reserves the right to revoke the conditional waiver of liability after giving the applicant written notice of such revocation and a reasonable opportunity to be heard on the matter pursuant to § 303.10.

(h) *Authority retained by FDIC Board of Directors.* The FDIC Board of Directors retains the authority to act on any application for waiver of liability of commonly controlled depository institutions.

§ 303.246 Insurance fund conversions.

(a) *Scope.* This section contains the procedures to be followed by an insured depository institution to seek the FDIC's prior approval to engage in an insurance fund conversion that involves the transfer of deposits between the SAIF and the BIF. Optional conversion transactions, commonly referred to as Oakar transactions, pursuant to section 5(d)(3) of the FDI Act (12 U.S.C. 1815(d)(3)), which do not involve the transfer of deposits between the SAIF and the BIF, are governed by the procedures set forth in subpart D (Merger Transactions) of this part.

(b) *Filing procedures.* Applicants shall submit a letter application to the appropriate FDIC regional director (DOS). The filing shall be signed by representatives of each institution participating in the transaction. Insurance fund conversions which are proposed in conjunction with a merger application filed by a state nonmember bank pursuant to section 18(c) of the FDI Act (12 U.S.C. 1828(c)) should be included with that filing.

(c) *Content of filing.* The application shall include the following information:

(1) A description of the transaction;

(2) The amount of deposits involved in the conversion transaction;

(3) A pro forma balance sheet and income statement for each institution upon consummation of the transaction; and

(4) Certification by each party to the transaction that applicable entrance and exit fees will be paid pursuant to part 312 of this chapter.

(d) *Additional information.* The FDIC may request additional information at any time during processing of the filing.

(e) *Processing.* The FDIC will provide the applicant with written notification of the final action as soon as the decision is rendered.

(f) *Delegation of authority.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to approve or deny filings for insurance fund conversions involving the transfers of deposits between the SAIF and the BIF.

§ 303.247 Conversion with diminution of capital.

(a) *Scope.* This section contains the procedures to be followed by an insured federal depository institution seeking the prior written consent of the FDIC pursuant to section 18(i)(2) of the FDI Act (12 U.S.C. 1828(i)(2)) to convert from an insured federal depository institution to an insured state nonmember bank (except a District bank) where the capital stock or surplus of the resulting bank will be less than the capital stock or surplus, respectively, of the converting institution at the time of the shareholders' meeting approving such conversion.

(b) *Filing procedures.* Applicants shall submit a letter application to the appropriate regional director (DOS).

(c) *Content of filing.* The application shall contain the following information:

(1) A description of the proposed transaction;

(2) A schedule detailing the present and proposed capital structure; and

(3) A copy of any documents submitted to the state chartering authority with respect to the charter conversion.

(d) *Additional information.* The FDIC may request additional information at any time during the processing.

(e) *Processing.* The FDIC will provide the applicant with written notification of the final action when the decision is rendered.

(f) *Delegation of authority.*—(1) *Approvals.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to approve applications to convert with diminution of capital.

(2) *Denials.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director to deny applications to convert with diminution of capital.

§ 303.248 Continue or resume status as an insured institution following termination under section 8 of the FDI Act.

(a) *Scope.* This section relates to an application by a depository institution whose insured status has been terminated under section 8 of the FDI Act (12 U.S.C. 1818) for permission to continue or resume its status as an insured depository institution. This section covers institutions whose deposit insurance continues in effect for any purpose or for any length of time under the terms of an FDIC order terminating deposit insurance, but does not cover operating non-insured depository institutions which were previously insured by the FDIC, or any non-insured, non-operating depository institution whose charter has not been surrendered or revoked.

(b) *Filing procedures.* Applicants shall submit a letter application to the appropriate regional director (DOS).

(c) *Content of filing.* The filing shall contain the following information:

(1) A complete statement of the action requested, all relevant facts, and the reason for such requested action; and

(2) A certified copy of the resolution of the depository institution's board of directors authorizing submission of the filing.

(d) *Additional information.* The FDIC may request additional information at any time during processing of the filing.

(e) *Processing.* The FDIC will provide the applicant with written notification of the final action as soon as the decision is rendered.

(f) *Authority retained by FDIC Board of Directors.* The FDIC Board of Directors retains the authority to act on any application to continue or resume status as an insured institution following termination under section 8 of the FDI Act (12 U.S.C. 1818).

§ 303.249 Truth in Lending Act—relief from reimbursement.

(a) *Scope.* This section applies to requests for relief from reimbursement pursuant to the Truth in Lending Act (15 U.S.C. 1601 *et seq.*) and Regulation Z (12 CFR part 226). Related delegations of authority are also set forth.

(b) *Procedures to be followed in filing initial requests for relief.* Requests for relief from reimbursement shall be filed with the appropriate regional director (DCA) within 60 days after receipt of the compliance report of examination containing the request to conduct a file search and make restitution to affected customers. The filing shall contain a complete and concise statement of the action requested, all relevant facts, the reasons and analysis relied upon as the basis for such requested action, and all supporting documentation.

(c) *Additional information.* The FDIC may request additional information at any time during processing of any such requests.

(d) *Processing.* The FDIC will acknowledge receipt of the request and provide the applicant with written notification of its determination within 60 days of its receipt of the request.

(e) *Delegation of authority.*—(1) *Denial of initial requests for relief.* Authority is delegated to the Director and Deputy Director (DCA), and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to deny initial requests for relief from the requirement for reimbursement under section 608(a)(2) of the Truth in Lending Simplification and Reform Act (15 U.S.C. 1607(e)(2)); provided, however, that a regional director or deputy regional director is not authorized to deny any request where the estimated amount of reimbursement is greater than $25,000.

(2) *Approval of initial requests for relief.* Authority is delegated to the Director and Deputy Director (DCA), and where confirmed in writing by the director, to an associate director, to approve requests for relief from the requirement for reimbursement under section 608(a)(2) of the Truth in Lending Simplification and Reform Act (15 U.S.C. 1607(a)(2)).

(f) *Legal concurrence.* The authority delegated under this section shall be exercised only upon concurrent certification by the General Counsel or, where confirmed in writing by the General Counsel, by his or her designee, or, in cases where a regional director or deputy regional director denies requests for relief, by the appropriate regional counsel, that the action taken is not inconsistent with the Truth in Lending Simplification and Reform Act.

(g) *Procedures to be followed in filing requests for reconsideration.* Within 15 days of receipt of written notice that its request for relief has been denied, the requestor may petition the appropriate regional director (DCA) for reconsideration of such request in accordance with the procedures set forth in § 303.11(f).

§ 303.250 Management official interlocks.

(a) *Scope.* This section contains the procedures to be followed by an insured state nonmember bank to seek the approval of FDIC to establish an interlock pursuant to the Depository Institutions Management Interlocks Act (12 U.S.C. 3207), section 13 of the FDI Act (12 U.S.C. 1823(k)) and part 348 of this chapter.

(b) *Filing procedures.* Applicants shall submit a letter application to the appropriate regional director (DOS).

(c) *Content of filing.* The application shall contain the following:

(1) A description of the proposed interlock;

(2) A statement of reason as to why the interlock will not result in a monopoly or a substantial lessening of competition; and

(3) If the applicant is seeking an exemption set forth in § 348.5 or § 348.6 of this chapter, a description of the particular exemption which is being requested and a statement of reasons as to why the exemption is applicable.

(d) *Additional information.* The FDIC may request additional information at any time during processing of the filing.

(e) *Processing.* The FDIC will provide the applicant with written notification of the final action when the decision is rendered.

(f) *Delegation of authority.* Authority is delegated to the Director and Deputy Director (DOS), and where confirmed in writing by the Director, to an associate director and the appropriate regional director, deputy regional director, to approve or deny a request to establish a management official interlock pursuant to § 348.5 or § 348.6 of this chapter or section 205(8) of the Depository Institutions Management Interlocks Act (12 U.S.C. 3207, 12 U.S.C. 1823(k)).

§ 303.251 Modification of conditions.

(a) *Scope.* This section contains the procedures to be followed by an insured depository institution to seek the prior consent of the FDIC to modify the requirement of a prior approval of a filing issued by the FDIC.

(b) *Filing procedures.* Applicants should submit a letter application to the

appropriate FDIC regional director (DOS).

(c) *Content of filing.* The application should contain the following information:

(1) A description of the original approved application;

(2) A description of the modification requested; and

(3) The reason for the request.

(d) *Additional information.* The FDIC may request additional information at any time during processing of the filing.

(e) *Processing.* The FDIC will provide the applicant with a written notification of the final action as soon as the decision is rendered.

(f) *Delegation of authority.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to approve or deny requests to modify the requirements of a prior approval of a filing issued by the FDIC subject to the following criteria;

(1) The Legal Division is consulted to the same extent as was required for approval of the original filing; and

(2) The approving delegate had the authority to approve the original filing.

§ 303.252 Extension of time.

(a) *Scope.* This section contains the procedures to be followed by an insured depository institution to seek the prior consent of the FDIC for additional time to fulfill a condition required in an approval of a filing issued by the FDIC or to consummate a transaction which was the subject of an approval by the FDIC.

(b) *Filing procedures.* Applicants shall submit a letter application to the appropriate regional director (DOS).

(c) *Content of filing.* The application shall contain the following information:

(1) A description of the original approved application;

(2) Identification of the original time limitation;

(3) The additional time period requested; and

(4) The reason for the request.

(d) *Additional information.* The FDIC may request additional information at any time during processing of the filing.

(e) *Processing.* The FDIC will provide the applicant with written notification of the final action as soon as the decision is rendered.

(f) *Delegation of authority.* (1) Except as provided in paragraph (f)(2) of this section, authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to approve or deny requests for extensions of time within which to perform acts or fulfill conditions required by a prior FDIC action on a filing of the insured depository institution.

(2) *Limits on exercise of delegated authority.* (i) An extension of time may not exceed one year; however, more than one extension may be granted regarding a particular filing.

(ii) Notwithstanding the delegations in paragraph (f)(1) of this section, no delegate shall have the authority to deny an extension of time request unless that delegate has the authority under this part to deny the original filing upon which the extension of time is predicated.

Subpart N—Enforcement Delegations

§ 303.260 Scope.

This subpart contains delegations of authority relating to the initiation, prosecution, and settlement of administrative enforcement actions under the FDI Act and other laws and regulations enforced by the FDIC, including investigations and subpoenas.

§ 303.261 Issuance of notification to primary regulator under section 8(a) of the FDI Act (12 U.S.C. 1818(a)).

(a) *Book capital less than 2 percent.* Authority is delegated to the Director and Deputy Director (DOS), and where confirmed in writing by the Director, to an associate director and to the appropriate regional director and deputy regional director, to issue notifications to primary regulator when the respondent depository institution's book capital is less than 2 percent of total assets; provided that authority may not be delegated to the regional director or deputy regional director whenever the respondent depository institution has issued any mandatory convertible debt or any form of Tier 2 capital (such as limited life preferred stock, subordinated notes and debentures).

(b) *Tier 1 capital less than 2 percent.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director, to issue notifications to primary regulator when the respondent depository institution's adjusted Tier 1 capital is less than 2 percent of adjusted part 325 total assets as defined in § 303.2(b).

(c) *Legal concurrence.* The authority delegated under this section shall be exercised only upon concurrent certification by the General Counsel or, where confirmed in writing by the General Counsel, by his or her designee, or, in cases where a regional director or deputy regional director issues notifications to primary regulator, by the appropriate regional counsel, that the allegations contained in the findings of violations of law or regulation and/or unsafe or unsound practices and/or unsafe or unsound condition, if proven, constitute a basis for the issuance of a notification to primary regulator pursuant to section 8(a) of the FDI Act (12 U.S.C. 1818(a)).

§ 303.262 Issuance of notice of intention to terminate insured status under section 8(a) of the FDI Act (12 U.S.C. 1818(a)).

(a) *General.* Authority is delegated to the Director and Deputy Director (DOS), and where confirmed in writing by the Director, to an associate director, to issue notices of intent to terminate insured status when the respondent depository institution has failed to correct any violations of law or regulation and/or unsafe or unsound practices and/or unsafe or unsound condition as specified in the relevant notification to primary regulator.

(b) *Legal concurrence.* The authority delegated under this section shall be exercised only upon concurrent certification by the General Counsel or, where confirmed in writing by the General Counsel, by his or her designee, that the allegations contained in the findings in the notice of intention to terminate insured status of violations of law or regulation and/or unsafe or unsound practices and/or unsafe or unsound condition, if proven, constitute a basis for termination of the insured status of the respondent depository institution pursuant to section 8(a) of the FDI Act (12 U.S.C. 1818(a)).

§ 303.263 Cease-and-desist actions under section 8(b) of the FDI Act (12 U.S.C. 1818(b)).

(a) *General.* Authority is delegated to the Director and Deputy Director (DOS), to the Director and Deputy Director (DCA), and where confirmed in writing by the appropriate Director, to an associate director and to the appropriate regional director and deputy regional director to issue:

(1) Notices of charges; and

(2) Cease-and-desist orders (with or without a prior notice of charges) where the respondent depository institution or individual respondent consents to the issuance of the cease-and-desist order prior to the filing by an administrative law judge of proposed findings of fact, conclusions of law and recommended decision with the Executive Secretary of the FDIC.

(b) *Joint DOS–DCA action.* The Director (DOS) and the Director (DCA) may issue a joint notice of charges or

cease-and-desist order under this section, where such notice or order addresses both safety and soundness and consumer compliance matters. A joint notice or order will require the signatures of both Directors or their Deputy Directors or associate directors, appropriate regional directors or deputy regional directors.

(c) *Legal concurrence.* The authority delegated under this section shall be exercised only upon concurrent certification by the General Counsel or, where confirmed in writing by the General Counsel, by his or her designee, or, in cases where a regional director or deputy regional director issues the notice of charges or the stipulated cease-and-desist order, by the appropriate regional counsel, that the allegations contained in the notice of charges, if proven, constitute a basis for the issuance of a section 8(b) order, or that the stipulated cease-and-desist order is authorized under section 8(b) of the FDI Act, and, upon its effective date, shall be a cease-and-desist order which has become final for purposes of enforcement pursuant to the FDI Act.

§ 303.264 Temporary cease-and-desist orders under section 8(c) of the FDI Act (12 U.S.C. 1818(c)).

(a) *General.* Authority is delegated to the Director and Deputy Director (DOS) and to the Director and Deputy Director (DCA), and where confirmed in writing by the appropriate Director, to an associate director, to issue temporary cease-and-desist orders.

(b) *Joint DOS–DCA action.* The Director (DOS) and the Director (DCA) may issue a joint temporary cease-and-desist order where such order addresses both safety and soundness and consumer compliance matters. A joint notice or order will require the signatures of both Directors or their Deputy Directors or associate directors.

(c) *Legal concurrence.* The authority delegated under this section shall be exercised only upon concurrent certification by the General Counsel or, where confirmed in writing by the General Counsel, by his or her designee, that the action is not inconsistent with section 8(c) of the FDI Act (12 U.S.C. 1818(c)) and the temporary cease-and-desist order is enforceable in a United States District Court.

§ 303.265 Removal and prohibition actions under section 8(e) of the FDI Act (12 U.S.C. 1818(e)).

(a) *General.* Authority is delegated to the Director and Deputy Director (DOS) or the Director and Deputy Director (DCA) and, where confirmed in writing by the appropriate Director, to an associate director, to issue:

(1) Notices of intention to remove an institution-affiliated party from office or to prohibit an institution-affiliated party from further participation in the conduct of the affairs of an insured depository institution pursuant to sections 8(e) (1) and (2) of the FDI Act (12 U.S.C. 1818(e) (1) and (2)), and temporary orders of suspension pursuant to section 8(e)(3) of the FDI Act (12 U.S.C. 1818(e)(3)); and

(2) Orders of removal, suspension or prohibition from participation in the conduct of the affairs of an insured depository institution where the institution-affiliated party consents to the issuance of such orders prior to the filing by an administrative law judge of proposed findings of fact, conclusions of law and a recommended decision with the Executive Secretary of the FDIC.

(b) *Joint DOS–DCA action.* The Director (DOS) and the Director (DCA) may issue joint notices and orders pursuant to this section where such notice or order addresses both safety and soundness and consumer compliance matters. A joint notice or order will require the signatures of both directors or their deputy directors or associate directors.

(c) *Legal concurrence.* The authority delegated under this section shall be exercised only upon concurrent certification by the General Counsel or, where confirmed in writing by the General Counsel, by his or her designee, that the allegations contained in the notice of intent, if proven, constitute a basis for the issuance of a notice of intent pursuant to section 8(e) of the FDI Act, or that the stipulated section 8(e) order is not inconsistent with section 8(e) of the FDI Act, and, upon issuance, shall be an order which has become final for purposes of enforcement pursuant to the FDI Act.

§ 303.266 Suspension and removal action under section 8(g) of the FDI Act (12 U.S.C. 1818(g)).

(a) *General.* Authority is delegated to the Director and Deputy Director (DOS), to the Director and Deputy Director (DCA), and where confirmed in writing by the appropriate Director, to an associate director, to issue orders of suspension or prohibition to an institution-affiliated party who is charged in any information, indictment, or complaint, or who is convicted of or enters a pretrial diversion or similar program, as to any criminal offense cited in or covered by section 8(g) of the FDI Act, when such institution-affiliated party consents to the suspension or prohibition.

(b) *Delegation of authority where suspension or prohibition mandated.* Authority is delegated to the Director and Deputy Director (DOS), to the Director and Deputy Director (DCA), and where confirmed in writing by the appropriate Director, to an associate director, to issue orders of suspension and prohibition to any institution-affiliated party who is charged in any information, indictment, or complaint, or who is convicted or enters a pretrial diversion or similar program, as to any criminal offense involving mandatory suspension or prohibition under sections 8(g)(1) (A)(ii) and (C)(ii) of the FDI Act (12 U.S.C. 1818(g)(1) (A)(ii) and (C)(ii)), whether or not such institution-affiliated party consents to the suspension or prohibition.

(c) *Joint DOS–DCA action.* The Director (DOS) and the Director (DCA) may issue joint orders pursuant to this section where such order addresses both safety and soundness and consumer compliance matters. A joint order will require the signatures of both Directors or their Deputy Directors or associate directors.

(d) *Legal concurrence.* The authority delegated under this section shall be exercised only upon concurrent certification by the General Counsel or, where confirmed in writing by the General Counsel, by his or her designee, that the action taken is not inconsistent with section 8(g) of the FDI Act (12 U.S.C. 1818(g)) and the order is enforceable in a United States District Court pursuant to sections 8(i) and 8(j) of the FDI Act (12 U.S.C. 1818 (i) and (j)).

§ 303.267 Termination of insured status under section 8(p) of the FDI Act (12 U.S.C. 1818(p)).

(a) *General.* Authority is delegated to the Executive Secretary to issue consent orders terminating the insured status of insured depository institutions that have ceased to engage in the business of receiving deposits other than trust funds pursuant to section 8(p) of the FDI Act (12 U.S.C. 1818(p)).

(b) *DOS and legal concurrence.* The authority delegated under this section shall be exercised only upon the recommendation and concurrence of the Director or Deputy Director (DOS) and, when confirmed in writing by the Director, an associate director, and upon the certification of the General Counsel and, where confirmed in writing by the General Counsel, by his or her designee, that the action taken is not inconsistent with section 8(p) of the FDI Act (12 U.S.C. 1818(p)).

§ 303.268 Termination of insured status under section 8(q) of the FDI Act (12 U.S.C. 1818(q)).

(a) *General.* Authority is delegated to the Executive Secretary to issue consent orders terminating the insured status of an insured depository institution where the liabilities of the insured institution for deposits shall have been assumed by another insured depository institution or depository institutions, whether by way of merger, consolidation, or other statutory assumption, or pursuant to contract, pursuant to section 8(q) of the FDI Act (12 U.S.C. 1818(q)).

(b) *DOS and legal concurrence.* The authority delegated under this section shall be exercised only upon the recommendation and concurrence of the Director or Deputy Director (DOS) or, when confirmed in writing by the Director, an associate director, and upon the certification of the General Counsel or, where confirmed in writing by the General Counsel, by his or her designee, that the action taken is not inconsistent with section 8(q) of the FDI Act (12 U.S.C. 1818(q)).

§ 303.269 Civil money penalties.

(a) *General.* Authority is delegated to the Director and Deputy Director (DOS), to the Director and Deputy Director (DCA), and where confirmed in writing by the appropriate Director, to an associate director, to issue:

(1) Notice of assessment of civil money penalties; and

(2) Final orders to pay (with or without a prior notice of assessment of civil money penalty) where the insured depository institution or institution-affiliated party consents to the issuance of the order to pay and waives, as applicable, receipt of a notice of assessment of civil money penalty and the right to an administrative hearing.

(b) *Legal concurrence.* The authority delegated under paragraph (a) of this section shall be exercised only upon concurrent certification by the General Counsel or, where confirmed in writing by the General Counsel, by his or her designee, that the allegations contained in the notice of assessment, if proven, constitute a basis for assessment of civil money penalties, or that the stipulated final order to pay is authorized under the FDI Act, and upon its effective date, shall be an order to pay which has become final for purposes of enforcement pursuant to the FDI Act.

(c) *Joint DOS–DCA action.* The Director (DOS) and the Director (DCA) may issue joint notices pursuant to paragraph (a) of this section where such notice addresses both safety and soundness and consumer compliance matters. A joint notice will require the signatures of both Directors or their Deputy Directors or associate directors.

(d) *Prosecution of civil money penalty actions and collection of civil money penalties.* Authority is delegated to the General Counsel or, where confirmed in writing, to his or her designee, to prosecute administrative civil money penalty actions and to collect civil money penalties under this section.

§ 303.270 Notices of assessment under section 5(e) of the FDI Act (12 U.S.C. 1815(e)).

(a) *General.* Authority is delegated to the Director and Deputy Director (DOS), and where confirmed in writing by the Director, to an associate director, to issue notices of assessment of liability to commonly controlled insured depository institutions for the estimated amount of loss to the deposit insurance funds.

(b) *Legal concurrence.* The authority delegated under this section shall be exercised only upon concurrent certification by the General Counsel or, where confirmed in writing by the General Counsel, by his or her designee, that the action taken is not inconsistent with section 5(e) of the FDI Act (12 U.S.C. 1815(e)).

§ 303.271 Prompt corrective action directives and capital plans under section 38 of the FDI Act (12 U.S.C. 1831o) and part 325 of this chapter.

(a) *General—notices, directives and orders.* Authority is delegated to the Director and Deputy Director (DOS), and where confirmed in writing by the Director, to an associate director, and to the appropriate regional director and deputy regional director, to accept, reject, require new or revised capital restoration plans, or make any other determinations with respect to the implementation of capital restoration plans and, in accordance with subpart Q of part 308 of this chapter, to issue:

(1) Notices of intent to issue capital directives;

(2) Directives to insured state nonmember banks that fail to maintain capital in accordance with the requirements contained in part 325 of this chapter;

(3) Notices of intent to issue prompt corrective action directives, except directives issued pursuant to section 38(f)(2)(F)(ii) of the FDI Act (12 U.S.C. 1831(f)(2)(F)(ii));

(4) Directives to insured depository institutions pursuant to section 38 of the FDI Act (12 U.S.C. 1831*o*), with or without the consent of the respondent bank to the issuance of the directive, except directives issued pursuant to section 38(f)(2)(F)(ii) of the FDI Act (12 U.S.C. 1831*o*(f)(2)(F)(ii));

(5) Directives to insured depository institutions requiring immediate action or imposing proscriptions pursuant to section 38 of the FDI Act (12 U.S.C. 1831*o*) and part 325 of this chapter, and in accordance with the requirements contained in § 308.201(a)(2) of this chapter;

(6) Notices of intent to reclassify insured banks pursuant to §§ 325.103(d) and 308.202 of this chapter;

(7) Directives to reclassify insured banks pursuant to §§ 325.103(d) and 308.202 of this chapter with the consent of the respondent bank to the issuance of the directive; and

(8) Orders on request for informal hearings to reconsider reclassifications and designate the presiding officer at the hearing pursuant to § 308.202 of this chapter.

(b) *Notices—dismissal of director and officer.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director, to:

(1) Issue notices of intent to issue a prompt corrective action directive ordering the dismissal from office of a director or senior executive officer pursuant to section 38(f)(2)(F)(ii) of the FDI Act (12 U.S.C. 1831*o*(f)(2)(F)(ii)) and in accordance with the requirements contained in § 308.203 of this chapter;

(2) Issue directives ordering the dismissal from office of a director or senior executive officer pursuant to section 38(f)(2)(F)(ii) of the FDI Act (12 U.S.C. 1831*o*(f)(2)(F)(ii)); and

(3) Issue orders of dismissal from office of a director or senior executive officer pursuant to section 38(f)(2)(F)(ii) of the FDI Act (12 U.S.C. 1831*o*(f)(2)(F)(ii)) where the individual consents to the issuance of such order prior to the filing of a recommendation by the presiding officer with the FDIC.

(c) *Reclassification of institution other than on basis of capital.* Authority is delegated to the Director and Deputy Director (DOS), and where confirmed in writing by the Director, to an associate director, to:

(1) Act on recommended decisions of presiding officers pursuant to a request for reconsideration of a reclassification in accordance with the requirements contained in § 308.202 of this chapter; and

(2) Act on requests for rescission of a reclassification.

(d) *Appeals of immediately effective PCA directives.* Authority is delegated to the Director and Deputy Director (DOS), and where confirmed in writing by the Director, to an associate director, to act on appeals from immediately effective directives issued pursuant to section 38

of the FDI Act (12 U.S.C. 1831*o*) and § 308.201 of this chapter.

(e) *Informal hearings.* Authority is delegated to the Executive Secretary of the FDIC to issue orders for informal hearings and designate presiding officers on directives issued pursuant to section 38(f)(2)(F)(ii) of the FDI Act (12 U.S.C. 1831*o*(f)(2)(F)(ii)).

(f) *Legal concurrence.* The authority delegated under this section shall be exercised only upon the concurrent certification by the General Counsel or, where confirmed in writing by the General Counsel, by his or her designee, or, in cases where a regional director or deputy regional director issues a notice, directive, or order, by the appropriate regional counsel, that the action taken is not inconsistent with section 38 of the FDI Act (12 U.S.C. 1831*o*) and part 325 of this chapter.

§ 303.272 Investigations under section 10(c) of the FDI Act (12 U.S.C. 1820(c)).

(a) *Authority of division directors.* Authority is delegated to the Director and Deputy Director (DOS), to the Director and Deputy Director (DCA), to the Director and Deputy Director of the Division of Resolutions and Receiverships, and where confirmed in writing by the appropriate Director, to an associate director, and to the appropriate regional director and deputy regional director, to issue an order of investigation pursuant to section 10(c) of the FDI Act (12 U.S.C. 1820(c)) and subpart K of part 308 of this chapter.

(b) *Authority of General Counsel.* Authority is delegated to the General Counsel, and where confirmed in writing by the General Counsel, to his or her designee, to issue an order of investigation pursuant to sections 8 through 13 of the FDI Act (12 U.S.C. 1818–1823), as appropriate, and subpart K of part 308 of this chapter.

(c) *Concurrence in certain situations.* In issuing an order of investigation that pertains to an open insured depository institution or an institution making application to become an insured depository institution, or a post-conservatorship or post-receivership order of investigation, the authority delegated under this section shall be exercised only upon the concurrent execution of the order of investigation by the Director or Deputy Director (DOS), or the Director or Deputy Director (DCA), or the Director or Deputy Director of the Division of Resolutions and Receiverships, their respective associate directors, and the General Counsel or his or her designee. In the case of a joint order of investigation, such authority shall be exercised only upon the concurrent execution of the order of investigation by both Directors or Deputy Directors, or their associate directors, and upon the certification and execution of the order by the General Counsel or his or her designee.

§ 303.273 Unilateral settlement offers.

(a) *General.* Authority is delegated to the Director and Deputy Director (DOS), to the Director and Deputy Director (DCA), and where confirmed in writing by the appropriate Director, to an associate director, to accept, deny or enter into negotiations for or regarding settlement and settlement offers with insured depository institutions, or with an institution-affiliated party, pertaining to or arising in connection with a proceeding under part 308 of this chapter. In cases where a proceeding under part 308 of this chapter was issued jointly by DOS and DCA, both Directors or Deputy Directors, or their associate directors, must agree to accept, deny or enter into negotiations regarding settlement and settlement offers with insured depository institutions or with an institution-affiliated party.

(b) *Legal concurrence.* The authority delegated under this section shall be exercised only upon concurrent certification by the General Counsel or, where confirmed in writing by the General Counsel, by his or her designee, that the action taken is not inconsistent with the FDI Act.

§ 303.274 Acceptance of written agreements.

(a) *Written agreements under section 8(a) of the FDI Act.* Authority is delegated to the Director and Deputy Director (DOS), and where confirmed in writing by the Director, to an associate director, to accept or enter into any written agreements with insured depository institutions, or any institution-affiliated party pertaining to any matter which may be addressed by the FDIC pursuant to section 8(a) of the FDI Act (12 U.S.C. 1818(a)).

(b) *Written agreements in lieu of cease-and-desist orders.* Authority is delegated to the Director and Deputy Director (DOS) and to the Director and Deputy Director (DCA), and where confirmed in writing by the appropriate Director, to an associate director, to accept or enter into any written agreements with insured depository institutions, or any institution-affiliated party pertaining to any safety and soundness or consumer compliance matter which may be addressed by the FDIC pursuant to section 8(b) of the FDI Act (12 U.S.C. 1818(b)) or any other provision of the FDI Act which addresses safety and soundness or consumer compliance matters. In cases which would address both safety and soundness and consumer compliance matters, the Directors, or their designees, may accept or enter into joint written agreements with insured depository institutions or any institution-affiliated party.

(c) *Written agreements as condition attendant to FDIC filings contained in this part.* Authority is delegated to the Director and Deputy Director (DOS), and to the Director and Deputy Director (DCA), as appropriate, and, where confirmed in writing by the appropriate Director, to an associate director, and to the appropriate regional director and deputy regional director, to accept or enter into any written agreements with any insured depository institution, any institution-affiliated party or any other petitioner which contains conditions precedent to the FDIC's non-objection to a filing pursuant to this part. A written agreement under this paragraph (c) shall not affect an institution's rating for prompt corrective action purposes, unless the written agreement expressly provides to the contrary.

(d) *Legal concurrence.* The authority delegated under this section shall be exercised only upon concurrent certification by the General Counsel or, where confirmed in writing by the General Counsel, by his or her designee, that the action taken is not inconsistent with the FDI Act.

§ 303.275 Modifications and terminations of enforcement actions and orders.

(a) *Termination of section 8(a) (12 U.S.C. 1818(a)) orders and agreements.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director, and to the appropriate regional director and deputy regional director, to terminate outstanding section 8(a) orders and agreements and to terminate actions and agreements which are pending pursuant to section 8(a) of the FDI Act when the depository institution is closed by a federal or state authority or merges into another institution.

(b) *Termination of section 8(a) (12 U.S.C. 1818(a)) notification to primary regulator issued by Board of Directors.* Authority is delegated to the Director and Deputy Director (DOS), and where confirmed in writing by the Director, to an associate director, and to the appropriate regional director and deputy regional director, to terminate notifications to primary regulator issued by the Board of Directors pursuant to section 8(a) of the FDI Act where the

respondent depository institution is in material compliance with such notification or for good cause shown.

(c) *Termination of section 8(a) (12 U.S.C. 1818(a)) notice of intent to terminate insured status.* In cases where the Board of Directors has issued a notice of intent to terminate insured status pursuant to section 8(a) of the FDI Act, authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director, and to the appropriate regional director and deputy regional director, to terminate the actions pending pursuant to such notice of intent to terminate insured status where the respondent depository institution is in material compliance with the applicable notification to primary regulator or for good cause shown.

(d) *Sections 8(b) and 8(c)(12 U.S.C. 1818(b) and (c)) actions and orders.* (1) Authority is delegated to the Director and Deputy Director (DOS) and to the Director and Deputy Director (DCA), as appropriate and, where confirmed in writing by the appropriate Director, to an associate director, and to the appropriate regional director and deputy regional director, to terminate outstanding section 8(b) and section 8(c) orders and agreements and to terminate actions and agreements which are pending pursuant to sections 8(b) and 8(c) of the FDI Act when the depository institution is closed by a federal or state authority or merges into another institution. In cases where a joint order was issued by DOS and DCA, both Directors, or their Deputy Directors or associate directors, or the appropriate regional directors or deputy regional directors, must execute the order of termination.

(2) Authority is delegated to the Director and Deputy Director (DOS) and to the Director and Deputy Director (DCA), as appropriate, and where confirmed in writing by the appropriate Director, to an associate director, and to the appropriate regional director and deputy regional director, to terminate outstanding section 8(b) orders issued by the Board of Directors either where material compliance with the section 8(b) order has been achieved by the respondent depository institution or individual respondent or for good cause shown. In cases where an order issued by the Board of Directors addresses both safety and soundness and consumer compliance matters, both Directors or Deputy Director, or the designees of the Directors, must execute the order of termination.

(e) *Modification and termination of section 8(e) (12 U.S.C. 1818(e)) orders and actions.* Authority is delegated to the Director and Deputy Director (DOS) and the Director and Deputy Director (DCA), as appropriate, and where confirmed in writing by the appropriate Director, to an associate director, to modify or terminate outstanding section 8(e) orders and pending actions and to grant consent under section 8(e)(7)(B) of the Act (12 U.S.C. 1818(e)(7)(B)) for the modification or termination of an outstanding section 8(e) order issued by another Federal financial institution regulatory agency where:

(1) The respondent has demonstrated his or her fitness to participate in any manner in the conduct of the affairs of an insured depository institution; and

(2) The respondent has shown that his or her participation would not pose a risk to the institution's safety and soundness; and

(3) The respondent has proven that his or her participation would not erode public confidence in the institution.

(f) *Modification and termination of section 8(g) (12 U.S.C. 1818(g)) orders and actions.* Pursuant to section 8(j) of the FDI Act (12 U.S.C. 1818(j)), authority is delegated to the Director and Deputy Director (DOS) and the Director and Deputy Director (DCA), as appropriate, and where confirmed in writing by the appropriate Director, to an associate director, to approve requests for modifications or terminations of section 8(g) orders issued by either the Board of Directors or under delegated authority.

(g) *Other matters not specifically addressed.* For all outstanding or pending notices, actions, orders, directives and agreements not specifically addressed in this subpart, the delegations of authority contained in this subpart shall include the authority to modify or terminate any outstanding or pending notice, order, directive or agreement issued pursuant to delegated authority, as may be appropriate.

(h) *Termination of pending actions—general.* Any pending enforcement action may be dismissed or terminated by the Director or Deputy Director of DOS or DCA, as appropriate, at any time prior to the commencement of a hearing on the merits by an administrative law judge. Once a hearing on the merits has been convened by an administrative law judge, a pending enforcement action may be dismissed or terminated by stipulation or consent of the affected parties no later than 14 days after the administrative law judge has closed the record of the hearing. Only the FDIC Board of Directors may terminate or dismiss an enforcement action more than 14 days after the record has been closed by an administrative law judge.

(i) *Legal concurrence.* Any dismissals, modifications or terminations pursuant to this section shall be exercised only upon concurrent certification by the General Counsel or, where confirmed in writing by the General Counsel, by his or her designee, or, in cases where a regional director or deputy regional director acts under delegated authority, by the appropriate regional counsel, that the action taken is not inconsistent with the FDI Act.

§ 303.276 Enforcement of outstanding enforcement orders.

After consultation with the Director (DOS) or the Director (DCA), or a Deputy Director or an associate director, or the appropriate regional director or deputy regional director, as may be appropriate, the General Counsel or designee is authorized to initiate and prosecute any action to enforce any effective and outstanding order or temporary order issued under 12 U.S.C. 1817, 1818, 1820, 1828, 1829, 1831*l*, 1831*o*, 1972, or 3909, or any provision thereof, in the appropriate United States District Court.

§ 303.277 Compliance plans under section 39 of the FDI Act (12 U.S.C. 1831p–1) (standards for safety and soundness) and part 308 of this chapter.

(a) *Compliance plans.* Authority is delegated to the Director and Deputy Director (DOS), and where confirmed in writing by the Director, to an associate director, and to the appropriate regional director and deputy regional director, to accept, to reject, to require new or revised compliance plans, or to make any other determinations with respect to the implementation of compliance plans pursuant to subpart R of part 308 of this chapter.

(b) *Notices, orders, and other action.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director, to:

(1) Issue notices of intent to issue an order requiring the bank to correct a safety and soundness deficiency or to take or refrain from taking other actions pursuant to section 39 of the FDI Act (12 U.S.C. 1831p–1) and in accordance with the requirements contained in § 308.304(a)(1) of this chapter;

(2) Issue an order requiring the bank immediately to correct a safety and soundness deficiency or to take or refrain from taking other actions pursuant to section 39 of the FDI Act (12 U.S.C. 1831p–1) and in accordance with the requirements contained in § 308.304(a)(2) of this chapter; and

(3) Act on requests for modification or rescission of an order.

(c) *Legal concurrence—compliance plans.* The authority delegated under this section as to compliance plans shall be exercised only upon the concurrent certification by the General Counsel or, where confirmed in writing by the General Counsel, by his or her designee, or, in cases where a regional director or deputy regional director accepts, rejects or requires new or revised compliance plans or makes any other determinations with respect to compliance plans, by the appropriate regional counsel, that the action taken is not inconsistent with the FDI Act.

(d) *Legal concurrence—notices and orders.* The authority delegated under this section as to notices and orders shall be exercised only upon the concurrent certification by the General Counsel or, where confirmed in writing by the General Counsel, by his or her designee that the allegations contained in the notice of intent, if proven, constitute a basis for the issuance of a final order pursuant to section 39 of the FDI Act or that the issuance of a final order is not inconsistent with section 39 of the FDI Act or that the stipulated section 39 order is not inconsistent with section 39 of the FDI Act and is an order which has become final for purposes of enforcement pursuant to the FDI Act.

§ 303.278 Enforcement matters where authority is not delegated.

Without limiting the Board of Directors' authority, the Board of Directors has retained the authority to act upon the following enforcement matters:

(a) Notifications to primary regulator under section 8(a) of the FDI Act (12 U.S.C. 1818(a)) when the respondent bank's book capital is at or above 2 percent of total assets and adjusted Tier 1 capital is at or above 2 percent of adjusted part 325 total assets as defined in § 303.2(b);

(b) Orders terminating insured status under section 8(a) of the FDI Act (12 U.S.C. 1818(a));

(c) Cease-and-desist orders under section 8(b) of the FDI Act (12 U.S.C. 1818(b)) when the respondent depository institution or individual does not consent to the issuance of such orders;

(d) Temporary orders of suspension and prohibition under section 8(e) of the FDI Act (12 U.S.C. 1818(e));

(e) Orders of removal, suspension or prohibition from participation in the conduct of the affairs of an insured depository institution under section 8(e) of the FDI Act (12 U.S.C. 1818(e)) when the individual does not consent to the issuance of such orders;

(f) Orders of suspension or prohibition to an indicted director, officer or person participating in the conduct of the affairs of an insured depository institution and orders of removal or prohibition to a convicted director, officer or person participating in the conduct of the affairs of an insured depository institution under section 8(g) of the FDI Act (12 U.S.C. 1818(g)) when such director, officer or person does not consent to the suspension or removal;

(g) Final orders to pay civil money penalties where respondents do not consent to the assessment of civil money penalties and hearings have been held;

(h) Denials of requests for modifications or terminations of orders issued pursuant to section 8(g) of the FDI Act;

(i) Grants or denials of requests for reinstatement to office, whether or not an informal hearing has been requested, pursuant to § 308.203 of this chapter; and

(j) Grants or denials of requests for waivers of liability of commonly controlled insured depository institutions as to assessments under section 5(e) of the FDI Act (12 U.S.C. 1815(e)).

PART 333—EXTENSION OF CORPORATE POWERS

2. The authority citation for part 333 continues to read as follows:

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

3. Section 333.4 is amended by adding the word ''and'' at the end of paragraph (d)(2), by removing the words ''; and'' at the end of paragraph (d)(3) and adding a period in their place, by revising the last sentence of paragraph (a), removing paragraphs (b) and (d)(4), and redesignating paragraphs (c), (d), (e) and (f) as paragraphs (b), (c), (d) and (e) respectively, to read as follows:

§ 333.4 Conversions from mutual to stock form.

(a) * * * As provided in § 303.162 of this chapter, the Board of Directors of the FDIC may grant a waiver in writing from any requirement of this section for good cause shown.

* * * * *

PART 337—UNSAFE AND UNSOUND BANKING PRACTICES

4. The authority citation for part 337 is revised to read as follows:

Authority: 12 U.S.C. 375a(4), 375b, 1816, 1818(a), 1818(b), 1819, 1820(d)(10), 1821f, 1828(j)(2), 1831, 1831f–l.

5. Section 337.6 is amended by revising paragraph (a)(5)(iii), adding a sentence at the end of paragraph (c), removing paragraphs (d), (e), and (f) and redesignating paragraphs (g) and (h) as paragraphs (d) and (e), respectively, to read as follows:

§ 337.6 Brokered deposits.

(a) * * *

(5) * * *

(iii) Notwithstanding paragraph (a)(5)(ii) of this section, the term *deposit broker* includes any insured depository institution that is not well-capitalized, and any employee of any such insured depository institution, which engages, directly or indirectly, in the solicitation of deposits by offering rates of interest (with respect to such deposits) which are significantly higher than the prevailing rates of interest on deposits offered by other insured depository institutions in such depository institution's normal market area.

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(c) * * * For filing requirements, consult 12 CFR 303.243.

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PART 341—REGISTRATION OF SECURITIES TRANSFER AGENTS

6. The authority citation for part 341 continues to read as follows:

Authority: Secs. 2, 3, 17, 17A and 23(a), Securities Exchange Act of 1934, as amended (15 U.S.C. 78b, 78c, 78q, 78q–1 and 78w(a)).

7. Section 341.7 is added to read as follows:

§ 341.7 Delegation of authority.

(a) Except as provided in paragraph (b) of this section, authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to act on disclosure matters under and pursuant to sections 17 and 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78).

(b) Authority to act on disclosure matters is retained by the Board of Directors when such matters involve exemption from registration requirements pursuant to section 17A(c)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1(c)(1)).

PART 347—INTERNATIONAL BANKING

8. The authority to citation for part 347 continues to read as follows:

Authority: 12 U.S.C. 1813, 1815, 1817, 1819, 1820, 1828, 3103, 3104, 3105, 3108; Title IX, Pub. L. 98–181, 97 Stat. 1153.

Subpart D [Removed]

9. In part 347, subpart D is removed.

PART 359—GOLDEN PARACHUTE AND INDEMNIFICATION PAYMENTS

10. The authority citation for part 359 continues to read as follows:

Authority: 12 U.S.C. 1828(k).

11. Section 359.6 is revised to read as follows:

§ 359.6 Filing instructions.

Requests to make excess nondiscriminatory severance plan payments pursuant to § 359.1(f)(2)(v) and golden parachute payments permitted by § 359.4 shall be submitted in writing to the appropriate regional director (DOS). For filing requirements, consult 12 CFR 303.244. In the event that the consent of the institution's primary federal regulator is required in addition to that of the FDIC, the requesting party shall submit a copy of its letter to the FDIC to the institution's primary federal regulator. In the case of national banks, such written requests shall be submitted to the OCC. In the case of state member banks and bank holding companies, such written requests shall be submitted to the Federal Reserve district bank where the institution or holding company, respectively, is located. In the case of savings associations and savings association holding companies, such written requests shall be submitted to the OTS regional office where the institution or holding company, respectively, is located. In cases where only the prior consent of the institution's primary federal regulator is required and that agency is not the FDIC, a written request satisfying the requirements of this section shall be submitted to the primary federal regulator as described in this section.

By order of the Board of Directors.

Dated at Washington, D.C., this 7th day of July, 1998.

Federal Deposit Insurance Corporation.

James LaPierre,

Deputy Executive Secretary.

[FR Doc. 98–21487 Filed 8–19–98; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Applications for Deposit Insurance

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Statement of policy.

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, the FDIC is revising its Statement of Policy on ''Applications for Deposit Insurance.'' These revisions include changes to the FDIC's policies regarding initial capitalization when a *de novo* bank is organized by certain well managed and well capitalized holding companies. Policies regarding stock benefit plans are amended and regional directors are given more discretion to act under delegated authority. Changes are also made to provide guidance for proposed depository institutions which would be owned by domestic governmental units, to eliminate outdated information, and to reflect current polices and practices that have not previously been incorporated into the Statement of Policy.

EFFECTIVE DATE: October 1, 1998.

FOR FURTHER INFORMATION CONTACT: Christie A. Sciacca, Associate Director, Division of Bank Supervision, (202) 898–3671; Jesse G. Snyder, Assistant Director, Division of Supervision, (202) 898–6915; Mark S. Schmidt, Associate Director, Division of Supervision, (202) 898–6918; John M. Lane, Assistant Director, Division of Supervision, (202) 898–6771; Marc J. Goldstrom, Counsel, Regulation and Legislation Section, Legal Division, (202) 898–8807; or Mark Mellon, Counsel, Regulation and Legislation Section, Legal Division, (202) 898–3854, FDIC, 550 17th Street, N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION: This Statement of Policy is a revision of the FDIC's Statement of Policy Regarding Applications for Deposit Insurance adopted on April 13, 1992 (57 FR 12822) (the ''1992 Statement of Policy''). Section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRIA) (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. Pursuant to this statute, the FDIC published a proposed Statement of Policy on ''Applications for Deposit Insurance'' in the **Federal Register** on October 9, 1997 (62 FR 52869). The proposed Statement of Policy was published in conjunction with a notice of proposed rulemaking in the **Federal Register** on October 9, 1997 (62 FR 52810) which would amend 12 CFR part 303 (and other FDIC regulations), including subpart B, concerning the procedures for an applicant to follow in applying for deposit insurance. In connection with the publication of this Statement of Policy, the FDIC has published a final rule amending part 303 (and other FDIC regulations) elsewhere in today's **Federal Register**.

Eleven commenters submitted comments in response to the proposal. The FDIC has carefully considered these comments. The comments are summarized below in the discussion of significant changes to the Statement of Policy.

Initial Offering of Stock

The proposed Statement of Policy provided that all stock of a particular class in the initial offering should be sold at the same price and have the same voting rights. Insiders are generally not permitted to acquire a separate class of stock with greater voting rights. Moreover, insiders should not be offered stock at a price more favorable than the price for other subscribers.

One commenter objected to these provisions on the basis that potential investors are adequately protected by the disclosure provisions of the federal securities laws and the ''fairness'' provisions of state securities laws. Moreover, the commenter argued that such unnecessary restrictions discourage investment in new depository institutions.

The FDIC continues to believe that these restrictions are appropriate. Price disparities or greater voting rights provide insiders with a means to gain control disproportionate to their investments. Furthermore, allowing insiders to purchase stock at a discount provides an immediate appreciation of the insiders' investments resulting from the mere establishment of the depository institution without regard to the institution's financial success and without greater risk to the insider than that borne by other investors. Such arrangements may encourage the formation of depository institutions for speculative purposes. The Statement of Policy specifically discusses the use of options as a means of compensating insiders for money placed at risk during the organization phase, as compensation for services rendered, and as a reward for contributions to the success of the enterprise. Such arrangements differ significantly from ''cheap stock'' in that an individual will benefit from options granted with a strike price of fair market value at the time of issuance only if the institution is financially successful. Therefore, these provisions have been adopted as proposed.

Wholly Owned Subsidiary of a Holding Company

The 1992 Statement of Policy required an initial capitalization in an amount that is sufficient to provide at least an 8% Tier 1 leverage capital to total assets ratio at the end of the third year of operation. The proposed Statement of Policy provided that, in certain circumstances, the amount of the initial capital injection for a *de novo* institution may be reduced to a minimum of $2 million or an amount that is sufficient to provide an 8% Tier 1 leverage capital ratio at the end of the first year of operation, or sufficient to meet any minimum standards established by the chartering authority, whichever is greater. This option would be available when the proposed depository institution is to be formed as a wholly owned subsidiary of a holding company which meets the standards established for an ''eligible holding company,'' as set forth in § 303.22 of the FDIC's regulations. The holding company would also be required to provide a written commitment to maintain the proposed depository institution's Tier 1 leverage capital ratio at no less than 8% throughout the first three years of operation. This revision would allow a well-managed holding company to provide less initial capital than would have been required under the former standard. This change is considered appropriate in recognition of the FDIC's ability to reasonably quantify the financial capacity of the parent organization, and to allow the holding company to more efficiently allocate the resources of the entire organization. This amendment will permit the appropriate FDIC regional director (DOS) to act on proposals that contain these provisions when the other factors necessary for delegated authority have been met.

One commenter suggested that the required capital level for a *de novo* institution be well capitalized, rather than an 8% Tier 1 leverage capital ratio, with the agency retaining authority to require a higher amount. The FDIC believes that a *de novo* institution requires a higher level of capitalization during its formative years than does a

mature institution with an established record of sound performance. Accordingly, the FDIC has not adopted the commenter's suggestion and these provisions have been adopted as proposed.

Operating Insured Offices

In certain instances, the proposal allowed the applicant to request that the benchmark for evaluating the adequacy of capital be such that the proposed depository institution would be classified as well capitalized, as defined by its primary federal regulator. This option would be available when the proposal involves the formation of a depository institution through the acquisition of an existing insured operating office (or offices). Criteria established for this lower initial capital benchmark are that the acquisition involves substantially all of the assets and liabilities of the operating insured office, that the applicant provides reasonable evidence that the *de novo* institution's operations will be stabilized at inception, and that the proponent for the applicant is either an eligible holding company or an established banking group. The proposed Statement of Policy used an identified chain banking group as an example of one type of ''established banking group.'' The term also is intended to cover a group of individuals who have served as directors or officers of an operating insured depository institution. For either a chain banking group or a group of individuals to be considered an established group, the association must be in existence for at least three years. This provision had been added in recognition that deposit insurance for a depository institution being established from operating offices does not present the same risks to the insurance funds as does the chartering of a true *de novo* institution. This provision sought to remove capital requirement inequities that may have existed under prior procedures with respect to certain corporate reorganization activities. This amendment would also permit the appropriate FDIC regional director (DOS) to act on proposals that contain these provisions when the other factors necessary for delegated authority have been met. Two commenters stated that they did not object to this provision and it has been adopted without change from the proposal.

Stock Financing by Directors, Officers, and 10% Shareholders

The proposal revised guidelines for borrowing limitations by directors, officers, and 10% shareholders to finance their purchases of stock in the proposed institution. The 1992 Statement of Policy provided that direct or indirect borrowings by an individual insider of more than 75% of the purchase price of the stock subscribed, or more than 50% of the purchase price of the aggregate stock subscribed by directors, officers, and 10% shareholders as a group, is presumed to be excessive. The 1992 Statement of Policy has been amended by deleting the statement that borrowing arrangements in excess of the referenced percentage limits will ordinarily be presumed to be excessive; however, borrowing arrangements would still be carefully reviewed. The burden of providing appropriate information supporting borrowing arrangements will remain with the affected insiders. This amendment would permit the appropriate FDIC regional director (DOS) to evaluate all insider borrowing arrangements on their own merits, without having a set limit for those that will be considered excessive or otherwise inappropriate. This amendment also would permit the appropriate FDIC regional director (DOS) to act on the proposal when insider borrowing arrangements are not detrimental to the institution if the other factors necessary for delegated authority have also been met.

Similarly, borrowings by a holding company to capitalize a proposed depository institution would be evaluated in the context of the holding company's consolidated operations, rather than basing such evaluation on a 50% limit of the total initial capital of the proposed depository institution. The borrowing arrangement would need to meet any leverage guidelines established by the holding company's primary federal regulator and be reasonable. This amendment will permit the appropriate FDIC regional director (DOS) to act on a proposal that involves holding company debt financing of more than 50% when the other factors necessary for delegated authority have been met. Three commenters specifically endorsed this portion of the proposal and the FDIC adopts these provisions as proposed.

Stock Benefit Plans

The proposed Statement of Policy recognized that it is becoming increasingly common for organizers of *de novo* depository institutions to propose stock benefit plans. Such plans often include not only active officers, but also directors and, in some cases, incorporators or organizers (collectively, ''incorporators''). The proposed Statement of Policy provided for participation of active officers, outside directors, and incorporators in stock benefit plans.

The proposal provided that stock benefit plans must be fully disclosed to all potential subscribers and a description of any such plans must be included in an application for deposit insurance. Stock benefit plans should encourage the continued involvement of the participants and serve as an incentive for the successful operation of the institution. The proposed Statement of Policy further indicated that stock benefit plans should contain no feature that would encourage speculative or high risk activities, or serve as an obstacle to or otherwise impede the sale of additional stock to the public.

Guidelines were included in the proposed Statement of Policy as standards to be used in evaluating the appropriateness of stock benefit plans. These guidelines were intended to provide the applicant with basic guidance and to promote consistency within the FDIC itself. Some concepts were retained from the 1992 Statement of Policy, such as a maximum 10-year limit on options. The FDIC's practice of requiring that the exercise price be established at no less than fair market value at the time of the grant was explicitly stated. New concepts were added which emphasize that the plan should encourage the continued involvement of the proposed management. A vesting period covering the first three years of operation would be appropriate to assure continued involvement. A three-year vesting period was selected based on the FDIC's experience that a three-year period provides reasonable assurance that the business plan will have been fully implemented and stabilized operations achieved. An additional requirement was that a stock benefit plan provide for an exercise or forfeiture clause which may be invoked by the depository institution's primary federal regulator in the event the capital falls below minimum requirements. This was considered necessary to ensure that the dilutive effects of outstanding stock options will not make it unduly difficult for institutions in need of additional capital to increase capitalization in a timely manner.

The proposed Statement of Policy indicated that the FDIC will separately review stock benefit plans established to compensate incorporators who have placed personal funds at risk to finance the organization of the institution or who have provided professional services in conjunction with the organization. Since these plans were envisioned as compensating

incorporators for services already rendered, vesting or restrictions on transferability were not required.

The proposed Statement of Policy also provided that stock appreciation rights and similar plans that involve a cash payment based directly on the market value of the depository institution's stock are specifically identified as objectionable. These types of plans can result in an expense which would reduce the depository institution's capital. Such compensation plans cannot be quantified in relation to the capital adequacy factor and could be detrimental to the overall capital of a depository institution, particularly in its formative years. The proposed Statement of Policy also provided that stock benefit plans offered by de novo holding companies in conjunction of a new depository institution will be reviewed in the same manner as if the plan were being established by the proposed depository institution.

The FDIC received five comments in response to the stock benefit plan provisions of the Statement of Policy. The comments were generally supportive of the changes. However, three commenters raised specific concerns.

Stock appreciation rights and similar plans that involve a cash payment based directly on the market value of the depository institution's stock were deemed to be unacceptable. Two of the commenters questioned this prohibition. The FDIC continues to believe that these types of plans tend to reduce the depository institution's capital in contrast to option plans which infuse capital into the institution. This is particularly objectionable in the formative years of a new depository institution when there is often a need to preserve capital during a period of rapid growth and operating losses. One commenter suggested that there could be a requirement to reinvest all cash received in new stock. The FDIC believes this would be the functional equivalent of a grant of stock and has not adopted the suggestion or changed the proposal with respect to this issue.

One commenter questioned the FDIC's authority to impose the criteria concerning stock benefit plans upon a proposed *de novo* holding company. The FDIC believes it has such authority under section 6 of the Act, 12 U.S.C. 1816, which authorizes the FDIC to consider the general character and fitness of the management of the depository institution. Good management will not commit the depository institution, directly or indirectly, to excessive compensation of insiders. Many *de novo* institutions are organized as subsidiaries of holding companies whose only substantive function is to own the stock of the proposed institution. Without the ability to set standards for stock benefit plans sponsored by *de novo* holding companies, the FDIC's requirements concerning stock benefit plans could easily be avoided by organizing a holding company. The FDIC has adopted this aspect of the proposal without change.

The proposed Statement of Policy did not place limits on the volume of options or warrants that could be issued to directors, officers or incorporators. The Statement of Policy contemplated the FDIC reviewing the volume of options or warrants granted on a case-by-case basis. The FDIC received no comments on this matter. However, since the publication of the proposed Statement of Policy, the FDIC has received a number of applications for deposit insurance contemplating stock benefit plans in which the volume of options granted to organizers went well beyond what the FDIC believed was reasonable. In light of this recent experience, the FDIC now believes that guidance should be provided regarding how the FDIC will determine if the volume of options or warrants granted is acceptable.

The FDIC has now adopted the following standards in the Statement of Policy for evaluating the volume of options or warrants to be granted:

- Stock benefit plans granted to active officers and directors will be reviewed as part of the total compensation package. The Statement of Policy does not place definite limits on stock benefit plans for such individuals.
- In reviewing stock benefit plans granted to incorporators, FDIC will review the individual's financial commitment, time, expertise, and continuing involvement in the management of the proposed financial institution. Plans to compensate incorporators that provide for more than one option or warrant for each share subscribed will generally be considered excessive. It is further expected that incorporators granted options or warrants at or near this level will actively participate in the management of the depository institution as an executive officer or director. On a case-by-case basis, the FDIC may not object to additional options being granted to an incorporator who will also be a senior executive officer.
- In those limited situations where individuals who substantially contribute to the organization of a new depository institution do not intend to serve as an active officer or director after the institution opens for business, the FDIC will generally not object to such individuals receiving stock options or warrants under certain circumstances. Specifically, organizers who agree to accept shares of bank stock as payment for funds placed at risk during the organization phase or in payment for professional services rendered may receive options or warrants of up to an equal number of shares received. When continuing service is not contemplated, the FDIC will not require vesting or restrictions on transferability, but will review the duration of the rights, exercise price, and exercise or forfeiture clauses.

It is believed that these standards allow incorporators of *de novo* institutions flexibility to design reasonable compensation programs to reward those who have placed money at risk and to incent directors and officers to promote the best interests of the institution, consistent with safe and sound banking practices.

Applicants Owned by Domestic Governmental Units

The FDIC specifically solicited comment in the proposal on whether deposit insurance should be conferred upon certain applicants that are owned or controlled by public entities, specifically domestic governmental units. The FDIC stated in the proposal that it was concerned that due to their ownership by a governmental unit, such depository institutions presented unique supervisory concerns that do not exist with privately owned depository institutions. The FDIC noted its uncertainty about such an institution's ability to operate independently of the political process, the institution's ability and willingness to raise capital in the equity markets, management stability and business purpose. The FDIC stated that in light of these concerns, the agency would review an application for deposit insurance filed by a domestic governmental unit very closely and that the FDIC was unlikely to resolve favorably all of the statutory factors which must be considered under the FDIC's implementing statute.[1] See 62 FR at 52871 (October 9, 1997).

[1] A distinction was made, however, for banks owned by foreign governments and their subdivisions and banks owned and controlled by Native American tribes or bands. Banks that are owned by foreign governments and their subdivisions are entitled to ''national treatment.'' (*See* International Banking Act of 1978, 12 U.S.C. 3101 *et seq.*). National treatment requires that all foreign depository institutions, whether publicly- or privately-owned, receive consistent treatment with domestic entities when operating in the United States. This includes eligibility for deposit insurance which is often a condition of either a

The FDIC received seven comments in response. Three were from organizations (both public and private) that provide low- and moderate-income housing in various areas of the country; two were from banking trade associations; one was from the trade association for local housing finance agencies; and one was from a member of the U.S. House of Representatives. Five commenters were opposed to the addition of language to the statement of policy concerning deposit insurance applications from a domestic governmental unit. The two other commenters agreed that the FDIC has legitimate concerns about providing deposit insurance to depository institutions owned by governmental units, but argued that it would still be best to have one application procedure for all applicants.

One of the most common criticisms of the positions taken in the preamble to the proposal is that it amounts to ''effective preclusion of ownership and operation of a depository institution by a public entity.'' The commenters further argued that a bank owned by a governmental unit seeking deposit insurance from the FDIC presents the same issues as any other applicant for deposit insurance. They noted that the criteria for the review of a deposit insurance application are specified by the FDIC's implementing statute and that the FDIC may not exceed those criteria or apply them differently to an applicant owned by a governmental unit.

Two commenters agreed with the FDIC that applications from depository institutions owned by public entities pose special concerns and should be carefully scrutinized. They recommended that notices of such applications be published in the **Federal Register** to ensure that a broad audience has the opportunity to comment on these applications.

In response to the comments on the positions taken in the preamble to the proposal, the FDIC emphasizes that it has no intention of exceeding the enumerated statutory criteria for evaluation of a deposit insurance application, nor does the agency propose to apply different standards among deposit insurance applicants. However, the FDIC notes that because of their ultimate control by the political process, such institutions could raise special concerns relating to management stability, their business purpose, and their ability and willingness to raise capital (particularly in the form of true equity rather than governmental transfers). On the other hand, such institutions may be particularly likely to meet the convenience and needs of their local community, particularly if the local community is currently un- or under-served by depository institutions. In view of such considerations and the policy issues they embody, the FDIC will closely evaluate such applications to ensure that the required statutory factors are met.

With respect to the recommendation from commenters that notices of deposit insurance applications from institutions which would be owned by governmental entities be published in the **Federal Register** for comment, the FDIC notes that all applications which are subject to the requirements of the CRA (this includes deposit insurance applications) will be listed on the FDIC's Internet home page. In addition, the FDIC is considering whether to specifically solicit comment on such matters as insurance applications from institutions which would be owned by governmental entities, either on the Internet or by publication in the **Federal Register**.

Other Changes

Other changes from the 1992 Statement of Policy included in the proposal are as follows:

- In conjunction with the FDIC's recent rescission of its Statement of Policy regarding Applications, Legal Fees, and Other Expenses (62 FR 15479, April 1, 1997), the proposal included comments relative to fees incident to an application.
- The proposed Statement of Policy replaced the requirement that ''no dividends are to be paid until all initial losses have been recaptured . . .'' with ''during the first three years of operation, cash dividends shall be paid only from net operating income (after tax) . . .'' The proposed Statement of Policy also retained the requirement that no dividends be paid until an appropriate allowance for loan and lease losses has been established and overall capital is adequate. This amendment was designed to provide reasonable accommodation to possible Subchapter S corporation applicants.
- The 1992 Statement of Policy was revised to authorize the appropriate FDIC regional director (DOS) to waive submission of financial information for proposed officers and directors when the proposed depository institution is being formed as a wholly owned subsidiary of a holding company. This was proposed in recognition that, when the proposed depository institution is being formed as a wholly owned subsidiary of a holding company, personal financial information may not be meaningful.
- The 1992 Statement of Policy was also amended by deleting the statement that the chief executive officer is expected to be a qualified and experienced lending officer. It is expected that a qualified lending officer will be provided for in the management structure; however, the chief executive officer need not be that person.
- The proposal deleted the requirement that a majority of the proposed directors will reside within, or have significant business interests within 100 miles of the proposed depository institution. While the FDIC encourages local involvement in proposed depository institutions, a specific residency requirement was not considered necessary.
- The 1992 Statement of Policy was also revised to require that the applicant commit the depository institution to obtain an audit by an independent public accountant annually for only a three-year period, rather than the first five years.

No commenters objected to these provisions and they have been adopted as proposed.

An additional minor change, not included in the proposal, has been added to the Statement of Policy. Under the discussion of the statutory factor ''Consistency of Corporate Powers with the Purposes of the Act'' a statement has been added which indicates that generally the FDIC will presume that a proposed national bank's or federal savings association's corporate powers are consistent with the purposes of the Act. The 1992 Statement of Policy and the proposal only addressed this statutory factor as it applied to insured state banks and state savings associations. The added provisions clarify the FDIC's position with respect to national banks and federal savings associations.

This Statement of Policy is applicable only to applications for deposit

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state or federal charter. Native American tribes or bands that own or control depository institutions can also be distinguished from a conventional governmental unit that seeks to open or acquire a depository institution. This is because under federal law, Native American tribes and bands function as both governmental and economic, for-profit entities. The Indian Reorganization Act of 1934 (the IRA) (25 U.S.C. 461 *et seq.*) authorizes not only the creation of tribal governments (see section 16 of the IRA, 12 U.S.C. 476), but also provides for the creation of tribal business corporations pursuant to section 17 of the IRA (25 U.S.C. 477). At the same time, however, a tribal government organized under section 16 of the IRA is not precluded from engaging in business activities. See *S. Unique Ltd.* v. *Gila River Pima-Maricopa Indian Community,* 138 Ariz. 384, 674 P.2d 1376 (Ct. App. 1984). These legal and policy considerations unique to these two categories of insurance applicants outweigh any concerns that the FDIC may have regarding the ownership of such depository institutions by governmental entities.

insurance, and it is not intended to establish policy for other applications or actions undertaken by established operating insured depository institutions.

The Board of Directors of the FDIC has adopted the following Statement of Policy on Applications for Deposit Insurance:

FDIC Statement of Policy on Applications for Deposit Insurance

Introduction

The Board of Directors of the FDIC is charged by statute with the responsibility of acting on applications for federal deposit insurance by all depository institutions [1] including any national bank, district bank, state bank, federal savings association, state savings association, savings bank, or trust company. In addition, the Board of Directors also will act on applications for federal deposit insurance by an industrial bank (or similar depository institution which the Board of Directors finds to be operating substantially in the same manner as an industrial bank), or any other depository institution which is engaged in the business of receiving deposits, other than trust funds.

An insured depository institution which wishes to continue its insured status after withdrawing from the Federal Reserve System, or when converting from a mutual to a stock form of ownership by the chartering of an interim savings association under the provisions of section 10(o) of the Home Owners Loan Act, also must file an application with the FDIC for deposit insurance.

Procedures

Forms and instructions for applying for deposit insurance may be obtained from any regional office of the FDIC Division of Supervision (DOS). Completed applications should be filed with the appropriate regional office as that term is defined in § 303.2(g) of the FDIC's rules and regulations. Organizers and incorporators (collectively, ''incorporators'') of proposed new depository institutions should file their applications with the FDIC and the appropriate chartering authority at the same time. Information provided to the chartering authority that is also needed as part of the deposit insurance application may be provided to the FDIC by appending a copy of the information to the FDIC application. Use of the FDIC application form is optional; however, the material submitted to the FDIC must contain all information requested in the FDIC application form, unless the FDIC otherwise indicates. In addition, all incorporators must sign and submit the signature page of the FDIC's deposit insurance application form, even if the application itself is not being used. It is strongly recommended that a representative(s) of the organizing group meet with the chartering authority and the FDIC prior to filing an application to reach an understanding of the information requirements of each agency. This practice typically facilitates processing and eliminate unnecessary delays. Information requirements may not be as extensive for applications sponsored by existing holding companies or other well established banking groups. The FDIC may take final action prior to final action by other regulatory authorities in cases in which the FDIC has determined that there is no material disagreement on the action to be taken.

The procedures governing the administrative processing of an application for deposit insurance are contained in part 303, subpart B, of the FDIC's rules and regulations (12 CFR part 303). Processing of an application will not commence until the application is deemed substantially complete. An incomplete application may be returned to the applicant. The applicant must satisfy all terms of a conditional approval prior to deposit insurance becoming effective.

These policies apply to all proposed *de novo* depository institutions and operating institutions applying for deposit insurance, with the exception of applications submitted for the sole purpose of acquiring assets and assuming liabilities of an insured institution in default. Policies are modified in those situations to reflect the urgent nature of the transaction. Guidance for those situations is contained in a separate section of this Policy Statement.

Subpart B of part 303 contains special filing and processing procedures for a state member bank which seeks to continue its insured status upon termination of membership in the Federal Reserve System and for interim institutions chartered to facilitate mergers.

Proposed Depository Institutions

In considering applications for deposit insurance for a proposed depository institution, the FDIC must evaluate each application in relation to the factors prescribed in section 6 of the Federal Deposit Insurance Act (hereafter the Act) (12 U.S.C. 1816). Those factors are:

- The financial history and condition of the depository institution;
- The adequacy of its capital structure;
- Its future earnings prospects;
- The general character and fitness of its management;
- The risk presented by such depository institution to the deposit insurance fund;
- The convenience and needs of the community to be served by the depository institution; and
- Whether its corporate powers are consistent with the purposes of the Act.

In general, the applicant will receive deposit insurance if all of these statutory factors plus the considerations required by the National Historic Preservation Act and the National Environmental Policy Act of 1969 are resolved favorably. Additional guidance regarding the National Historic Preservation Act and the National Environmental Policy Act may be found in the respective FDIC Statements of Policy for each of these statutes.

If the proposal contemplates the simultaneous establishment of a holding company, the application should disclose and discuss the proposed activities of the parent holding company, as well as those of the proposed depository institution.

Where the proposed depository institution will be a subsidiary of an existing bank or thrift holding company, the FDIC will consider the financial and managerial resources of the parent organization in assessing the overall proposal and in evaluating the statutory factors prescribed in section 6 of the Act. In such circumstances, the application for deposit insurance should contain a copy of any information submitted to the holding company's primary federal regulator. Subpart B of part 303 of the FDIC's regulations (12 CFR 303.20–303.27) discusses certain expedited procedures that may be available to eligible depository institutions or eligible holding

[1] Certain exceptions to the statutory requirement that deposit insurance for all depository institutions be acted on by the FDIC are identified in section 5 of the Act, 12 U.S.C 1815. For example, federally-chartered interim institutions are deemed to be insured depository institutions upon the issuance of the institution's charter by the appropriate federal agency. Under section 5(a)(2) a federally-chartered interim institution is a federally-chartered depository institution that will not open for business. An application for federal deposit insurance generally is not required for such an institution even if the federal interim institution is the surviving charter of a merger with another insured depository institution. *See* 12 CFR 303.62(b)(2) and the FDIC's Statement of Policy on Bank Merger Transactions (section 4.2). Additionally, any depository institution whose insured status is continued pursuant to section 4 of the Federal Deposit Insurance Act is not required to apply to continue its insured status. 12 U.S.C. 1815, 1814.

companies (as those terms are defined in the regulation).

The FDIC may conduct examinations and/or investigations to develop essential information with respect to deposit insurance applications. The appropriate regional director (DOS) will determine the need to conduct an investigation and its scope. Every effort will be made to coordinate any FDIC investigation with any investigations conducted by other regulators.

The FDIC has formulated guidelines for evaluating deposit insurance applications which are designed to ease administration, prevent arbitrary judgment, and assure uniform and fair treatment of all applicants. A discussion of these guidelines follows.

Statutory Factors

1. Financial History and Condition

Proposed and newly organized depository institutions have no financial history to serve as a basis for determining qualifications for deposit insurance. Thus, the primary areas of consideration under this statutory factor are the ability of proponents to provide financial support to the new institution, investment in fixed assets, including lease obligations, and insider transactions. Lease transactions shall be reported in accordance with Financial Accounting Standards Board Statement 13 (Accounting for Leases). Applicants are expected to provide procedures, security devices, and safeguards at least equivalent to the minimums specified in the Bank Protection Act of 1968 (12 U.S.C. 1881–1884).

(a) *Investment in fixed assets and leases*—The applicant's aggregate direct and indirect fixed asset investment, including lease obligations, must be reasonable in relation to its projected earnings capacity, capital, and other pertinent matters of consideration. Applicants are cautioned against purchasing any fixed assets or entering into any noncancelable construction contracts, leases, or other binding arrangements related to the proposal unless and until the FDIC approves the application.

(b) *Insider transactions*—Any financial arrangement or transaction involving the applicant and an insider(s) should be documented by the applicant to demonstrate that: (1) the proposed transaction with insiders is made on substantially the same terms as those prevailing at the time for comparable transactions with non-insiders, and does not involve more than normal risk or present other unfavorable features to the applicant depository institution; and (2) the proposed transaction must be approved in advance by a majority of the depository institution's incorporators. In addition, full disclosure of any arrangements with an insider must be made to all proposed directors and prospective shareholders. An insider means a person who is proposed to be a director, officer, or incorporator of an applicant; a shareholder who directly or indirectly controls 10% or more of a class of the applicant's outstanding voting stock; or the associates or interests of any such person.

2. Adequacy of the Capital Structure

Normally, the initial capital of a proposed depository institution should be sufficient to provide a Tier 1 capital to assets leverage ratio (as defined in the appropriate capital regulation of the institution's primary federal regulator) of not less than 8.0% throughout the first three years of operation. In addition, the depository institution must maintain an adequate allowance for loan and lease losses.

The adequacy of the capital structure of a newly organized depository institution is closely related to its deposit volume, fixed asset investment and the anticipated future growth in liabilities. Deposit projections made by the applicant must, therefore, be fully supported and documented. Projections should be based on established growth patterns in the specific market, and initial capitalization should be provided accordingly. Special purpose depository institutions (such as credit card banks) should provide projections based on the type of business to be conducted and the potential for growth of that business. Initial capital should normally be in excess of $2 million net of any pre-opening expenses that will be charged to the institution's capital after it commences business.

(a) *Initial offering of stock*—All stock of a particular class in the initial offering should be sold at the same price, and have the same voting rights. Proposals which allow the insiders to acquire a separate class of stock with greater voting rights are generally unacceptable. Insiders should not be offered stock at a price more favorable than the price for other subscribers. Price disparities provide insiders with a means to gain control disproportionate to their investments.

When securities are sold to the public, the disclosure of all material facts is essential. The FDIC's Statement of Policy regarding use of Offering Circulars in connection with Public Distribution of Bank Securities (61 FR 46808, September 5, 1996) provides additional guidance. A copy of the offering circular prepared by the applicant, the stock solicitation material and the subscription agreement should be submitted to the FDIC when they become available.

(b) *Wholly owned subsidiary of a holding company*—If the applicant is being established as a wholly owned subsidiary of an eligible holding company (as defined in part 303, subpart B), the FDIC will consider the financial resources of the parent organization as a factor in assessing the adequacy of the proposed initial capital injection. In such cases, the appropriate regional director (DOS) may find favorably with respect to the adequacy of capital factor, when the initial capital injection is sufficient to provide for a Tier 1 leverage capital ratio of at least 8% at the end of the first year of operation, based on a realistic business plan, or the initial capital injection meets the $2 million minimum capital standard set forth in this Statement of Policy, or any minimum standards established by the chartering authority, whichever is greater. The holding company shall also provide a written commitment to maintain the proposed institution's Tier 1 leverage capital ratio at no less than 8 % throughout the first three years of operation.

(c) *Operating insured offices*—If the proposal involves the acquisition of an insured operating office or offices, the applicant may request that the benchmark for evaluating the adequacy of capital be an amount necessary for the newly chartered institution to be classified as well capitalized, as defined by its primary federal regulator. In such cases, the appropriate regional director (DOS) may find favorably with respect to the capital factor based on a favorable finding with respect to the following:

- There is a realistic three-year business plan which evidences stabilized operations at inception;
- The proposal involves substantially all assets and deposits attributable to the respective insured operating office(s); and
- The proponent is either an eligible holding company (as defined in part 303, subpart B) or is a banking group that has, as determined by the FDIC, demonstrated its ability to successfully manage an insured depository institution. (A qualified banking group should have an established association of at least three years. A chain banking group which is recognized as such by the FDIC is one type of banking group that is contemplated in this paragraph.)

(d) *Stock financing by proposed officers, directors, and 10% shareholders*—Financing arrangements by proposed officers, directors, and 10%

shareholders of their investments in stock of the proposed depository institution will also be carefully reviewed. Such financing will be considered acceptable only if the party financing the stock can demonstrate the ability to service the debt without reliance on dividends or other forms of compensation from the applicant. When stock financing arrangements of proposed officers, directors, and 10% shareholders are anticipated, information should be submitted with the application demonstrating that adequate alternative independent sources of debt servicing are available. Direct or indirect financing by proposed officers, directors, and 10% shareholders of more than 75% of the purchase price of the stock subscribed by any individual, or more than 50% of the purchase price of the aggregate stock subscribed by the proposed officers, directors, and 10% shareholders as a group, will require supporting justification in the application regarding the reason that the financing arrangements should be considered acceptable. If the proposed financing arrangements are not considered appropriate, the FDIC may find unfavorably on the adequacy of the capital structure.

When the proposed depository institution is being established as a subsidiary of an existing holding company, the funding source being utilized by the holding company for its capital contribution will be evaluated in the context of the holding company's consolidated operations. In such cases, the holding company's proposed leverage must be in accordance with the guidelines of its primary federal regulator.

Loans made to purchase the stock of the proposed institution are not to be refinanced by the newly established institution. Deposits or other funds of the institution at correspondent banks are not to be used as compensating balances for loans to insiders. During the first three years of operation, cash dividends shall be paid only from net operating income, and shall not be paid until an appropriate allowance for loan and lease losses has been established and overall capital is adequate.

3. Future Earnings Prospects

Before approving an application for deposit insurance, the FDIC must have reasonable assurance that the new institution can be operated profitably. Therefore, the incorporators will need to demonstrate through realistic and supportable estimates that, within a reasonable period (normally three years), the earnings of the applicant will be sufficient to provide an adequate profit.

The applicant must also maintain its books and records in accordance with the principles of accrual accounting.

4. General Character and Fitness of the Management

To satisfy this factor, the evidence must support a management rating which, in an operating institution, would be equivalent to a rating of 2 or better under the Uniform Financial Institution Rating System.[2] Since in most instances the management of a proposed depository institution will not have an operating record, the individual directors and officers will be evaluated largely on the basis of the following:

- Financial institution and other business experience;
- Duties and responsibilities in the proposed depository institution;
- Personal and professional financial responsibility;
- Reputation for honesty and integrity; and
- Familiarity with the economy, financial needs, and general character of the community in which the depository institution will operate.

All proposed depository institutions shall provide at least a five member board of directors. The identity and qualifications of the proposed full-time chief executive officer should be made known to the FDIC as soon as possible, preferably when the application is filed with the appropriate FDIC regional director (DOS). Prior to the opening of the institution, proponents must advise the FDIC in writing of any change in the directorate, senior active management, or a change in the ownership of stock which would result in a shareholder owning 10% or more of the total shares of either the depository institution or its holding company.

(a) *Fees and expenses*—The commitment to pay or payment of unreasonable or excessive fees and other expenses incident to an application will reflect adversely upon the management of the applicant institution. Fees and other organizational expenses incurred or committed to should be fully supported.

Expenses for professional or other services rendered by insiders will receive special review for any indication of self-dealing to the detriment of the institution and its other shareholders. As a matter of practice, the FDIC expects full disclosure to all directors and shareholders of any arrangement with an insider.

In no case will a deposit insurance application be approved where the payment of a fee, in whole or in part, is contingent upon any act or forbearance by the FDIC or by any other federal or state agency or official.

(b) *Stock benefit plans*—Stock benefit plans, including stock options, stock warrants, and other similar stock based compensation plans will be reviewed by the FDIC and must be fully disclosed to all potential subscribers. Participants in stock benefit plans may include incorporators, directors, and officers. A description of any such plans proposed must be included in the application submitted to the appropriate regional director (DOS). The structure of stock benefit plans should encourage the continued involvement of the participants and serve as an incentive for the successful operation of the institution. Stock benefit plans should contain no feature that would encourage speculative or high risk activities or serve as an obstacle to or otherwise impede the sale of additional stock to the general public.

Listed below are factors that the FDIC will consider in reviewing stock benefit plans:

- The duration of rights granted should be limited, and in no event should the exercise period exceed ten years;
- Rights granted should encourage the recipient to remain involved in the proposed depository institution. For example, a vesting period of approximately equal percentages each year over the initial three years of operation is a type of provision that would be appropriate to ensure continued involvement. This requirement may be waived for participants awarded only a nominal number of shares;
- Rights granted should not be transferable by the participant;
- The exercise price of stock rights shall not be less than the fair market value of the stock at the time that the rights are granted;
- Rights under the plan must be exercised or expire within a reasonable time after termination as an active officer, employee or director; and
- Stock benefit plans should contain a provision allowing the institution's primary federal regulator to direct the institution to require plan participants to exercise or forfeit their stock rights if the institution's capital falls below the minimum requirements, as determined by its state or primary federal regulator.

Stock benefit plans provided to directors and officers will be reviewed

[2] A 2 rating under the Uniform Financial Institution System is generally indicative of a satisfactory record of performance in light of the institution's particular circumstances.

as a part of the total compensation package offered to such individuals.

The FDIC will closely review stock benefit plans established to compensate incorporators. In reviewing such plans, the FDIC will consider the individual's time, expertise, financial commitment, and continuing involvement in the management of the proposed institution. The FDIC will also consider the amount and basis of any cash payments which will be made to the incorporator for services rendered or as a return on funds placed at risk. Plans to compensate incorporators that provide for more than one option or warrant for each share subscribed will generally be considered excessive. It is further expected that incorporators granted options or warrants at or near this level will actively participate in the management of the depository institution as an executive officer or director. On a case-by-case basis, the FDIC may not object to additional options being granted to an incorporator who will also be a senior executive officer.

The FDIC recognizes that there will be limited instances where individuals who substantially contribute to the organization of a new depository institution do not intend to serve as an active officer or director after the institution opens for business. The FDIC generally will not object to awarding warrants or options to incorporators who agree to accept shares of stock in lieu of cash payment for funds placed at risk or for professional services rendered. In such instances, the FDIC defines funds placed at risk to include ''seed money'' actually paid into the organizational fund and the value of professional services rendered as the market value of legal, accounting and other professional services rendered. Generally, warrants or options for organizers who will not participate in the management of the institution will be considered excessive if the amount of options or warrants to be granted exceeds the number of shares of stock received in repayment for funds placed at risk and/or for professional services rendered. The granting of options to incorporators who guarantee loans to finance an institution's organization generally would not be objectionable, but options granted should be limited so that the market value of the stock subject to option does not exceed the amount of the loan guarantees (although guarantees exceeding the amount drawn or expected to be drawn will not be considered). When continuing service is not contemplated, the FDIC will not require vesting or restrictions on transferability, but will review the duration of the rights, exercise price, and exercise or forfeiture clauses in the same manner as discussed above.

In evaluating benefit and compensation plans for insiders, the FDIC will look to the substance of the proposal. Those proposals that are determined to be substantially stock based plans will be evaluated based on the foregoing stock benefit plan criteria. Stock appreciation rights and similar plans that include a cash payment to the recipient based directly on the market value of the depository institution's stock are unacceptable.

If the proposal involves the formation of a *de novo* holding company and a stock benefit plan is being proposed at the holding company level, that stock benefit plan will be reviewed by the FDIC in the same manner as a plan involving stock issued by the proposed depository institution.

In some instances, the exercise of rights granted by a stock benefit plan will trigger the requirements of the Change in Bank Control Act of 1978, section 7(j) of the FDI Act (12 U.S.C. 1817(j)). The approval of an Application for Deposit Insurance which includes a description of stock benefit plans does not satisfy the prior notice requirements of the Change in Bank Control Act, if the exercise of rights would trigger the prior notice requirement.

(c) *Background and biographical information*—Proposed directors, officers, and 10% shareholders must file financial and biographical information in connection with the deposit insurance application. The FDIC may request a report from the Federal Bureau of Investigation or other investigatory agencies on these individuals. Fingerprinting of individuals may be required. Background checks and fingerprinting may be waived by the appropriate FDIC regional director (DOS) for individuals who are currently associated with, or have had a recent past association with, an insured depository institution. When the proposed depository institution is being established as a wholly owned subsidiary of an eligible holding company, the appropriate FDIC regional director (DOS) may waive financial information for those persons who are being proposed as directors or officers of the applicant. Background checks conducted by other federal financial institution regulators in connection with charter applications are generally adequate for the FDIC if the other regulators agree to notify the FDIC of instances in which further investigation is warranted.

In the event any present or prospective director, officer, employee, controlling stockholder, or agent of the applicant has been convicted of any criminal offense involving dishonesty, breach of trust, or money laundering, or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution of such offense, the applicant must obtain the FDIC's written consent under section 19 of the Act (12 U.S.C. 1829), before any such person may serve in one or more of those capacities. Guidelines regarding section 19 applications may be obtained from the appropriate FDIC regional office (DOS).

Proponents should be aware of the prohibitions against interlocking management officials which are applicable to depository institutions and depository institution holding companies and which are contained in the Depository Institution Management Interlocks Act (12 U.S.C. 3201).

(d) *Fidelity insurance, policies, and audit coverage*—An insured depository institution should maintain sufficient fidelity bond coverage on its active officers and employees to conform with generally accepted industry practices. Primary coverage of no less than $1 million is ordinarily expected. Approval of the application may be conditioned upon acquisition of adequate fidelity coverage prior to opening for business.

Applicants are expected to develop appropriate written investment, loan, funds management and liquidity policies. Establishment of an acceptable audit program is required for proposed depository institutions. Applicants for deposit insurance coverage are expected to commit the depository institution to obtain an audit by an independent public accountant annually for at least the first three years of operation. The FDIC may determine,[3] on a case-by-case basis, that a separate audit is unnecessary where the applicant is owned by a holding company and the proposed depository institution will undergo an audit performed by an independent public accountant as part of an audit of the consolidated financial statements of its parent company.

5. Risk Presented to the Bank Insurance Fund or Savings Association Insurance Fund

In order to resolve this factor favorably, the FDIC must be assured that the proposed institution does not present an undue risk to the Bank Insurance Fund or the Savings Association Insurance Fund. As a

[3] In a situation in which the FDIC is not to be the primary federal regulator, these determinations will be made in consultation with the primary federal regulator.

general matter, the FDIC interprets this factor very broadly. In making its determination, the FDIC will rely on any information available to it, including, but not limited to the applicant's business plan. The FDIC expects that an applicant will submit a business plan commensurate with the capabilities of its management and the financial commitment of the incorporators.[4] Submission of an unsound business plan will unfavorably impact the finding concerning this factor. An applicant's business plan should demonstrate the following:

- Adequate policies, procedures, and management expertise to operate the proposed depository institution in a safe and sound manner;
- Ability to achieve a reasonable market share;
- Reasonable earnings prospects;
- Ability to attract and maintain adequate capital; and
- Responsiveness to community needs.

Operating plans that rely on high risk lending, a special purpose market, or significant funding from sources other than core deposits, or that otherwise diverge from conventional bank related financial services will require specific documentation as to the suitability of the proposed activities for an insured institution. Similarly, additional documentation of plans is required where markets to be entered are intensely competitive or economic conditions are marginal.

6. Convenience and Needs of the Community to be Served

The essential considerations in evaluating this factor are the deposit and credit needs of the community to be served, the nature and extent of the opportunity available to the applicant in that location, and the willingness and ability of the applicant to serve those financial needs.

The applicant must clearly define the community it intends to serve and provide information on that community, including economic and demographic data and a description of the competitive environment. The applicant should also define the services to be offered in relation to the needs of the community. The proposed depository institution's Community Reinvestment Act documentation, including any applicable public file information, prepared in accordance with the requirements of the institution's primary federal regulator, is an important part of the FDIC's evaluation of the convenience and needs of the community to be served.

7. Consistency of Corporate Powers with the Purposes of the Act

(a) *National banks and Federal savings associations*—Generally the FDIC will presume that a proposed national bank's or federal savings association's corporate powers are consistent with the purposes of the Act.

(b) *Insured state banks and state savings associations*—Pursuant to section 24 of the Act (12 U.S.C. 1831a), no insured state bank may 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 state bank is, and continues to be, in compliance with applicable capital standards prescribed by its primary federal regulator. Similarly, section 28 of the Act (12 U.S.C. 1831e) provides that a state chartered savings association may not engage in any type of activity that is not permissible for a federal savings association, unless the FDIC has determined that the activity would pose no significant risk to the affected deposit insurance fund and the savings association is, and continues to be, in compliance with the capital standards for the association. Applicants shall agree in the application not to engage in any prohibited activities after deposit insurance has been granted.

State nonmember banks may not exercise trust powers without the prior written approval of the FDIC.

Operating Noninsured Institutions

This section discusses the evaluation of applications for deposit insurance submitted by operating noninsured institutions. The FDIC's criteria for evaluating applications submitted by operating institutions are generally the same as those for proposed depository institutions.

The FDIC must consider the seven factors found in section 6 of the Act, which are discussed above.

The condition of an applicant institution will be determined from all available information and will generally include an on-site examination as part of the investigation process. Results of the examination should reflect an institution that is fundamentally sound, although some modest weaknesses may exist. The nature and severity of deficiencies found should not be material, and the institution must be stable and able to withstand business fluctuations.

Capital ratios will be calculated using financial statements prepared in accordance with the ''Instructions-Consolidated Reports of Condition and Income'' or ''Thrift Financial Reports'' in use for insured institutions at the time. An applicant's capital adequacy will be measured in relation to the capital ratios established in the capital regulations of the institution's primary federal regulator. Based on an analysis of the type and quality of the institution's assets, the kind of powers exercised, the institution's funding sources, or other factors, an initial capital level higher than the minimum levels prescribed may be required. The analysis will include consideration of such matters as whether the applicant is relatively new,[5] has embarked upon a substantive change in powers exercised, or has experienced erratic growth patterns in recent years.

As part of the application investigation process, the FDIC will discuss with the applicant its future operating intentions. If any change in its kind or level of activity is expected following, or as a result of, the approval by the FDIC of deposit insurance, the applicant may be requested to submit a plan for maintaining adequate capital in the future.

Unless waived in writing by the FDIC, an applicant shall have a full scope audit conducted by an independent public accountant prior to submitting an application and shall submit a copy of the auditor's report as part of the application.

Section 24 of the Act (12 U.S.C. 1831a) limits the powers of insured state banks, and section 28 of the Act (12 U.S.C. 1831e) limits the powers of state chartered savings associations. If the institution is exercising any powers not authorized under the applicable statute, the application should contain an agreement and plan for eliminating the activity as soon as possible, or a separate application should be submitted seeking the FDIC's consent to continue the activity.

Deposit Insurance Applications From Proposed Publicly Owned Depository Institutions

An application for deposit insurance for a proposed depository institution

[4] Any significant deviation from the business plan within the first three years of operation must be reported by the insured depository institution to the primary federal regulator before consummation of the change.

[5] This Statement of Policy provides that the initial capital for a proposed depository institution should be sufficient to provide a leverage ratio of Tier I capital to total estimated assets of at least 8% throughout the first three years of operation. This standard shall also be applied to a recently organized institution applying for deposit insurance.

which would be owned or controlled by a domestic governmental entity (such as, for example, a state, county or a municipality) will be reviewed very closely.[6] The FDIC is of the opinion that due to their public ownership, such depository institutions present unique supervisory concerns that do not exist with privately owned depository institutions. For example, because of their ultimate control by the political process, such institutions could raise special concerns relating to management stability, their business purpose, and their ability and willingness to raise capital (particularly in the form of true equity rather than governmental transfers). On the other hand, such institutions may be particularly likely to meet the convenience and needs of their local community, particularly if the local community is currently un- or under-served by depository institutions. In view of such considerations and the policy issues they embody, the FDIC will closely evaluate such applications to ensure that the required statutory factors are met.

Proposed Depository Institutions Formed for the Sole Purpose of Acquiring Assets and Assuming Liabilities of an Insured Institution in Default

Because of the urgent nature of this type of transaction, the procedures described above for insuring proposed depository institutions are modified when the institution is being formed for the sole purpose of acquiring assets and assuming liabilities of an institution in default. Such institutions are approved based on the statutory factors contained in section 6 of the Act; however, the procedures for resolving these factors are modified significantly.

The evaluation of the statutory factor ''financial history and condition'' will be based to a great extent on the quality of assets purchased and the types of liabilities assumed in the transaction.

The minimum capital requirement for these transactions is such that the acquiring depository institution would be ''adequately capitalized,'' as defined in the capital regulations of its primary federal regulator, which should be augmented by an adequate allowance for loan and lease losses. It is emphasized that this is a minimum standard, and a higher capital level may be required. The initial capital requirements may be based on a realistic projection of the estimated retained deposits. However, the proposed depository institution will be required to provide a written commitment to achieve the minimum capital position shortly after consummation if the volume of deposits is underestimated.

Proponents should contact the appropriate FDIC regional office (DOS) as soon as possible if they are interested in acquiring assets and/or assuming liabilities of an institution in default. Due to the time constraints involved with this type of transaction, information submissions and applications will be abbreviated. Generally, a letter request accompanied by copies of applications filed with other federal or state regulatory authorities will be sufficient. Other information will be requested only as needed by the appropriate FDIC official.

Relationships With Other Federal Regulators

Nothing in these guidelines is intended to relieve the applicant of any requirements imposed by a depository institution's primary federal regulator. Any differences in requirements of the FDIC and the institution's primary federal regulator will be resolved during the investigation process.

By order of the Board of Directors.

Dated at Washington, D.C., this 7th day of July, 1998.

Federal Deposit Insurance Corporation.

James LaPierre,

Deputy Executive Secretary.

[FR Doc. 98–21488 Filed 8–19–98; 8:45 am]

BILLING CODE 6714–01–P

[6] Banks that are owned by foreign governments and their subdivisions and banks that are owned or controlled by Native American tribes or bands are distinguished from conventional governmental units and will continue to be reviewed in the same manner as in the past. Banks that are owned by foreign governments and their subdivisions are entitled to ''national treatment.'' (*See* International Banking Act of 1978, 12 U.S.C. 3101 *et seq.*). National treatment requires that all foreign depository institutions, whether publicly- or privately-owned, receive consistent treatment with domestic entities when operating in the United States. This includes eligibility for deposit insurance which is often a condition of either a state or federal charter. Native American tribes or bands that own or control depository institutions can also be distinguished from a conventional governmental unit that seeks to open or acquire a depository institution. This is because under federal law, Native American tribes and bands function as both governmental and economic, for-profit entities. The Indian Reorganization Act of 1934 (the IRA) (25 U.S.C. 461 et seq.) authorizes not only the creation of tribal governments (see section 16 of the IRA, 12 U.S.C. 476), but also provides for the creation of tribal business corporations pursuant to section 17 of the IRA (25 U.S.C. 477). At the same time, however, a tribal government organized under section 16 of the IRA is not precluded from engaging in business activities. See S. *Unique Ltd.* v. *Gila River Pima-Maricopa Indian Community*, 138 Ariz. 384, 674 P.2d 1376 (Ct. App. 1984). These legal and policy considerations unique to these two categories of insurance applicants outweigh any concerns that the FDIC may have regarding the ownership of such depository institutions by governmental entities.

FEDERAL DEPOSIT INSURANCE CORPORATION

Bank Merger Transactions

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Statement of policy.

SUMMARY: The FDIC is revising its Statement of Policy on Bank Merger Transactions (Statement of Policy) by updating it to reflect legislative and other developments that have occurred since the Statement of Policy was last revised in 1989. The revision also gives added guidance by including new provisions and clarifying some existing provisions. The revision is a part of the FDIC's systematic review of its regulations and written policies under the Riegle Community Development and Regulatory Improvement Act of 1994. The revised Statement of Policy is intended to be read in conjunction with the merger provisions of the FDIC's revised regulations governing applications filed with the FDIC, which also appear in this issue of the **Federal Register**.

EFFECTIVE DATE: October 1, 1998.

FOR FURTHER INFORMATION CONTACT: Kevin W. Hodson, Review Examiner, Division of Supervision, (202) 898–6919; Martha Coulter, Counsel, Legal Division, (202) 898–7348, Federal Deposit Insurance Corporation, Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION: On October 9, 1997, the FDIC issued for a public comment a proposal to revise the existing Statement of Policy (62 FR 52877). The proposal was issued in connection with section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI Act), 12 U.S.C. 4803(a), which required that each of the federal banking agencies conduct a review of its regulations and written policies, for two general purposes. These purposes were: (1) To streamline and modify the regulations and policies in order to improve efficiency, reduce unnecessary costs, and eliminate unwarranted constraints on credit availability; and (2) to remove inconsistencies and outmoded and duplicative requirements.

As part of this review, the FDIC determined that the Statement of Policy should be revised. The primary purpose of the revision was to update the Statement of Policy to reflect statutory changes and other developments since its last revision in 1989. In addition, certain clarifications and refinements were proposed, as well as new provisions intended to give guidance in

areas not addressed by the existing Statement of Policy.

The recent developments reflected in the proposed revisions included those resulting from statutory changes, such as changes made by the CDRI Act; the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994; and the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.[1] Changes in each of those statutes caused related references in the existing Statement of Policy to become out-dated or incomplete.

Also reflected in the proposed revision were such other developments as the discontinuation of FDIC collection of data on ''IPC'' deposits (deposits of individuals, partnerships, and corporations), previously used as a measure in FDIC merger analysis. The proposal also reflected amendments to certain FDIC regulations, such as the 1995 amendment of the FDIC's regulations implementing the Community Reinvestment Act (*see* 60 FR 22156 (May 4, 1995)) and, more recently, the proposed amendments to the FDIC's regulations governing merger applications (*see* 62 FR 52810 (October 9, 1997)).

In addition to the updates discussed above, the proposed revision expanded the Statement of Policy to include elements not previously covered, such as references to optional conversion transactions, branch closings in connection with merger transactions, and interstate and interim merger transactions. The proposed Statement of Policy also included a number of clarifications and refinements, such as a clarification that transactions that do not involve a transfer of deposit liabilities typically do not require prior FDIC approval under the Bank Merger Act, unless the transaction involves the acquisition of all or substantially all of an institution's assets.

The FDIC received two letters specifically commenting on the proposed revisions. Both letters were from depository institution trade associations and both expressed support for the revisions. No unfavorable comments were received. No changes were made as a result of comments received; however, a reference to the recently adopted Interagency Statement on Branch Names was added to the section discussing related considerations. The Interagency Statement, which addresses the potential for customer confusion about deposit insurance when an insured institution operates a branch under a trade name different from that of the institution, was adopted May 1, 1998, with an effective date of July 1, 1998. See FDIC, Financial Institution Letter 46–98, (May 1, 1998).

With this exception, and with the exception of a few minor editorial changes, the Board is adopting the revised Statement of Policy as proposed. The revised Statement of Policy is intended to be read in conjunction with the revised merger provisions of newly-amended part 303 (Applications) of the FDIC's regulations, which is published elsewhere in this issue of the **Federal Register**.

The Statement of Policy is revised by the Board to read as follows:

FDIC Statement of Policy on Bank Merger Transactions

I. Introduction

Section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)), popularly known as the ''Bank Merger Act,'' requires the prior written approval of the FDIC before any insured depository institution may:

(1) Merge or consolidate with, purchase or otherwise acquire the assets of, or assume any deposit liabilities of, another insured depository institution if the resulting institution is to be a state nonmember bank, or

(2) Merge or consolidate with, assume liability to pay any deposits or similar liabilities of, or transfer assets and deposits to, a noninsured bank or institution.

Institutions undertaking one of the above described ''merger transactions'' must file an application with the FDIC. Transactions that do not involve a transfer of deposit liabilities typically do not require prior FDIC approval under the Bank Merger Act, unless the transaction involves the acquisition of all or substantially all of an institution's assets.

The Bank Merger Act prohibits the FDIC from approving any proposed merger transaction that would result in a monopoly, or would further a combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States. Similarly, the Bank Merger Act prohibits the FDIC from approving a proposed merger transaction whose effect in any section of the country may be substantially to lessen competition, or which in any other manner would be in restraint of trade. An exception may be made in the case of a merger transaction whose effect would be to substantially lessen competition, tend to create a monopoly, or otherwise restrain trade, if the FDIC finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest. For example, the FDIC may approve a merger transaction to prevent the probable failure of one of the institutions involved.

In every proposed merger transaction, the FDIC must also consider the financial and managerial resources and future prospects of the existing and proposed institutions, and the convenience and needs of the community to be served.

II. Application Procedures

1. *Application filing.* Application forms and instructions may be obtained from any FDIC Division of Supervision (DOS) regional office. Completed applications and any other pertinent materials should be filed with the appropriate regional director as specified in § 303.2(g) of the FDIC rules and regulations (12 CFR 303.2(g)). The application and related materials will be reviewed by regional office staff for compliance with applicable laws and FDIC rules and regulations. When all necessary information has been received, the application will be processed and a decision rendered by the regional director pursuant to the delegations of authority set forth in § 303.66 of the FDIC rules and regulations (12 CFR 303.66) or the application will be forwarded to the FDIC's Washington office for processing and decision.

2. *Expedited processing.* Section 303.64 of the FDIC rules and regulations (12 CFR 303.64) provides for expedited processing, which the FDIC will grant to eligible applicants. In addition to the eligible institution criteria provided for in § 303.2 (12 CFR 303.2), § 303.64 provides expedited processing criteria specifically applicable to proposed merger transactions.

3. *Publication of notice.* The FDIC will not take final action on a merger application until notice of the proposed merger transaction is published in a newspaper or newspapers of general circulation in accordance with the requirements of section 18(c)(3) of the Federal Deposit Insurance Act. See § 303.65 of the FDIC rules and regulations (12 CFR 303.65). The applicant must furnish evidence of publication of the notice to the appropriate regional director (DOS) following compliance with the publication requirement. See § 303.7(b) of the FDIC rules and regulations (12 CFR 303.7(b)).

4. *Reports on competitive factors.* As required by law, the FDIC will request

[1] The citations for these statutes are, respectively, Pub. L. 103–325, 108 Stat. 2160; Pub. L. 103–328, 108 Stat. 2338; and Pub. L. 101–73, 103 Stat. 183.

reports on the competitive factors involved in a proposed merger transaction from the Attorney General, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Director of the Office of Thrift Supervision. These reports must ordinarily be furnished within 30 days, and the applicant upon request will be given an opportunity to submit comments to the FDIC on the contents of the competitive factors reports.

5. *Notification of the Attorney General.* After the FDIC approves any merger transaction, the FDIC will immediately notify the Attorney General. Generally, unless it involves a probable failure or an emergency exists requiring expeditious action, a merger transaction may not be consummated until 30 calendar days after the date of the FDIC's approval. However, the FDIC may prescribe a 15-day period, provided the Attorney General concurs with the shorter period.

6. *Merger decisions available.* Applicants for consent to engage in a merger transaction may find additional guidance in the reported bases for FDIC approval or denial in prior merger transaction cases compiled in the FDIC's annual ''Merger Decisions'' report. Reports may be obtained from the FDIC Office of Corporate Communications, Room 100, 801 17th Street N.W., Washington, D.C. 20434.

III. Evaluation of Merger Applications

The FDIC's intent and purpose is to foster and maintain a safe, efficient, and competitive banking system that meets the needs of the communities served. With these broad goals in mind, the FDIC will apply the specific standards outlined in this Statement of Policy when evaluating and acting on proposed merger transactions.

Competitive Factors

In deciding the competitive effects of a proposed merger transaction, the FDIC will consider the extent of existing competition between and among the merging institutions, other depository institutions, and other providers of similar or equivalent services in the relevant product market(s) within the relevant geographic market(s).

1. *Relevant geographic market.* The relevant geographic market(s) includes the areas in which the offices to be acquired are located and the areas from which those offices derive the predominant portion of their loans, deposits, or other business. The relevant geographic market also includes the areas where existing and potential customers impacted by the proposed merger transaction may practically turn for alternative sources of banking services. In delineating the relevant geographic market, the FDIC will also consider the location of the acquiring institution's offices in relation to the offices to be acquired.

2. *Relevant product market.* The relevant product market(s) includes the banking services currently offered by the merging institutions and to be offered by the resulting institution. In addition, the product market may also include the functional equivalent of such services offered by other types of competitors, including other depository institutions, securities firms, or finance companies. For example, share draft accounts offered by credit unions may be the functional equivalent of demand deposit accounts. Similarly, captive finance companies of automobile manufacturers may compete directly with depository institutions for automobile loans, and mortgage bankers may compete directly with depository institutions for real estate loans.

3. *Analysis of competitive effects.* In its analysis of the competitive effects of a proposed merger transaction, the FDIC will focus particularly on the type and extent of competition that exists and that will be eliminated, reduced, or enhanced by the proposed merger transaction. The FDIC will also consider the competitive impact of providers located outside a relevant geographic market where it is shown that such providers individually or collectively influence materially the nature, pricing, or quality of services offered by the providers currently operating within the geographic market.

The FDIC's analysis will focus primarily on those services that constitute the largest part of the businesses of the merging institutions. In its analysis, the FDIC will use whatever analytical proxies are available that reasonably reflect the dynamics of the market, including deposit and loan totals, the number and volume of transactions, contributions to net income, or other measures. Initially, the FDIC will focus on the respective shares of total deposits [1] held by the merging institutions and the various other participants with offices in the relevant geographic market(s), unless the other participants' loan, deposit, or other business varies markedly from that of the merging institutions. Where it is clear, based on market share considerations alone, that the proposed merger transaction would not significantly increase concentration in an unconcentrated market, a favorable finding will be made on the competitive factor.

Where the market shares of the merging institutions are not clearly insignificant, the FDIC will also consider the degree of concentration within the relevant geographic market(s) using the Herfindahl-Hirschman Index (HHI) [2] as a primary measure of market concentration. For purposes of this test, a reasonable approximation for the relevant geographic market(s) consisting of one or more predefined areas may be used. Examples of such predefined areas include counties, the Bureau of the Census Metropolitan-Statistical Areas (MSAs), or Rand-McNally Ranally Metro Areas (RMAs).

The FDIC normally will not deny a proposed merger transaction on antitrust grounds (absent objection from the Department of Justice) where the post-merger HHI in the relevant geographic market(s) is 1,800 points or less or, if it is more than 1,800, it reflects an increase of less than 200 points from the pre-merger HHI. Where a proposed merger transaction fails this initial concentration test, the FDIC will consider more closely the various competitive dynamics at work in the market, taking into account a variety of factors that may be especially relevant and important in a particular proposal, including:

- The number, size, financial strength, quality of management, and aggressiveness of the various participants in the market;
- The likelihood of new participants entering the market based on its attractiveness in terms of population, income levels, economic growth, and other features;
- Any legal impediments to entry or expansion; and
- Definite entry plans by specifically identified entities.

In addition, the FDIC will consider the likelihood that new entrants might enter the market by less direct means; for example, electronic banking with local advertisement of the availability of such services. This consideration will be particularly important where there is

[1] In many cases, total deposits will adequately serve as a proxy for overall share of the banking business in the relevant geographic market(s); however, the FDIC may also consider other analytical proxies.

[2] The HHI is a statistical measure of market concentration and is also used as the principal measure of market concentration in the Department of Justice's Merger Guidelines. The HHI for a given market is calculated by squaring each individual competitor's share of total deposits within the market and then summing the squared market share products. For example, the HHI for a market with a single competitor would be: $100^2 = 10{,}000$; for a market with five competitors with equal market shares, the HHI would be: $20^2 + 20^2 + 20^2 + 20^2 + 20^2 = 2{,}000$.

evidence that the mere possibility of such entry tends to encourage competitive pricing and to maintain the quality of services offered by the existing competitors in the market.

The FDIC will also consider the extent to which the proposed merger transaction likely would create a stronger, more efficient institution able to compete more vigorously in the relevant geographic markets.

4. *Consideration of the public interest.* The FDIC will deny any proposed merger transaction whose overall effect likely would be to reduce existing competition substantially by limiting the service and price options available to the public in the relevant geographic market(s), unless the anticompetitive effects of the proposed merger transaction are clearly outweighed in the public interest by the convenience and needs of the community to be served. For this purpose, the applicant must show by clear and convincing evidence that any claimed public benefits would be both substantial and incremental and generally available to seekers of banking services in the relevant geographic market(s) and that the expected benefits cannot reasonably be achieved through other, less anticompetitive means.

Where a proposed merger transaction is the only reasonable alternative to the probable failure of an insured depository institution, the FDIC may approve an otherwise anticompetitive merger transaction. The FDIC usually will not consider a less anticompetitive alternative that is substantially more costly to the FDIC to be a reasonable alternative, unless the potential costs to the public of approving the anticompetitive merger transaction are clearly greater than those costs likely to be saved by the FDIC.

Prudential Factors

The FDIC does not wish to create larger weak institutions or to debilitate existing institutions whose overall condition, including capital, management, and earnings, is generally satisfactory. Consequently, apart from competitive considerations, the FDIC normally will not approve a proposed merger transaction where the resulting institution would fail to meet existing capital standards, continue with weak or unsatisfactory management, or whose earnings prospects, both in terms of quantity and quality, are weak, suspect, or doubtful. In assessing capital adequacy and earnings prospects, particular attention will be paid to the adequacy of the allowance for loan and lease losses. In evaluating management, the FDIC will rely to a great extent on the supervisory histories of the institutions involved and of the executive officers and directors that are proposed for the resultant institution. In addition, the FDIC may review the adequacy of management's disclosure to shareholders of the material aspects of the merger transaction to ensure that management has properly fulfilled its fiduciary duties.

Convenience and Needs Factor

In assessing the convenience and needs of the community to be served, the FDIC will consider such elements as the extent to which the proposed merger transaction is likely to benefit the general public through higher lending limits, new or expanded services, reduced prices, increased convenience in utilizing the services and facilities of the resulting institution, or other means. The FDIC, as required by the Community Reinvestment Act, will also note and consider each institution's Community Reinvestment Act performance evaluation record. An unsatisfactory record may form the basis for denial or conditional approval of an application.

IV. Related Considerations

1. *Interstate bank merger transactions.* Where a proposed transaction is an interstate merger transaction between insured banks, the FDIC will consider the additional factors provided for in section 44 of the Federal Deposit Insurance Act, 12 U.S.C. 1831u.

2. *Interim merger transactions.* An interim institution is a state- or federally-chartered institution that does not operate independently, but exists, normally for a very short period of time, solely as a vehicle to accomplish a merger transaction. In cases where the establishment of a new or interim institution is contemplated in connection with a proposed merger transaction, the applicant should contact the FDIC to discuss any relevant deposit insurance requirements. In general, a merger transaction (other than a purchase and assumption) involving an *insured* depository institution and a *federal* interim depository institution will not require an application for deposit insurance, even if the federal interim depository institution will be the surviving institution.

3. *Optional conversion.* Section 5(d)(3) of the Federal Deposit Insurance Act, 12 U.S.C. 1815(d)(3), provides for ''optional conversions'' (commonly known as Oakar transactions) which, in general, are merger transactions that involve a member of the Bank Insurance Fund and a member of the Savings Association Insurance Fund. These transactions are subject to specific rules regarding deposit insurance coverage and premiums. Applicants may find additional guidance in § 327.31 of the FDIC rules and regulations (12 CFR 327.31).

4. *Branch closings.* Where banking offices are to be closed in connection with the proposed merger transaction, the FDIC will review the merging institutions' conformance to any applicable requirements of section 42 of the FDI Act concerning notice of branch closings as reflected in the Interagency Policy Statement Concerning Branch Closing Notices and Policies. See 2 FDIC Law, Regulations, Related Acts 5391.

5. *Legal fees and other expenses.* The commitment to pay or payment of unreasonable or excessive fees and other expenses incident to an application reflects adversely upon the management of the applicant institution. The FDIC will closely review expenses for professional or other services rendered by present or prospective board members, major shareholders, or other insiders for any indication of self-dealing to the detriment of the institution. As a matter of practice, the FDIC expects full disclosure to all directors and shareholders of any arrangement with an insider. In no case will the FDIC approve an application where the payment of a fee, in whole or in part, is contingent upon any act or forbearance by the FDIC or by any other federal or state agency or official.

6. *Trade names.* Where an acquired bank or branch is to be operated under a different trade name than the acquiring bank, the FDIC will review the adequacy of the steps taken to minimize the potential for customer confusion about deposit insurance coverage. Applicants may refer to the Interagency Statement on Branch Names for additional guidance. See FDIC, Financial Institution Letter, 46–98 (May 1, 1998).

By order of the Board of Directors.

Dated at Washington, D.C., this 7th day of July, 1998.

Federal Deposit Insurance Corporation.

James LaPierre,

Deputy Executive Secretary.

[FR Doc. 98–21489 Filed 8–19–98; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Liability of Commonly Controlled Depository Institutions

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Statement of policy.

SUMMARY: The FDIC is revising its Statement of Policy on Liability of Commonly Controlled Depository Institutions (Statement of Policy) which sets forth the procedures and guidelines the FDIC uses in assessing or waiving liability against commonly controlled depository institutions under section 5(e) of the Federal Deposit Insurance Act. The revised Statement of Policy removes the application procedures for requesting a conditional waiver of the cross-guaranty liability from the Statement of Policy and incorporates those same procedures into § 303.245 of the FDIC's Rules published elsewhere in today's **Federal Register**.

EFFECTIVE DATE: October 1, 1998.

FOR FURTHER INFORMATION CONTACT: Jesse G. Snyder, Assistant Director, Division of Supervision (202) 898–6915, or Grovetta N. Gardineer, Counsel, Legal Division, (202) 898–3728, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION: In accordance with section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4803(a)), the FDIC conducted a systematic review of its regulations and written policies and determined that it was appropriate to revise the Statement of Policy. As a result of this review, the Board of Directors of the FDIC revised the Statement of Policy Regarding Liability of Commonly Controlled Depository Institutions to move the application procedures for requesting a conditional waiver of cross guaranty liability from the Statement of Policy to part 303 (12 CFR part 303). Specifically, the contents of an application for requesting a conditional waiver of liability will be located in § 303.245. The purpose of this revision is to place virtually all of FDIC's application procedures into one regulation to facilitate ease of use.

The FDIC received two comments regarding the revision to the Statement of Policy. Both of the commenters supported the FDIC's proposal to revise the Statement of Policy.

For the above reasons, the FDIC is adopting the following revision to the Statement of Policy:

Liability of Commonly Controlled Depository Institutions

Introduction

Section 5(e) of the Federal Deposit Insurance Act (12 U.S.C. 1815(e)), as added by section 206(a)(7) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, creates liability for commonly controlled insured depository institutions for losses incurred or reasonably anticipated by the Federal Deposit Insurance Corporation (FDIC) in connection with (i) the default of a commonly controlled insured depository institution; or (ii) any assistance provided by the FDIC to any commonly controlled insured depository institution in danger of default. In addition to certain statutory exceptions and exclusions contained in sections 5(e)(6), (7) and (8), the FDI Act also permits the FDIC, in its discretion, to exempt any insured depository institution from this liability if it determines that such exemption is in the ''best interests of the Bank Insurance Fund or the Savings Association Insurance Fund.''

The liability of an insured depository institution attaches at the time of default of a commonly controlled institution. It is completely within the discretion of the FDIC whether or not to issue a notice of assessment to the liable institution for the estimated amount of the loss incurred or reasonably anticipated to be incurred by the FDIC.

Guidelines for Conditional Waiver of Liability

The FDIC may, in its discretion, choose not to assess liability based upon analysis of a particular situation, and it may entertain requests for waivers from affiliated or unaffiliated parties of an institution in default or in danger of default. The determination of whether an exemption is in the best interests of either insurance fund rests solely with the Board of Directors of the FDIC (Board). Should the Board make such a determination, a waiver will be issued setting forth terms and conditions that must be met in order to receive an exemption from liability (conditional waiver of liability). The following guidelines apply to conditional waivers of liability under the provisions of this section:

(1) A conditional waiver of liability will be considered in those cases where the waiver facilitates an alternative that would be in the best interests of the FDIC. For example, a conditional waiver may be granted when requisite additional capital and managerial resources are being provided which substantially lessen the exposure of the affected insurance fund. When a conditional waiver is granted to an unaffiliated acquirer of an institution in default or in danger of default it will be granted for a fixed period, generally not to exceed a period of time reasonably required for existing problems to be identified and resolved.

(2) If one or more institutions in a commonly controlled relationship is otherwise solvent, well-managed and viable, it may be in the best interest of the FDIC to waive or reduce claims against such entities. In determining whether a conditional waiver is appropriate, consideration will be given to actions of a holding company which may contribute to or diminish the FDIC's losses, as well as proposals to strengthen other weakened institutions, if any.

(3) Procedures to request a conditional waiver of liability are contained in § 303.245 of the FDIC's Rules and Regulations, 12 CFR 303.245.

(4) In cases where an insured depository institution is sold to an acquirer with no financial interest, directly or indirectly, in the institution prior to the acquisition, it is the general policy of the FDIC to forego the issuance of a notice of assessment to the acquirer and its affiliated institutions in the event of a default of an insured depository institution formerly affiliated with the acquired institution. The FDIC will review all such transactions prior to making a final determination to forego the issuance of the notice of assessment.

Guidelines for Assessment of Liability

Whenever the FDIC determines that assessment of liability in connection with a commonly controlled insured depository institution(s) is appropriate, a Notice of Assessment of Liability, Findings of Fact and Conclusions of Law, Order to Pay, and Notice of Hearing (Notice of Assessment) will be served upon the liable institution. In assessing the amount of the FDIC's loss and the liable institution(s'') method of payment, the following guidelines shall apply:

(1) A good faith estimate of the amount of loss the FDIC shall incur shall be based upon (a) the actual sale or calculation of loss from a review by the FDIC of the assets and liabilities of the institution prior to default or the granting of assistance; or (b) any other cost estimate bases as explained in the Notice of Assessment.

(2) If there is more than one commonly controlled depository institution to be assessed, each such institution is jointly and severally liable for all losses; however, the FDIC shall make a good faith estimate of the liability of each institution as determined by (a) first assessing an initial amount on a pro rata capital basis that brings about parity in the capital ratios of the liable institutions, and (b) then apportioning any residual assessment on a pro-rata size basis utilizing the most recent Report of

Condition. Any final assessment can be based on the estimated liability of each institution by the FDIC and/or negotiations with the liable institutions.

(3) In the event that any liable institution is closed prior to paying an assessment, the amount assessed or to have been assessed against that institution may be assessed against the remaining liable institution(s).

(4) The FDIC, after consulting with the appropriate Federal and State financial institutions regulatory agencies, shall establish in each case a schedule for payment which may include a lump sum reimbursement, as well as procedures for receipt of such payment.

(5) Once liability has attached, the FDIC will consider information similar to that provided with a request for a conditional waiver of liability in determining the amount of the estimated loss to be assessed. Such information may also include suggested payment plans.

By order of the Board of Directors.

Dated at Washington, D.C. this 7th day of July, 1998.

Federal Deposit Insurance Corporation.

James LaPierre,

Deputy Executive Secretary.

[FR Doc. 98–21490 Filed 8–19–98; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Applications to Establish a Domestic Branch (Includes Remote Service Facilities); Rescission of Statement of Policy

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Rescission of statement of policy.

SUMMARY: The FDIC is rescinding its Statement of Policy ''Applications to Establish a Domestic Branch (Includes Remote Service Facilities)'' (Statement of Policy). The Statement of Policy provides information and guidance to state nonmember banks planning to establish a domestic branch. However, the information and guidance contained in the Statement of Policy is out-of-date.

This action is being taken in accordance with section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI), which requires the federal bank and thrift regulatory agencies to review and streamline their regulations and policies in order to improve efficiency, reduce unnecessary costs, eliminate unwarranted constraints on credit availability, and remove inconsistencies and outmoded and duplicative requirements.

The FDIC is rescinding the Statement of Policy because the revisions to its applications regulation, published elsewhere in today's **Federal Register**, update requirements and sufficiently address all required application procedures.

EFFECTIVE DATE: October 1, 1998.

FOR FURTHER INFORMATION CONTACT: Jesse G. Snyder, Assistant Director, (202)898–6915, Division of Supervision; Susan van den Toorn, Counsel, (202)898–8707, Legal Division, FDIC, 550 17th Street, N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION: In accordance with section 303(a) of the CDRI (12 U.S.C. 4803(a)), the FDIC conducted a systematic review of its regulations and written policies and determined that it was appropriate to rescind the Statement of Policy. A notice of proposed rescission of this Statement of Policy was published on October 9, 1997 (62 FR 52880).

The FDIC developed the Statement of Policy to provide general supervisory information and guidance to state nonmember banks on the application process and the evaluation of statutory factors in establishing domestic branches. The FDIC last amended the Statement of Policy September 8, 1980. 2 FDIC Law, Regulations, Related Acts 5105.

Since the Statement of Policy was last amended, the application process for establishing domestic branches has changed significantly. As a result, the supervisory information and guidance contained in the Policy Statement are now out-of-date.

As part of the FDIC's comprehensive review of its applications process the FDIC is amending part 303 (Applications) of its regulations elsewhere in today's **Federal Register**. The revisions to part 303 address all required application procedures to establish a domestic branch.

The FDIC received three comments regarding the rescission of the Statement of Policy. Two of the commenters supported the FDIC's proposal to rescind the Statement of Policy and one offered no objection.

For the above reasons, the FDIC rescinds the Statement of Policy on Applications to Establish a Domestic Branch (Includes Remote Service Facilities).

By order of the Board of Directors.

Dated at Washington, D.C. this 7th day of July, 1998.

Federal Deposit Insurance Corporation.

James LaPierre,

Deputy Executive Secretary.

[FR Doc. 98–21553 Filed 8–19–98; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Applications to Relocate Main Office or Branch (Includes Remote Service Facilities); Rescission of Statement of Policy

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Rescission of statement of policy.

SUMMARY: The FDIC is rescinding its Statement of Policy ''Applications to Relocate a Main Office or Branch (Includes Remote Service Facilities)'' (Statement of Policy). The Statement of Policy provides information and guidance to state nonmember banks planning to relocate a bank's main office or a branch. The information and guidance is out-of-date.

This action is being taken 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 (CDRIA), which requires the federal bank and thrift regulatory agencies to review and streamline their regulations and policies in order to improve efficiency, reduce unnecessary costs, eliminate unwarranted constraints on credit availability, and remove inconsistencies and outmoded and duplicative requirements.

The FDIC is rescinding the Statement of Policy because the revisions to its applications regulation published elsewhere in today's **Federal Register** update the requirements and sufficiently address all required application procedures to relocate a main office or a branch.

EFFECTIVE DATE: October 1, 1998.

FOR FURTHER INFORMATION CONTACT: Jesse G. Snyder, Assistant Director, (202)898–6915, Division of Supervision; Susan van den Toorn, Counsel, (202)898–8707) Legal Division, FDIC, 550 17th Street, N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION: In accordance with section 303(a) of the CDRIA (12 U.S.C. 4803(a)), the FDIC conducted a systematic review of its regulations and written policies and determined that it was appropriate to rescind the Statement of Policy. A notice of proposed rescission of this

Statement of Policy was published on October 9, 1997 (62 FR 52886).

The FDIC developed the Statement of Policy to provide general supervisory information and guidance to state nonmember banks relative to the application process and the evaluation of statutory factors in relocating main office or branches. The FDIC last amended the Statement of Policy September 8, 1980. 2 FDIC Law, Regulations, and Related Acts 5125.

Since the Statement of Policy was last amended, the application process for relocating branches and main offices has changed significantly. As a result, the supervisory information and guidance contained in the Policy Statement are now out-of-date.

As part of the FDIC's comprehensive review of its applications process the FDIC is amending part 303 of its regulations elsewhere in today's **Federal Register**. The revisions to part 303 cover the relocation of main offices and branches in sufficient detail so as to address the required application procedures.

The FDIC received three comments regarding the rescission of the Statement of Policy. Two commenters supported the FDIC's proposal to rescind the Statement of Policy and one offered no objection.

For the above reasons, the FDIC rescinds the Statement of Policy on Applications to Relocate Main Office or Branch (Includes Remote Service Facilities).

By order of the Board of Directors.

Dated at Washington, D.C. this 7th day of July, 1998.

Federal Deposit Insurance Corporation

James LaPierre,

Deputy Executive Secretary.

[FR Doc. 98–21554 Filed 8–19–98; 8:45 am]

BILLING CODE 6714–01–P

Federal Register

Thursday
August 20, 1998

Part III

The President

Executive Order 13098—Blocking Property of UNITA and Prohibiting Certain Transactions With Respect to UNITA

Federal Register
Vol. 63, No. 161
Thursday, August 20, 1998

Presidential Documents

Title 3—

The President

Executive Order 13098 of August 18, 1998

Blocking Property of UNITA and ProhibitingCertain Transactions With Respect to UNITA

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), section 5 of the United Nations Participation Act of 1945, as amended (22 U.S.C. 287c) (UNPA), and section 301 of title 3, United States Code, in view of United Nations Security Council Resolutions 1173 of June 12, 1998, and 1176 of June 24, 1998, and in order to take additional steps with respect to the actions and policies of the National Union for the Total Independence of Angola (UNITA) and the national emergency declared in Executive Order 12865, I, WILLIAM J. CLINTON, President of the United States of America, hereby order:

Section 1. Except to the extent provided in regulations, orders, directives, or licenses issued pursuant to this order, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any license or permit granted prior to the effective date of this order, all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons, of UNITA, or of those senior officials of UNITA, or adult members of their immediate families, who are designated pursuant to section 5 of this order, are hereby blocked.

Sec. 2. Except to the extent provided in regulations, orders, directives, or licenses issued pursuant to this order, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any license or permit granted prior to the effective date of this order, the following are prohibited:

(a) the direct or indirect importation into the United States of all diamonds exported from Angola on or after the effective date of this order that are not controlled through the Certificate of Origin regime of the Angolan Government of Unity and National Reconciliation;

(b) the sale or supply by United States persons or from the United States or using U.S.-registered vessels or aircraft, of equipment used in mining, regardless of origin, to the territory of Angola other than through a point of entry designated pursuant to section 5 of this order;

(c) the sale or supply by United States persons or from the United States or using U.S.-registered vessels or aircraft, of motorized vehicles, watercraft, or spare parts for the foregoing, regardless of origin, to the territory of Angola other than through a point of entry designated pursuant to section 5 of this order; and

(d) the sale or supply by United States persons or from the United States or using U.S.-registered vessels or aircraft, of mining services or ground or waterborne transportation services, regardless of origin, to persons in areas of Angola to which State administration has not been extended, as designated pursuant to section 5 of this order.

Sec. 3. Any transaction by a United States person or within the United States that evades or avoids, or has the purpose of evading or avoiding,

or attempts to violate, any of the prohibitions set forth in this order is prohibited.

Sec. 4. For the purposes of this order:

(a) the term ''person'' means an individual or entity;

(b) the term ''entity'' means a partnership, association, trust, joint venture, corporation, or other organization;

(c) the term ''United States person'' means any United States citizen, permanent resident alien, entity organized under the laws of the United States (including foreign branches), or any person in the United States;

(d) the term ''UNITA'' includes:

(i) the Uniao Nacional para a Independencia Total de Angola (UNITA), known in English as the ''National Union for the Total Independence of Angola;''

(ii) the Forcas Armadas para a Liberacao de Angola (FALA), known in English as the ''Armed Forces for the Liberation of Angola;'' and

(iii) any person acting or purporting to act for or on behalf of any of the foregoing, including the Center for Democracy in Angola (CEDA);

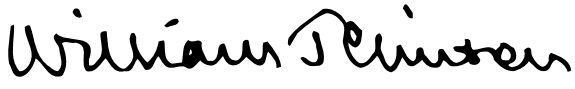
(e) the term ''controlled through the Certificate of Origin regime of the Angolan Government of Unity and National Reconciliation'' means accompanied by any documentation that demonstrates to the satisfaction of the United States Customs Service that the diamonds were legally exported from Angola with the approval of the Angolan Government of Unity and National Reconciliation.

Sec. 5. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including designating senior officials of UNITA and adult members of their immediate families for purposes of section 1 of this order, designating points of entry in Angola and areas of Angola to which State administration has not been extended for purposes of section 2 of this order, establishing exemptions from the prohibitions set forth in this order for medical and humanitarian purposes, and promulgating rules and regulations, and to employ all powers granted to the President by IEEPA and UNPA, as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order, including suspension or termination of licenses or other authorizations in effect as of the effective date of this order.

Sec. 6. Nothing contained in this order shall create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

Sec. 7. (a) This order is effective at 12:01 a.m., eastern daylight time on August 19, 1998.

(b) This order shall be transmitted to the Congress and published in the **Federal Register**.



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Filed 8–19–98; 11:39 am]
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